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# In the Privy Council.

UNIVERSITY OF LONDON  
 No. 34 of 1949.  
 30 MAR 1951  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

## ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

KANNANGARA ARATCHIGE DHARMASENA  
(Accused)

UNIVERSITY OF LONDON  
 W.C.1.  
 17 JUL 1953  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES  
*Appellant*

AND

THE KING (Complainant) - - - - - Respondent.

# RECORD OF PROCEEDINGS

DARLEY, CUMBERLAND & CO.,  
 36 JOHN STREET, W.C.1,  
*Solicitors for the Appellant.*

BURCHELLS,  
 9 BISHOPSGATE, E.C.2,  
*Solicitors for the Respondent.*

ON APPEAL  
FROM THE SUPREME COURT OF THE ISLAND OF Ceylon

UNIVERSITY OF LONDON

17 JUL 1953

INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN  
KANNANGARA ARATCHIGE DHARMASENA alias BAAS  
(Accused) - - - - - Appellant

AND  
THE KING (Complainant) - - - - - Respondent.

RECORD OF PROCEEDINGS

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# In the Privy Council.

## ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

KANNANGARA ARATCHIGE DHARMASENA alias  
BAAS (Accused) - - - - - *Appellant*

AND

THE KING (Complainant) - - - - - *Respondent.*

# 10 RECORD OF PROCEEDINGS

No. 1.

(a) INDICTMENT.

*In the  
Supreme  
Court.*

Supreme Court  
No. 1  
Magistrate's Court  
of Colombo  
Case No. 36089

No. 1 (A).  
Indictment,  
18th June  
1948.

(1) INDICTMENT

20 In the Supreme Court of the }  
Island of Ceylon } [Criminal Jurisdiction]

Western Circuit }  
District of Colombo } At a Session of the said Supreme Court in its  
4th Western Session } Criminal Jurisdiction for the Western Circuit  
Colombo 1948 } to be holden at Colombo in the year of our  
1949. } Lord One Thousand Nine hundred and forty  
eight.

THE KING

*Versus*

1. KANNANGARA ARATCHIGE DHARMASENA alias BAAS
2. BEATRICE MAUDE DE SILVA SENEVIRATNE

30 you are indicted at the instance of Alan Edward Percival Rose, Esquire, K.C., His Majesty's Attorney-General and the charges against you are :—

1. That between the 1st and 8th day of November, 1947, at Nugegoda and Kotahena in the district of Colombo, you did agree to commit or act together with a common purpose for or in committing an

*In the  
Supreme  
Court.*

No. 1 (A).  
Indictment,  
18th June  
1948,  
*continued.*

offence to wit the murder of one Govipolagodage Dionysius de Silva Seneviratne of No. 107 College Street, Kotahena, and that you have thereby committed the offence of conspiracy, to commit murder, in consequence of which conspiracy the said offence of murder was committed ; and that you have thereby committed an offence punishable under section 113B read with sections 296 and 102 of the Penal Code.

2. That on or about the 7th November, 1947, at Kotahena in the district of Colombo, and in the course of the same transaction as set out in count (1) above, you 1. Kannangara Aratchige Dharmasena alias Baas, did commit murder by causing the death of the said Govipolagodage Dionysius de Silva Seneviratne, and that you have thereby committed an offence punishable under section 296 of the Penal Code. 10

3. That between the dates mentioned in count (1) above, you 2. Beatrice Maude de Silva Seneviratne, did abet the said Kannangara Aratchige Dharmasena alias Baas, the 1st accused, in the commission of the offence set out in count (2) above which said offence was committed in consequence of such abetment and that you have thereby committed an offence punishable under section 296 read with section 102 of the Penal Code.

This 18th day of June, 1948.

20

(Sgd.) H. A. WIJEMANNA,

Crown Counsel.

To this Indictment the prisoners :—

1. Kannangara Aratchige Dharmasena *alias* Baas

2. Beatrice Maude de Silva Seneviratne  
severally plead not guilty to the charges.

(Sgd.) J. B. JAYASEKERA,

Clerk of Assize.

**(b) VERDICT.**

No. 1 (B).  
Verdict,  
3rd  
February  
1949.

Wednesday the 5th day of January One thousand nine hundred and forty-nine 30

The unanimous Verdict of the Jurors sworn to try the matter of accusation in this case is that both prisoners are guilty on count (1) of

the Indictment and that the 1st prisoner is also guilty on count (2) of the Indictment.

(Sgd.) (*Illegible*)

Foreman.

(Sgd.) J. B. JAYASEKERA,

Clerk of Assize.

*In the  
Supreme  
Court.*

No. 1 (B).  
Verdict,  
3rd  
February  
1949,  
*continued.*

Wednesday the 3rd day of February One thousand nine hundred and forty-nine.

On this Indictment the sentence of the Court, pronounced and  
10 published this day, is that both prisoners be taken hence to the Welikada  
Prisons, and on the 15th and 16th days of March, 1949, be hanged by  
their necks until they be dead.

(Sgd.) J. B. JAYASEKERA,

Clerk of Assize.

(c) List of Productions and List of Witnesses.

[*Not Printed.*]

No. 1 (c).  
[*not  
printed.*]

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No. 2.

PROCEEDINGS AND ORDER on Motion for separation of Trials.

S.C. No. 1.

M.C. Colombo No. 36089.

20

REX

V.

1. KANNANGARA ARATCHIGE DHARMASENA alias BAAS.
2. BEATRICE MAUDE DE SILVA SENEVIRATNE.

*Trial Begins on* : 4th January, 1949.

*Counsel* : Mr. J. A. P. Cherubim, Crown Counsel, with Mr. J. G. T. Weeraratne, Crown Counsel, for the Crown.

Mr. Lekamge (assigned) counsel for the first accused.

Mr. Nihal Gunasekera with Mr. A. B. Perera instructed by Messrs. Meril Perera and Gunasekera for the second accused.

30 Mr. G. A. Thavathuray (assigned) Counsel for the second accused.

Before the trial is resumed, Mr. Nihal Gunasekera brings to the notice of the Court that witness No. 7, on the back of the indictment, is absent.

Crown Counsel states that a medical certificate has been forwarded stating that this witness was delivered of a baby on the 23rd December, and will not be fit to attend Court for two weeks.

*Order.*

Let the trial proceed. We shall examine her in her house if necessary.

No. 2.  
Proceedings  
and Order  
on Motion  
for separa-  
tion of  
trials, 4th  
and 5th  
January  
1949.

*In the  
Supreme  
Court.*

No. 2.  
Proceedings  
and Order  
on Motion  
for separa-  
tion of  
trials, 4th  
and 5th  
January  
1949,  
*continued.*

At this stage Mr. Nihal Gunasekera moves for a separation of trials. He requests that the Jury be asked to retire to their chamber.

*Court:* Will the members of the jury please retire to the Jury chamber.

*Jury retire.*

(The representatives of the Press who are present, asked by His Lordship, to refrain from reporting these proceedings.)

*Mr. Gunasekera* states that the joint trial of the accused now before Court, would both prejudice and embarrass the defence of his client, the second accused. He states that, so far as he understands the case for the prosecution, that is, while there was no motive for the first accused to kill the deceased, he did so at the instigation or to accede to the wishes of the second accused. *Mr. Gunasekera* states that the defence of the second accused is that she does not know who killed the deceased; she certainly did not instigate the first accused to do so. *Mr. Nihal Gunasekera* draws the attention of the Court to the depositions at page 244 of the proceedings before the Magistrate, which show that the deceased was a miser, who wore his almirah key round his neck in order to protect his property. The depositions show that this key was not found round the neck of the deceased after his death. The almirah in question was opened by the Police with a screw driver. *Mr. Gunasekera* states that, in these circumstances, it is open to the second accused to take up the position that the motive for this killing might have been theft. He submits that, in that state of affairs, it becomes very relevant to the defence of the second accused not merely to suggest but to go on to prove that the first accused is type of person who would commit theft. *Mr. Gunasekera* states that he has a deposition to prove that the first accused had several previous convictions for offences such as theft, house-breaking and robbery. To prove these matters, a portion of the defence of the second accused would obviously prejudice the defence of the first accused, and therefore, *Mr. Gunasekera* submits that it might be both in the interests of the second accused, as well as of the first, that there should be a separation in their trials. *Mr. Gunasekera* cites:—

Section 179 Criminal Procedure Code,  
Dias Volume 1, page 429,  
37 Ceylon Law Weekly,  
Chitterly Volume 2, page 1425.

*Mr. Lekamge* states that he too desires a separation of trials, as the reasons given by the Learned Counsel for the second accused apply even more strongly in respect of the first accused.

*Crown Counsel* states that he submits his application with every sense of responsibility of his duties as an officer prosecuting on behalf of the Crown. He states that a separation of trials in this case would mean no less than the abandonment of the case against the second prisoner. It is essentially the case for the prosecution that the first prisoner caused the death of the deceased upon the abetment by conspiracy of the second prisoner. In support of these submissions, Crown Counsel urges the following reasons:

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1. There is no evidence "aliunde" of the conspiracy between the first and the second prisoner which is not in the very forefront of the case for the prosecution. The evidence of this conspiracy is mainly that of certain matters which transpired on the 6th day of November, the day prior to the death of the deceased. It is clear from the depositions at page 48, that a conspiracy as alleged in the indictment, can be proved from the statements set out therein, as having been made by the first accused to the second accused. Upon a separation of trials of the two prisoners, all these statements become hearsay as against the second prisoner, and the Crown, may well immediately withdraw the indictment as against her.

2. To decide the matter now before Court, the Court need travel no further than the depositions and exhibits at present before Court.

3. The case for the prosecution is that the first accused was a tool in the hands of the second accused, who stood to benefit by the death of the deceased.

4. Speaking from the depositions, there was no evidence that there was any property of value, whether in the form of cash or otherwise in the almirah of the deceased. The evidence is that there was only a sum of Rs.1.25, on the person of the deceased at the time of his death.

5. The defence, if robbery is sought to be made the motive for the death of the deceased, puts forward the defence that some unknown person killed the deceased for reasons of robbery. This would satisfy the positions of both the prisoners in regard to the present charge without embarrassment or prejudice to either.

Crown Counsel cites : 31 Criminal Appeal Reports, page 116.  
17 New Law Reports, page 139,  
S.C.2—M.C. Pt. Pedro 9250.  
Supreme Court minutes of 22.9.48, and  
48 New Law Reports page 183.

*Mr. Lekamge* states that he has nothing further to add. He leaves it to *Mr. Gunasekera*.

*Mr. Gunasekera* states that he too has made his application with every sense of his duty both to his client and to the Court. There is no rule of Law that co-conspirators should be tried together; nor is in the circumstances, the prosecution would be embarrassed by a separation of trial, relevant. It is essential to the defence of the second accused to prove the first accused's previous convictions, which he knows are large a number, are relating to offences like theft, housebreaking and robbery. Once that is done, the first accused has no chance whatsoever in regard to his defence in a trial before a Jury. As regards the submissions that there is no evidence "aliunde" of a conspiracy other than the statements of the second accused, *Mr. Gunasekera* submits that the following statements of the second accused taken cumulatively would establish conspiracy "Aliunde." In the depositions at page 49, the second accused said that the woman (Alice Nona) is trustworthy.

6. At page 51, "the second accused said that the master should be present between 9 and 10 a.m."

At page 51 "in the night after dinner," the second accused said, "The Baas would come in the morning and asked me to avoid him."

*In the  
Supreme  
Court.*

No. 2.  
Proceedings  
and Order  
on Motion  
for separa-  
tion of  
trials, 4th  
and 5th  
January  
1949,  
*continued.*



*In the  
Supreme  
Court.*

No. 2.  
Proceedings  
and Order  
on Motion  
for separa-  
tion of  
trials, 4th  
and 5th  
January  
1949,  
*continued.*

At page 57, " Whilst passing the Police Station the second accused called me and said, ' Look at this, Ana, Master has been murdered '. I knew what it was but the lady has asked me not to speak about it."

Mr. Gunasekera states that these statements of the second accused would be admissible against her in the event of a separate trial of the second accused and join the prosecution to ask for no ruling from the Court in terms of section 10 of the Evidence Ordinance, that evidence of a conspiracy, that there is reasonable ground to believe that the second accused and Dharmasena conspired together to commit the offence alleged in the indictment. If the Court of Trial so looks to all the circumstances of the first accused throughout, this transaction could become relevant by reason of Section 10. 10

*Mr. Gunasekera* cites Archbold 1943 edition, page 1418.

*Order* : The matter is one of considerable difficulty. I wish to exercise my discretion judicially and not arbitrarily. I will reserve my order till tomorrow.

(Adjourned till 9.30 tomorrow.)

Certified Correct

(Sgd.) A. H. M. WIJENAIKE,

Stenographer Supreme Court. 20

9.30 a.m.

5th January, 1949.

Accused present.

Same Counsel as yesterday.

*Jury asked to retire.*

Court delivers order that the trial should proceed against both prisoners.

*Order.*

After listening to the arguments of learned counsel yesterday, I once again read through the depositions, the inquest proceedings and the 30 exhibits. I refer to the depositions at marginal pages 44, 48, 151, 152, 203, 211, 244, 250, 253, 254, 260, 287, 295, 299, 303, 335, 345, 352, 363, and to the exhibits P.19, P.20, P.32, P.33, P.34, P.35, P.37, P.38, P.41, and P.43.

I am satisfied on the material before me that the trial must proceed against both the prisoners who, it is to be noted, are jointly charged with the offence of conspiracy.

On the aspect of motive, it is I think to be found principally in the fact that a sum of nearly Rs.4,000/- was payable to the widow of the deceased by the Public Servants Mutual Provident Association of which the deceased was a member. Robbery was not the object. The depositions 40 show that the first accused was at the material time the proprietor of a shop where medicinal herbs were sold. He was a contractor. He lived near the 2nd accused's mother's house. The 2nd accused's mother had a shrine room built in her premises. First accused built it. The first accused used to do the repairs of the 2nd accused's houses. The deceased

admitted the first accused to his home and treated him as a good and honoured friend. They would sit side by side on chairs, talk together, smoke together and read together. Thus there was contact between the two prisoners and opportunity for the conspiracy alleged. The depositions further show that it was the penurious household living a hand-to-mouth existence. Even bread for the two children was a scarcity. If the deceased kept the key of his wardrobe round his neck it was I think because he was miserly and secretive and at arms length with his wife. In that wardrobe he kept two or three pass books from which he drew  
 10 from time to time. My view is that the first accused is bound to have known, in fact knew, that nothing of immediate value would be in the wardrobe of the deceased on the morning of the 7th November 1947.

As regards the alleged previous convictions of the first accused I do not see that they have any bearing at all on the true issues of fact in this case.

After a consideration of everything, I have come to the conclusion that it is right and proper that the jury should be in a position to arrive at their own findings on all aspects and matters in respect of the case as a whole.

20 I direct that trial of both prisoners do proceed as set out in the indictment.

(Sgd.) R. R. CROSSETTE THAMBIAH.  
 (Commissioner of Assize.)

*Jury return.*

Charges (*vide* Indictment page 2).

Plea severally not guilty.

English speaking Jury empanelled.

Sworn or affirmed.

No. 3.

30 **PROCEEDINGS AND ORDER as to Admissibility of Photographs.**

Crown Counsel moves to hand over to the jury two sets of photographs which he will prove in due course.

*Mr. Lekamge* : Before the photographs go to the jury I have a submission to make. Will the Court be pleased to ask the Gentlemen of the jury to retire.

*The jury retire.*

Mr. Lekamge submits that he objects to the photographs in booklet P.47 and the photographs marked A, B, C on two grounds. The photographs 3 to 8 in booklet P.47 would cause undue prejudice to his client the  
 40 1st accused. Further these photographs in no way would assist the Crown. Secondly, there is no provision of the evidence ordinance that these photographs could be handed to the jury.

*Mr. Nihal Gunsekera* : I find under photograph A and B the following expressions occur : " Wound No. 6 described in post mortem report and

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No. 2.  
 Proceedings  
 and Order  
 on Motion  
 for separation  
 of  
 trials, 4th  
 and 5th  
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*continued.*

No. 3.  
 Proceedings  
 and Order  
 as to ad-  
 missibility  
 of photo-  
 graphs, 5th  
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*In the  
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Court.*

No. 3.

Proceedings  
and Order  
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missibility  
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*continued.*

which is believed to be the first blow dealt by the assailant," "Wound No. 7 described in the post mortem report and is believed to be the 2nd blow dealt which the deceased received," I object to these words being conveyed to the jury.

*Crown Counsel :* In regard to the submission of Mr. Nihal Gunesekera I agree to the deletion of the printed matter under the photographs A and B. In regard to the submissions of Mr. Lekamge I submit that these photographs are admissible in evidence.

*Order :*

Let the typed matter under photographs A and B be deleted. 10  
Booklet P.47 can go to the Jury.

*Jury return.*

Photographs handed to the jury as directed by Court.

Crown Counsel moves that a copy of the transcript of the proceedings be furnished to him and states that he could make it available to the Defence.

*Court :* Allowed.

Mr. Lekamge moves that Mr. ,  
be excused from attendance in Court until he is required.

*Court :* Allowed. 20

Crown Counsel moves to place the sketches without the key in the hands of the jury.

*Court :* Allowed.

C.C. opens case.

11.20 a.m. Adjourned for fifteen minutes.

Certified Correct.

(Sgd.) D. V. JAYAMAHA,

Stenographer S.C.

*Prosecu-  
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No. 4.

EVIDENCE of Dr. G. S. W. de Saram.

30

Mr. Cherubim, Crown Counsel, Calls :—

No. 4.  
Dr. G. S. W.  
de Saram,  
5th  
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1949.  
Examina-  
tion.

DR. G. S. W. DE SARAM—Sworn.  
Judicial Medical Officer, Colombo.

On the 7th November 1947 I was called upon by the police to visit No. 107, College Street, Kotahena. I arrived at that house at 1.50 p.m. and I walked right into the house up to the dining room. I found the body of the deceased lying on its right side in the back room of the house ;

the right arm was under the body and the right forearm was lying with its back on the floor, with the palm facing upwards and fingers partially flexed; the forearm was almost at right angles to the arm; the left arm lay over the left side of the body which was uppermost; the forearm was bent at right angles to the arm and its front was facing the body; the hand was tucked in at right angles to the forearm with fingers and palm upwards between the ground and lower part of the right waist. The left leg was almost completely outstretched and turned on its left side overlying the right leg which was flexed at the knee for about 45 degrees. The right foot was lying below the lower third of the left leg. The head and shoulders lay under one side of a wooden table. There was a pool of blood flowing out towards the back door step—about one pint of blood in which the serum had separated; there was another pool of blood near the doorway between the middle room and the back room where the body was lying—about  $\frac{3}{4}$  to one pint of blood. There was the lens of a pair of spectacles in the pool of blood; another pool of blood, about ten ounces, was found in the front verandah at the entrance to the middle room in which the remainder of the pair of spectacles was found broken.

(Shown photograph 7 of P.47.) This photograph correctly represents the position in which I saw the body of the deceased when I went to the house.

(Shown photographs 5, 6 & 8 of P.47.) These photographs also depict the position of the deceased's body viewed at various angles.

When I saw the deceased he was dressed in a pair of black shoes a white drill trouser fastened with studs in front and secured with a flap on top, white belt with metal part in front, a pair of white drill shorts worn under the trousers aertex sports shirt, under which was a cream coloured silk shirt, and a white cord was tied round his waist. In his left trouser pocket I found Rs.126.

I saw a leather sandal lying under the left shoe—leather sandal with rubber sole, with blood marks on the rubber sole.

(Shown photograph 7 of P.47.) I see the heel of a sandal in this photograph.

I held a post mortem examination on the body of the deceased at the Maradana Police mortuary, on the 7th November 1947. I have not made a note of the time I commenced the post-mortem examination. I got the body removed immediately from Kotahena to the Maradana police mortuary—it must have been about 2.15 or 2.30 p.m. (To Court : The photographs that were shown to me now were not taken under my supervision.)

At the post mortem examination the body of the deceased was identified by Paul Melius de Silva Seneviratne, said to be a brother of the deceased, and by R. P. Goonetilleke, said to be a brother-in-law of the deceased. The deceased must have come by his death about 9 a.m. on the 7th November 1947. Before I held the post-mortem examination, at the mortuary I got photographs taken of the deceased.

(Shown P.29, A, B and C.) These were the photographs taken in my presence by Mr. Webster.

The deceased was poorly nourished, about 55 years of age, height five feet,  $1\frac{1}{2}$  inches.

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—  
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Dr. G. S. W.  
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*continued.*

On external examination I found the following injuries :—

1. An abrasion  $\frac{1}{4}$  inch in diameter over the first joint of the right thumb.

2. Incised wound  $\frac{1}{4}$  inch long by  $\frac{1}{16}$ th of an inch deep over the outer side of the second joint of the right middle finger.

3. Three abrasions one inch long by  $\frac{1}{4}$  inch broad,  $\frac{1}{4}$  inch in diameter and  $\frac{1}{4}$  inch in diameter respectively over the back of the left elbow.

4. An abrasion  $\frac{1}{2}$  inch long by  $\frac{1}{4}$  inch broad, over outer side of right elbow. 10

5. An abrasion  $1\frac{1}{4}$  inch long,  $\frac{3}{4}$  inch broad over the inner side of right elbow.

6. Incised wound over right side of the front of neck,  $1\frac{1}{2}$  inches long, 2 inches deep, tailing off for another one inch in front in a superficial linear cut  $\frac{1}{16}$ th inch by two inches. (Photograph A in P.29.) The back end of this wound was sharp cut for  $\frac{1}{4}$  inch. The wound was  $2\frac{1}{4}$  inches above the inner end of the right collar bone and its direction was obliquely downwards and forwards. The front end of the wound was deeper than the rear end. 20

7. Irregular incised wound on the left side in front of neck extending obliquely for  $1\frac{3}{4}$  inches, backwards and upwards from a point three inches above the inner end of left collar bone ; the wound was  $\frac{1}{4}$  inch deep. Lying immediately above this wound and separated from its upper margin by  $\frac{1}{8}$ th inch was an irregular incised wound two inches long,  $\frac{1}{8}$ th inch deep ; direction of both wounds was downwards and forwards.

8. Incised wound over left half of back of neck placed horizontally two inches above the level of shoulder,  $2\frac{3}{4}$  inches long and extending for one inch to the right and  $1\frac{3}{4}$  inches to the left of the middle line, depth  $1\frac{1}{2}$  inches direction downwards and forwards. 30

9. One inch above the left extremity of wound No. 8 was an incised wound three inches long,  $1\frac{1}{4}$  inches deep, passing upwards and to the right, direction downwards and forwards.

10. The skin between wounds 8 and 9 was undercut for  $1\frac{1}{2}$  inches.

11. Incised wound  $2\frac{1}{4}$  inches long, one inch deep, with lower edge undercuts,  $1\frac{1}{4}$  inches above the outer  $\frac{2}{3}$ rd of wound No. 9 ; direction downwards and forwards. 40

12. The superficial skin was partially removed and partially undercut over an area  $1\frac{1}{2}$  inches by  $\frac{3}{4}$  inch. between the left extremities of wounds 9 and 11, behind left ear.

13. The rear  $\frac{2}{3}$ rd of the left ear had an incised wound in it  $1\frac{1}{2}$  inches long which almost completely separated it from the rest of the ear except for a small bridge of tissue  $\frac{1}{4}$  inch wide at its lower margin.

14. Below this bridge of tissue was an incised wound  $\frac{3}{4}$  inch long extending downwards and forwards from the rear of the left ear. 50

Those were the external injuries.

On internal examination I found wound No. 6 had cut the sternomastoid muscle and the muscles of the right side of neck and the right internal jugular vein and further back had cut the right side of the 5th and 6th cervical vertebræ and the vertebral artery at the same level ; direction downwards and from right to left.

Wound No. 8 had cut through the muscles of the back of the neck on left side and the back of lower left articular process of the 4th cervical vertebra and into the adjoining part of the left superior articular process of the 5th cervical vertebra to a depth of  $\frac{1}{4}$  inch ; direction downwards and forwards.

Wound No. 9 had cut the muscles of the neck above No. 8

No. 11 had cut the scalp and the muscles attached to the lower part of the back of head.

Death was due to hæmorrhage and shock from multiple incised wounds on the neck (shown P.29, A, B and C). These photographs show the injuries on the neck. Injury No. 6 is shown in P.29, A. No. 7 is shown in P.29, B, No. 8 is shown in P.29, C, at the bottom. No. 9 is shown in P. 29, C in the middle, and the top one in P. 29, C is injury No. 11. No. 10 is also shown in P.29 C. No. 12 is also shown in P.29 C. No. 13, the top wound on the ear is shown in P.29B. No. 14 is also seen in P.29B, about half the distance from the bottom of the lobe of the ear. Injury No. 8 on the back of the neck is also shown in P.29B. In P.29C are shown the three injuries on the back of the neck and the injuries on the ear and between the ear and the back.

External injuries 1 and 2 were probably defence injuries, caused when the deceased put up his hand to ward off the blows. Injuries 3, 4 and 5 were consistent with a struggle or a fall.

Injury No. 6 taken by itself was necessarily fatal. No amount of medical attention would have been of any avail after the deceased received injury No. 6. No other injury taken individually was necessarily fatal.

Injuries Nos. 8, 9 and 11 were cumulatively sufficient in the ordinary course of nature to cause death ; that is, having received those three injuries, if he did not receive medical attention he would have died.

Injury No. 6 would have bled profusely because there was a cut in the internal jugular vein. There would have been a gush of blood from that injury, but no spurting. Injuries 8, 9 and 11 would have bled freely.

(Shown P.6.) The injuries on the deceased could have been caused with a weapon like P.6.

(Court : Q. How many times do you think that weapon was used on the deceased ?

A. Four times with force and once the blow was warded off. (Witness demonstrates how the blows must have been delivered.) The deceased was struck all four times with force in the region of the neck.)

There was a pink froth in the right side of the heart. That was due to suction of air which was drawn into the heart through the cut of the internal jugular vein.

I had a good look round the house in which the body lay and the various places in which there was blood. I saw blood on the verandah, at the exit of the front room and on the floor in the rear room.

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(Shown photograph 3 of P.47.) This photograph shows blood on the verandah.

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tion's  
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(Shown photograph 4.) This shows blood by the cabinet, at the exit of the front room.

(Shown photograph 5.) This shows blood under the table in the rear room where I found the body of the deceased.

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(Shown photographs 6, 7 and 8.) The blood in the rear room is prominently shown in these photographs.

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tion,  
continued.*

*(Court :* Are you in a position to assist the jury from your observations of the house that day as to the different stages of the attack on the deceased ? 10

A. Yes, I can. In my opinion the first blow was a back hand blow which landed on the right side of the neck and was dealt while the deceased was standing, facing the assailant, at the entrance of the front room, that is, in the outer verandah. It is probable that the deceased in an attempt to save himself offered resistance as a result of which his right hand was injured—wounds 1 and 2. The resistance offered by the deceased was such that the second blow aimed by the assailant—wound No. 7—consisted of two blows closely proximated parallel irregular and superficial cuts ; that is the wound on the left side. In the course of the struggle the pair of spectacles the deceased was wearing fell to the ground and was found 20 smashed near the pool of blood in the front verandah. That wound No. 6 was inflicted earlier in the attack is shown by the volume of blood found on the ground, the distribution of the stains on the deceased's clothes and the collection of froth in the heart due to suction of air by the cut in the jugular vein. The deceased had then probably rushed from the verandah to the front room of the house and had stood at the entrance to the rear room, probably holding on to the glass cabinet as is shown by the blood at this spot.)

Wounds 3, 4 and 5 could have been caused by a struggle, a fall or by the assailant holding the deceased by the elbow from behind when the 30 deceased attempted to get free.

Wounds 8 to 14 were caused by three blows probably struck in quick succession, the deceased's head being partially turned at the time. He had turned away as the blows came.

Wound No. 8 was caused by one blow.

Wounds Nos. 9, 10, 14 and the lower part of 12 by one blow ; wounds 11, 13 and the upper part of 12 by one blow.

Deceased could have shouted out during the assault. Death must have followed in a few minutes after the assault and after he had fallen to the ground near the table in the rear room. 40

*(Court to witness :* The jury can get a composite view of the whole situation in the sketch. Kindly tell them how you think the attack was done ?

A. In the sketch, the first attack in the verandah was at D. Deceased then turned round and went into the front room and halted near F. I believe he was struck there three times on the neck. Then the deceased tumbled down the steps leading to the rear room and fell near the table.)

That same day I went to the compound adjoining the deceased's house at about 2.15 p.m. (Adjoining compound is marked N on the sketch, and is shown in photograph 10 in P.47).

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(Shown P.5.) I remember seeing this bag in the adjoining compound. It was lying in the compound at point "X" in photograph 10. There were some shrubs there. I also remember seeing knife P.6 (shown P.6) lying near P.5. At that time the police were guarding that spot. I examined P.6 as soon as I saw it. There were blood stains on P.6, but I cannot remember precisely where on P.6. I found hair adhering to the blade of the knife, on a side of the blade. I took into my possession the hair that was adhering to the blade. Thereafter I took some hair from the head of the deceased. I compared the hair I found on the blade of P.6 with the hair I took from the head of the deceased. They were similar in texture and pigmentation.

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tion,  
*continued.*

Q. Are you specially qualified to make such examinations of hair ?

A. Yes.

(Court : Have you those specimens of hair here ?

Witness : No, My Lord.

Court : Why not ? I should have expected you to show the two specimens of hair to the jury ; can you give your reasons to them for saying that the two specimens of hair were similar in texture and pigmentation ?

Witness : Yes.

Court : Why did you not produce those specimens ?

Witness : I should have produced it. It is usually produced.)

Crown Counsel to witness : You should produce such specimens in future.

Q. Are similarities of hair noticeable to the naked eye.

A. No.

Court : Why not ? Anyhow the main thing is that it is the jury who must decide and not the witness.

Did you examine this first accused ?—Yes.

When ?—I examined him on the night of the 7th November 1947 at 11.25 p.m. He was produced before me by the police. I examined him with his consent and found an oblique incised wound over the inner prominence of the right ankle. Five-eighths inch long with undercutting of the lower margin over its whole length for  $\frac{1}{4}$  inch. Quarter inch below the front end of this wound there was an abrasion with undercutting of the posterior end,  $\frac{1}{2}$  inch by  $\frac{1}{4}$  inch broad—very recent, bleeding, covered with vegetable paste which had to be cleaned off ; no contusions ; the end of wound No. 1 was sharp cut.

Mr. Lekamge : My Lord, the first accused has a scar on his ankle. I have no objection to the scar being pointed out to the jury by the doctor if your Lordship has no objection.

Court : Very well.

(The first accused is brought out of the dock and made to stand before the jury. The doctor points out the scar on the 1st accused's right ankle to the jury. Thereafter the 1st accused is again put into the dock.)



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Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*No. 4.  
Dr. G. S. W.  
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tion,  
continued.*

That injury as I saw it on the first accused's ankle was a sharp cut injury. When I took off the vegetable paste, the injury bled. The accused had applied some vegetable paste as a medicine and I took it off for medical examination. It was a recent injury when I saw it.

*Q.* Was it consistent with being caused round about 9 or 9.30 that morning ?

*A.* Yes.

*Q.* Could that injury have been caused by the ankle coming in contact with the sharp edge of a galvanized sheet or zinc sheet ?

*A.* Yes.

10

*(To Court :* That was the only injury I found on the first accused.) That injury could not have been caused by a dog bite. *(To Court :* I am definite.) I found some hair on P.6.

*Q.* From the nature of the injuries you have seen, is it likely that the hair would have got on to this knife from the deceased's head ?

*A.* Yes.

*Q.* This knife must have come in contact with that portion of the neck where the hair was growing ?

*A.* Yes.

I produce my post mortem report P.29. Photographs P.29, A, B, C 20 were taken under my supervision. They are accurate.

*Cross-  
examina-  
tion by Mr.  
Lekamge.*

*Cross-examined by Mr. Lekamge :*

*Q.* You said that you do not think that the injury on the 1st accused's ankle could have been caused by a dog bite. What you really found was a cut on the ankle ?

*A.* Yes.

*Q.* For you to see that cut you had to remove some vegetable matter which had been spread over the wound ?

*A.* Yes.

*Q.* Was this vegetable paste dried up ?

30

*A.* Yes.

*Q.* Therefore when you removed it, it could have caused even a very slight tear again on that injury ?

*A.* I do not think I would have torn the wound when I removed the paste.

When I removed the paste there was fresh bleeding. The paste had flaked into the wound. In removing it some of the blood vessels might have got torn ; coagulation might have been upset.

*Q.* You said it was possible it was caused by the edge of a galvanized sheet ?

40

*A.* It could have been caused.

*Q.* The result of coming in contact with any sharp edge ?

*A.* Below the front end of the wound there was an abrasion. A knife could not have caused that wound.

*(Court :* Why not ?

*Witness :* The abrasion indicates that the ankle came up against a hard surface while coming in contact with a sharp edge.

*Q.* So that the indications are that it was something like a zinc sheet ?

*A.* Yes, and probably the leg was carried in an upward direction because the undercutting is downwards.)

50

Dogs have two canine teeth, long and sharp pointed like human. In between, the teeth are flat and small.

Q. If perhaps a dog did come and tug at the man's ankle, that sharp tooth could have caused the cut whereas the abrasion below could have been caused by a blunt tooth. I am talking only of one side of the ankle?

A. Teeth do not cause incisions. This wound could not have been caused if the dog had caught the leg and the leg had been pulled off. If a sarong covered one side of the ankle, it might prevent a mark of a bite or it might not. It depends on the force of the bite.

10 Q. The injury cutting the jugular vein would normally cause a large spurt?

A. Not a spurt, but a large flow of blood.

(To Court: An artery would have caused a spurt of blood, but not a vein.) So far as I remember the hair I took off from P.6 was stuck on to the blade. I cannot say how much of the blade was covered with blood. I did not take the knife for examination of blood. The knife P.6 and bag P.5 were guarded by the police when I went to the spot.

Cross-examined by Mr. Gunasekera: Nil.

Re-examined: There would be a free flow of blood from a vein.

20 Q. If there was a struggle between the deceased and the assailant after the deceased was cut, would you expect blood to get on the assailant's clothes?

A. Yes.

Court: Q. As between the theories of a dog bite on the 1st accused's ankle and his getting an injury while trying to cross over a zinc sheet, you are definitely in favour of the latter?

A. Yes, the zinc sheet.

Q. Do you exclude a dog bite altogether?

A. Yes, because there is a distinct incision.

30 To Jury: Nil.

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No. 5.

EVIDENCE of G. Webster.

G. WEBSTER—Sworn.

I am the Technical Assistant to the J.M.O., Colombo.

On the 7th November 1947 I was called upon to take photographs of the deceased. I took photographs P.29, A, B, C at the Maradana police mortuary in the presence of the J.M.O. Colombo and under his supervision. I produce them P.29, A, B and C. They were printed and developed by me.

40 Cross-examined by Mr. Lekamge: Nil.

Cross-examined by Mr. Gunasekera: Nil.

To Court: Nil.

To Jury: Nil.

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Court.

Prosecu-  
tion's  
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de Saram,  
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examina-  
tion by Mr.  
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continued.

Re-examina-  
tion.

No. 5.  
G. Webster,  
5th  
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tion.

*In the  
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No. 6.

**EVIDENCE of P. M. Seneviratne.**

*Prosecu-  
tion's  
Evidence.*

No. 6.  
P. M. Sene-  
viratne,  
5th and 6th  
January  
1949.  
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tion.

P. M. SENEVIRATNE—Affirmed.

I am a Proctor of the Supreme Court. I knew the deceased in this case. He was my younger brother. (*To Court*: He was born I believe in 1893.) At the post mortem examination held on his body I identified the body. (*To Court*: The deceased was educated at St. Benedict's College and passed the Cambridge Junior and studied for the Senior, but before the results were out he joined the Colombo Municipality. He must have been about 18 or 19 when he joined the Municipality. 10 He joined as a clerk and rose to be a Revenue Inspector.)

At the time of his death he had retired. He retired about 4 or 5 years before he died. At the time of his death he was 54 years old. He had to retire long before his age limit because of bad eyesight. He was suffering from cataract of the eye. At the time of retirement I think his only trouble was the eye trouble. (*To Court*: When he retired I think he drew round about Rs.300/- a month. Apart from his commuted pension I think he drew a pension of about Rs.150/- a month. Witness is asked to try and get the exact figures from the Municipality before he comes to give evidence to-morrow.) 20

I believe the deceased married in 1934 or 1935. (*To Court*: I did not go to the wedding. I did not know that he got married.) He married the second accused. The deceased is a Sinhalese. The second accused's father is a Sinhalese, but the mother I believe is a Burgher lady. The deceased's marriage was not approved by his relatives. (*To Court*: Apart from his salary as a Revenue Inspector, the deceased had no private means.)

The second accused got a dowry from her parents. I came to know later that she got two houses, one house in Jambugasmulla, a hamlet of Nugegoda, and the other house also in Nugegoda, but I do not know where exactly in Nugegoda. So far as I am aware the deceased lived 30 with his wife at the house in Jambugasmulla soon after his marriage. I do not know where the 2nd accused's parents lived at the time of the 2nd accused's marriage, but I know they lived on the same road as the deceased and the 2nd accused. I was not on terms with the deceased after his marriage for about a year. His first visit to me after his marriage was when I lost my wife. Both the deceased and the 2nd accused came on that occasion. That was on the 20th November 1936. Thereafter they visited me several times and I returned the visits. At that time the deceased and the 2nd accused were doing very well. They kept a well furnished house, they owned a car, the deceased had made improve- 40 ments to the house, two children had been born. They had a beautiful nursery. The two appeared to be getting on very happily.

In the middle of 1942, after the raid, the deceased sent me a telegram. Even at that time the deceased was living at Jambugasmulla. On receipt of that telegram I went to see him. When I went to his house I saw only the deceased and the two children, nobody else, not even servants. (*To Court*: The deceased kept servants when he was doing well. There was a chauffeur, children's ayah. He was not living miserly at all at that time.)

The deceased's eye trouble began I believe in 1939 or 1940. He was 50 working when he had the eye trouble. Later he went on half pay leave.

By 1942 his eye trouble had got worse ; that is what I thought. He was taking native treatment for it. My recollection is that my brother was on half pay leave in 1942 because of his illness.

*In the  
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Court.*

When I went to see my brother on receiving that telegram he was in a very pitiable condition. I realised that his wife had left. By "pitiable condition" I meant he was all alone with his children, no servants, his eyes were giving him trouble.

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tion's  
Evidence.*

(*To Court* : When I went to see him in 1942 my brother did not appeal to me for funds. I presume he was alright financially. The car I believe was there, but I did not see the chauffeur. Everything was there as I found earlier. When I said "pitiable" I meant the deceased had no one to look after him.)

No. 6.  
P. M. Sene-  
viratne,  
5th and 6th  
January  
1949,  
Examina-  
tion,  
*continued.*

I advised the deceased to make up with his wife. That same day I met the 2nd accused. I was passing down the same road. She came to the gate and spoke to me. I advised her to go back to her husband and she agreed to go back. Then I went home. Thereafter I did not go that side for some time and I presumed everything was quite alright. I went to my brother's house again about a year afterwards. That was also to the house at Jambugasmulla. On that occasion I saw the 2nd accused in the house of the deceased.

In 1944, the following year, the deceased fell ill. He had to stand an operation for his eye. He entered Dr. Bilimoria's Nursing Home. That was a successful operation. The deceased was wearing glasses after that and he was able to see. Later, in 1944, hearing that the deceased was ill I went to see him. This was about the middle of 1944. At that time he was suffering from dysentery. The 2nd accused was with him at that time. I advised the deceased to enter hospital. He entered hospital about August or so, and after treatment he returned home quite well.

About September 1944 I received a wire from my brother one evening at about 4 p.m. at my office. I went home after that. Then I received another wire from my brother but I did not go to see him. I sent a wire to a friend of mine living close to my brother's house. Before my messenger could have reached the post office my brother came to my house in a car with the two children. I was living in St. Lucia's street at that time. My brother brought a suitcase also with him. He and his children stayed with me. He had left his home. My brother and his two children lived with me till April 1945. During that period the 2nd accused visited my brother. My impression is that she was living with her father at that time. The 2nd accused's first visit to my house, after my brother came to live with me, was to remove her jewellery. That was about two weeks or so after my brother had come to live in my house. The deceased had the jewellery with him. He did not hand it to me for safekeeping. I was then living with my children. I had lost my wife. On the first visit of the 2nd accused to my house, the deceased did not give the jewellery to the 2nd accused. A date was fixed for the delivery of the jewellery ; that was another two weeks later. On that day the 2nd accused came to my house and the box of jewellery was taken out by the deceased and the 2nd accused picked out her jewellery from the box and took it into her custody in my presence, and she gave a receipt for the jewellery in my presence.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 6.  
P. M. Sene-  
viratne,  
5th and 6th  
January  
1949,  
Examina-  
tion,  
*continued.*

(*To Court* : To the best of my recollection the 2nd accused signed the receipt in my presence on the day she took delivery of the jewellery, but I cannot remember now who wrote out the receipt. My recollection is that something was written in block letters in my house. I am not very familiar with the 2nd accused's signature, but I can recognise it if seen.)

1.45 p.m. Adjourned for the day.

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Certified correct.

(Sgd.) M. ANTHONY,  
Stenographer, S.C.

6th January, 1949.

10

Accused present.

Same counsel.

*Crown Counsel* states that specimens of hair referred to in the evidence of the Judicial Medical Officer yesterday are available and that they have been in the personal custody of the Judicial Medical Officer who made a report in respect of them to the Magistrate.

*Court* : I will consider the matter after the evidence of this witness.

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P. M. SENEVIRATNE—Re-sworn.

*Examined (continued)* :

I had fixed a date for the return of the jewellery to the second accused. 20  
By appointment the second accused came to my house. At that time the deceased was there. The deceased returned the jewellery in my presence to the second accused. A receipt was given by the second accused. My recollection is that something was written in block letters. On that occasion deceased handed over the keys to the second accused. My recollection is that that was on the same day that I returned the jewellery to the second accused. (P.44 shown.) It is a document written in block letters. This document refers to the keys. It was written in my house and signed in my presence. The second accused signed P.44. The signature reads G. B. W. de S. Seneviratne. (Witness reads P.44. The document 30  
is shown to the jury.)

(*To Court* : In it the second accused admits receipt of the keys of the doors of Lakshmi Villa and undertakes to pay half the rent of the premises to the deceased after deducting for annual repairs and white-washing. Lakshmi Villa is the house where he was residing. This is the larger of the two houses.)

Deceased handed over the keys to the second accused in my presence. I was present when the jewellery was given over to the second accused. A receipt was given for that also. I cannot say whether I saw the parties writing the receipts but to the best of my recollection the receipts were 40  
signed in my presence. (P.43 shown.) This is the receipt for the jewellery signed in my presence. (Witness reads P.43.) Both documents are dated 5.11.44. I identify the signature of P.43 as that of the second accused.

She signed it in my presence. On 5.11.44 the father of the second accused was also present at the handing over. In fact second accused came to my house in the company of her father. On that day second accused said that she wanted to take divorce proceedings and obtain custody of her children. I wish to correct myself; this was not on the day the jewellery was given but on the occasion of her first visit, about two weeks before. On that day too the father of the second accused was there. She said this in the presence of her father. I gave advice. I did not speak to her but I spoke about the matter to her father. I suggested that they should enter into a deed of separation and live apart for some time and see whether a reconciliation could be brought about. I did not want publicity to be given to their domestic troubles.

(To Court : I stated yesterday that my brother came to live with me about September 1944. That was before I had my recollection refreshed by looking at these two documents. Now that my memory has been refreshed by looking at these two documents it seems to me that my brother came to live with me in October.)

After second accused's father had consented to my suggestion I drafted a deed. (P.45 shown.) There is no date on the draft; it was about two weeks after the jewellery was handed over. I gave one copy to the father. I produce P.45. (Witness reads a gist of P.45.) This is a summary; the wife to live separate and apart from the husband; husband and wife not to molest or annoy each other; the wife to support and maintain herself; the husband to be entitled to the custody and control of the children except during school vacation when they should be with the wife; the wife to manage her dowry property and remit half of the income of the larger property to the husband; the wife to keep the husband indemnified against all liability. At the time the deed was drafted deceased was living with me and even thereafter. The children of the deceased were also with me. After the deed was written second accused and her father came to my house. About a month after the deed was written there was a reconciliation between the husband and wife and this deed was ignored. When the reconciliation was brought about the parties entered into certain verbal conditions. They were reconciled on (1) husband not be asked to take a house to live either in Jambugasmulla or in Nugegoda, that is to say, they were to live away from Nugegoda area; (2) the wife should not go to her parent's house without the consent or approval of the husband; (3) the wife to have as her pocket money only the income of the smaller house and not to ask the deceased for any further money. At that time the smaller house fetched a rental of Rs.25/- a month so far as I remember. The income of the bigger house was to be taken by the husband and he was to run the house with that and his pension.

(To Court : His pension was Rs.144.03. He retired on 14th November, 1943. He drew a commuted pension of Rs.5716.25. The rent of the larger house at that time was Rs.100/- a month.)

According to this agreement the 2nd accused had no control over the management of the house. The husband ran the house. After this reconciliation the deceased continued to live with me till they found a house. The wife continued to live with her parents. She came very frequently to visit her husband and her children. The deceased lived with me for four or five months after the reconciliation. They found a

*In the  
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Court.*

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tion's  
Evidence.*

—  
No. 6.  
P. M. Sene-  
viratne,  
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1949,  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court.*

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tion's  
Evidence.*

No. 6.  
P. M. Sene-  
viratne,  
5th and 6th  
January  
1949,  
Examina-  
tion,  
*continued.*

house about April or May, 1945, at 107 College Street, Kotahena. That is the house where the deceased died. On that occasion deceased and his wife went to the house as sub-tenants of a Burgher family known as Joachims. The Joachims lived in a portion of the house. Later deceased, his wife and family shifted to Mayfield Lane, Kotahena. To all appearances husband and wife got on well. While at Mayfield Lane second accused again left her husband and went to her parent's house. Again there was a reconciliation because they lived together again. From Mayfield Lane deceased and second accused shifted to Wasala Road, Kotahena. From there deceased and second accused returned to 107 College Street, Kotahena, 10 but as tenants. The Joachims became their sub-tenants. The deceased took the house on rent.

*(To Court :* I do not know the rent of the house. After they became tenants at 107 College Street, I visited them about four months before his death. Deceased moved into 107 College Street as tenants in May, 1946, to the best of my recollection.)

*Cross-examined by Mr. Lekamge :* Nil.

*Cross-  
examina-  
tion by Mr.  
Gunasekera.*

*Cross-examined by Mr. Gunasekera :*

I am a Buddhist. Second accused's parents are Catholics. Her mother is still alive. I do not know that the deceased became a Catholic 20 to marry the second accused. I learnt of my brother's death between 9.30 and 10 a.m. on 7.11.47. I got there about 10 a.m. The police were already there. I was in and out of the place the whole day. All the arrangements had to be made by me. We are four brothers. When I was out that morning two of my brothers had come there. I met one brother before the body was taken to the inquest proceedings. I met the other brother earlier in my house. The brother I met at College Street is the youngest brother, Cyril, who is also a proctor; I cannot swear to it. I met Leopold at my house about 1 p.m. that day. Again I met him later at my house. I cannot remember whether I met him 30 at College Street. Leopold is Permanent Secretary to the Ministry of Education. I do not know at what time the Inspector General of Police or the Prime Minister came to College Street; I heard that they came.

Deceased was a very careful man. I do not say that he was miserly; he lived within his means. The first trouble between the deceased and the second accused was about the middle of 1942. That was the occasion when I went to see the deceased and on my way back from his house second accused met me at her father's gate. Second accused could have seen me from the verandah of her father's house passing along the road. I believe I met second accused on my return at the gate closer to the 40 main road.

*Court (to counsel) :*

Do you think it will help the jury if they go to the second accused's parent's house and the dowry house ?

*Mr. Gunasekera :*

I do not think so but it may help if they went to the first accused's medical hall, but I will elicit further evidence.

*Cross-examined (continued) :*

So far as I am aware before the first incident second accused and deceased were living happily. The separation in 1942 was for a day or two only. The second separation was in October 1944 a few days after deceased had returned from the General Hospital. He had gone there for some stomach trouble. I do not know whether that quarrel was due to the fact that the deceased was not giving enough bread to the children. There was no scarcity for bread then. When deceased lived with me deceased fed the children very well. Deceased did not pay me when he and his children lived with me but he used to bring food for the children and occasionally provisions for the house. During deceased's illness in 1944 whenever I went there deceased and second accused appeared to live a normal life. I was myself ill at that time and I visited deceased once in hospital before he left hospital. On that occasion I did not see second accused there.

The second reconciliation was about February 1945, or even earlier. One of the terms of that reconciliation was that the deceased would get the rent of the bigger house and with the pension meet all the household expenses including the rent of the house they were going to take. The second accused was to get the rent of the smaller house for her expenses. I do not know that house at all. I do not know but it may be that the rent of 107 College Street was Rs.47.50. It could fetch a rental of about Rs.50/-. In 1945 deceased and his wife went to live with the Joachims. My impression is that in Mayfield Lane deceased lived in one of Rupasinghe's houses. The third quarrel took place there. I heard of it from the deceased. That quarrel was due to the second accused getting late to get into her clothes to go to the Fort. (*To Court* : Deceased was not keeping a car then. He gave up his car after he retired.) On this occasion second accused went to her father's house. I cannot say if she was there for only one day. The third quarrel may be late in 1945. After that I heard of domestic differences but not so serious as to require my intervention. (*To Court* : So far as I know second accused used to go to her father's place for a day or two and come back and it went on like that.) So far as I know there was no separation of the earlier type.

*To Court* : Her father died in May 1946. From Rupasinghe's house deceased and second accused went and shared a house with two old ladies, Mrs. Jayatilekes in Wasala Road. Deceased was a sub-tenant there. It may be that deceased and family went back to 107 College Street about November 1946. On this occasion deceased was actually the tenant. I learnt of a transaction between the Joachims and the deceased. I do not know that it was a loan of Rs.225/- on 26th October, 1946. I do not know first accused at all. I have not seen his medical hall at Highlevel Road, Nugegoda. I cannot remember whether deceased wore a gold amulet on his person. In August, 1947, I know that the deceased, second accused and her children went to Tissamaharama on a pilgrimage. I do not know how they went. So far as I know deceased had no bank account after he retired. He had one when he was in service. I know nothing about how he dealt with his commuted pension. I do not know that he had spent it. Deceased's estate has not been administered so far as I know. I made no inquiries about it. If a deceased person leaves any property worth at least Rs.2500/- then his estate has to be administered in court.

*Re-examined* : Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 6.  
P. M. Sene-  
viratne,  
5th and 6th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekera,  
*continued.*



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*No. 7.  
Dr. G. S. W.  
de Saram  
(recalled),  
6th  
January  
1949.  
Examina-  
tion.*

**No. 7.**

**EVIDENCE of Dr. G. S. W. de Saram (recalled).**

Crown Counsel moves to recall the Judicial Medical Officer. Allowed.

Dr. G. S. W. DE SARAM—Re-sworn.

*To Court :* I told the jury of the hair I found on the blade of P.6 and the hair I took from the deceased's head. From that time up to date they have been in my personal custody. Therefore I am able to vouch personally that the two specimens of hair are respectively those taken from the blade and the head.

*Court :* Any objection Mr. Lekamge ?

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*Mr. Lekamge :* No my Lord.

*Court :* Any objection Mr. Gunasekera ?

*Mr. Gunasekera :* No my Lord.

*To Crown Counsel :* I produce the specimen of hair that I took from the weapon P.6. (It is marked P.55.) I also produce P.56, hair taken by me from the head of the deceased at the post-mortem.

*Court :* Will you please demonstrate to the jury in as good a light as possible the similarities which you say there are between these two specimens of hair. (Witness does so.)

*Cross-examined by Mr. Lekamge :* Nil.

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*Cross-examined by Mr. Gunasekera :* Nil.

Mr. Lekamge refers to marginal page 392 and requests permission to question the J.M.O.—Allowed.

*Cross-  
examina-  
tion by Mr.  
Lekamge.*

*Cross-examined by Mr. Lekamge :* When I examined the first accused on 7th November, 1947, I cut the nails of the first accused. He had submitted himself to my inspection.

*To Court :* That was with his consent. I found no blood in the nails.

*To Crown Counsel :* If the hands are washed there will be no blood on the nails.

*To Mr. Gunasekera :* Nil.

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*No. 8.  
R. P. Guna-  
tilleke,  
6th  
January  
1949.  
Examina-  
tion.*

**No. 8.**

**EVIDENCE of R. P. Gunatilleke.**

R. P. GUNATILLEKE—affirmed, 51, clerk, Colombo Kachcheri, Mt. Lavinia.

*Examined :* I knew the deceased. He was my wife's brother. I identified his body at the post-mortem examination. I remember the time he was living at College Street, Kotahena. I had been calling on him very rarely at that time. I had no occasion to ask him to come to my

house. Some months before his death deceased came to my house with an attache case and gave it to me. I did not know what it contained. It was locked when he gave it to me. (*To Court* : I had it in my custody.) I kept it in my wardrobe in my house under lock and key. Deceased kept with him the key of the attache case. Deceased gave me the attache case about 12 or 18 months before his death to the best of my recollection. That was when he was living in College Street. (*To Court* : I cannot say whether it was when he was living there for the first time or the second time.) It was with me in the condition in which it was given to me by  
 10 deceased at the time of his death.

I never opened it while I kept it. It was opened after deceased's death. Second accused opened it at the Kotahena Police Station in my presence. (*To Court* : Four or five days after my brother died I produced the attache case at the Kotahena Police Station.) Sub-Inspector Gordon and the A.S.P. were there. Second accused was also there. Second accused produced the key of the attache case and opened it. There were various kinds of jewellery in it. (*To Court* : At that time I came to the conclusion that the jewellery was worth about Rs.8000/-.)

I think I found two receipts in that attache case. (P.43 and P.44  
 20 shown.) These are the two receipts. I produce them. P.43 tallies with the jewellery more or less that was in the attache case. I handed over P.43 and P.44 to the police.

On this day the attache case was opened, checked and given back to me with the jewellery by the police. I have deposited that jewellery in the Bank of Ceylon.

*To Court* : Besides the jewellery and the two receipts there was nothing else in that attache case.

*Cross-examined by Mr. Lckamge* : Nil.

*Cross-examined by Mr. Gunasekera* : P. 43 contains a list of jewellery.  
 30 I did not check the jewellery item by item with P.43. The pieces of jewellery were taken out of the attache case and placed on the table and the A.S.P. prepared a list. I did not follow each item. I am making a rough guess when I say that the jewellery is worth Rs.8000/-. I am not in contact with jewellers. Before deceased's death I told no one that he had deposited an attache case with me.

I know Inspector Gordon. I had known him for a long time—for the last ten years. I came to know him first when I was acting Mudaliyar of Salpiti Korale at which time he was attached to Kesbewa police. At that period I did not assist him in any police investigation. I heard of deceased's  
 40 death about 11 a.m. on 7th November. I went to College Street about 3 p.m. The police were in the house when I arrived. There were some constables. I do not remember seeing Inspector Gordon there. I did not see him that day. I did not go to the Kotahena Police Station that day. I did not meet Inspector Gordon the next day. I met him at the Kotahena Police Station when I took this attache case there.

On 7th November I remained at 107 College Street for about half an hour and went to Skinner's Road North where Proctor Seneviratne stays. I did not come back to College Street. From there I went to the police mortuary. The remains were brought back to College Street before burial.

*In the  
 Supreme  
 Court.*

*Prosecu-  
 tion's  
 Evidence.*

No. 8.  
 R. P. Guna-  
 tilleke,  
 6th  
 January  
 1949,  
 Examina-  
 tion,  
*continued.*

Cross-  
 examina-  
 tion by Mr.  
 Gunasekera.

*In the Supreme Court.* The burial took place on the following day about 5. On the 7th or 8th I did not see the I.G.P. or the Prime Minister at 107 College Street.

*Prosecution's Evidence.* *Re-examined :* At the police station when the jewels were checked by the police second accused did not make a complaint of any shortage.

*To Court :* I have been in Government service for 31 years. I am a permanent muhandiram.

No. 8.  
R. P. Gunatilleke,  
6th  
January  
1949,  
*continued.*  
Re-examination.

Interval taken.

Certified correct.

(Sgd.) H. E. GOMES,

Stenographer S.C. 10

No. 9.  
S. A.  
Fernando,  
6th  
January  
1949.  
Examination.

No. 9.

**EVIDENCE of S. A. Fernando.**

11.40 a.m.

6th January, 1949.

S. A. FERNANDO—sworn.

Chief Ledger Clerk, P.S.M.P.A. Office, Colombo. Late Mr. G. Dionysius de Silva Seneviratne was a member of the P.S.M.P.A. The letters P.S.M.P.A. stand for Public Service Mutual Provident Association. He joined the P.S.M.P.A. in 1919 as a member and he made monthly contributions of 1½ per cent. of his monthly salary. He contributed at an average of Rs.9/- a month. In all he had contributed Rs.2240/-, and at the time of his death the donation due to his wife was Rs.3802.70. He had not appointed a nominee. According to the rules one-half of the contributions was payable to the widow of the deceased and the other half in equal shares to the children. If he had two children, then half of the contributions will go in equal shares to them. The donation is paid according to the contribution. The donation is paid entirely to the widow unless the deceased had nominated that his children also should get out of the donation. In which case half of the donation would go in equal shares to the children.

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*(To Court :* Under our rules we make a distinction between contributions and donations. As regards contributions, half of the sum contributed is payable to the children and the other to the widow. As regards the donation, unless the deceased makes a nominee the whole amount goes to the widow.)

In this case Mr. G. Dionysius de Silva Seneviratne's widow would have received a sum of Rs.3802.70 as the donation. We have already paid

that to her. We have already paid to the widow, Mrs. Seneviratne a sum of Rs. 3902.70 as the donation and one-half of the contribution, a sum of Rs.124.21, and thus we paid her altogether a sum of Rs.3926.91. The balance contribution is deposited in the Ceylon Savings Bank on behalf of the two children. The half of the contribution diminished because of the loan Mr. de Silva Seneviratne had taken. Loans are taken only on the contribution. At the time of his death there was a loan of Rs.2200/- outstanding. The donation was paid in this case direct to the widow at the Remand Jail. After the death of the deceased, the widow's proctor wrote to us. One Mr. Gunatilake wrote to us and we paid the donation to her.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :* A nominee could be appointed a month before the contributor's death.

*To Court :* The donation is not free of estate duty, but it does not go to the estate of the deceased.

*Re-examined :* Nil.

*To Jury :* Nil.

*In the Supreme Court.*

*Prosecution's Evidence.*

No. 9.  
S. A. Fernando,  
6th  
January  
1949,  
Examination,  
*continued.*  
Cross-examination by Mr. Gunasekera.

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No. 10.

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**EVIDENCE of H. F. Dissanayake.**

H. F. DISSANAYAKE : affirmed.

Clerk, Post Office Savings Bank. P.31 is a Post Office Savings Bank Book. The depositor is Govipolagodage James Dionysius Oranda de Silva Seneviratne, Minor. He starts his account on 26th June 1944 at the Nugegoda Post Office. The name of the guardian is G. D. de Silva Seneviratne. On the 26th June a sum of Rs.1000/- was deposited.

Then the next deposit was a sum of Rs.300/- on 29th July 1944 at Nugegoda.

At Mount Lavinia on 24th April 1945 he had deposited a sum of Rs.1000/-.

At Kotahena he had deposited a sum of Rs.8.50 on the 30th April, 1945.

Then a sum of Rs.15/- was credited to his account as interest. Then the next deposit was a sum of Rs.22.50 at Kotahena.

Then a deposit of Rs.20/- on 3.4.46 at Kotahena.

Then there is a withdrawal of Rs.50/- on 25th July 1946 at Kotahena.

On 31st July 1946 a sum of Rs.46.64 was credited as interest.

On 20th August 1946 at Kotahena he has withdrawn a sum of Rs.55/-.

On 19th October 1946 at Kotahena he has withdrawn a sum of Rs.175/-.

On 7th December, 1946, at Kotahena he has withdrawn a sum of Rs.80/-

On 20th February, 1947, at Kotahena he has withdrawn a sum of Rs.25/-.

On 4th April, 1947, at Kotahena he has withdrawn a sum of Rs.50/-.

On 27th May, 1947, at Kotahena he has deposited a sum of Rs.11/-.

No. 10.  
H. F. Dissanayake,  
6th  
January  
1949.  
Examination.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 10.  
H. F. Diss-  
anayake,  
6th  
January  
1949,  
Examina-  
tion,  
*continued.*

On 8th July, 1947, he has withdrawn at Kotahena a sum of Rs.75/-.  
On 10th September, 1947, at Kotahena he had withdrawn a sum  
of Rs.50/-.

Interest credited for 1946-47 was a sum of Rs.94.73.

Then he had a balance of Rs.1,959.37 to his credit.

This money is still with the Post Office Savings Bank.

Under our rules a widow is entitled to half of the amount her husband  
had to his credit at the time of his death. Then she must make an  
application to the controller of the Post Office with an affidavit to withdraw  
that money. In this case Mrs. Seneviratne has not applied for it. 10

P.36 is a Post Office Savings Bank Book which belongs to  
Govipolagodage Beatrice Chula Sumana de Silva Seneviratne. No  
guardian's name is mentioned in her book. In this book the first deposit  
is a sum of one rupee, deposited on 13th May, 1944, at Nugegoda.

Next, on 17th May, 1944, she had deposited a sum of Rs.1000/-  
at Colombo.

Then, on the same date she has deposited a sum of Rs.1000/- at  
Colombo.

On 24th April, 1945, at Mt. Lavinia she had deposited a sum of  
Rs.1000/-. 20

Interest credited to her : a sum of Rs.28/-.

Then on 2nd January, 1946, at Kotahena she has withdrawn a sum  
of Rs.100/-.

On 16th March, 1946, at Kotahena she has withdrawn a sum of  
Rs.250/-.

On 18th March, 1946, at Kotahena she had deposited a sum of  
Rs.22.50.

On 3rd April, 1946, at Kotahena she had deposited a sum of Rs.50/-.

On 6th May, 1946, at Cinamon Gardens she has deposited a sum  
of Rs.50/-. 30

Then on 13.5.46 at Kotahena she has withdrawn a sum of Rs.100/-.

Then on 12.7.46 at Kotahena she has withdrawn a sum of Rs.100/-.

Then a sum of Rs.64.40 was credited to her account as interest.

Then on 20th August, 1946, at Kotahena she has withdrawn a sum  
of Rs.55/-.

On 14th September, 1946, at Kotahena she has withdrawn a sum  
of Rs.100/-.

On 19th October, 1946, at Kotahena she has withdrawn a sum of  
Rs.175/-.

On 16th November, 1946, at Kotahena she has withdrawn a sum 40  
of Rs.100/-.

On 15th January, 1947, at Kotahena she has withdrawn a sum of  
Rs.100/-.

On 19th March, 1947, at Kotahena she has withdrawn a sum of  
Rs.100/-.

On 11th May, 1947, at Kotahena she has withdrawn a sum of Rs.75/-.

On 27th May, 1947, at Kotahena she has deposited a sum of Rs.11/-.

On 24th June, 1947, at Kotahena she has withdrawn a sum of Rs.60/-.

On 27th June, 1947, she has deposited at Kotahena a sum of Rs.60/-.

On 24th July, 1947, at Kotahena she has withdrawn a sum of Rs.40/-. 50

On 16th August, 1947, at Kotahena she has withdrawn a sum of  
Rs.75/-.

On 22nd August, 1947, at Kotahena she has withdrawn a sum of Rs.50/-.

On 24th October, 1947, at Kotahena she has withdrawn a sum of Rs.60/-.

Then interest credited to her account was a sum of Rs.63.01.

Interest credited for the balance year was a sum of Rs.39.52.

The balance was Rs.1849.43 and that money is still in the Savings Bank.

10 P.48 is the Post Office Savings Bank Book of Mr. B. Dionysius de Silva Seneviratne. His last deposit was on 2nd August, 1945. Thereafter he made no further deposits. On 2nd August, 1945, he deposited a sum of Rs.85/- at Kotahena. Thereafter there are withdrawals. The last withdrawal was on 20th April, 1947, at Kotahena, a sum of Rs.10/-. Thereafter his credit balance was a sum of Rs.12.97.

(To Court : This book P.48 was practically closed in April, 1947.)

P.49 is the Post Office Savings Bank Book of Mrs. Beatrice Maude de Silva Seneviratne. Her account starts on 4th January, 1945, with a deposit of Rs.5/- at Nugegoda. The 2nd deposit was a sum of Rs.100/-. Her final credit balance is a sum of Rs.3.92.

20 I produce the Post Office Savings Bank Books marked P.36, P.31, P.48 and P.49.

*Cross-examined by Mr. Lekamge* : Nil.

*Cross-examined by Mr. Gunasekera* : The guardian of the children was the deceased, their father, Dionysius de Silva Seneviratne. The widow is entitled to half of her husband's account and the children would be entitled to the other half.

The widow would get nothing from P.31 because it is in the name of one of her children.

30 She would get nothing from P.36 too because that too is in the name of the other child.

In P.36 the age of the depositor is given as seven years.

In P.48 the widow gets half of Rs.12.97, and that is all what she would have got out of the three books.

40 *Re-examined* : Even a minor over the age of seven can withdraw money from the book without any written authority from parents or a guardian. It is necessary that the book must be produced for all transactions. If the child is under seven years the guardian who opens the account can withdraw the money on certain conditions, for the maintenance of the minor or his education. When an application is made on behalf of a minor under seven he would get only a part of the amount applied for, whatever the post master thinks necessary. In this case although the father is dead the minors can come and withdraw their money, because the money credited in their books is minor's personal accounts. Any withdrawal by a minor over seven years of age is that minor's personal transaction and the guardian does not come into the picture.

*To Jury* : Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 10.  
H. F. Diss-  
anayake,  
6th  
January  
1949,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Gunasekera.

Re-examin-  
ation.

## EVIDENCE of Mrs. Audrey Paul.

In the  
Supreme  
Court.

Prosecu-  
tion's  
Evidence.

No. 11.  
Mrs. Audrey  
Paul, 6th  
January  
1949.  
Examina-  
tion.

MRS. AUDREY PAUL—Sworn.

Thirty-six years, wife of Mr. T. G. P. Paul, No. 1 College Street, Kotahena. I have been in Kotahena for twenty years. I know late Mr. G. Dionysius de Silva Seneviratne and the 2nd accused his widow. I have known them for about two or three years before the death of Mr. Seneviratne. I knew them for the first time in Kotahena. I also know that they lived at Kotahena in College Street for some time and they moved away. One of their children, Oranda, was in my class. I teach at St. Benedict's College. At first Oranda attended St. Benedict's College and thereafter he went to Prince College. I got to know Mr. Seneviratne first, because he brought his child to school. That was in 1944 or 45. The boy was about seven years of age then. I came to know the 2nd accused, Mrs. Seneviratne, through the deceased. After that the deceased brought his wife to my house and they wanted me to take an interest over the child. The deceased used to come very often to class to see his child. The 2nd accused used to come with the deceased to my house and eventually we became friends. The second accused asked me some money when her father died. I think it was somewhere in June or July 1946. I gave her a sum of Rs.600/- but I took no security. I did not take a promissory note but she gave me a ring of her own accord. I handed the ring over to Court. (Shown P.21.) This is the ring. (The ring is shown to the jury.) I made no arrangements with her for the interest. She promised to pay back the money when she got back her money from her father's will. Up to date I did not receive any money from her because she told me that she received nothing yet from her father's will. I got nothing back from this Rs.600/-. After this loan when her brother was to be married she came again in November, 1946, and asked for a loan. I had no money at the time and therefore I recommended her to Mrs. Wallace. I know that she went to Mrs. Wallace.

(To Court: I asked her for the money in 1947, somewhere in March, and then she replied that she did not get the money yet. I asked her three or four times.)

In this transaction with Mrs. Wallace I signed the promissory note as a witness. I was present when the money passed. That note was written in my presence. It was a promissory note for Rs.500/- and the note was signed by the 2nd accused on 17th November, 1946. Apart from that loan which I gave her the second accused asked me for small loans, and whenever I had I used to give her. They were small transactions—just a rupee or two. She used to stop me when I pass her house and ask for a loan. I used to ask her why she was in need of money and she told me that her husband did not give her any money. I did not go into further detail. Before I gave her the loan of Rs.600/- I informed the deceased and got his permission. As regards the little monies I did not tell her husband. I did not receive any kind of assurance that her husband would pay her debt.

Cross-examined by Mr. Lekamge : Nil.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

Cross-examined by Mr. Gunasekera : I knew that the second accused had some house properties. P.21 is a gold ring set with brilliants. I

would have given the 2nd loan of Rs.500/- if I had the money. In small sums I must have given her about ten or fifteen rupees. Before giving the loan of Rs.600/- I mentioned the request made by the 2nd accused to the deceased and obtained his permission to give that loan to the 2nd accused. If the deceased had asked me not to give the loan I would not have given the loan.

*Re-examined* : Nil.

*To Jury* : Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 11.  
Mrs. Audrey  
Paul, 6th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekera,  
*continued.*

**No. 12.**

10

**EVIDENCE of Mrs. M. Wallace.**

MRS. M. WALLACE—Sworn.

About 60 years, wife of Marshall Wallace. I live at Bambalapitiya. I know the 2nd accused, I came to know her through the last witness, Mrs. Paul. In November, 1946, she came to my house and asked me for a loan and that loan was recommended by Mrs. Paul. I gave her Rs.500/- on a promissory note. To that note Mrs. Paul was a witness. P.19 is the note and I produce it. I have not received any money out of that. I have charged 18 per cent. interest on that note. She did not pay me any interest. I asked for that money on several occasions but she did not  
20 settle it.

*Cross-examined by Mr. Lekamge* : Nil.

*Cross-examined by Mr. Gunasekera* : The second accused said that she wanted the money for her brother's wedding. Shortly after I gave her the loan her brother got married. A sum of fifty rupees was not paid to me.

*Re-examined* : Nil.

*To Jury* : Nil.

No. 12.  
Mrs. M.  
Wallace,  
6th  
January  
1949.  
Examina-  
tion.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

**No. 13.**

**EVIDENCE of Fayis Mohammed.**

30 FAYIS MOHAMMED—Affirmed.

Forty-one years, Slave Island, Money Lender. On this promissory Note P.32 I lent money to that lady in the dock, the 2nd accused. I lent her a sum of Rs.450/- on 7th March, 1947, at 18 per cent. interest. She signed the note in my presence. I produce the promissory note P.32. She paid three months' interest and thereafter no money was paid, and no part of the principal had been paid to me although I made several demands for it. I gave this money at her house when her husband was present at the time. I made several demands having gone to her house.

*Cross-examined by Mr. Lekamge* : Nil.

No. 13.  
Fayis  
Mohammed,  
6th  
January  
1949.  
Examina-  
tion.



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 13.  
Fayis  
Mohammed,  
6th  
January  
1949,  
*continued.*  
Cross-  
examina-  
tion by Mr.  
Gunasekera.  
Re-examin-  
ation.

*Cross-examined by Mr. Gunasekera :* Before I gave the money I was passing the house one day along the College Street when the 2nd accused's husband having seen me passing called me into the house, and asked me for a loan. I did not want to give him any money because he was a Municipal Pensioner and I suggested that his wife should sign the promissory note. When the note was signed by the 2nd accused I gave her the money in the presence of the husband. I do not know to whom the lady handed over the money. I went to the house from time to time to get the interest. The first and second interest were paid by the second accused and the other interest was paid by her husband. 10

*Re-examined :* The person who was present there at the time of the transaction was 2nd accused's husband.

*To Jury :* Nil.

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No. 14.

EVIDENCE of Seyed Sadiq Khan.

No. 14.  
Seyed  
Sadiq Khan  
6th  
January  
1949.  
Examina-  
tion.

SEYED SADIQ KHAN—Affirmed.

Thirty-seven years, Slave Island. Money Lender. On Promissory note P.33 I gave a sum of Rs.700/- at 18 per cent. interest on 16th July 1947 to the 2nd accused. She signed the note in my presence. She did not pay me either interest or any part of the principal. I went to her house and made demands for it. 20

*Cross-examined by Mr. Lekamge :* Nil.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

*Cross-examined by Mr. Gunasekera :* When the 2nd accused signed the note her husband was present in the house. At that time I did not know who he was but later I found out that it was her husband.

*Re-examined :* Nil.

*To Jury :* Nil.

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No. 15.

EVIDENCE of Mohammed Yakoo Bhai.

No. 15.  
Mohammed  
Yakoo  
Bhai, 6th  
January  
1949.  
Examina-  
tion.

MOHAMMED YAKOO BHAI—Affirmed. 30

Forty-two years, Slave Island, Money Lender. On this promissory note P.34 I lent a sum of Rs.300/- at 18 per cent. interest on 9th August 1947 to the 2nd accused. She signed the note in my presence. I produce the note P.34. I did not get any interest or any part of the principal.

*Cross-examined by Mr. Lekamge :* Nil.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

*Cross-examined by Mr. Gunasekera :* At the time of the transaction I did not collect the first month's interest. For the first month a sum of two rupees was given as a "santhosam" but I did not get any interest. When we lend money we do not deduct the first month's interest. At the time she took the loan there was a gentleman present. The money was given to her at Kotahena, in her house. The 2nd accused said that that gentleman who was there was her husband. That man was somewhat old, but I cannot remember whether he was having grey hair or not. 40

*Re-examined :* Nil.

*To Jury :* Nil.

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**No. 16.**  
**EVIDENCE of A. Sathasivam.**

*In the  
Supreme  
Court.*

**A. SATHASIVAM—Affirmed.**

Thirty-one years, Merchant, No. 120 St. Joseph's Street, Grandpass. I lent money on interest. In October, 1947, I advertised in the Daily Press that I was prepared to lend money on personal security. I received an application from the 2nd accused and in reply to that I wrote to her this letter P.37. I have given there my office address and it was signed by my clerk on my behalf. This letter is dated 4th October, 1947. (P.37 is shown to the jury.) On promissory note P.38 I lent a sum of Rs.350/- at 18 per cent. interest on 7th October, 1947. That promissory note was signed in my presence by the 2nd accused. In reply to my letter the 2nd accused came to my office at Ferry Street on the 6th October. She made an appointment by telephone before she came. She came there with a servant woman. (Shown Alice Nona.) I cannot be sure whether it was this woman or a woman like her. I did not observe her. I cannot say whether she was a young woman or an old woman. When the 2nd accused telephoned me on the 6th I asked her to come on the following day. I asked her why she wanted the money. I had a talk with her. She said that her husband was in hospital and she wanted the money. The 2nd accused met me either on the 5th or 6th and the promissory note was given on the 7th. The next day too she came with a woman. I paid the money on the promissory note. At the time the transaction was taking place the woman stood outside. I produce the promissory note marked P.38. I received no interest or any part of the principal. I made no demands.

*Prosecu-  
tion's  
Evidence.*

No. 16  
S. Sathasi-  
vam, 6th  
January  
1949,  
Examina-  
tion.

*Cross-examined by Mr. Lekamge : Nil.*

*Cross-examined by Mr. Gunasekera :* On the 6th the 2nd accused said that her husband was in hospital and said that she wanted the money for her husband. She said who she was and who her husband was. I gave the money on the following day. In the meantime I telephoned the General Hospital and found out that her husband was ill in hospital. I cannot remember in what ward he was.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

*Re-examined : Nil.*

*To Jury : Nil.*

**No. 17.**  
**EVIDENCE of M. K. Sally.**

No. 17.  
M. K. Sally  
6th and 7th  
January  
1949.  
Examina-  
tion.

**M. K. SALLY—Affirmed.**

Twenty-nine years, I am without a job now. I live at Maligawatte, Maradana. I know the 2nd accused. Mr. Joachim's family was known to me for a fairly long time and I used to call on them. About two years ago when I went to Mr. Joachim's house I was introduced to the 2nd accused. The first occasion I met her was on a Wesak day. I think it was in May

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*No. 17.*

*M. K. Sally,  
6th and 7th  
January  
1949,  
Examina-  
tion,  
continued.*

1947. I was passing down College Street in my Baby Austin car with one or two of my friends about 8 or 8.30 p.m. when I found the Joachim's family outside their home. I stopped the car and I had a chat with them. There I met the 2nd accused. I took some of the ladies round to see the decorations. I took Miss Joachim, the 2nd accused, Mr. Joachim's son and another lady. I took them round and brought them back at 10 or 10.30 p.m.

*(To Court :* I am a Muslim. At this time I was living at Mutwal. I am not married. My father is dead. I am a man of proprietary means.)

After that Wesak day I got a letter from the second accused. 10

*(To Court :* On that Wesak night the 2nd accused asked me where I was working and I gave her the address. I was working at that time in charge of a factory, Snowwhite Soap Factory at Maligawatte. I was then getting Rs.150/- as salary per month.)

This letter P.39 bears the date 12th May 1947, I got this letter about that time, a few days after the Wesak. This came by post to my office. I opened it and read it.

*(To Court :* I remember the envelope was addressed to me in pencil.)

(Crown Counsel states that the Wesak was on the 5th and 6th of May, 1947.) 20

*(To Court :* I opened the letter and noticed that it had been written on a paper taken out of an exercise book. The letter went into the other sides of the paper. It was signed. Having read the letter I put it back in the envelope and had it in the office for some time. These slips which are now before me do not contain the signature. These pieces are only a part of the letter I received. In all I received three or four letters from the 2nd accused and I sent her one or two letters.)

I have also met the 2nd accused after the Wesak night. I used to meet her frequently. I did not discuss the letters then.

*Q.* Are you in a position to say that these slips of paper are in the 30 handwriting of the 2nd accused ?

*A.* I did not know her handwriting.

I met the 2nd accused in Mr. Joachim's house. I wrote a reply to that letter P.42. This is my reply to that letter P.39. P.39 has got the address. The address given there is 107 College Street, Kotahena. My reply to that letter P.39 is not amongst these four letters : P.39, P.40, P.41 and P.42. After writing that reply I may have met the 2nd accused. The accused call me Sally when I meet her. I used to call her Beatrice. When I wrote to her I addressed the letters to Mrs. Seneviratne, No. 107 College Street, Kotahena. I used to begin the letters : My Dear Beatrice. 40 I received this letter P.41. I think I got it at my office and this letter P.41 bears the address : No. 107 College Street, Kotahena. It was signed : Beatrice Seneviratne. When I got the letter P.41 I replied. P.42 is the reply. I sent that reply to the 2nd accused. I began P.42 : Dear Beatrice, and I finished : Yours and my initials.

*(Court :* I think a course of correspondence has taken place and I like to know whether Mr. Nihal Gunasekera would object.

*Mr. Gunasekera* : I object.

*Court* : I will hear you to-morrow.)

(Court adjourns for the day—1.45 p.m.)

Certified Correct.

(Sgd.) D. V. JAYAMAHA,

Stenographer S.C.

7th January 1949. 9.30 a.m.

Accused present—Same Counsel.

M. K. SALLY—Re-affirmed.

10 *Court* : Did the police get these letters (shown P.39 and P.40) from your possessions ?

*Witness* : I gave these letters to the police.

*Q.* Who tore them up in the way in which they are now ?

*A.* These were destroyed by me.

(Shown P.42.) This is my letter in my handwriting. I posted this letter to the second accused. (Shown P.41.) I got this letter. I had this letter with me and I gave it to the police.

*Court to Crown Counsel* : Have you any witness who can identify the handwriting of the 2nd accused ?

20 *Crown Counsel* : There are witnesses who may be in a position to identify.

*Court* : If so, I will allow them to be called now so that I might consider the admissibility of these documents.

*Court to Witness* : Stand down for the present.

Crown Counsel moves to call Mrs. Noel Peris.

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No. 18.

EVIDENCE of Mrs. Noel Peris.

MRS. NOEL PERIS—Sworn.

50, Widow of James Peris, living at Nugegoda.

30 The second accused is my daughter. (Shown P.41.) (*Court* asks the witness to read through letter P.41.) (*To Court* : I cannot read or write English, but I speak English. I can sign my name in English. I am a Burgher lady. My maiden name is Kenny. My father was an engine driver, Kenny. I have not studied much.

*Q.* Have you been to school

*A* I studied at home.

I have never in my life written a letter in English. I have never read a letter in English. I know the English alphabet. I can write the English alphabet. I studied up to the second standard.)

40 *Court to Crown Counsel* : There is no use going on with this witness.

*Court to Witness* : You can stand down.

Crown Counsel next calls :

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 17.  
M. K. Sally,  
7th  
January  
1949,  
Examina-  
tion,  
*continued*

No. 18.  
Mrs. Noel  
Peris, 7th  
January  
1949.  
Examina-  
tion.

*In the  
Supreme  
Court.*

No. 19.

**EVIDENCE of B. C. de S. Seneviratne.**

*Prosecu-  
tion's  
Evidence.*

No. 19.  
B. C. de S.  
Sene-  
viratne,  
7th  
January  
1949.  
Examina-  
tion.

**B. C. DE S. SENEVIRATNE—Sworn.**

12, Daughter of the deceased. (*To Court*: I am Sumana. I have been to school. I am now studying at St. Joseph's convent. I was at one time studying at Prince College, Kotahena. I am in the 6th standard. I can read English.)

(Shown P.41.) Court asks the witness to look at P.41 carefully. This letter P.41 is in my mother's handwriting. I am familiar with my mother's handwriting.

*Cross-examined by Mr. Lekamge*: Nil.

*Cross-examined by Mr. Gunasekera*: Nil.

10

*Court*: I have considered these four documents P.39, P.40, P.41 and P.42. I propose to admit P.41 and P.42 in evidence and to rule out P.39 and P.40. If Counsel wish to address me I will ask the jury to retire.

*Crown Counsel*: I do not wish to address the jury in that way, but I want to make an application that I be allowed merely to show P.39 and P.40 to the witness who received them, merely to say he received certain letters.

No. 20.  
M. K.  
Sally  
(recalled),  
7th  
January  
1949.  
Examina-  
tion.

No. 20.

**EVIDENCE of M. K. Sally (recalled).**

20

**M. K. SALLY—recalled—re-affirmed.**

*Examination continued*:

*Q.* You told the Court yesterday that you met the second accused for the first time on the Wesak day?

*A.* Yes.

My recollection is that I got the first letter from the second accused 2 or 3 weeks after I had met her on Wesak night. About a week or ten days after I got another letter from the second accused. Thereafter I got letter P.41. (Shown P.41.) (Court asks the witness to read out the letter P.41—witness reads it and thereafter it is shown to the jury.) P.41 is dated 14th June 1947. I produce P.41. In this letter the second accused has asked me for a loan. I sent a reply to P.41. (Shown P.42.) This is my reply dated 18th June 1947. (Witness is asked to read out P.42. Witness reads it and thereafter it is shown to the jury.) I was unable to give the Rs.300/- she had asked for. I have given her money on one or two occasions. On the first occasion I gave her Rs.25/-. That may have been 4 or 5 days after I wrote P.42. I met her at Armour Street junction by appointment and gave her the Rs.25/-. About a month after I met her again at Armour Street junction and gave her Rs.50/- on that occasion. I remember meeting her once near College Street, but I did not

40

give her money on that occasion. About two weeks after I gave her the Rs.50/- I met her again at Borella bus stand by appointment and gave her Rs.10/-. I did not give her money on a fourth occasion. She did not send a message to my house. Her servant woman never came to my house. That is all the money I had given. I got back Rs.50/- from her, but not the rest.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*Cross-examined by Mr. Lekamge : Nil.*

No. 20.

*Cross-examined by Mr. Gunasekera :*

M. K.

Sally

(recalled),

7th

January

1949,

Examina-

tion,

*continued.*

Cross-

examina-

tion by Mr.

Gunasekera.

10 Q. Did you ask the second accused to return the money ?  
A. I made her understand that I was pressed and she returned Rs.50/-.

That was about 1½ months after all these loans. I gave her the loan of Rs.10/- about two weeks after the second loan.

*Re-examined : Nil.*

*To Jury : Nil.*

**No. 21.**

**EVIDENCE of L. B. Hinnihamy.**

No. 21.

L. B.

Hinnihamy,

7th

January

1949,

Examina-

tion.

L. B. HINNIHAMY—Affirmed.

25, Spinster, living in Kotahena.

20 (Crown Counsel states that Witness No. 15 on the back of the indictment, W. A. Maihamy, is now dead, and that he wishes to prove her death through this witness now and after the deposition is read recall her.)

I know Maihamy. She was a witness in this case in the Magistrate's Court. I live in the same garden in which she lived. She is now dead. She died about four months ago. I saw her dead body. I went to see her after her death but I was not present at the time of the removal of the dead body.

*No questions by Messrs. Lekamge and Gunasekera :*

30 (The witness is asked to stand down. Crown Counsel moves under section 33 of the Evidence Ordinance to read the deposition of W. A. Maihamy.)

Court directs the jury to retire. They retire.

*Court :* I have shown certain passages in this deposition within square brackets. Counsel on both sides agree that these passages should not be read to the jury.

(Jury recalled and the deposition of Maihamy read to the jury excluding passages indicated by Court. At this stage Crown Counsel moves that the productions P.24A and P.24B be shown to the jury—allowed.)

40 (P.24A and P.24B are shown to the jury.)

Crown Counsel moves to recall L. B. Hinnihamy—allowed.

*In the  
Supreme  
Court.*

L. B. HINNIHAMY—Re-affirmed.

*Prosecu-  
tion's  
Evidence.*

*Examined:* I know Maihamy who is now dead. (P.24 shown.) Maihamy gave me this receipt. The police questioned me and took this receipt P.24 from me on the 19th November 1947.

*Cross-examined by Mr. Lekamge:* Nil.

No. 21.

*Cross-examined by Mr. Gunasekera:*

L. B.  
Hinnihamy,  
7th  
January  
1949,  
*continued.*  
Cross-  
examina-  
tion by Mr.  
Gunasekera.

I cannot remember the date when Maihamy gave me P.24. I gave evidence in the Magistrate's Court in December 1947 in connection with this case. Maihamy gave me P.24 about a month or two before that. She asked me to keep it with me saying it is "licence receipt." I did not ask her why she could not keep it herself.

*Re-examined:* Nil.

*To Jury:* Nil.

No. 22.  
Gamage  
Girigoris,  
7th  
January  
1949.  
Examina-  
tion.

No. 22.

**EVIDENCE of Gamage Girigoris.**

**GAMAGE GIRIGORIS—Affirmed.**

38, Pawnbroker's manager, living at Kotahena.

I know Maihamy. I know that she is dead now. She came to our pawn shop to pawn an article of jewellery. (Shown P.24A and P.24B.) She brought these articles of jewellery to me and pawned them with me on the 1st August 1947. I gave her receipt P.24. I produce P.24. (P.24 is shown to the jury.) When Maihamy came to pawn these articles she came with another man, one Dharmasena. He is the first accused in this case. The first accused spoke to me on that day. He said he wanted Rs.100/- on those articles. He negotiated the pawn. I refused to give Rs.100/- on those articles. I gave only Rs.50/-. I deducted the interest and gave the balance to Maihamy and she handed the money to the first accused. I wrote out the receipt in the name of Maihamy. The first accused wanted me to write the receipt in his name, but Maihamy wanted it to be written in her name. I decided to give the receipt in the name of Maihamy. These articles were not redeemed.

Cross-  
examina-  
tion by Mr.  
Lekamge.

*Cross-examined by Mr. Lekamge:*

My pawn shop is 128, Kotahena Street, almost opposite the Kotahena police station. It is known as Sirima Pawnbroker's shop. Two houses next to the pawn shop is a tea boutique called the Sirima hotel. It is run by us.

*Q.* The police drop into your boutique almost every day for tea?

*A.* Yes.

*Q.* Your hotel gave credit to the police?

*A.* Yes.

Before the first accused came with Maihamy to pawn these articles I had seen first accused once before going along the road. Several people come to our shop to pawn articles. After Dharmasena came to our shop to pawn the articles with Maihamy, he did not come to our shop again.

Q. If Maihamy says she came along with first accused and he was standing outside the door, would that be correct ?

A. That is not correct.

It was Maihamy who brought the articles to the counter. She had been to our shop three or four times before that. When she brought the articles to me on this occasion the first accused wanted Rs.100/- on them. Maihamy also asked for Rs.100/-. Ultimately I agreed to give them Rs.50/-. The first accused asked me to write the pawn receipt in his name.

10 Q. When Maihamy brought the articles to you and the first accused wanted the receipt in his name, you did not think it was peculiar ?

A. I did not think so.

Q. All the conversation between Maihamy and the first accused was near your counter ?

A. Yes.

Q. You heard everything that was said ?

A. Yes.

Q. If the first accused brought these articles to you direct, would you have accepted them and given some money for it ?

20 A. Yes, whoever who brings articles I used to accept them and give money.

*Cross-examined by Mr. Gunasekera:* I gave Maihamy actually Rs.48/85 having deducted 1/15 as interest.

Q. She straightaway gave it to the first accused ?

A. Yes. I do not know that the first accused is a mason.

Q. In the course of the conversation between Maihamy and the first accused, did you gather that the first accused had to get some money, for some work done ?

30 A. I did not gather that this money was for some work done by the first accused.

*Re-examined:* I knew that the articles belonged to a lady. I knew which lady it was. It was Mrs. Seneviratne, the second accused.

*To jury:* Nil.

No. 23.

EVIDENCE of Harry Perera.

HARRY PERERA—Affirmed.

Forty-two, Sanitary Inspector, living in Zeleski Place, Colombo.

40 I knew the deceased, Mr. Seneviratne, and his wife the second accused. I knew the deceased for a long number of years. Mr. and Mrs. Seneviratne were on visiting terms with me. My wife is now dead. (*To Court:* She died on 19th September 1946.) Deceased and his wife called on me about a week later to sympathise with me in my bereavement. Three months after the death of my wife there was an almsgiving at my house and the deceased and his wife both came for that almsgiving. Thereafter the deceased came to my house alone. One day he came to see whether his

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7th

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Cross-  
examina-  
tion by Mr.  
Lekamge,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Gunasekera.

Re-examina-  
tion.

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Harry  
Perera, 7th  
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tion,  
*continued.*

wife had come to my house. That was about three months after the almsgiving. The second accused was not in my house. The second accused did not come to my house subsequently at any time. She met me one day at Windsor Hotel, Panchikawatte, by appointment. She came with a lady. That was about two to three months after the deceased's visit to me. Before I met the second accused at the hotel she had written to me for a loan of Rs.300/-. That was about two weeks before I met her at the hotel. I wrote back saying I had no money. Again she contacted me on the telephone. On that occasion she reminded me about the letter and asked whether I could help her with a loan, but she mentioned no figure. 10 I said I could give her about Rs.100/-. Then we met at the Windsor Hotel. On that occasion she came with a young lady whom she introduced to me as Leena. On that occasion I gave the second accused Rs.100/- in cash. Then they went away. About three to four months after that I met the second accused again at the same hotel by appointment over the telephone. That was about four weeks before the deceased's death. On that occasion also she asked me for a loan, but did not mention a figure. I gave her Rs.50/-. On that occasion the second accused came with an old woman. (*Court*: Can you recognize that old woman if you see her?—A. Not likely. The old woman was in the drawing room.) 20

(*Witness Alice is shown to this witness.*) I cannot be definite it was this woman.

It was drizzling at the time and the second accused asked me whether I could give her a lift in my car, and I gave her a lift in my car to Nugegoda. The old woman also got into my car and had a seat at the back. My car was a Baby Austin. The second accused did not tell me where she wanted to go on that occasion, but I expected that she wanted to go to her mother's house. I dropped her at Nugegoda junction. I think that junction is about half a mile from her mother's house, not a few yards. I have not received any part of the money I gave the second accused. In all I gave her Rs.150/-. I had no opportunity of mentioning this to the deceased during his lifetime. 30

*Cross-examined by Mr. Lekamge*: Nil.

Cross-  
examina-  
tion by Mr.  
Gunasekera.

*Cross-examined by Mr. Gunasekera*:

*Q.* On the occasion of the first loan, the second accused said she wanted money in connection with her brother's wedding.

*A.* She said something to that effect. I did not attend her brother's wedding.

*Q.* On the first occasion the second accused came with her cousin Leena?

*A.* Yes.

*Q.* Did you know that at that time Leena was living with the second accused?

*A.* I understood so.

*Q.* On the occasion of the second loan, the second accused told you she was in debt?

*A.* Yes.

I dropped the second accused at the junction of the road leading to the Nugegoda railway station from the High Level road. After dropping her

there I came back to Colombo. From that junction where I dropped her, her mother's house is about half a mile.

*Re-examined*: From Windsor Hotel I must have driven about five miles up to Nugegoda junction where I dropped the second accused.

*Q.* Would you grudge another half a mile up to her mother's house?

*A.* Not that, but the rain had ceased and she said she could walk.

*To Jury*: Nil.

11.15 a.m. Court is adjourned for 15 minutes.

Certified Correct.

(Sgd.) M. ANTHONY,  
Stenographer S.C.

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No. 24.

EVIDENCE of W. A. Alice Nona.

7th January, 1949.

11.30 a.m.

W. A. ALICE NONA—Affirmed.

50, wife of Abraham, Averiawatta.

*Court*: You seem excited. Compose yourself, listen to the question and speak the truth. I will give you a little time to compose yourself.

20 *Examined*: I have no children. I had one child whom I lost. I can read and write. I had gone to school. I studied up to the fourth standard. I knew the late Mr. Seneviratne and his wife. I took up employment under them as a cook woman. Before I took up employment under them I had been a cook in three or four houses. I took employment under them about a month before deceased's death.

I know all the members of the Seneviratne family. They lived in a house at 107 College Street, Kotahena. They were Mr. and Mrs. Seneviratne and two children, a boy and a girl named Sumana and Oranda.

30 At the time I took employment under them there lived another family in that house—a Burgher family known as Joachims. That family was composed of a gentleman and a lady, a girl and two boys. The girl and two boys are grown-up persons. I worked only for the Seneviratne family. The Joachims had a servant woman who used to go to her house after work. She came to work about 9 a.m. She came to prepare dinner. She used to come about 5 or 5.30 p.m. and leave when she had finished her work. That was after the Joachim family had had their dinner and she had washed the crockery, when people retire for the night.

40 All the five members of the Joachim family went out to work in the morning. They used to leave about 7.30 or 8 a.m. They did not come for lunch at all. They had their lunch out. They returned to the house about 5 or 6 p.m.

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When I took employment under the Seneviratne family the second accused was not a teacher. After I joined them the 2nd accused took employment as a teacher. That was about two weeks after I joined them. She went to a school almost across the road. That was a Buddhist school. Second accused used to leave the house after morning tea. She used to leave sometimes before and sometimes after the Joachim family left. She used to take her two children also to the school. The children studied there. They used to come home for lunch. I used to have their meals ready. They used to return for lunch about 11 or 11.30 a.m. After lunch second accused and the two children again returned 10 to school. They used to come back about 2.30 or 3 p.m.

At this time deceased had no employment; he was in retirement. Mostly the gentleman did the marketing. On certain days I used to go marketing. When Mr. Seneviratne went to the market he used to carry a bag with him. He went to the Kotahena market. It is not very far away. (P. 3 shown.) This is the bag he used to carry to market. Whenever I happened to go to market I used to carry a bag. (P. 2 shown.) This is the bag I used to carry. When my master went to the market I did not go to market. It was only when he was not in a position to go to market that I went. My master went to market after tea about 9 or 10 a.m. 20 He used to return soon after with provisions. Normally he used to buy vegetables and fish. If there was no fish he used to buy meat. When I went to market Mr. Seneviratne used to give me money. He managed the household affairs.

After deceased returned from the market and before his wife and children returned, only myself and deceased were in the house. If he was in the house it would be only he and myself.

Small quantities of curry stuffs are generally bought and kept in the house. Fish and meat are bought daily. Chillies and onions are given to me daily by Mr. Seneviratne. On some days the quantity of curry 30 stuffs he gave me was not enough. Deceased was very careful. In fact deceased kept the curry stuffs under lock and key and he kept the key.

Deceased liked the children very much. He supervised their studies at home.

(*To Court*: There was a dog in that house belonging to the Joachims and another dog belonging to Mr. Seneviratne. When the Joachims left for the day they used to tie the dog on some days and on some days it was left loose. If there were any remnants we used to feed the Joachim dog by day. It used to bite unknown people. My master's dog was a small young dog. It was generally kept tied but sometimes it got loose. 40 It was almost a puppy. Whenever I was at home I used to look after it. I was fond of it and I used to feed it. The family was very fond of it. It used to bark at strangers.)

Deceased used to supervise the studies of the children. He used to supervise the feeding of the children in the house.

(*To Court*: Whenever he was at home he used to sit by the children and feed them.)

As a general rule the master and wife used to sit together at night but not at day time.

After I took employment under the deceased one day I witnessed displeasure between deceased and second accused. That day they did not sit together for dinner. That was roughly about a week before deceased's death.

I know Maihamy. I never accompanied her anywhere. I did go. I forgot. I went with her to a pawn broker's shop to pawn a pair of ear studs. Second accused sent me with her there. Maihamy pawned the ear studs and obtained a receipt.

(*To Court*: Rs.50/- was got by the pawn. Maihamy gave me  
10 Rs.50/- which I handed over to the second accused. That was some days after I took employment under Mr. Seneviratne.)

I know the young boy Orandha. I used to call him "Baby." (Shown Orandha.) This is "Baby." He used to go to school in a pair of shorts. When he gets to bed at night he is clad in a sarong. In the morning after he dresses for school he hangs the sarong on a line in the back verandah. (Shown photograph No. 9 of P.47.) This picture shows the back verandah. I see the steps. The back verandah is cemented. The sarong is usually hung near B. That is a general feature daily. (P.1 shown). This is the sarong belonging to Orandha.

20 I remember the day my master died. That morning too the son put up the sarong P.1 on the line at its usual place.

(Witness looks at first accused.) I had seen the first accused before to-day. I remember the day deceased died. I had seen the first accused even before that day.

*Q.* Think well before you answer this question. How many times had you seen the first accused before the day of the death of the deceased?

*A.* Two or three times.

I know where first accused lives. He lives at Nugegoda. I had been to first accused's house. I remember going to first accused's house on two  
30 occasions. I can now remember the day on which I went to first accused's house on the first occasion. That was not soon after I had taken employment under the second accused. It was about two weeks after I had been with them. On that day I left the house with the second accused. We left in the morning. We went by bus to Nugegoda. At Nugegoda we went first to the house of the second accused's mother. The mother was there and we remained there for some time. We had our noon meal there. We left that house after noon meal and tea. We next went to the Baas's house.

(*To Court*: I knew the first accused as Baas.)

40 On that occasion the Baas was at home. Second accused spoke to him. From there we returned to Kotahena.

I remember another occasion on which I went with the second accused to her mother's house. On that day we went by bus first and got down at the Pettah. Then second accused and I went to a house. It was a big house. I saw the walls of that house. I saw paintings on the front. A gentleman was holding biscuits and a lady was holding a cup of tea. It appeared to be a hotel. I saw people coming in and going out. That day as we went in second accused sat in the hall for a short time. She came out. Then a gentleman came in a car and along with him she came

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back to the hall. We were there for a short while. Second accused and that gentleman chatted for a little time in English. I did not see him giving any money to the second accused. That was the gentleman who was in the witness-box when I was called. After second accused and that gentleman had finished their conversation second accused and I got into that car and that gentleman drove the car and dropped us near about the seventh mile post. That place is not very far from second accused's mother's house. The house is not visible from that place. Thereafter we walked the distance to the house of the second accused's mother. We reached that house in time for the noon meal. I also had my noon meal 10 in that house. We left the house after tea. We did not go to the Baas's house that day. That is as far as I remember. I said that I had been to the Baas's house on two or three occasions. On the day we went to the hotel we did not go to the Baas's house as it was raining. Baas's house is by the roadside and second accused's mother's house is inside a garden, about 80 yards from the house of Baas.

A few days before my master died I remember Sumana keeping away from school owing to an injured foot. She kept back for two days. On one of those two days the first accused came to our house at College Street. I was cooking the noon meal when he came. It was in the morning. 20 When he came, deceased, Sumana and I were the only persons in the house. I was cooking in the kitchen and first accused was chatting with the deceased. The deceased was cutting some dresses at a table in the middle room. Sumana was on a bed.

(*To Court* : I cannot remember whether the dogs barked when the first accused came.)

First accused came to the kitchen and asked me for some water. I gave him some water. From the kitchen where I was working I could not see deceased chatting to first accused. I could see him chatting only when I came to the table ; not otherwise. First accused was chatting to the 30 deceased for some time. I did not see first accused leaving the house. Ultimately by the time lunch was ready I realized that he had gone away.

I remember the day before the deceased died. My master died on the 7th. On the 6th I cooked the noon meal. Second accused and children returned from school for lunch. They had lunch. Deceased had his meal after second accused and children had theirs. Then the second accused and children went back to school and they returned as usual round about three. After second accused returned home she had tea, and after that second accused and I went to Nugegoda. We left the house round about 3.30 p.m. We went to the Pettah by bus from Galpotta Street 40 junction. From the Pettah we took another bus to go to Nugegoda. At the bus halting place at Nugegoda both of us got down. From there we went to the house of the second accused's mother. We got down at the seventh mile post and walked up to the house of the second accused's mother. That day second accused remained at her mother's place for a short time.

*Q.* Was it unusually short ?

*Mr. Gunasekera* : I object.

*Court* : Was it shorter or longer than usual ?

*Witness* : It was longer than others.

*Crown Counsel* : What was longer ?

*Witness* : After a short while she left.

I accompanied her from there. We walked along the road from her mother's house. We were going in the direction of the first accused's house along the road. Before we reached first accused's house we met a gentleman on the road. Second accused smiled and talked to him in English. Then we went on to first accused's house.

10 First accused's house is a medicine shop where medicinal herbs are stocked. We reached first accused's house not very late in the evening. The sun was up.

(*To Court* : It was not even 4.30 p.m.)

While we approached the house I did not see first accused. As we got up to the house I saw first accused sweeping the compound. Seeing us Baas came up to us. He spoke to second accused. Both of us entered the hall of his house. Second accused took a seat. First accused was standing. I was standing on a side near them. After the lady sat down I saw first and second accused talking to each other.

*Q.* What did the first accused tell the second accused ?

20 *A.* He pulled out a drawer and showed a gun. He also showed some pieces like pieces of pencil about two inches long. I saw about three or four of them. He said they were brought from a long distance. He showed the gun also and said it was brought from a long distance. He said "If you want to shoot with this the noise would be heard." He said that when he came to the house he would introduce those pieces of pencil like things and drop them in the house so that it might be understood that a thief had done it.

*Q.* What exactly did the first accused say ?

30 *A.* After pulling out the drawer and showing the gun first accused said, "If the gentleman were to be shot with this the noise will be heard. After the gentleman is dead I will introduce those pieces of pencil to indicate that they had been left by a thief." That is all I can remember.

*Court* : Did the second accused say anything ?

*A.* I do not know what she said.

*Court* : She heard all this ?

*A.* Yes.

*Court* : He said this to her ?

*A.* Yes.

*Examined* (continued) : First accused did not make any inquiries from second accused.

40 *Q.* Was there any conversation about a previous visit ?

*Mr. Gunasekera* : I object.

*Mr. Lekamge* : And I too.

*Court* : You say a conversation like this took place within your hearing. Can you remember how it happened to be in your hearing ? Speak the truth.

*A.* They talked that day.

*Court* : How did it happen to be in your hearing ?

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A. First accused asked second accused whether the old woman would be reliable or whether she would give out their secrets to any other person.

Court : What did second accused say to that ?

A. Second accused said, " She will not give out."

Court : Give us the Sinhalese words as far as you remember.

A. First accused said : " Me amme rahasak kianda, kauruth ekka kiaitha ? " Second accused said " Kiyanne ne " (First accused said : " Will this old lady give out a secret to any other which I will tell you ? " She replied : " She will not.")

Court : That was how this conversation took place within your 10 hearing ?

A. Yes.

Court : Anything else besides what you have already told ?

A. I cannot remember.

*Examined (continued) :* (P.27 shown) These are the pencil like things which were shown by the first accused. The lead made me think they were pencil pieces.

After this conversation we returned home. We walked up to the bus halt, the bus stopped on the road and we got into it. We reached home. It was late and there were lights on the road. I cannot say whether 20 the Joachim family had already returned home at the time we reached home. I went to cook the dinner. All the members of the Seneviratne family were at home that day.

Husband and wife did not sit for dinner together that day. Deceased fed the children first and then deceased had his dinner. Second accused had her dinner after deceased had finished his. That night after dinner we went to bed. Before I went to bed I cannot remember what second accused told me. She did not tell me anything. Just before her dinner she did not tell me anything. That night after dinner all of us went to bed.

I got up the next morning. The Joachim family were getting ready 30 to go out. So did the second accused and the children. Before second accused left the house she asked me to cook the meals.

Q. What else did she ask you to do ?

A. She said " Baas will be coming now. When Baas comes you better leave the house."

She asked me to go to the market. She gave me Rs.1/-.

Q. Apart from that did you know that Baas was expected that day ?

A. She told me that.

Q. Regardless of all that did you know that Baas was coming that morning ? 40

A. Yes because she told me.

(To Court : If the second accused had not told me that I would not have expected the Baas that morning.)

I remember the second accused and the two children leaving for school. I also remember the Joachim family leaving for work. After that there were in the house Mr. Seneviratne and myself. After these people went out Mr. Seneviratne dressed and went out. He took his marketing bag P.3 with him. He said nothing before he went. He was not in the habit of telling me where he was going. After he left I was the sole occupant of the house. He left about 10 a.m. a short while 50

after second accused had left the house. After my master left I was cooking in the kitchen. When master left he closed the front door. It was not locked.

While I was working in the kitchen Baas came. He came up to the dining table. I saw him when he came to the dining table. He had a bundle of gotukola with him. He asked me "Mahatmaya ko?" I told him he had gone to the market. He asked me also to go to the market. He said "Palayang yande." I said "I cannot leave the house in the absence of the master." He spoke to me harshly and asked me to go  
10 away. I went away.

(To Court: When I left he was the only person in the house. I went to the market. I took the bag P.2 with me. I took with me the Rs.1/- which second accused gave me. I went to the Kotahena market.

On my way to the market I did not meet the deceased. Second accused had instructed me to buy vegetables and fish and I bought them. That day I bought one pound of beef and vegetables. It took me some time to buy these things.

When I was returning from the market I saw the second accused weeping at the Kotahena Police Station. Seeing me she said, "Amme, somebody has killed master." Before I reached the Police Station I stopped for some time near a tree. That was after I had bought these things at the market.  
20

Q. Why did you do that?

A. I did so because first accused had asked me not to come to the house. So I was taking my own time. I had to pass the police station to get home. When second accused said that I walked into the police station. Second accused was weeping there. There were some police officers there. From there I went back to the house with some police officers and second accused. I cannot say whether some police officers were already there.  
30 There were a number of persons on the road. I went into the house with the second accused.

I saw deceased lying dead in the dining room. I saw some vegetables on the table. They had been brought from the market in the bag P.3 which had been taken by the master earlier.

(To Court: I did not see the contents of the bag.) Later I saw some gotukola on the table. Baas had brought a bundle of gotukola in his hand. I think that was not the gotukola which I saw on the table. He brought a big bundle. What I saw on the table was a smaller bundle of gotukola.

(To Court: Master used to bring gotukola.)

40 On the night of 7th November, 1947, I accompanied the police to the house of the first accused. In fact it was I who pointed out the house of the first accused to the police. That evening I was taken to a certain place.

(To Court: A gentleman took a statement from me. I answered questions put to me.)

The next morning I went before the Magistrate. I gave evidence before the Magistrate on the 8th.

Court inquires from counsel whether the jury can usefully visit the locus on Monday morning, since the Court will not be sitting till 11 a.m. on  
50 Monday. After discussion counsel agree that on Monday morning the

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jury can usefully view first accused's house at Nugegoda, second accused's mother's house, and second accused's larger dowry house, also second accused's smaller dowry house which is on the same road.

The Court directs that the jury assemble here at 9 a.m. on Monday. The Court appoints the Clerk of Assize the officer under whose care the jury will remain during the visit in terms of Section 238 (1) of the Criminal Procedure Code.

The Court makes further direction as follows: the Clerk of Assize shall not suffer any person to speak or hold any communication with any of the jury; and when the view is finished the jury shall immediately be conducted back into court. The accused will be present as well as counsel.

Court adjourns for the day.

Certified correct.

(Sgd.) H. E. GOMEZ,  
Stenographer S.C.

10.1.49.

9.00 a.m. Jury visits the scene as directed by Court yesterday.

11.15 a.m. 1st Western Circuit, 1949, opens.

10th January 1949 (11.15 a.m.).

*Crown Counsel*: I move to add the case now pending to the present, 20 Colombo Calendar.

*Court*: Allowed.

Accused present.

Same Counsel as before.

ALICE NONA—Re-affirmed.

(With permission of the Court *Crown Counsel* continues the examination-in-chief.)

*To Crown Counsel*. Q. (Shown P.28—a pair of slippers) Do these belong to any member of your master's household?

A. No.

30

(*To Court*: Q. Neither to the Joachims nor to the Seneviratnes?

A. It does not belong to the Seneviratne family.

Q. So far as you know?

A. Yes.

Q. Have you seen any Joachim wearing those slippers?

A. No.)

*To Crown Counsel* (Shown umbrella P.4): Does that belong to any member of the Seneviratne family?

A. No.

Q. (Shown P.5) Have you seen that in your house before?

40

A. No.

Q. Have you seen that in your house? (Shown knife P.6.)

A. No.

Q. When the first accused came to your house that morning of the 7th how was he dressed, can you say ?

A. He was wearing a white tunic coat. I cannot remember what kind of cloth he was wearing.

Q. Did you see him wearing a shirt ?

A. I saw him wearing a coat.

Q. Did he wear anything on his feet ?

A. He had a pair of sandals.

To Court :

10 Q. What pay did you get as a cook woman ?

A. Rs.15/- per month.

Q. Did you get your food too ?

A. Yes.

Q. How many salaries of Rs.15/- per month had you drawn when this incident occurred ?

A. I was there only for one month and I had drawn only Rs.15/-.

Q. Who paid you that money ?

A. The lady paid me the money.

Q. Who gave her that money ? Do you know ?

20 A. I do not know that.

Q. What did you do with the money ?

A. I bought some clothes with that money.

Q. You said the master went mostly to the market ?

A. Yes.

Q. What did he usually bring when he went to the market ?

A. Vegetables, meat—

Q. What kind of vegetables and how much ? We want to get some idea about how much marketing he did ?

30 A. On some days he used to bring "vettakolu." He would bring about four or five vettakolu fruits.

Q. What else ?

A. On some days he used to bring "pathola" and also a bundle of katuru-murunga leaves.

Q. Apart from vegetables what did he bring ?

A. Meat and fish.

Q. Meat would be beef or mutton ?

A. Beef.

Q. How much beef would he bring ?

A. About a pound.

40 Q. About a pound daily ?

A. Yes.

Q. What else would he bring ?

A. About half a pound of potatoes.

Q. When he brings beef would he bring fish also ?

A. When he brings fish he would not bring beef.

Q. When he brought fish how much fish did he bring ?

A. I cannot say.

Q. Did he bring fruits also ?

A. I did not see him bring any fruits.

50 Q. Was any bread bought for that house ?

A. He bought bread from the bakery.

Q. Daily ?

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A. He used to buy a pound of bread but I cannot say whether it is daily.

Q. How often did he buy a pound of bread ?

A. When the bread that is bought is over he used to buy another pound of bread.

Q. How often is that ?

A. Daily he bought a pound of bread for the evening.

Q. When you went marketing how much money did you get ?

A. About 75 cents.

Q. You told the Jury on Friday two visits were paid by the second 10 accused to the first accused at his house ?

A. Yes.

Q. The second visit was about 4.30 p.m. on the day before the deceased died ?

A. Yes. Evening after tea.

Q. At what time was the first visit ?

A. That was in the morning.

Q. About what time ?

A. After morning tea.

Q. Roughly what time ?

20

A. About 9 a.m.

Q. How much earlier was the first visit than the second visit ?

A. About a week before.

Q. On the occasion of that first visit did you hear the conversation between the first and second accused ?

A. I did not hear.

Q. Why not ? Was it because you were far away or was it because they were talking in a low tone ?

A. I was a short distance away.

Q. Did they speak in a normal tone ?

30

A. In a somewhat low tone.

Q. How far were you from them ?

A. They were about the distance from me to the place where the Registrar sits (seven feet).

Q. You told the jury on last Friday about the visit by the first accused to the second accused's house when Sumana was ill ?

A. Yes.

Q. Was it before or after the first visit of the second accused to the first accused's house ?

A. I cannot remember that.

40

Q. On this second visit of the second accused to the first accused's house was any mention of theft or robbery took place ?

A. No.

Q. On the second visit was any conversation took place about the visit of the first accused to second accused's house when Sumana was ill at home ?

A. No.

Q. I am going to remind you what you told the Magistrate in this connection. After your memory has been refreshed in this way tell me whether this happened or not. Did you tell the Magistrate that, on the 50 second visit of the second accused to the first accused's house, the first accused told the second accused, " When I came the child was in the house and I could not do anything to the master " ?

A. I have said so.

Q. Is that true ?

A. Yes. First accused did say so.

(The above passage is marked X.)

*Cross-examined by Mr. Lekamge :*

Q. You remember that statement you made to the Magistrate now ?

A. I now remember it.

Q. If you are reminded of many more things you will remember now all those things ?

10 A. Yes.

Q. That is because the evidence you gave before the Magistrate was evidence that you were taught to give ?

(Court : Were you taught to give evidence in the Magistrate's Court ?

A. No.)

Q. This master of yours, the deceased man, you hated him, did you not ?

A. No.

Q. Did you like him in his special way ; you liked him like a servant towards a master ?

20 A. I had no reason to be angry with him nor to hate him.

Q. You would treat him I suppose as an ordinary servant would treat his master ?

A. Yes.

Q. Perhaps with a little more respect and regard than you treat an ordinary man in the street ?

A. Yes.

Q. On that 7th morning when according to you Baas came and asked you to go to the market you did not go but when he asked you roughly to go you went ; do you remember that ?

30 A. Yes.

Q. When you went did you have any idea of anything extraordinary would happen in that house during your absence ?

A. Baas asked me to go away and I left the house.

Q. When you left the house on the 7th morning did you think that anything unusual would happen in the house ?

A. (Witness is silent for nearly two minutes.)

(Court : You have been silent for nearly two minutes ?

A. (No answer).)

40 Q. When you left the house that morning for the market did you think that anything unusual would happen ?

A. Yes.

Q. What did you think that would happen ?

A. I knew that something would happen.

Q. What is this something ?

A. I thought that the gentleman might be assaulted.

(Court : That is your master ?

A. Yes.)

Q. Did you expect him to be killed that day ?

A. No.

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*Q.* What was your feeling when you knew that your master might be assaulted? Were you sorry about it, or were you glad about it or were indifferent about it?

*A.* I did not like it but because I had been asked to go away, I went.

*Q.* You did not like it? Please answer my question in short?

*A.* I did not like it.

*Q.* When you went to the market there must have been quite a large number of people whom you met on the way?

*A.* Yes.

*Q.* And amongst them there might have been some people whom 10 you knew, perhaps, servants in other houses?

*A.* I did not meet servants from other houses.

*(Court : Did you meet anyone whom you knew ?*

*A. No.)*

*Q.* Did you meet anybody whom you knew, at the Kotahena market?

*A.* No.

*Q.* You bought beef at the usual stall where you buy beef?

*A.* I cannot remember.

*Q.* You remember a woman called Podinona?

*A.* I do not know her.

20

*Q.* Why you do not know that woman Podinona?

*A.* (No answer.)

*Q.* The woman who sells gram and mangoes at the entrance to the Prince College?

*A.* I know that woman but I do not know her name.

*Q.* (Shown witness Podinona) Do you know this woman?

*A.* I know her, but I do not know her name.

*Q.* Did you see that woman on that day on your way back from the market?

*A.* I did not see her properly because there was a large number of 30 people.

*(Court : Q. On your way back ?*

*A. I cannot remember if I saw her.)*

*Q.* You went to the market at the usual time at which the servants in other houses too go to the market?

*A.* At that time and also later.

*Q.* At the market or from your way back from the market you did not see anybody whom you knew?

*A.* Yes.

*Q.* From No. 107 College Street, how did you go to the market? 40

*A.* I go and return by the Police Station Road.

*Q.* Police Station Road is only a short distance away from your house?

*A.* Yes.

*Q.* You went to the market past the Police Station?

*A.* Yes.

*Q.* You did not think that it would be advisable to inform the Police about the intending attack on your master?

*A.* The 2nd accused asked me not to tell.

*Q.* Can you remember the day of the month on which you got 50 employed?

*A.* I cannot remember.

- Q. You calculate your salary from that day to the same day in the following month ?
- A. Yes.
- Q. So you can remember the day on which you got employed ?
- A. No.
- Q. You remember that you got a month's salary Rs.15/- ?
- A. Yes.
- Q. Can you remember on what day you received the salary ; how long before this incident ?
- 10 A. I got the salary about the 1st of November.
- Q. Before you came into this house you were a servant employed in another house a certain distance away from Mr. Seneviratne's house, also in Kotahena ?
- A. Yes.
- Q. Immediately before that you were a labourer working under a mason ?
- A. Yes.
- Q. Before you got employment under a mason did you work in any other house ?
- 20 A. I cannot remember.
- Q. So that in your examination-in-chief when you said that you were working in three or four houses you were talking without trying to be accurate ?
- A. (No answer.)
- Q. Do you know a mason by the name of Kalleel ?
- A. If he is shown to me I might be able to say whether I know him.
- Q. (Shown Kaldeen *alias* Kalleel) Do you know this man ?
- A. I cannot remember.
- (Court : Do you know this man or not ?
- 30 A. I do not know this man.)
- Q. Have you at any time work under that man ?
- A. No.
- Q. You told us that you had the usual regard for your master as a good servant should be ?
- A. Yes.
- Q. You did not like your master being assaulted that day ?
- A. Yes.
- Q. From the time you left that house till you came back you did not speak about a possible attack on your master ?
- 40 A. The 2nd accused asked me not to tell anybody about it.
- (To Court : Q. When did she tell you about this ?
- A. On the 6th.
- Q. Where ?
- A. At her house.
- Q. At what time ?
- A. In the evening..
- Q. After the conversation with the first accused or before ?
- A. After she had the conversation with the first accused on the 6th.
- Q. She told you this when she came back from the first accused's
- 50 house ?
- A. Yes.)

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Q. Tell me in the Sinhalese language as far as you can remember what this lady told you ?

A. (Baas gederata aiwe kawruthekka kiyanta epa) Baas will come home, don't tell this to anyone.

Q. That is all she said ?

A. Yes.

Q. She said that in No. 107 College Street, Kotahena, in that house ?

A. Yes.

Q. Can you say why you said after you were repeatedly questioned by the learned Crown Counsel that lady made no request to you ?

10

A. I have forgotten about it.

Q. You remember the question was repeated over and over again. Yet you did not remember it then but you remember it now ?

A. (No answer.)

Q. Did anything happen during this week-end to remember it now ?

(Court : Had anyone seen you about this case between Friday and this morning ?

A. No. )

Q. Where are you staying ?

A. At Mrs. Jayasekera's home.

20

Q. Mrs. Jayasekera's home is quite accessible to the Police. Had any Police Officer come and seen you at Mrs. Jayasekera's home ?

A. No.

Q. Who came and told you the date of the trial when you had to attend Court as a witness ?

A. I was informed by Mrs. Jayasekera.

Q. Do you know how Mrs. Jayasekera came to know about it ?

A. No.

Q. You have got a peculiar kind of memory, one day you remember a thing and one day you don't. Do you remember on the day of this 30 murder itself you were taken to some place at Maradana about 4 p.m. ?

A. I was taken to some place but I do not know where it was.

Q. And there the A.S.P. asked you what you know about it ?

(Court : If the contents of the inquest proceedings are to be led in evidence it must be done in a legal way.

(To Crown Counsel) : Do you rely on the inquest proceedings ?

Crown Counsel : No.

Court : Do you rely on the inquest proceedings ?

Mr. Lekamge : Yes.

Court : Then you will have to prove them.

40

Mr. Lekamge : I will do so. I hear the Coroner is dead.

Court : I will assist you to prove that.

Mr. Lekamge : I intend proving the entire statement.

Court : You are entitled to do so.)

Q. Did you say this to the Coroner at 4 p.m. on the same evening ?

(Court : Listen carefully and tell the gentlemen of the jury whether you said those or not.)

Q. "I was employed as a cook woman under the deceased." Did you say so ?

A. Yes.

50

- Q. "Today at about 9 a.m. when I was in the kitchen the deceased returned home having bought some beef and vegetables for the day meal." Did you say so to the Coroner ?
- A. I did not say so.
- Q. "I had then finished boiling rice." Did you say so ?
- A. Yes.
- Q. "At that time only persons present in the house were myself and the deceased."
- A. Yes.
- 10 Q. The deceased spoke to me and said that there is no rice for the dinner tonight and that we would have to eat string hoppers." Did you say so ?
- A. Yes.
- Q. "and so saying he gave me a rupee and fifty cents and asked me to go and bring beef and vegetables." ?
- A. It was the lady who gave me money.
- (To Court : Q. Did you say so ?
- A. I cannot remember if I said so.)
- Q. "I left the place at once ? "
- 20 A. I cannot remember if I said so.
- Q. "When I left my master the deceased was the only person in the house ? "
- A. Yes.
- Q. "The deceased's wife had gone to school ? "
- A. What I said was Mrs. Seneviratne and the two children went to school.
- Q. "After a time I returned . . . and the Police were making inquiries ? "
- A. Yes.
- 30 (To Court : Q. The jury are not concerned with what you said elsewhere but they are concerned with what you said here. Is it true that your master gave you Rs.1.50 to go to the market ?
- A. It is not true.)
- (The statement of Alice Nona made to the Coroner as read out by the Counsel is marked 1D.1.)
- Q. After making that statement you came back to the Police Station.
- A. Yes.
- Q. And there that night itself at about 7.30 p.m. one of the Inspectors took a statement from you ?
- 40 A. Yes.
- Q. Then at about 9 p.m. or so after this statement was taken down by the Police you accompanied them to Nugegoda ?
- A. Yes.
- Q. You pointed out the house of the first accused Baas ?
- A. Yes.
- Q. The first accused was arrested that night, do you know that ?
- A. Yes.
- Q. The Police took something from Baas's house, do you know that ?
- A. I do not know. I did not see.
- 50 Q. Then you came back to Kotahena Police Station and stayed there that night ?

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- A. Yes.  
Q. You stayed during the whole night at the Kotahena Police Station ?  
A. Yes.  
Q. Next morning you were produced before the Colombo Magistrate ?  
A. Yes.  
Q. You gave evidence before the Magistrate ?  
A. Yes.  
Q. On the day you gave evidence before the Magistrate you were affirmed ? 10  
A. Yes.  
Q. You said you would speak the truth ?  
A. Yes.  
Q. This was the day immediately after the murder ?  
A. Yes.  
Q. The memory was very much fresher then than today about the day of this incident and about the day before the incident ?  
A. (No answer.)  
Q. Did you say this to the Magistrate : " The deceased's wife used to go to Nugegoda quite often ? " 20  
A. Yes. She used to go once a week.  
Q. " I have been with her twice." Did you say so ?  
A. Yes.  
Q. " Yesterday the deceased was found dead at about 10 a.m." Did you say so ?  
A. Yes.  
Q. " Day before yesterday I went with the deceased's wife to Nugegoda by bus ? "  
A. Yes.  
Q. " After visiting her relatives . . . we stopped at the Baas's 30 house ? "  
A. Yes.  
Q. " I waited in the verandah of the house of the first accused ? "  
A. Yes.  
Q. " The accused was in the house in a boutique ? "  
A. Yes.  
Q. " The deceased's wife spoke to accused in a low tone ? "  
A. I said so.  
Q. " I could not hear what they said ? "  
A. I said so. 40  
Q. " After a short time we returned home ? "  
A. Yes.

(The above statements marked 1AD1.)

(*To Court*: Q. Now we want the truth. On those two visits was the conversation between the 2nd accused and the first accused in a low tone that you could not hear ?

A. In a low tone.

Q. Could you hear ?

A. No.

Q. This was the second visit the day before the murder ? 50

A. I could not hear.

Q. You could not hear a word ?

A. No.

Q. You got the day right. This is the evening at 4.30, the day before the murder ?

A. (No answer.)

Q. Whenever your lady speaks to an outsider do you stand by your lady or you stand by the outsider ?

A. I don't stand quite close to the lady. I stand some distance away from her.

Q. However you stand closer to the lady than to the outsider ?

A. I don't stand quite close to the lady.

10 (To Court: Q. You told the jury on Friday that you heard the first accused asked the second accused whether you could keep a secret ?

A. First they talked together in a low tone and then they began to talk in a tone that I could hear.)

Q. First accused asked the lady whether you could keep a secret ?

A. Yes.

Q. When you gave evidence before the Magistrate on the first day you did not mention anything about this—whether you could keep a secret ?

A. I remember I said so on the first occasion.

20 Q. And on that day you did not mention whatsoever about the first accused opening a drawer and showing anything ?

A. I mentioned it on the first date.

(To Court: Q. Take it from me the record shows that you did not mention on the first date but you have mentioned it subsequently ?

A. (No answer.)

Q. After you gave evidence in the Magistrate's Court on the first date you went back to the Kotahena Police Station ?

A. Yes.

30 Q. And you spent another six days at the Kotahena Police Station, from 8th to the 13th November ?

A. Yes.

Q. Where did you stay ?

A. A matron was with me at the Police Station.

Q. And from time to time during this period you were being interrogated by the Police ?

A. Only at the proper time.

Q. What is this proper time ?

A. At the time I was to be brought to Court I was questioned.

(Court: Q. During those six days how many statements did you make ?

40 A. I remember making statements on three occasions.

Q. Do you know the difference between the Magistrate and the Police ?

A. Yes.)

Q. Do you know Inspector Gordon ?

A. Yes.

Q. (Shown Inspector Gordon.) This is the gentleman who questioned you ?

A. Yes.

50 Q. And after the last statement taken on the 13th of that month were you dispatched to Jayasekera Home ?

A. Yes. On the 12th evening.

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*Q.* And you have been there till now ?

*A.* Yes.

*Q.* Then again about two or three weeks later on the 1st December you were again produced at the Magistrate's Court ?

*A.* Yes.

*Q.* And you gave evidence ?

*A.* Yes.

*Q.* On that day you made a very elaborate statement about your visit to Nugegoda ?

*(Court :* That day you gave evidence again ?

10

*A.* Yes.)

*Q.* That day you did not make any mention of the alleged conversation between Baas and the Lady and Baas saying that he would throw cartridges about on the floor as if a thief had come ?

*A.* I remember I did say so.

*(Court :* You did not.)

*Q.* Do you remember making a statement to the Magistrate something about pieces of pencils ?

*A.* Yes.

*(To Court :* Do you remember when these pencils were shown to you ?

*A.* One day at Nugegoda and then in Court.)

*Q.* Then three weeks after that on the 23rd December you gave evidence again before the Magistrate ?

*A.* Yes.

*Q.* Did you say this : " On the first visit the second accused and I went to the first accused's shop. It was as far as I remember in the evening at 3.30 p.m. ? "

*A.* I may have said so.

*Q.* " This was within a full month of my stay with the second accused ? "

*A.* I may have said so.

30

*(The above statements are marked 1 D 2.)*

*(To Court :* *Q.* Was the first visit in the morning or in the evening ?

*A.* In the morning.)

*Q.* Then you said : " About two weeks after this visit the 2nd accused . . . ? "

*A.* I cannot remember.

*(It is marked 1 D 3.)*

*Q.* Did you say this to the Magistrate : " First accused was standing about a foot or two away. I was by the lady " ?

*A.* I cannot remember.

40

*(It is marked 1 D 4.)*

*Q.* On the last date you gave evidence in the Magistrate's Court you were shown the cartridges ?

*A.* Yes.

*Q.* When your master goes marketing what does he usually wear ?

*A.* Pair of trousers, a shirt or a coat.

*Q.* Sometimes does he wear a tie also ?

*A.* I have not seen it distinctly.

*(To Court :* *Q.* Do you know what a tie is ?

*A.* Yes.

50

Q. Can you remember him wearing a tie when he goes to the market ?

A. I cannot remember.)

Q. Do you remember what your master wore on that morning when he went to the market, did he wear a coat or a shirt ?

A. I cannot remember.

Q. When he wears a coat and goes to the market and when he comes back does he hang the coat somewhere ?

A. I do not look at those things.

Q. What did you buy when you went to the market ?

10 A. A pound of beef, one pathola, some green chillies, a lime fruit, ginger, garlic, Karapinche and rampy.

Q. Can you remember what was the price you paid for a pound of beef that day ?

A. Seventy-five cents without bones.

I cannot remember how much the pathola cost me. After buying beef, for the balance twenty-five cents I bought the other goods.

Q. Is it not the fact that you had Rs.1.50 that day, not a rupee ?

A. I had only a rupee.

Q. How long had you known the first accused ?

20 A. Since I got employment under the deceased.

(To Court: Q. How many times did he come to that house ?

A. He came there only once to the Kotahena house when I was there.

Q. Have you seen him anywhere else ?

A. I did not know him before.)

Q. He came once to your master's house and you went twice to his house ?

A. Yes.

Q. Did you become friendly with him ?

A. What friendship have I got with him.

30 Q. You have just seen the man ?

A. Yes.

Q. On one occasion he came and asked you for a glass of water and you gave it ?

A. Yes.

Q. There was no special friendship ?

A. No.

*Cross-examined by Mr. Gunasekera :*

40 My village is Avariwatte in the Negombo district. I was the wife of Abraham. He is dead. He died about nine years ago. I had a child and that child died. I had no other children. It was after my husband's death that I had to go out and earn my living. My husband left me nothing. We are very poor. I have nothing of my own.

Q. After your husband's death you became a mason's assistant ?

A. Yes.

Q. You used to help masons in building houses ?

A. Yes.

50 I have been assisting a mason only in Colombo. After my husband's death about three years ago I came to Colombo. It is more than three years from to-day. I cannot say how long before Mr. Seneviratne's death that I came to Colombo. I think it was about the year 1946. Before I came to Colombo I used to remain in various places as I had no house of my own.

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(*To Court* : My husband died when I was in Jaffna.)

He was a carpenter there. After his death I was at Jaffna for some time. And thereafter I came to Colombo. After my husband's death I lived some years in Jaffna.

(*To Court* : I cannot remember in what year my husband died.)

I was in Jaffna for the Japanese air-raid. Then my husband was alive.

*Q.* Was it the following year he died ?

*A.* Yes.

After his death I was selling vegetables in Jaffna Town and also in 10  
the suburbs. I used to buy the vegetables at Periyakade. As that trade  
was not profitable to me I had to give it up. Then I came to Colombo.  
Having come to Colombo the employment I had was to become a mason's  
assistant. At Fort there was a building put up and I assisted only there.  
I worked there about three months. I do not know the name of the  
mason. I got Rs.1.50 per day. During that period I was staying in a  
certain house, the occupants of which were known to me. That house is  
in College Street, Kotahena. The chief occupant of the house was John, a  
Sinhalese man. After the work in the Fort building was over I got  
employment under a Burgher gentleman, in his house at Kotahena, and 20  
there I got fifteen rupees as my monthly salary. I got food and that  
salary. That house is close to Mr. Seneviratne's house. Before I got the  
employment in the Burgher gentleman's house I was unemployed for about  
two months. During that period I continued to live in the house of  
John.

(*To Court* : I do not know the name of that Burgher gentleman.  
He works in an office.)

Till I got the employment under the Burgher gentleman I was fed  
by John and his wife. I had no money to pay them, but whenever I got  
money I gave them. When I was out of employment I had no money 30  
to pay them. When I was employed under the mason I paid them but  
I did not pay them when I got unemployed. I stayed about two or three  
months at the Burgher gentleman's house. A certain woman got that  
employment under that Burgher gentleman for me. One day when I  
was going to the market I met a woman and I asked her to find a job  
for me and she got this job in the Burgher gentleman's house. In the  
Burgher gentleman's house I got my pay month by month. When I  
was staying in that house I did not pay John and his wife anything.  
Out of the money I got from the Burgher gentleman I bought clothes.  
I did not pay even five or ten rupees to John and his wife during that 40  
period for allowing me to stay and for feeding me when I was out of  
employment. John is a fisherman. He gets money according to his  
catch. One day when I was cooking, the lady in the Burgher gentleman's  
house abused me and I left the place. I left the house immediately.  
I had to take a month's salary but they did not pay me. When I left  
the Burgher gentleman's house I had no money with me. So I went  
again to John's house, but I did not stay there very long. I cannot  
remember how long I stayed there. I was there only a short time.

(*To Court* : John is not related to me. I came to know him after  
I came to Colombo. He has three children.)

My next employment was under the deceased. A Tamil woman found that employment for me. She is a woman who find employment for women. It was through her that I got the employment under Mr. Seneviratne. The second accused interviewed me before I got the employment. I cannot remember at what time of the day it was that I went there to obtain employment under the second accused.

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(*To Court* : I had not met her before. She was a complete stranger to me.)

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I did not know the second accused when the broker took me to her house. I did not know that there was a lady called Mrs. Seneviratne in College Street. Mr. Seneviratne was not there when the lady interviewed me. I was engaged as a cook woman. I knew that Mr. Seneviratne used to look into the household matters. He used to go to the market when I was not sent. He used to order for food. He used to give out the provisions, and he kept everything under lock and key.

*Q.* You realised very soon that he was miserly ?

*A.* I do not know that. Whatever provisions given to me I took and I cooked.

(*To Court* : I do not know whether he was miserly or not.)

He used to give very little provisions for the kitchen. He used to give two or three onions and three or four chillies for each meal, for cooking a meal for five persons. He used to buy a pound of bread for the whole day. When there is rice we take rice for both meals, but mostly one rice meal a day. He used to get rice from the co-operative store. When the rice he got from the co-operative store is out of stock he used to go out and bring rice from somewhere. Generally for the day meal rice and for the other meal string hoppers or rotty. The rice is taken with a curry, vegetables and mellum. String hoppers or rotty are taken either with a fish curry or beef curry. That is all for the night. For the morning meal either bread or hoppers prepared at home. Very often than not bread in the morning. Bread is taken with some curry left overnight, or with butter for the children. Master takes bread with butter or jam. Mistress also takes bread with butter or jam. The children also get either butter or jam to eat bread. For the evening they took bread with butter or jam.

The children get about two or three times a week an egg for each child. Master took eggs but not the mistress. If eggs are left over after the children take them that is taken and given to the master.

*Q.* This pound of bread used to be cut by the master ?

*A.* Yes.

*Q.* He used to cut it into thin slices because that pound must last two meals ?

*A.* Somewhat thin slices.

*Q.* And sometimes there used to be displeasure between the husband and the wife on the ground that the children were not getting sufficient for their food ?

*A.* They used to talk in English and I did not understand.

In the morning I take hoppers if hoppers are prepared at home otherwise I get bread.

*Q.* You get one slice of bread ?

*A.* Two slices.

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Q. Without butter or jam ?

A. With butter.

Q. At lunch what do you get ?

A. Rice.

Q. With any curries left over from the table ?

A. Yes.

Q. Often what was left over was a little mellum ?

A. I get a little curry also, mostly mellum.

I came to Court to-day by train with a Police Constable. I go back with a matron and a constable. I get down at Fort Station and come to 10 Court walking. From this Court I go walking to Fort Station. A matron always accompany me on the way to Court from Mrs. Jayasekere's and on the way back to Mrs. Jayasekere.

(Adjourned for the day) 1.30 p.m.

Certified Correct.

Sgd. D. V. JAYAMAHA.

11th January 1949. 9.35 a.m.

Accused present.

Same counsel as before.

W. A. ALICE NONA—Re-affirmed.

20

*Cross-examination by Mr. Gunasekere continued :*

Q. The last thing you said yesterday was about a matron and a constable with whom you returned to the Jayasekere home on Friday ?

A. Yes.

Q. Is that the person standing at the door (pointing to a woman standing at the door behind the witness box) ?

A. Yes, that is the matron. She is attached to the Jayasekere Home.

Q. She is the woman who was recently convicted and who spent two weeks at the Welikade jail during the time the second accused was on 30 remand at the Welikade jail in connection with this case ?

A. I do not know that.

Q. The Seneviratnes used to get their bread from the New Colombo bakery in Van Rooyen Street ?

A. I do not know from where it is obtained.

Q. But bread used to be delivered ?

A. No, Mr. Seneviratne used to bring bread from somewhere. I never saw a breadman delivering bread at the house.

Q. Would it be correct to say that a few days before Mr. Seneviratne's death the bread came late ?

40

A. I cannot remember.

Q. And that Mr. Seneviratne wrote in the book, " Refused—late " and did not accept the bread ?

A. I do not know about it. I may have been in the kitchen at the time.

On the 6th night there was some displeasure between Mr. and Mrs. Seneviratne and they did not sit together for dinner that night.

Q. That displeasure was over the quantity of food given to the children ?

A. I do not know.

I do not know how many admirahs there were in the house. I have seen one admirah in the hall. One day I went into the bedroom. I cannot remember whether there was an admirah in that bedroom. The admirah in the hall was not used by Mr. Seneviratne. The key of that admirah was with the second accused. Mr. Seneviratne used to dress in the room.

10 Mr. Seneviratne's possession ?

A. The keys were with Mr. Seneviratne.

I do not know who generally kept the key of the admirah which was in the hall.

Q. Whenever you saw those keys they were with the second accused ?

A. I have seen her opening the admirah but I did not see the key.

Q. Whenever you did see the key of the admirah in the hall in the possession of anybody, was it in the hands of Mr. Seneviratne or the second accused ?

A. I have never seen that key.

20 Q. Did anybody tell you last evening to hedge in giving answers, to say "I do not know," or "I do not remember" ?

A. No.

Q. Did Mr. Seneviratne wear anything round his neck ?

A. Yes, he had three keys hanging round his neck and a gold amulet round the neck.

(Court: How did you see these things?—I have seen these things when the deceased removed his banian to be washed.

How were the keys hung?—They were hung tied to a string. I cannot say whether the amulet was attached to the same string or to a  
30 separate string.)

Q. Was he in the habit of locking up several keys in one admirah and keeping the key of that admirah in a chain ?

A. No.

Q. You say he was not in the habit of locking up several keys in an admirah ?

A. What I know is that Mr. Seneviratne had several keys tied to a string round his neck.

Q. Did you tell the magistrate (page 244 of record) "My master used to lock up the keys in an admirah and have the key of that admirah in a  
40 chain round his neck" (2D1) ?

A. I did not say so.

I said yesterday that the household was run by my master.

Q. From what you saw he was a very careful man ?

A. Yes.

Q. He spent very little money ?

A. Yes.

Q. In fact he was miserly in your opinion ?

A. I do not know that.

Q. Did you tell the magistrate (page 244 of record) "The deceased  
50 was miserly" (2D2) ?

A. I cannot remember.

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I drew my first month's salary of Rs.15/- and with that money I bought some clothes and redeemed a pair of bangles from the pawn shop. There was nothing left out of that money. There was no other article of jewellery belonging to me in a pawn shop at that time.

*Q.* Were you satisfied with the salary of Rs.15/- ?

*A.* I accepted their terms. I did not say that Rs.15/- was not enough. They did not promise to increase my salary.

The first month's salary was the only money I got during my employment under the Seneviratnes. I did not get any other money or articles as presents during the time I was there.

*Q.* You say you were taken into the confidence of the conspiracy to murder Mr. Seneviratne ?

*A.* Yes, I was asked not to tell anybody.

I am a Sinhalese.

Shortly after I took up employment under the Seneviratnes, Mr. Seneviratne fell ill and went to hospital, and the second accused used to visit him in hospital.

Yesterday I spoke of two visits with the second accused to the first accused's house.

*Q.* At what time was the first visit ?

*A.* In the noon, after lunch.

That day the second accused had her lunch at her mother's house. I also ate there. It was on the return journey that we went to the first accused's house. I cannot remember whether that was my first visit to the second accused's mother's house. I do not remember a shrine room in the second accused's mother's house. I have not been inside that house.

*Q.* When you went to that house were you asked to stay outside in the garden ?

*A.* I was in the kitchen side. I walked through the house to the kitchen.

I have not been to the two houses which the second accused owns.

*Q.* Going from the main road to the second accused's mother's house you have to pass one of the houses owned by the second accused ?

*A.* I do not know that house.

I do not know that the first accused is a mason. He runs a medicinal shop. Up to now I do not know that he is a mason. I do not know that the first accused has built a shrine room for the second accused's mother. I do not know that the first accused used to do repairs to second accused's houses.

*Q.* On this first visit to the first accused's house did you go inside or remain on the road ?

*A.* I did not remain on the road. I went on to the verandah.

The first accused's house is in a row of boutiques on the High Level road. In front of this row of boutiques there is a cement drain.

*Q.* From the edge of the tarred portion of the road to the cement drain there is about 4 yards of earth ?

*A.* There is earth, but I cannot give the actual width.

There are two stone slabs over the drain in front of first accused's house. It is not very far from the drain to the edge of the first accused's verandah. There is one step to get on to the verandah. It is a small size verandah. Next to the verandah there is a hall.

*Q.* That hall was used by the first accused as the medicinal shop ?

*A.* Yes.

10

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50

- (*Court* : Have you looked into that hall ?—I have seen the hall.  
 What was inside the hall ?—There were medicines in bottles.  
 On the ground ?—No, on plank racks.  
 On all four sides ?—I remember only one side.  
 What else was in that hall ?—I cannot say what else.  
 Did you see any chairs there ?—Yes.  
 How many chairs ?—Two or three.  
 Did you see any tables ?—I cannot remember.  
 Any scales ?—I did not see.  
 10 Was there anything on the verandah ?—I cannot remember.)
- Q.* Did you see any almirahs or show cases in the hall ?  
*A.* The medicine bottles were inside glass cases.
- (*Court* : Then what was on the racks ?—That is what I meant when I spoke of plank racks.  
 How many glass cases were there as far as you remember ?—These glass cases were all along on one side.)
- Q.* So that there was more than one glass case ?  
*A.* I cannot remember well.
- Q.* The show cases were placed so that people from the road could  
 20 see the glass cases and the medicine bottles inside, the usual way in which they would be placed in a medicinal shop ?  
*A.* Anyone passing on the road could look in and see it was a medicinal shop.
- Q.* The glass show cases were placed about the middle of the room ?  
*A.* Yes, in the middle.
- Q.* So that from the road only about half the hall would be visible to a person passing ?  
*A.* Yes, only a portion of the hall would be visible from the road.
- Q.* On no occasion did you go behind the show cases ?  
 30 *A.* No.
- Q.* On the first visit to the first accused's medicinal shop, who got on to the verandah first, you or the second accused ?  
*A.* The second accused.
- Q.* And how far behind did you follow ?  
*A.* I stood on the verandah near the railings.
- (*Court* : What do you mean by railings ?—I remember something of planks at the edge of the verandah.)  
 These railings were parallel to the road. I cannot remember well, but I think these railings were near the step. On the first visit I definitely  
 40 got on to the verandah.
- We walked from the second accused's mother's house to the first accused's shop. On that occasion between the second accused's mother's house and the first accused's shop the second accused did not say anything. At the turn-off from the road to the first accused's shop the second accused did not say anything. She merely turned off from the road and got into the verandah of the first accused's shop and I also followed her and got on to the verandah. The second accused calls me " Amma."
- Q.* Turning into the first accused's shop the second accused did not say " Amma, wait here, I will go and talk to Baas and come " ?  
 50 *A.* I cannot remember.

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*Q.* Did she or did she not say that ?

*A.* I cannot remember.

If she had told me to remain on the road I would have remained on the road. It was because she had said nothing to me that I followed her and stopped on the verandah.

*Q.* Where was the first accused at the time you went to the verandah ?

*A.* What I remember is that he was in the hall, in the front portion, in front of the medicine bottles.

*(Court :* You stopped on the verandah ?—Yes.

What did your mistress do ?—She went inside the hall. She saw 10  
the first accused there.)

The two of them did not go to the other side of the hall, behind the medicine bottles. The conversation between the two of them took place in the front portion of the hall.

*Q.* Was that place closer to the verandah or to the place where the medicine bottles were ?

*A.* I cannot say. I did not go inside the hall. They had a short talk ; spoke for a short time.

*(Court :* Longer than it takes to boil a pot of rice ?

*A.* Not so long as it takes to boil a pot of rice.)

20

I heard nothing of the conversation. Then both of us returned home, reaching Kotahena about sunset. There was no conversation between me and the second accused on our way back home from the first accused's shop. Up to date I do not know why the second accused went to the first accused's shop on that day. The second accused did not tell me the purpose of her visit to the first accused's house.

*Q.* You said that first accused paid a visit to Seneviratne's house one day when Sumana had a blister on her foot ?

*A.* Yes.

The first accused came there that day when I was cooking the noon 30  
meal, before 12 noon. On that occasion Mr. Seneviratne and Sumana were both in the house. On that occasion the first accused did not come inside the kitchen. He came up to the dining hall and asked me for some water.

*(To Court :* When the first accused asked me for water I got up, went into the dining room, took a tumbler from a table there, went back to the kitchen, took water from a tap in the kitchen, came out to the dining room with the water and gave it to the first accused and he drank it.)

*Q.* When the baas (first accused) came you were in the kitchen ?

*A.* Yes.

40

*Q.* Where was Mr. Seneviratne ?

*A.* He was in the hall.

*Q.* And Sumana ?

*A.* I remember she was in the bed in the room.

*Q.* Mr. Seneviratne was cutting a saree cloth for Sumana at the time ?

*A.* Yes.

I do not know whether the first accused took a seat or not, but shortly after he came he asked me for some water. After drinking the water the first accused kept the tumbler on the dining table and went, I do not know where.

50

(*Court* : Was the deceased cutting his daughter's saree when the first accused came?—Yes.

Was he doing that in the dining room or in the hall?—At the table which was in the hall, not at the dining table.)

From that hall there is a door leading to the dining room, and from the dining room there is a door leading to the kitchen which is on the right of the dining room as one faces the back compound.

Q. After the first accused came, did you ask Sumana to get money from the master to buy some things?

10 A. I cannot remember.

(*Court* : Can you remember speaking to Sumana after the first accused came?—I cannot remember well.)

What do you mean by saying you cannot remember well, you do remember something then?—

A. I cannot remember.

Q. At any time that morning while the first accused was in the house did Sumana give you any money?

A. Yes, I got five cents from her to buy some coconut oil. I think the first accused was there.

20 (*To Court* : I cannot remember whether it was before or after the first accused had his drink of water. I know I got five cents from Sumana that morning.)

I went with that money to the boutique close by.

Q. That morning did the first accused make some signs to you with his hands?

A. No.

Q. Did Mr. Seneviratne see that and tell Sumana to tell you to close the door of the kitchen?

30 A. I did not hear Mr. Seneviratne tell anything to Sumana, but Sumana came and told me "Thaatha kiyanawa, Amme, mey thora wahanda kiyala." (Father says, Amme, to close this door.) I closed the back door.

There is no door to the kitchen. The doorway between the dining room and the kitchen is an open door.

Q. I am instructed that there is a door between the dining room and the kitchen which can be closed?

A. There are two shutters to the door between the dining hall and the kitchen

40 Q. Did not Sumana ask you to close the kitchen door, that is the door between the dining room and the kitchen?

A. I did not close that door. I went and closed only the back door. There is a door between the hall and the dining room with shutters.

Q. Did you hear the deceased asking Sumana to close that door?

A. I did not hear.

Q. But the fact is that Sumana closed that door?

A. I did not see.

Q. I put it to you that this incident of closing the door or doors was due to the fact that on this morning the first accused made some signs to you?

50 A. I did not see any signs made by the first accused to me.

(*Court* : When did you go for that coconut oil?)

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A. When I was cooking.

Q. Had the first accused come then ?

A. I think he was there when I went to get the coconut oil.)

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*continued.*

I have studied up to the fourth standard at the Averiwatte school. I think it is a Government school. I have read a newspaper. I have never read a letter. I can write a little. I have never written a letter.

Q. On how many occasions when the second accused went anywhere did she take you ?

A. On about two occasions. I have been with her only when she went to Nugegoda. 10

Q. That is to say, you went once with her to Nugegoda about a week before the death of Mr. Seneviratne ?

A. Yes.

Q. And on the way back both of you went to the first accused's shop ?

A. Yes.

Q. You also went, according to your evidence, to Nugegoda the day before Mr. Seneviratne's death ?

A. Yes, on the 6th.

Q. Are those the only two occasions you and the second accused went together to Nugegoda ? 20

A. Yes.

Q. On which of those two occasions did you go in the car of the gentleman (Harry Perera) who was shown to you on Friday ?

A. I cannot remember.

Q. But you remember it was on one of those two occasions that you went in his car ?

A. Yes.

Q. During the period of your employment, the second accused used to go out alone by herself ?

A. No, she used to go with a woman called Maihamy. Maihamy 30 lives far away from the second accused's house, but in Kotahena. I cannot say where the second accused went with Maihamy.

Q. There were occasions when the second accused went out alone also ?

A. I cannot remember.

Q. So far as you can say there is no reason why she should have taken you when she went out ?

A. She did not tell me why. She used to call me and I used to go.

(Witness is now reminded of the day before the murder.) That was a Thursday. There was school on that day. On that day the second accused and I went by bus. Usually we get down from the bus after we 40 pass the first accused's shop. We get down at the 7th mile post. The 7th mile post is near about the halt where we get down.

(*To Court* : I cannot remember whether the 7th mile post is near about the turn-off to the second accused's mother's house.)

11 a.m. Interval of 10 minutes taken.

Certified correct by me.

(Sgd.) M. ANTHONY,

Stenographer, S.C.

11th January, 1949.

After interval.

W. A. ALICE NONA.

*Cross-examined by Mr. Gunasekera (continued).*

On the second occasion after meeting the first accused at Nugegoda on the way back home we boarded a bus. On the 6th of November after the visit to the first accused we boarded a bus to come home. We boarded the bus not at the Nugegoda junction. From the second accused's mother's house we came along the gravel road and came to the high road and we  
10 walked towards Colombo and came to the first accused's medicine shop, From first accused's medicine shop we walked a short distance towards Kotahena and got into a bus. I cannot say whether we walked towards a junction where four roads meet; when a bus came we got into it.

(*To Court*: I do not know Nugegoda. These are the only two occasions on which I went to Nugegoda in all my life.)

I have travelled by bus before. In order to board a bus I stop at a bus halting place.

(*To Court*: I know a bus halting place. On that day we did not go to a halting place; a bus came and stopped.)

20 Second accused signalled to the bus to stop.

Before I took employment under the Seneviratnes I was employed at Kohuwela. That is about a mile from Nugegoda. While at Kohuwela I had been to Nugegoda. So I knew Nugegoda junction. From the junction one road goes to Kohuwela. One road comes to Colombo. One road goes towards Nugegoda railway junction.

Q. And the other road to Ratnapura and to first accused's medicine shop?

*Court*: Do you know?

A. I know that there are roads like that.

30 *Counsel*: The fourth road goes towards first accused's medicine shop?

A. Yes.

Q. It was near that junction that you took the bus on 6th November and returned to Kotahena?

A. I cannot remember that we took a bus at that junction.

On 6th November we left Kotahena after our noon meal. Second accused and I had tea at her mother's house. We were not given something to eat. Second accused was talking to her mother in the house and also to her brother's wife; they were all chatting together. We arrived there about tea time. That was about 4 p.m.

40 It was towards evening that we went to first accused's shop. Till I went that evening to first accused's shop I did not know that we were going there. Between second accused's mother's house and the first accused's medicine shop second accused did not say anything. She did exactly what she did on the previous occasion: when she came in front of first accused's shop she turned and walked in and I automatically turned and walked in with her. I cannot remember whether she told me "Amme wait here, I will come in a moment." If she had told me to wait outside I would have followed her orders. I walked in because she did not tell me to stop outside.

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Second accused walked into the hall, that is into the front portion of the hall, in front of the medicine chest. I also walked into the hall.

*(To Court :* I did not stop at the railing ; I also walked into the hall.)

As second accused did not ask me to stop at the railing I went in. Second accused did not tell me, " Amme, walk in and hear what I am talking to the Baas." Automatically I walked into the hall without thinking that I should stay in the hall. On the previous visit second accused did not ask me to come into the hall.

*Q.* Nor did she ask you to stop on the verandah or on the road ?

*A.* That being the first visit, as I did not know, I stood on the 10<sup>th</sup> verandah, but she did not ask me to stop on the verandah.

*Q.* You walked into the hall because you thought you knew the Baas on the 6<sup>th</sup> ?

*A.* I got used to that and so I walked in.

*Q.* What did you get used to ?

*A.* I followed the second accused.

*Q.* So it was not because you got used to anything that you went into the hall ?

*A.* As I was not asked to remain in the verandah I walked in.

*Q.* Did you get into the hall hoping that you would hear the 20<sup>th</sup> conversation between the first and second accused ?

*A.* No.

*Q.* Were you curious to know what this visit was about ?

*A.* No.

I suspected nothing wrong. When I went to the shop first accused was in the front portion of the hall. Of the talk which took place I cannot remember what the second accused said. While this conversation took place neither accused spoke to me while in the hall. I cannot remember second accused telling me, " Amme, go into the verandah and wait there for a few minutes." If she had ordered me to go the verandah I would 30 have done so. She did not ask the first accused to come to the back of the hall.

*Q.* Nor did the first accused ask her to come to the back of the hall ?

*A.* I cannot remember.

*Q.* What was the first thing you heard the first accused say ?

*A.* They talked in a low tone.

*Q.* And you did not hear what they said in a low tone ?

*A.* Yes.

*Q.* Then they raised their voices a little and you heard something ?

*A.* Not even that.

40

*Court :* Did they raise their voices a little ?

*A.* I did not listen.

*Counsel :* But after a time you pricked up your ears and heard something ? What was it that you heard first ?

*A.* They did not speak anything to be heard by me.

*Q.* And you now say then that you did not hear the first accused say anything to the second accused ?

*A.* I did not hear.

*Q.* So you did not hear any of the conversation between 1st and 2nd accused in 1st accused's shop on 6<sup>th</sup> November ?

*A.* I did not hear.

50

Q. That is why on the day after Mr. Seneviratne's death you told the Magistrate that "when you went to first accused's house the day before yesterday you did not hear what first and second accused spoke?"

A. Had I heard I would have said.

Q. That is the truth?

A. Yes.

Q. You spoke the truth on 8th November when you gave evidence before the Magistrate?

A. Yes, I did not hear.

10 After this conversation I returned with the second accused to Kotahena. I cannot remember second accused saying anything to me on the way home. That night there was some displeasure between husband and wife, and second accused had her dinner after her husband. That day the household had string hoppers for dinner. I had my dinner after the second accused. After that I went to sleep near the dining table.

Q. Did the second accused say anything about the Baas that night?

A. Yes.

Q. What?

A. "To-morrow morning Baas would come. You had better go out."

20 Q. Did you ask her why?

A. I did not ask.

Q. That was the first occasion second accused had ever asked you to leave the house if Baas came?

A. Yes.

Q. She had never previously asked you to leave the house if Baas came?

A. No.

30 About a week before Baas had come to the house when I gave him some water. Before that visit second accused did not ask me to leave the house if Baas came. Second accused told me in the night to leave the house if Baas came.

Q. Then your evidence in examination-in-chief that she told you this in the morning before leaving for school is incorrect?

A. It was in the morning; I forgot about it.

Q. So before or after dinner she told you nothing?

A. Not in the night.

Second accused did tell me in the house: "Baas will come home; don't tell anybody." She said this on the 6th. I cannot remember the place where she said this, whether in the house or anywhere else.

40 Q. Yesterday you said that she said this in the house after you had returned from Nugegoda?

A. I cannot remember where.

To go to the house of the second accused's mother from Kotahena I came from Kotahena by bus to the Pettah bus stand and from there we took another bus to Nugegoda. Returning from Nugegoda I cannot remember whether we came to the Pettah bus stand. (*To Court: Not to the Pettah bus stand.*)

50 To Court and back I pass the Pettah bus stand twice daily. If I am asked to-day to take a bus and go to the house of the second accused's mother I can do so. On the 7th morning second accused did not give me a letter or message and ask me to deliver it to her mother and come back.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 24.  
W. A. Alice  
Nona, 7th,  
10th and  
11th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekera,  
*continued.*



*In the  
Supreme  
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*Prosecu-  
tion's  
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No. 24.  
W. A. Alice  
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tion by Mr.  
Gunasekera,  
*continued.*

*Q.* She could very easily have got you out of the house while this murder was being committed by sending you to Nugegoda or elsewhere with a letter or message ?

*A.* She did not give me anything.

On the 7th morning second accused and children got out of the house first. Mr. Seneviratne left the house a short while later. I cannot say whether first accused came a short while or a long while after deceased left because I was cooking in the kitchen. First accused came up to the dining table. He asked me where the deceased was and I said, "Master had gone to the market." Then first accused said "Umba palayang yande." He did not say "Karunakara kadeta yande." He spoke to me as a master or mistress of the house would speak to me. First he said: "Palayang yande." I told him: "Mahataya mey then matta yande beh." Then he said: "Umba yanawada nethda" harshly ("Will you go or not?").

*Q.* Was there anything which happened the previous day or which happened that morning to make you understand that Mr. Seneviratne would be murdered ?

*A.* First accused told the second accused that he would murder the master. 20

*Q.* When was that ?

*A.* On the 6th.

*Q.* Where ?

*A.* At the first accused's shop.

*Q.* When you went into the first accused's shop that day what was the first thing that you heard ?

*A.* They were chatting in a low tone first and then first accused asked the second accused "If I tell a secret will this amma give it out?" Then second accused said, "No, she will not give it out." Then first accused asked the second accused, "At what time in the day will the master be in the house?" Then second accused said, "He would be in the house between 9 and 10 a.m." 30

*Court:* What else did she say ?

*A.* I did not hear anything else.

*Counsel:* Had the second accused prior to this day told you that she was thinking of getting her husband murdered ?

*A.* No.

I did not know whether second accused particularly liked me or not. Second accused had never scolded me, nor had Mr. Seneviratne. As a cook woman I had more dealings with the deceased. He never spoke harshly to me. He addressed me as Amme. He used to speak to me kindly. 40

*Q.* There was no reason for anyone to think that you would not mind anybody murdering Mr. Seneviratne ?

*A.* Second accused asked me not to tell anybody.

*Court:* That is no answer to the question.

The Kotahena market is a short distance away from Mr. Seneviratne's house. It is not so far as from here to the Fort Railway Station. I cannot give the distance in fathoms. I went to about two stalls on the 7th morning, that is, the beef stall and the vegetable stall. 50

*Q.* You knew that on your return to the house you would find your master murdered ?

A. Yes.

Q. Then why did you tell counsel for the first accused that you did not know that he would be murdered but you thought that he might be assaulted ?

A. (No answer.)

John and his wife live very far away from the Seneviratnes. They live in Kotahena. They live about a quarter of a mile away.

10 I used to sleep in the dining room. Nobody else slept there. At night I close the door leading to the back compound. I also close the door between the hall and the dining room. So that I have privacy in the dining room. There are two bolts to the back door. There is a latrine inside the main house. It is not next to the bed room. It is in line with the kitchen. It is not next to the dining room. I use the public latrine which is very close by.

Q. If you did go out at night would you open the back door and go to the Municipal latrine ?

A. I did not go out at night.

20 On the night of the 6th I did not slip out at night and go to John's house and ask them what to do. Nor did I at any time go to the police station and say, "This gentleman is going to be murdered."

On the 7th when I was going to the market I had to pass the police station and on my return I had to pass the police station. On my return journey when I was passing the police station second accused called me in. She beckoned to me and I went in. When I went in I found the second accused seated at a table. I did not notice a telephone on the table. There were several constables at the place. I cannot remember a constable being seated at a table. That morning I was very excited.

30 This was the first occasion on which I knew beforehand that a person was going to be murdered. When I went into the police station second accused said, "Look at this amme, master has been murdered by somebody." The constables about the place must have heard the remark. If the second accused had not called me into the police station I would have gone slowly to Mr. Seneviratne's house.

Q. When second accused told you that the master had been murdered by somebody you got more excited than you were ?

A. Yes.

I did not ask second accused, "Why lady, the Baas had done it."

Q. You felt like saying so but you did not ?

A. Yes.

40 I cannot remember whether when I went into the police station second accused was making a statement. After I went into the police station I did not see the second accused saying something to a constable and that constable taking down what she was saying. From the police station along with the second accused and the police I went back to 107 College Street. I cannot remember whether the police were already there. I did not get near the dead body at that time. First I went to the hall and saw the dead body. Then I was later ordered to go on to the verandah and I did so. In the house the police were preventing people from going up to the dead body. There was a constable with me on the verandah.

50 I was asked not to leave the house.

Q. From the house you were taken to the Maradana police station ?

A. I cannot remember whether it was the next day.

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W. A. Alice  
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tion by Mr.  
Gunasekera,  
*continued.*

*Q.* On this very day in the afternoon were you not taken to the Maradana police station ?

*A.* I cannot remember.

*Q.* But you were taken to the Maradana police station and produced before the coroner ?

*A.* I was taken to a certain place.

*Q.* And you gave evidence ?

*A.* Yes.

Before giving evidence I was affirmed to speak the truth. I do not know where it was. I did not speak the truth on that occasion. As I 10 was asked not to tell I did not tell the truth. After giving evidence at the inquest I was brought back to the Kotahena police station. I slept that night there. The police provided my food. I slept that night on a mat provided by them, which was spread in the lock-up for women.

The next morning I was brought to the Magistrate's Court and I gave evidence. First accused was then the only person accused in the case. Then I was taken back to the Kotahena police station. I got back to the Kotahena police station late in the noon. I had my noon meal at the police station. A matron got some bread and gave it to me in the lock up. I was at the Kotahena police station till about the 12th November, 20 when I was taken to the Jayasekera Home. I was not allowed to leave the police station till the 12th. I was in the lock-up except when I went to answer a call of nature or when I was taken out to be questioned by police officers.

*Q.* You were alarmed at your detention at the police station ?

*A.* Yes.

*Q.* You naturally thought you would be made an accused in the case ?

*A.* Yes.

*Court :* Did you think you would be made an accused in the case ?

*A.* Yes. 30

*Counsel :* In fact the police told you that you might be made an accused ?

*A.* No, I was not told so.

I was questioned several times by the police and I made several statements. After I went to the Jayasekera Home one day two police inspectors came and questioned me. I did not see them write down. They wanted to know the name of a village. I know that the second accused was arrested on the 16th November.

*Q.* I put it to you that your story of this conspiracy between the first and second accused is an entire fabrication ? 40

*A.* I deny that what I said is false ; nobody taught me.

*Q.* And that you have come out with this story of a conspiracy to save your own skin when you knew that you were in danger of being made an accused in this case ?

*A.* I have not said this to save my skin.

Re-examina-  
tion.

*Re-examined :*

The first visit to the first accused's house was about one week before the second visit. Sumana kept away from school about a week before deceased died.

*Q.* May it have been three or four days before deceased died ? 50

*A.* I think it was about a week before.

(*To Court* : During my employment Sumana kept away from school on one occasion only.)

She kept away from school for two days. That was the time when first accused came to the house. I had seen first accused one day before I gave him water in the house. That was not the day on which second accused and I visited the house of her mother and from there went to the first accused's house. I had seen the first accused on a previous occasion when he came to Kotahena with the second accused's mother. I cannot say how many days previously that was.

10 On the day I gave water to first accused I asked Sumana five cents to buy oil. I went from the back compound. I cannot remember whether first accused was in the house when I asked Sumana for this money. On the second occasion I went to first accused's house, namely on 6th November, the first accused was not a stranger to me. I had seen the first accused in the company of second accused's mother when both of them came to the deceased's house. First accused was not well then and he was covering himself with a towel over his head and shoulders. On another occasion I went to the first accused's house and was standing on the verandah while second accused went into the hall. On another occasion I saw  
20 first accused in the deceased's house chatting to the deceased for a long time.

On the 6th when I went to the first accused's house in the company of the second accused he was no stranger to me. I walked into the hall with the second accused without any formality. On that occasion first and second accused spoke in low tones. I had said that I heard first accused mention certain things to the second accused and that he opened a drawer. (*To Court* : He opened the drawer of a table.) He did this in the course of the conversation. I cannot remember if it was before or after he said : Can this woman keep a secret ? I said that he opened  
30 a drawer and took out a gun and some pieces of pencil like things. The gun was a small one, a little longer than my palm. Showing that to the second accused, first accused said : " If I shoot with this the noise would be heard."

First accused asked second accused : " What time will the master be in the house ? " in the course of the same conversation. Second accused replied, " He will be in the house between 9 and 10 a.m." I remember it was in the course of the same conversation that first accused said : " When I came the child was in the house and I could not do any thing to the master."

40 I told the court yesterday that second accused told me after we returned home from first accused's house that I should not tell anything about this to anybody. In the following day I was taken before the coroner at Maradana.

*Q.* To the coroner on the same day about 3 or 4 p.m. why did you not mention anything about the Baas ?

*Court* : The record shows that you said nothing about the Baas then ?

*A.* Yes.

*Court* : Why not ?

*A.* I had been asked not to say anything.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 24.  
W. A. Alice  
Nona, 7th,  
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1949,  
Re-examin-  
ation.  
*continued.*

*In the  
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tion's  
Evidence.*

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W. A. Alice  
Nona, 7th,  
10th and  
11th  
January  
1949,  
Re-examin-  
ation.  
*continued.*

*Counsel* : By whom ?

A. By second accused.

Q. Is it out of a sense of loyalty to your mistress that you did not mention this ?

A. Yes I was asked not to tell anybody.

Q. You wanted to be loyal to your mistress ?

A. Yes.

From the coroner's inquiry I was taken back to the police station. That night I made a statement to the police. I got into a car with the police and went to Nugegoda. That night I pointed out not only the house of the first accused but the first accused as well. On the following morning first accused was produced before court and I gave evidence when first accused was in the dock. Second accused was not under arrest that day. She was taken into custody after I was sent off to the Jayasekera Home. 10

I made two statements to the police, one on the 7th November at 7.30 p.m. and the other on the 13th November at 3.30 p.m.

Q. Why did you fear that you would be made an accused ?

A. I told the second accused that I might be implicated in this and she said, "Don't be afraid. The inquiry will go on for about a month and then the matter will be dropped." 20

That day when first accused asked me harshly to get out of the house I was frightened. I did not come back soon after I had finished marketing because Baas had asked me not to come.

*To Court* : Q. Is it a coincidence that both on the day the first accused came and Sumana was bad and you left the house to buy coconut oil and on the day the deceased died you left the house ?

A. Yes it was by chance.

Q. Can it be that the signal the first accused was making to you on the first day was to leave the house ? 30

A. I did not see any signal being given.

When the child said "Father wants you to close the door" I closed the back door and not the kitchen door.

*To Jury* : Nil.

Court inquires from the jury and counsel whether it would be convenient for them to sit to-morrow for two hours since this is a long trial and they were having too many breaks this week. Jury and counsel agree to this suggestion.

Court adjourned for the day.

## EVIDENCE of H. M. D. George Perera.

*In the  
Supreme  
Court.*

12th January, 1949 (9.30 a.m.).

Accused present.

Same Counsel as before.

*Prosecu-  
tion's  
Evidence.*

H. M. D. GEORGE PERERA—Affirmed.

No. 25.

H. M. D.  
George  
Perera,  
12th  
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1949.  
Examina-  
tion.

64 years, timber merchant, Nugegoda.

In November, 1947, too I was a timber merchant and as such I had a timber depot on High Level Road near the 7th mile post. I know the  
10 first accused's medicinal shop. My timber depot is about 24 feet from the first accused's medicinal shop. Coming from Colombo towards Nugegoda along the High Level Road I have to pass the first accused's shop before coming to my timber depot. My timber depot is about 24 feet from the first accused's medicinal shop and it is between the seventh mile post and the first accused's shop. I am closer to the 7th mile post than to the first accused's shop. I know 2nd accused and I knew her husband, Mr. Seneviratne. I knew the second accused for the last twenty years. Her family lives at Nugegoda. I had known her personally. I remember the 7th November, 1947, the day on which Mr. Seneviratne died. On  
20 the 6th November in the evening I met the 2nd accused just in front of my timber depot. At that time she was passing along with a servant woman towards the 7th mile post. In order to go to her mother's house she has to go in that direction. I met her at about 4 or 4.30 p.m. At that time I had just come out of the shed and was getting on to the road when I saw Mrs. Seneviratne passing the place. I spoke to Mrs. Seneviratne and remarked, "You are going with a new companion to-day." That was just a passing remark. She was a new servant, and I did not know that woman. If that woman is shown I might be able to recognise her. (Shown Alice Nona)—This was the woman who went with the second  
30 accused on that day passing my timber depot. The accused smiled when I made that remark. She was going towards her mother's house. Thereafter I was examining some timber, and about 15 minutes later the second accused came back with that servant woman. Then she was going in the direction of Nugegoda. That was in the direction of the first accused's shop. I spoke to her again and remarked, "You are returning too soon to-day." I had seen her going to her mother's house on earlier occasions and on those occasions she used to remain longer. To my remark she said that she went to see her sister-in-law who was unwell and that she was going home. I did not notice where she went thereafter, as I was  
40 attending to my work.

*Cross-examined by Mr. Lekamge :*

I knew the first accused quite well.

Q. He had done work for you in your timber shed ?

A. Yes.

Q. Can you remember, before the day on which Mr. Seneviratne died, when was the last occasion on which the first accused worked for you ?

A. I cannot remember.

I take outside contracts. My baas had engaged the first accused as a carpenter. The first accused did not work for me shortly before the

Cross-  
examina-  
tion by Mr.  
Lekamge.

*In the  
Supreme  
Court.*

7th November. He worked for me a long time ago. Furniture is made in my timber shed by outsiders.

*Prosecu-  
tion's  
Evidence.*

(*To Court* : I cannot remember if the first accused worked in my timber depot two or three days before this incident.)

*Q.* About two or three days before this incident did your carpentry Baas, Simon, work in your shed ?

*A.* Yes.

*Q.* Did the first accused do carpentry work nearby your house ?

*A.* Yes.

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George  
Perera,  
12th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamge,  
*continued.*

(*To Court* : I have a house separate from my timber depot. It is 10 opposite to the second accused's mother's house. My carpentry Baas is Simon.)

I remember my Baas Simon worked in a house near my house about two or three days before the 7th November. I cannot remember whether the first accused worked under my carpentry Baas, Simon, about two or three days prior to this incident. I heard about the death of Mr. Seneviratne about 10 o'clock that very day.

*Q.* Did you meet the first accused thereafter ?

*A.* It was the first accused who came and told me about it.

*Q.* That would be about 10 o'clock ?

*A.* 10 or 10.30 a.m.

20

I was in the timber shed when he came and gave me that information I think my Baas Simon was also there at the time. I had known Mr. Seneviratne for some time and when I came to hear of his death I felt very sorry about it.

*Q.* Did you then discuss about it with the first accused and Simon Perera ?

*A.* We all sympathised.

*Q.* You moaned over his death ?

*A.* Yes.

30

*Cross-examined by Mr. Gunasekera* : Nil.

*Re-examin-  
ation.*

*Re-examined* :

I come daily to my timber shed about 8 a.m. and remain there till night. I go home about noon for my lunch and I come back after lunch, about 1 or 1.30 p.m. When the first accused came to my timber shed I had not gone for my lunch. It was about half an hour or an hour before lunch that he came there. There is no timepiece in my shed nor do I wear a watch. He came there about 11 o'clock.

*To Court* :

*Q.* As far as you can, try and recollect at what time the first accused 40 came to your shed ?

*A.* I think he came about 11 o'clock.

That is a guess time. I went home that day late for lunch. As I heard this exciting news time was taken to discuss it. When I said that the first accused came there half an hour or an hour before lunch I meant my lunch that day.

*Q.* I am putting these questions to you because you have said in the Magistrate's Court that the first accused came there between 12 noon and 1 p.m. Was it nearer 12 or was it nearer 1?

*A.* I have no actual time to go for my lunch.

*Q.* Was it between 12 and 1 or between 11 and 12, which is more accurate?

*A.* First accused came and informed me about it at about 12 noon.

*To Jury :* Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 25.  
H. M. D.  
George  
Perera,  
12th  
January  
1949,  
Re-examin-  
ation,  
*continued.*

No. 26.  
V. A.  
Suduhamy,  
12th  
January  
1949.  
Examina-  
tion.

No. 26.

EVIDENCE of V. A. Suduhamy.

10

V. A. SUDUHAMY—Affirmed.

28 years, Naragasipitiya. I am a spinster. I know the second accused and her mother. I was employed under the second accused's mother, Mrs. Peiris, from my childhood. I was a servant under her even before the second accused got married. At the time she got married I had gone to my village. I was about five years when I took employment under the second accused's parents. The second accused and I were more or less of the same age and we were brought up more or less as children. I remember the time the second accused got married. After marriage they lived in one of the houses at Nugegoda. It was one of the houses given to her as her dowry. I continued to live with Mrs. Peiris. I know the first accused. I have known him for about two years. I knew him for about a year before Mr. Seneviratne died. He built a small shrine room for me to offer flowers. Mrs. Peiris and her family are not Buddhists. It was for my benefit that the first accused built a shrine room. The shrine room was built in the opposite garden outside the house. That shrine room is not there now. It had been demolished. I removed the pictures and the other things when I left the service of Mrs. Peiris, on 31st January, 1948. First accused used to come to Mrs. Peiris's house whenever there is some work to be done. On the day Mr. Seneviratne died I was at Mrs. Peiris's house. I came to know about it at about 12.30 or 1 p.m. when I was taking my lunch. On the 6th the second accused came to her mother's house in the evening at about tea time. She came there with Amme—with that woman Alice Nona, second accused's servant woman. I cannot remember whether the second accused had tea in the house. Then the second accused and her servant woman left the house. That day Mrs. Peiris was in the house.

*To Court :*

*Q.* Mrs. Peiris brought you up as a daughter?

40

*A.* She treated me kindly.

Mr. Peiris was living when I was taken to that house. Mr. and Mrs. Peiris had three children, two males and a female. George is the eldest, the second accused is the next and Joe is the youngest. I think



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tion's  
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tion,  
*continued.*

Mr. Peiris was working in the grainary. I cannot say exactly where Mr. Peiris worked. They did not have a car. They lived well. The second accused went to a school close by. I attended the school at the Subadhanaramaya. She went to an English School while I went to a Sinhalese School. Mr. Peiris died about 2½ years ago. I think it was in 1946 that Mr. Peiris died. The second accused got married before Mr. Peiris' death. I call the first accused "Baas." I have been to the first accused's medicinal shop. This shrine room was built after Mr. Peiris' death. Mr. Peiris was thinking about building a shrine room for me but he could not put it up. Before the small shrine room was built the first accused did not come to the house. After he built the shrine room he did not come there to attend to any repairs in the house, but he built a small altar in the house of Mrs. Peiris. That was done after the shrine room was built. He did not do any repairs to the house. Mr. Seneviratne and his wife got him to attend to some repairs in their house at Nugegoda before Mr. Seneviratne died. 10

*Q.* We have heard that the first accused used to do masonry work as well as carpentry work ?

*A.* I do not know that. He used to whitewash houses.

I cannot remember whether the first accused did work for 20 Mr. Seneviratne when Mr. Peiris was living.

*Q.* We can help you, you know that Mr. Seneviratne and his wife left that locality ?

*A.* Yes.

*Q.* Did they leave the place when Mr. Peiris was living ?

*A.* Yes.

Mr. and Mrs. Seneviratne left Nugegoda about two years before Mr. Peiris died.

*Cross-  
examina-  
tion by Mr.  
Lekamge.*

*Cross-examined by Mr. Lekamge :*

I remember the day Mr. Seneviratne died. The news came to us 30 when we were taking our lunch.

*Q.* What is the time now ?

*A.* About 10 or 10.30 (Court clock registers 10.22).

*Q.* It was about 12.30 that day you heard about it ?

*A.* Yes.

When the people in the house heard about it they all got ready and went to see.

(*To Court :* When we got the news about the death of Mr. Seneviratne, Mrs. Peiris, Mr. George, an elder sister of Mrs. Peiris and I were there. Then they went in a car to Kotahena.) 40

Mr. George, Mrs. George and Mrs. Peiris went to Kotahena in a car. It was Mr. George who brought the news home. He came in a car. Mrs. George did not go because she was expecting a baby. About ten or fifteen minutes after Mr. George and her mother left the first accused came there. Having come there he said he had come from the Barber Saloon. He further said, "I only had a shave but I could not cut my hair. I heard that a crime had been committed on Mr. Seneviratne. I am very sorry as he had been useful to me. He had offered cigars to me." That is all he said. Thereafter he went away.

*Q.* Would it be correct to say that he came there to verify this 50 information which he had received ?

*A.* He also brought the news to us.

*Cross-examined by Mr. Nihal Gunasekere :*

Mr. Peiris' family is Roman Catholic. Mr. Seneviratne married the second accused in the Roman Catholic Church. It may be that they got married at the Nugegoda church. George's wife is called Cloy. On 10th November a child was born to Mrs. George. That was the first child. They got married in December, 1946. I remember the day before Mr. Seneviratne's death.

*Q.* Mrs. George had some pains that day ?

*A.* I cannot remember.

10 It was a few days after that she gave birth to a child. Alice Nona and the second accused, when they came to Mrs. Peiris' house on the 6th November, they remained there about an hour or two. They came there about the tea time.

*To Court :* First accused, Baas, is married.

*Re-examined :* Nil.

*To Jury :* Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 26.

V. A.  
Sudhamy,  
12th  
January  
1949,  
*continued.*  
Cross-  
examina-  
tion by Mr.  
Gunasekere.

No. 27.

**EVIDENCE of Liyanage Podinona.**

LIYANAGE PODINONA—Affirmed.

20 47 years, wife of Albert Singho, Kotahena. I am a trader. I sell gram and other things which the children eat near the temple school at Kotahena. That is the Prince College. I sit outside the gate and carry on the trade. I know Mrs. Seneviratne and her family. I know the day Seneviratne died. That morning, as usual I went to the market to buy things for the purpose of my trade. I went to the Pettah market, I bought my things and then I returned. On my way back I had to come past the Kotahena Market in order to come to the College Street. I went to Pettah by bus and came back walking. I came towards the Kotahena Market about 9.30 or 10 a.m. Whilst I was passing the market

30 I saw Alice Nona seated on the pavement along which I was walking. She was seated on the pavement just outside the market near a tree. She was doing nothing there. I did not speak to her. I looked at her and went away. I did not notice whether she had a bag with her. She was seated with her legs crossed with arms folded and arms resting on the knees. (Witness shows how she was seated.) I then went on passing the Police Station. Passing that way I saw a number of people looking on and I also went up and I learnt about the death of Mr. Seneviratne.

*Cross-examined by Mr. Lekamge :* Nil.

*Cross-examined by Mr. Gunasekere :*

40 *Q.* You made your statement to the Police three or four days later ?

*A.* I cannot remember.

*Re-examined :* Nil.

(Crown Counsel states that she made her statement to the Police on the 11th.)

*To Jury :* Nil.

No. 27.  
Liyanage  
Podinona,  
12th  
January  
1949.  
Examina-  
tion.

Cross-  
examina-  
tion by Mr.  
Gunasekere.

*In the  
Supreme  
Court.*

No. 28.

**EVIDENCE of S. Singarayar.**

**S. SINGARAYAR—Sworn.**

*Prosecu-  
tion's  
Evidence.*

No. 28.  
S. Singar-  
ayar, 12th  
January  
1949.  
Examina-  
tion.

Police Constable No. 1273. Dematagoda. On the 7th November, 1947, I was at Kotahena. That day at 10 a.m. I was on reserve duty when the second accused came to the Police Station. She made a statement which was recorded by Police Sergeant No. 336, Martin. Whilst she was making her statement I saw witness Alice Nona going along the road passing the Police Station. She was carrying a bag. (Shown P.2)—It was one like that. While she was passing the second accused called her. 10  
Then she came to the Station. The second accused said, when she came up, "Aya-amme, Mahatayawa kapala." (Mahata-ya is cut.)

(*To Court* : I know Sinhalese. I am a Tamil. I have been 15 years in Sinhalese districts. I am a Jaffna Tamil.)

The second accused interrupted her statement to say this to Alice Nona. Having told that to Alice the second accused continued her statement. Having made the statement the second accused left the station in the direction of her house. She went in the company of Alice Nona. Police had already gone to the scene then.

*Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Cross-examined by Mr. Lekamage :*

Alice Nona came to the Station about ten or fifteen minutes after the second accused came to the station. At that time there was a crowd of ten or fifteen persons on the road in front of the Police Station. After that the people who were collected there were chased out. From the Police Station I saw ten or fifteen people outside. I do not know whether a large crowd of people was collected in the street. Whilst making her statement the second accused was looking towards the road when she saw Alice Nona passing the place, then she called Alice Nona saying, "Aya-amma." It is not true that she merely beckoned her with her hand. When Alice Nona was informed about the death of Mr. Seneviratne 30  
Alice Nona said, "Aiyo-nona." Nothing else.

*Cross-  
examina-  
tion by Mr.  
Gunasekere.*

*Cross-examined by Mr. Gunasekere :*

The second accused met me first when she came to the Police Station.

Q. And she told you "My husband had been cut by someone" ?

A. No.

Q. She did not say that her husband had been cut by someone ?

A. No.

Q. You have told that to the Magistrate. Did you make this statement to the Magistrate : "She told me that her husband had been cut by someone" ? 40

A. I cannot remember saying that to the Magistrate.

(This passage is marked 2D3.)

Police Sergeant No. 336, Martin, was on duty at the time. It was his duty to record the complaint of the second accused. Whilst the second accused made her statement Alice Nona was passing the station. The second accused had her face towards the road whilst she sat at the table of the sergeant who recorded her statement.

*Re-examin-  
ation.*

*Re-examined :*

The room of the Police Station abuts the road. The front entrance to the charge room is open. Passers by can see the charge room and the 50 people in the charge room can see the people outside.

*To Jury* : Nil.

## No. 29.

## EVIDENCE of G. W. Valentine.

G. W. VALENTINE—Sworn.

45 years, butcher, living at Kotahena. I know late Mr. Seneviratne. I had known him for some time. I had known him for about five or six years. I came to know him when he came to the market to buy beef at the Kotahena market. I am a butcher there. I was selling beef there. He comes there almost every day. He comes there in the morning. Normally he comes there at about 8.30 or 9 a.m. He buys only half a pound of beef with bones for 25 cents. That is all he bought at our stall. I cannot say whether it was this bag P.3 that he brought when he came there to buy beef. He used to carry a bag. I remember the day he died. That day too he came there about 8.30 or 9 a.m. and he bought half a pound of beef, paid for it and left the place.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekere :* The deceased used to buy half a pound of beef with bones. I have been in the Kotahena market for about twenty years. We come to know various gentlemen and ladies who come to the market to buy beef. We also come to know their servants.

20 *Q.* The deceased was well known to be a miser ?

*A.* It was known to be so.

*Re-examined :* Nil.

*To Jury :* Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 29.  
G. W.  
Valentine,  
12th  
January  
1949.  
Examina-  
tion.

Cross-  
examina-  
tion by Mr.  
Gunasekere.

## No. 30.

## EVIDENCE of B. C. de S. Seneviratne (recalled).

B. C. DE S. SENEVIRATNE—Sworn.

12 years, daughter of the deceased. I remember the time I left Nugegoda. I lived at Nugegoda with my parents and my younger brother. My brother is Oranda. When I was at Nugegoda I went first to Anula Vidyalaya. That is a Sinhalese School. My brother also went there. I cannot remember whether my father was employed at the time. I can remember the time we all left Nugegoda and went to Kotahena. I remember the house in which my father died. That is No. 107, College Street, Kotahena. We first came to that house from Nugegoda. We lived there for some time and we went to the Mayfield Road. I cannot remember where we went to from the Mayfield Road. I remember going to a house that belongs to Mr. Jayasekere. In Mayfield Road we were in Mr. Rupesinghe's house. Finally we came back to the same house in College Street. I cannot say in what year we came to the College Street again.

*(To Court :* When we were at 107, College Street, on the first occasion I attended the Good Shepherd Convent and there I studied English.

No. 30.  
B. C. de S.  
Sene-  
viratne  
(recalled),  
12th and  
13th  
January  
1949.  
Examina-  
tion.

*In the  
Supreme  
Court.*  
*Prosecu-  
tion's  
Evidence.*  
*No. 30.  
B. C. de S.  
Sene-  
viratne  
(recalled),  
12th and  
13th  
January  
1949,  
Examina-  
tion,  
continued.*

Oranda went to St. Benedict's College. My mother was in the house at the time, she did not go to teach. My father was also in the house at the time, he was not employed, he had retired by that time. (When we came back to College Street we went to Prince College and so did my brother.) My father was a Buddhist. My mother was a Roman Catholic. We children went to the temple. We never go to Church. My father also went to the temple. My mother did not go to Church. She went to the temple with my father. During the time I knew my father he was sickly. He wore spectacles. He could not see without the glasses. I remember the time my mother took up a teaching job at Prince College. 10  
After we went to Prince College my mother began to teach. In our house at College Street also lived the Joachim's family, about five of them. They had a servant working under them. First they did not get a servant, but later they got a servant who used to come in the evening, cook their dinner, and go away at night. At our house there was a permanent servant, Alice Nona. She also came to work there about a month before my father died. All the members of the Joachim's family went out for work and left home about 8.30 a.m. I cannot remember whether they left the house earlier or we left the house for school earlier. I, Oranda and mother went to school about 8.30 a.m. The school is over at 11 a.m. for 20  
luncheon interval. After lunch we go to school again at 1 p.m. and the school is over for the day at 2.30 p.m. Joachims come home in the evening about 4 p.m. After we all go to school and the Joachims go for work only my father and the servant woman, Alice Nona, are left behind in the house. My father went to the market. It was he who did the marketing. He used to take a bag when he went to the market. P.3 is the bag that he carried. He also spent for the household expenses. My mother had very little to do with regard to the management of the house. My father loved us very much. He took a lot of trouble over our studies and also regarding our food. My father taught us in the house. He fed me and my 30  
brother. He came to see us frequently at school. He was in the habit of inquiring from the teacher how we were getting on. My father called me Sumana.

(*To Court* : I am living with Mrs. Peiris now at Nugegoda. Oranda is also there.)

I know the first accused very well. I call him Baas. I remember the time I lived with my parents at Nugegoda. I cannot remember whether I knew the first accused at that time.

(*To Court* : I have seen him when I lived with my parents at Nugegoda, and the first accused had come to our house at Nugegoda.) 40

I know his house at Nugegoda. He was friendly with the members of our family. I remember the time I came back to Kotahena. Even thereafter the first accused came to our house. He does not come often, he comes about five times a month. When he came home he spoke to my father and mother, and also to me and to my brother. Sometimes he used to come there in the absence of my father. Then my mother offers him a chair in the house. Sometimes the first accused used to do work for my father in the house. He used to repair doors and chairs. He used to varnish the furniture in the house. My mother had two houses given as her dowry and those two houses are at Nugegoda. The first 50  
accused repaired that house. There was no displeasure between the first

accused and my father. My father treated him well. So did my mother. (Shown P.36)—That is a post office savings bank book in my name. My father deposited moneys in my name in the bank. He was also in the habit of drawing money also on my account. He asked me to sign a withdrawal form whenever he wanted money and I did it. I remember the day my father died. That was on the 7th November, 1947. Three or four days before that I kept away from school, as I had a bad foot. On account of my bad foot I kept away three or four days. I did not go to school with my bad foot. On one morning I suddenly noticed a  
 10 boil on my toe and I decided not to go to school. That did not get better for three or four days. I did not go to school on the 3rd, 4th and 5th November. On one of those three days the first accused came to our house. It was about the third day that I got absent that the first accused came to our house. The third day would be the 5th November.

(To Court : I had not gone to school about three or four days when the first accused came to our house.)

He came home about 9 a.m. At that time my mother had gone to school and all the members of the Joachim's family had gone out for work. When the first accused came there my father was in the house  
 20 and Alice Nona was also in the house. At the time the first accused came there my father was cutting a saree for me. He was cutting the saree in the dining hall. My house has a front verandah and it leads into a hall. From there we can get on to the back verandah where we eat, and that is used as a dining hall. Then you go down two or three steps and get on to the back compound. My father was cutting the saree in the dining hall. There is a table in the dining hall. While he was cutting the saree the first accused came. At that time I was near my father. (Sketch is shown to the witness)—Father and I were in the middle room leading into the bed room. He was at the table marked J. I was in  
 30 the father's company watching him cutting the saree. The first accused came by the front door. He was wearing a white cloth and a white coat like a peon. The coat closed up at the top. He had buttons on his coat but I cannot say of what colour they were. He wore a cap. It was a black cap with a peak. He had a pair of sandals on his feet. He wore a pair of sandals like P.28. He brought a small round parcel wrapped in newspaper. (Witness indicates the size of the parcel.) I cannot remember whether it was tied with a string. When he came previously he did wear that cap. That was the first day that I saw him wear a cap. Having got into the house he walked straight up to the place where my  
 40 father and I were. Having got up he spoke to my father. He said, "Hallo Mahataya," and he said, "Kohomada Mahataya." (How are you Sir.) Then my father smiled. The first accused was standing there watching my father cutting the saree. My father continued to work. The first accused saw me there. After a little while I went to drink a glass of water. I had to go to the other hall as there was a filter. Baas also came to the dining hall and asked me for a glass of water. He came up to the door leading to the dining hall. I washed my glass and filled it with water and gave it to the first accused. Having drunk the water he came back to the place where we were. He remained  
 50 there for some time and went to the verandah. He went near the front door and he was making some noises. He was making a noise with his mouth. (Shows how he made the noise.) He continued to do

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Court.*

*Prosecu-  
tion's  
Evidence.*

No. 30.  
B. C. de S.  
Sene-  
viratne  
(recalled),  
12th and  
13th  
January  
1949,  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court.*  
*Prosecu-  
tion's  
Evidence.*  
—  
No. 30.  
B. C. de S.  
Sene-  
viratne  
(recalled),  
12th and  
13th  
January  
1949,  
Examina-  
tion,  
*continued.*

that for some time. Thereafter he came back to the place where my father was. Then he went again near the dining hall door. That is the back door. Before that I cannot remember him seated at the back verandah. I cannot remember him making any other noise apart from the noise he made near the front door. At the back verandah I saw him making some signs. I do not know to whom he made those signs. He made some signs with his hands across his face. (Shows.) He was moving his hands up and down across his face. At that time he was looking towards the back garden. He was making these signs for a little while. At that time the cook woman was in the kitchen. After making these signs he went up to the kitchen door and asked the cook woman for a glass of water. She took the water from the kitchen tap and offered a glass of water to the first accused. Then he came again to the place where my father was cutting the saree. Then my father folded up the saree and began to speak to the first accused. Both went to the front verandah. My father took a seat in the front verandah and the first accused also sat on a chair. Both of them had a chat. First accused offered my father a cigar. Then my father went in and brought a cigar and gave it to him. Both of them smoked. Before they went to the front verandah, as my father saw the first accused making those signs, my father asked me to ask Alice to keep the kitchen door closed and work. I told Alice, "Mahataya kiwwa, ayata kussiye dora wahala wedakerandekiyala." (Master wants you to keep the kitchen door closed and do the work.) Ultimately the kitchen door was closed. I closed the dining hall door. That is the door leading to the back verandah. When my father and the first accused went to the front verandah I was in the bed room. When I was in the bed room nobody came and called me. The cook woman came and spoke to me. Alice Nona wanted some money to bring some things. Then I went and told my father about it. Then my father gave her ten cents. He gave that to me and I handed it over to Alice Nona. Then Alice Nona went to the market. At that time the first accused was in the verandah. I saw the cook woman coming from the market. She came back soon from the market and went to the kitchen. Again my father went back to the front verandah and had a chat with Baas for some time. After a little while the first accused said that he wanted to go and he went away. That parcel which he brought was taken away by him. That parcel was not untied in our house.

11.50 a.m.—Court adjourns for the day.

13th January 1949, 9.30 a.m.

Accused present.

Same Counsel as before.

B. C. DE S. SENEVIRATNE—Re-sworn.

*Examination-in-chief continued :*

On the 7th November in the morning I went to school along with my mother and brother Oranda. Before I left home for school the Joachims had left the house. At the time I left for school my father and the cook woman were in the house. After we go to school we have to attend the assembly for prayers and after that I went to class with my brother. (*To Court* : The whole school assembles for the assembly.

The teachers also assemble. Q. Did mother also attend the assembly?  
A. She attended the assembly for the small children. There are two assemblies.)

*In the  
Supreme  
Court.*

The children in the kindergarten have one assembly and the children in the higher forms have another assembly (*To Court*: Oranda and I attended the bigger assembly and mother attended the smaller assembly.)

*Prosecu-  
tion's  
Evidence.*

The principal, Mr. Dahanayake, took the prayers at our assembly. (*To Court*: I cannot say who took the prayers at the smaller assembly.)

No. 30.  
B. C. de S.

10 Q. After the assembly was over, did you go to class?

A. Yes.

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viratne  
(recalled),  
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13th  
January  
1949,  
Examina-  
tion,  
*continued.*

At this time I was studying in the fifth standard, studying English and Sinhalese both. My brother Oranda was also in the same class. My mother was teaching in the kindergarten. The kindergarten class is not in the same building as the fifth standard.

Q. In the kindergarten are there two classes in one hall?

A. Yes.

Q. And two teachers teaching the two classes?

A. Yes.

20 Q. For the fifth standard there is a separate class room by itself?

A. Yes.

Q. When you went to class that morning who was your teacher?

A. Miss Willegoda.

Q. What was taught during the first period?

A. Sinhalese.

Q. On the 7th morning after you had gone to your class room what happened?

A. We were learning.

Q. While you were learning did anybody come into the class room?

A. Yes.

30 Q. Who came?

A. My father.

Q. How soon after you had commenced that class, did your father come?

A. After about ten minutes.

Q. What did he do in that class?

A. He came and spoke to the teacher.

Q. For how long?

A. For a little while.

40 Q. Did he speak to you or your brother?

A. Yes.

Q. Then what did he do?

A. He went back.

Q. When he came up there did he carry with him his marketing bag?

A. No.

Q. You did not see him having it?

A. I did not see.

Q. Did he leave the school premises?

A. Yes.

50 Q. Was your father in the habit of coming to your class room occasionally in the mornings?

A. Yes.

Q. And did he on previous occasions too speak to the teacher and go away?



*In the  
Supreme  
Court.*

A. Yes.

Q. After he left you continued to learn ?

A. Yes.

*Prosecu-  
tion's  
Evidence.*

(*Court* : He was anxious about your studies ?—Yes.)

Q. While you were continuing your studies in the class room what happened next, did you see anybody coming towards the college premises ?

A. Yes.

No. 30.  
B. C. de S.  
Sene-  
viratne  
(recalled),  
12th and  
13th  
January  
1949,  
Examina-  
tion,  
*continued.*

Q. Whom did you see ?

A. Mrs. Christie.

(*Court* : Was that while you were still doing Sinhalese ?—Yes. 10  
Still the first period ?—No, this was while we were doing the arithmetic.)

Q. For how long did you do Sinhalese ?

A. For two periods.

Q. How long is a period ?

A. I cannot say.

Q. After that what did you do ?

A. Arithmetic.

Q. You said while you were doing arithmetic you saw Mrs. Christie coming to the school premises ?

A. Yes. 20

Q. Did you see her coming by the gate ?

A. Yes.

Q. Had you known Mrs. Christie before ?

A. Yes.

Q. Does she live at Kotahena near your house ?

A. I cannot say that.

Q. In what direction did Mrs. Christie go, having come in through the gate ?

A. She came straight in.

Q. And went where ? 30

A. And went to my mother's class.

Q. Did you see your mother coming out of the class room to speak to her ?

A. Yes.

Q. And then what did your mother do ?

A. My mother came up to my class room and called us.

Q. Did she enter your class room ?

A. She was out.

Q. From there she called you and your brother to come out ?

A. Yes. 40

Q. Did she speak to the teacher ?

A. No.

Q. When your mother called you and your brother out did both of you come out ?

A. Yes.

Q. Did you take your books and come out ?

A. No.

Q. And when you came out what happened ?

A. Mrs. Christie was talking to a teacher.

Q. Was it to your teacher ? 50

A. Yes.

- Q. And after Mrs. Christie talked to your teacher did Mrs. Christie come and join you and your mother ?
- A. Yes.
- Q. Then what happened ?
- A. Then again my brother and I went inside the class room, took the books and came out.
- Q. What made you go and take your books ?
- A. Because my father had told us that whenever we come out of the school we should bring the books and come.
- 10 Q. So you got out with your books and joined your mother ?
- A. Yes.
- Q. From there where did you go ?
- A. Straight to our house.
- Q. Your house is right opposite the school across the road ?
- A. Yes.
- Q. Did you come right up to the entrance to your house ?
- A. Yes.
- (Court : Who did ?—All of us, that is, Mrs. Christie, my mother, my brother Oranda and I.)
- 20 Q. Up to the time you came up to your doorstep had your mother told you anything ?
- A. No.
- Q. There is a door at the entrance to your house ?
- A. Yes.
- Q. Did you open that door ?
- A. Yes.
- A. Tell us what happened at that stage ?
- A. All of us went in.
- (Court : Mother too went in ?—Yes.)
- 30 Q. Then what did you see ?
- A. I saw father dead.
- Q. When you came up to the verandah did you notice anything ?
- A. Yes.
- Q. What did you notice in the front verandah ?
- A. I noticed a pool of blood.
- Q. Did you notice anything else on the ground ?
- A. Yes.
- Q. What did you see ?
- A. I saw my father's pair of spectacles. (Shown spectacles P.23.)
- 40 These are my father's spectacles.
- (Court : You found them in this state on the verandah ?—Yes.)
- (P.23 is shown to the jury.)
- Q. Did your father use these glasses to see or to read or for both ?
- A. To read and to see.
- Q. Had he other glasses ?
- A. No, this was his only pair.
- Q. Could he see well without his glasses ?
- A. No.)

*In the  
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Q. Having seen this pool of blood on the verandah did you go into  
50 the next room ?

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A. Yes.

Q. Did you see anything in the next room on the ground ?

A. Yes, I saw blood.

Q. From there did you go on to the room behind ?

A. Yes.

Q. What did you see there ?

A. There I saw my father lying dead on the ground.

Q. Did you go right up to his body ?

A. Yes.

(*Court* : Did mother go right up to his body too ?—No.)

10

Q. Where was she standing ?

A. She was on the verandah.

Q. And your brother ?

A. He saw blood and ran away.

(*Court* : Did mother come into the room or did she not ?—I cannot remember.)

(Shown photographs 6 and 7 of P.47.) This is how my father lay when I saw him that morning.

Q. You remember you were in the dining hall when you saw your father's body there ?

20

A. Yes.

Q. Having seen that, what did you do ?

A. I came to the verandah.

Q. When you came to the verandah who was there on the verandah ?

A. There were a lot of people.

Q. Where was your mother when you came back to the verandah ?

A. She was on the verandah.

Q. Did you tell anything to your mother ?

A. No.

Q. Did you tell your mother what you had seen ?

30

A. Yes.

Q. What did you tell her ?

A. I told her that father was killed.

Q. Then what happened ?

A. Then all the people were worrying her to go to the police station.

Q. So she went to the police station ?

A. Yes.

Q. What did you and your brother do when she went to the police station ?

A. Mrs. Wijsekere took us back to the school.

40

Q. She is a teacher in your school ?

A. Yes.

Q. By this time she had come up to your house ?

A. Yes.

Q. And she took you and your brother back to the school ?

A. Yes.

(Shown P.4.) This umbrella does not belong to any member of our household. I have not seen this umbrella in our house before.

(Shown P.6.) I have not seen this knife in our house before. (*To Court* : This is not a thing which belongs to our house.)

50

(Shown P.5.) I have not seen this canvas bag in our house before this day.

(Shown P.1.) This is my brother's sarong. That morning this sarong was out on the line ; it was hanging out to dry in the backyard.

Q. At that time did you come back home that day ?

A. After we went to the school my cousin sister Philis came and took us to her house at Skinner's Road, Kotahena. Philis is my father's brother's daughter.

When we were at College Street, Kotahena, my father entered hospital. He went to hospital in October, the month previous to his death. He remained in hospital for about a week or so. I cannot say what was wrong  
10 with him. I went to see him in hospital. My mother also went and saw him in hospital.

*Cross-examined by Mr. Lekamage :*

Q. During the time your father was in hospital did the first accused also come to see your father in hospital at any time ?

A. I do not know.

The first accused used to come to our house about 4 or 5 times a month.

Q. Every time he came, the conversation between him and your father was quite pleasant, on friendly terms ?

A. Yes.

20 (*To Court :* They smoked together, they sat on chairs side by side, they read books together.)

Q. This baas used to address your father as Hamu Mahatmaya ?

A. Yes.

(*Court :* How did he address your mother ?—As Nona Mahatmaya.)

Q. You know that the first accused used to come home 4 or 5 times a month to your house because at the times the first accused comes to your house you are also at home ?

A. Yes.

(*Court :* Q. Does he usually come during school hours ?

30 A. After school hours.)

Q. Is it more correct to say that he comes more often on Saturdays than on weekdays ?

A. I do not remember.

Q. When he comes home he talks most of the time with your father ?

A. Yes.

Q. And he used to speak to your father quite respectfully ?

A. Yes.

Q. And your father also used to discuss various matters with this  
baas ?

40 A. Yes.

Q. About the prices of fish in the market, prices of curry stuffs and various things ?

A. Yes.

Q. Do you remember your father going out with this baas at any time to the town ?

A. Sometimes he goes out with the baas.

Q. Would you be able to say that your father treated this baas more or less like a friend ?

A. He used to treat the baas well.

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tion by Mr.  
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continued.*

Q. Sometimes when the baas comes he gives him tea ?

A. Yes.

Q. Nearly always he gives him a cigar ?

A. Yes.

Q. Has your father at any time asked the baas to stay over and have a meal ?

A. Sometimes.

(Court : Q. The baas has eaten meals in your house ?

A. Yes.)

Q. You told us that this baas came there also a few days before this 10 incident ?

A. Yes.

Q. On other days when he comes there, does he not wear anything on his head at all ?

A. No.

Q. Do you know whether he comes on a bicycle sometime ?

A. Sometimes he comes on a bicycle.

(Shown a cap marked 1D5.) The first accused wore a cap like this only on that day when he came to our house.

(1D5 is shown to the jury.)

20

Q. When this baas came there a few days before this incident, can you remember who was at home when the baas came into the house ?

A. My father and the cook woman and I.

Q. Can you remember whether the front door was closed at that time and whether anybody went and opened that front door and let the baas come in, or was it open ?

A. Half the door was closed I think.

Q. Can you remember whether the baas knocked at the door or speak from the door before entering ?

A. He spoke from the door.

30

Q. After that he came in ?

A. Yes.

Q. Are you quite sure that at that time the cook woman was in ?

A. At that time my father told the cook woman to go and bring something from the market.

Q. Then did the cook woman go ?

A. Yes.

Q. How long was the cook woman away ?

A. For about 15 minutes.

Q. Was it about this time that you gave a glass of water to the baas ? 40

A. Yes.

Q. Did your father tell the baas, " You better sit down, I will finish what I am doing and come and speak to you ? "

A. Father did not tell that.

Q. The baas came near to where you and your father were ?

A. Yes.

Q. While your father was near this table, was the baas sitting down or standing ?

A. He was standing.

Q. During the time the baas was standing there, was there any 50 conversation going on between your father and the baas ?

A. No.

- Q. Your father was cutting that saree and showing you how to cut a pattern on a cloth ?
- A. Yes.
- Q. During that time the baas was standing near this table ?
- A. Yes.
- (Counsel shows sketch to the witness.) There is a table at J.
- Q. Your father was cutting the saree keeping it on table marked J.
- A. Yes.
- Q. You were also near that table ?
- 10 A. Yes.
- Q. And you said the first accused was making some signs across his face ?
- A. Yes.
- Q. Can you say where about the baas was standing at that time ?
- A. He was standing close to K when he made the signs.
- Q. And he was turning towards the back of the house ?
- A. Yes.
- Q. At the time this baas was making this sign, the cook woman was cooking in the kitchen ?
- 20 A. Yes.
- Q. From the kitchen, when the fire is lit, sometimes smoke comes into the house ?
- A. Yes.
- Q. Sometimes when smoke comes into the house you or your father or mother would go and close the door to prevent the smoke coming in ?
- A. No.
- Q. Even if you are having any visitors in your house ?
- A. No.
- Q. Have your father and mother and you children gone to neighbours' houses round about ?
- 30 A. Yes.
- Q. Can you name some of the people whom you visit sometimes ?
- A. We won't go. Only my father goes.
- Q. Do you know whether your father visits Proctor Jayasekere's house ?
- A. Yes.
- Q. Your father knew Proctor Jayasekere very well ?
- A. I do not know that.
- I know Maihamy.
- 40 Q. Was she working in your house at any time as a servant ?
- A. Sometimes, when we had no servants.
- Q. Alice Nona came to your house as a servant about a month or a little over a month before this incident ?
- A. Yes.
- (Court : Q. In what month did she come as a servant ?
- A. I cannot remember.
- Q. Was it before or after your father went to hospital ?
- A. I think before.
- Q. How long before ?
- 50 A. About a week or so before.)

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She came at a time when we had no servant. For about a month we worked without a servant. I cannot remember whether Maihamy

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did any work during that month. She did not stay in our house during that month. About a month before that we had another servant woman. (To Court : I called that servant woman " Amme.")

Q. Before that servant woman also came to your house was there no servant in your house for any short time ?

A. I cannot remember.

Q. During that month you said there was no servant in your house, did your father occasionally get some other servant to come and help in the house and go away ?

A. Yes. 10

Q. Did your father get the servant woman of Proctor Jayasekere to come and do any work in your house and go away ?

A. No.

I know the witness Ukku Menika in this case. She has not come to our house at any time for any purpose. I have not been to Proctor Jayasekere's house at any time.

Q. When this baas comes to your house, does he bring any parcels or does he come empty handed every time ?

A. Sometimes he brings only a newspaper.

Q. Sometimes he brings parcels wrapped in paper ? 20

A. No, he does not bring.

Q. So that it was only on this day when you were at home with the boil on your toe that he brought this paper parcel and came ?

A. Yes.

Cross-  
examina-  
tion by Mr.  
Gunasekere.

*Cross-examined by Mr. Nihal Gunasekere :*

I was baptised, but my brother was not baptised. My father used to take me to the temple. During the August holidays in 1947 my father, mother, brother and I went on a pilgrimage to Tissamaharama.

(To Court : There is a temple there.

Q. You worshipped there ? 30

A. Yes.

Q. Did you go on to Kataragama ?

A. No.)

We were away for about two weeks on that trip. Only the four of us went on that trip. We went by bus and we returned also by bus. Going to Tissamaharama we spent a night somewhere, but I cannot remember the place, not a resthouse. On our way back we broke journey but did not spend a night anywhere. At Tissamaharama we stayed at one Dias' place. From Tissamaharama we did trips to other places close by. We went to the town and to the temples close by. We went to those 40 places walking.

(Court : Mother too went to these temples ?—Yes.

Has your mother ever gone to a church to your knowledge ?—No.)

Occasionally did she not go to church ?—Yes.

I mean now and again ?—Only when there was an occasion in the church she would go. She would go to a church festival. Then she would take me also to church.

(Court : Q. You went far more to temples than to church ?

A. Mostly to temples.)

Q. It was after you returned from Tissamaharama and your school had re-opened that your father entered the General Hospital ?

A. Yes.

Q. Would it be correct to say that was about a month before he died ?

A. Yes.

Q. In fact he entered hospital because his face and legs were swollen ?

A. Yes.

He was in hospital for about three weeks and my mother went to see him in hospital. (To Court : I cannot remember how long before he died that he returned from hospital.)

Q. Did your mother go every day to hospital to see your father ?

A. Yes.

Q. That would be in the evening after school is over ?

A. Yes.

Q. Did she take you and your brother along with her ?

A. Yes.

Q. You remember baas' visit to your house a few days before your father died ?

A. Yes.

Q. He asked for water twice ?

A. Yes.

Q. First he asked you and you gave him water from the filter ?

A. Yes.

Q. Later he asked Alice Nona for water ?

A. Yes.

Q. And she gave it from the tap in the kitchen ?

A. Yes.

Q. Where did he take the water (the water which Alice Nona gave him), near the door between the dining room and the kitchen, or where ?

A. I cannot remember.

Q. You said the first accused made some signs on this visit ?

A. Yes.

Q. And after that two doors were closed ?

A. Yes.

Q. Did Alice Nona close the door between the dining room and the kitchen ?

A. She closed the kitchen door.

(Counsel shows witness the sketch in the case.)

On this sketch there is a door marked at F (in red). Alice Nona closed the door at F. The first room marked on this sketch, after the verandah, I call the drawing room. I do not call the next room by any name, but we have our meals in that room. I closed the door at E (in red).

I was attending a Buddhist school.

(To Court : Prince College is a Buddhist school.)

Before school begins "pansil" is observed at the assembly. There are two assemblies, one for the big children and one for the kindergarten children. Pansil is observed separately by the two assemblies. Pansil takes about ten minutes. It is after that that the children go to the various class rooms for studies. That morning I returned home from the school with my mother, brother and Mrs. Christie. I saw blood on the verandah of our house.

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*continued.*
- Q. Seeing the blood on the verandah your brother ran towards the road ?
- A. Yes.
- Q. And your mother went after him ?
- A. Yes.
- Q. In the meantime you went inside the house ?
- A. Yes.
- Q. Did Mrs. Christie also go in ?
- A. No, she was outside in the garden.
- Q. You did not touch your father ?
- A. No.
- Q. Your mother did not touch your father ?
- A. No.
- Q. Nor did your brother or Mrs. Christie ?
- A. No.
- Q. In fact even the spectacles you did not touch ?
- A. I did not.
- Q. From the verandah it was possible to see your father lying in the place in which he was lying ?
- A. Yes.
- Q. You remember one day your father refused to take the bread that was brought to the house ?
- A. Yes.
- Q. When was that ?
- A. That was about 3 days before his death.
- Q. He refused to take it because it had come late ?
- A. Yes.
- Q. Is it correct to say after that the bread man did not come ?
- A. I cannot remember.
- Q. On the occasion the first accused came to your house a few days before your father died, you said in answer to my learned friend that soon after the baas came your father told Alice Nona to go to the market ?
- A. Yes.
- Q. And she went and was away for about 15 minutes ?
- A. Yes.
- Q. Later that morning she asked you to get some money from your father for something and again she went out ?
- A. Yes.
- (*Court* : Q. So that she came back from the market while the first accused was still there ?
- A. Yes.
- Q. And she began to cook ?
- A. Yes.
- Q. Later she again went to the market ?
- A. Yes.)
- Q. You were lying down in the bedroom when she came and asked you to get some money from your father ?
- A. Yes.
- Q. You said yesterday that you got 10 cents from your father and gave it to Alice Nona and that she went out ?
- A. Yes.

(*Court : Q.* And then when she went out this time did she come back before the first accused left ?

*A.* When she came back the first accused was still there.)

*Q.* She went out the second time with the 10 cents your father gave after the incident of the signs and the closing of the doors ?

*A.* Yes.

*Q.* While the previous servant woman (the one before Alice Nona) was there, was your mother teaching at Prince College ?

*A.* I cannot remember.

10 (*To Court :* My mother started teaching at Prince College after we came back from Tissamaharama.)

*Re-examined :*

*Q.* You remember your father told Alice Nona to go to the market the first time ?

*A.* Yes.

*Q.* On that occasion what was she to buy at the market ?

*A.* Some vegetables.

*Q.* On that day did your father go out marketing ?

*A.* No.

20 *Q.* So that instead of your father going to the market that day, the cook woman went ?

*A.* Yes.

*Q.* Did your father give her some money to go to the market ?

*A.* Yes.

(*To Court :* I cannot remember how much he gave her. She went out only to bring vegetables.)

*Q.* Did she bring any meat or fish that day ?

*A.* I cannot remember.

30 *Q.* Can you tell us whether there was any fish curry or meat curry for your noon meal that day ?

*A.* I cannot remember.

*Q.* Did the cook woman take some time to return from the market that day on the first occasion ?

*A.* Yes.

*Q.* During the time she was out only you and your father were at home ?

*A.* Yes.

*Q.* Can you tell us how many minutes before she left for the market the first accused arrived ?

40 *A.* About five minutes before.

*Q.* On that day did your father go to the kitchen to give instructions to Alice Nona to go to the market ?

*A.* I think he went.

*Q.* At that time where was the first accused ?

*A.* On the outer verandah.

*Q.* On the second occasion it was the woman who came and asked you for some money ?

*A.* Yes.

*Q.* Was it to buy some coconut oil ?

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A. I cannot remember.

Q. On that occasion did she come back soon after buying whatever she went to buy ?

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A. Yes.

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After interval.

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EVIDENCE of Mervyn Joachim.

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MERVYN JOACHIM—Sworn. 26, clerk, Shell Co., Rajagiriya.

10

*Examined :*

My father's name is S. B. Joachim. My mother is alive. I have two brothers and three sisters. I know No. 107 College Street, Kotahena. I am not sure of the year but I think we first came to live in that house in 1943. My parents took that house on rent. From 1943 onwards my parents and other members of the family lived at 107 College Street, Kotahena. Only five of us lived in that house: father, mother, sister Noreen, younger brother Clive and myself.

Some time later Mr. and Mrs. Seneviratne came to live in that house. I am not sure of the year, I think it was somewhere about 1945, towards 20 the middle of the year. Even at that time my father paid the rent of that house. In the first instance we occupied the whole of the house and the Seneviratnes had one room. They paid us a boarding fee of Rs.125/-. They were given their meals too.

(*To Court :* All four of them lived in one room. They occupied the first room on your right as you enter the house. (Shown sketch.) It is marked "bed room" on that sketch.)

I think they left the house the same year. They lived in that house with us for about six months.

They then lived down Mayfield Road. Even from there they shifted 30 on to one Mr. Jayatilleke's house at Wasala Road in Kotahena. After that they came back to our house again. I think that was in the year 1946. I am afraid I do not know the month.

(*To Court :* I think my father will be in a position to say in what month they came back.)

On that occasion the deceased took the house on rent. I think father did speak to him to come and take the house. At that time my father found it difficult to pay the rent. The rent was Rs.45/- a month. Mr. Seneviratne paid the rent while we paid Rs.25/- a month for two rooms. We occupied the first two rooms on the left as you enter the 40 house—the rooms marked "outer room" and the other room behind.

(*To Court*: At the moment my father is a clerk at Colombo Apothecaries. At that time he was catering assistant to an Australian air line.)

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After Mr. and Mrs. Seneviratne came to our house they lived there till the time of the deceased's death. During the time they lived with us I did hear quarrels. I think they quarrelled two or three times a month. I think the deceased used to be hard on the little children. He used to beat them over their studies. (*To Court*: He used to beat them with his hands.) Deceased took much interest in the studies of the children.

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10 I do not know of any other quarrel for any other reason.

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After the Seneviratnes came the second time to our house we had one woman as a servant. That particular woman stayed with us till she went away. (*To Court*: We used to call her just "Amme.") She had left before deceased died, about three months before.

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*continued.*

Then brother and I used to go down to our sister's for our meals, Mrs. Lenard at Kotahena. Then we found that this arrangement did not suit us. We then engaged a woman who prepared our meals for the night but who did not stay the night with us. She used to come in by about 5.30 or 6 p.m. and leave between 9.30 and 10.

20 My mother was working at the nurses' training school and she lived outside. Father used to go out. Not one of us used to come home for lunch. I left the house by about 8 a.m. and the other members of our family left about 7.30 a.m. By 8.10 all of us were out of the house. In fact I am the last to leave.

I had seen the first accused before. I had seen him in our house on three or four occasions. I might have seen him in the morning. I think it was more in the morning.

(*To Court*: That was before 8.10 a.m. or even after 8.10 a.m. on a Sunday or on a holiday. On Sundays all of us are at home.)

30 I think on one occasion I did see him in the evening after I returned from work.

(*To Court*: When the Seneviratnes first lived with us I do not remember seeing the first accused. My recollection is that I saw the first accused only after the Seneviratnes came the second time. I think he mostly came on a Sunday or on an off day.)

40 If he came during the day time I would have seen him on a Sunday or on a holiday. He came to see Mr. Seneviratne; we had no dealings with him. When he came he used to speak to Mr. and Mrs. Seneviratne. The Seneviratnes always treated him well. Mrs. Seneviratne did not treat him in any indifferent way; she used to greet him as a visitor come to see Mr. Seneviratne. (*To Court*: My impression was that he used to come to see Mr. Seneviratne.) I was not concerned with the business on which he used to come. I minded my business and he used to come and talk to them and go away. I used to see him in a coat and sarong. I think on one occasion I saw him wearing a pair of slippers. I had not see him wear a cap. He was called Baas. (1D5 shown.) I am seeing this for the first time.

50 On the day the deceased died I did go out to work. That was on 7th November, 1947. Before I went out, father, mother, sister and brother had all gone out to work. I was the last to leave. (*To Court*: I left about 8 a.m.) On that day I returned home about 11.30 a.m. While

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at the office I got information that Mr. Seneviratne had been murdered. When I came home I saw Mr. Seneviratne dead in the dining room. (*To Court* : The police were there when I came home.) Normally I would not come home at that time. I came along with my father. Neither mother nor sister nor Clive came. Clive is ill at the Ragama sanatorium. I know that he has sent a medical certificate to say that he is not fit to get out for three months. He did not want to come to the house that day because he was frightened.

(P.28 shown.) None of my family own this pair of slippers. Our servant woman never wore a pair of slippers. (P.4 shown.) This umbrella 10 does not belong to any member of our family. (P.5 shown.) This too does not belong to us. (P.6 shown.) This does not belong to us.

On 10th November, 1947, at an identification parade that was held I identified the first accused at the Magistrate's Court.

*Cross-examined by Mr. Lekamage* : Nil.

Cross-  
examina-  
tion by Mr.  
Gunasekere.

*Cross-examined by Mr. Gunasekere* :

At this time Mrs. Seneviratne was teaching at Princes College, Kotahena. I think she was teaching for about two months. I know Alice Nona. Prior to her being taken into the employment of the Seneviratnes another woman was their cook woman. Between her leaving 20 and Alice Nona getting this job I think there was a period of time when the Seneviratnes had no servant woman. During that period I do not think Mrs. Seneviratne taught at the Princes College. Prior to that period when they had that other woman I think she taught ; I am not sure.

When I saw the first accused in the house in the morning that must have been days which were Sundays or public holidays or they must have been days on which I took leave.

*To Court* : I saw the second accused doing the cooking in the house when there was no servant woman.

No. 32.  
Mrs. N. R.  
Anderson,  
13th  
January  
1949.  
Examina-  
tion.

No. 32.

30

**EVIDENCE of Mrs. N. R. Anderson.**

Mrs. N. R. ANDERSON—Sworn, 21, Dalugama.

*Examined* :

In November, 1947, I lived at 107 College Street, Kotahena. (*To Court* : I am Noreen Joachim.) On the day of this incident I left home about 8 a.m. and came back about 7 or 7.30 p.m.

I had seen the first accused before that day. When he came to our house he was dressed in a coat and cloth. (P.7 shown.) I had seen the first accused wear a coat like this. On 10th November, 1947, I pointed out the first accused at an identification parade held at the Magistrate's 40 Court.

(P.28 shown.) This pair of slippers does not belong to us. This umbrella P.4, this canvas bag P.5, and this knife P.6 do not belong to us.

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Mr. Gunasekere* : Nil.

## No. 33.

## EVIDENCE of Stanley Joachim.

STANLEY JOACHIM—Sworn, 56, store-keeper, Colombo Apothecaries, Rajagiriya.

*Examined :*

On 7th November, 1947, I went out to work about 8 a.m. and returned home about 11.30 a.m. or 12 noon. Normally I do not come home till evening, but on this day my son informed me of this murder and I came home about noon.

- 10 I knew Mr. and Mrs. Seneviratne. They lived with me on two occasions. On the first occasion the Seneviratnes lived with us for about one year and left. They stayed away for about nine months and came back in the latter part of 1946 and they stayed with us till the time of this incident. I think they came back on the second occasion in September, 1946. It may be 1st November, 1946.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekere :* Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 33.  
S. B.  
Joachim,  
13th  
January  
1949.  
Examina-  
tion.

## No. 34.

## EVIDENCE of Mrs. May Joachim.

- 20 Mrs. MAY JOACHIM—Sworn, 53, wife of Stanley Joachim. Nurses Training School.

*Examined :*

On 7th November, 1947 I was not in the house. Even at that time I was at the Nurses Training School. On 6th November I did not sleep at home. On the 7th I came home about 6 p.m.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekere :* Nil.

No. 34.  
Mrs. May  
Joachim,  
13th  
January  
1949.  
Examina-  
tion.

## No. 35.

## EVIDENCE of N. Ukku Menika.

- 30 N. UKKU MENIKA—Affirmed. 29, wife of Pedrick, Galle.

*Examined :*

In November, 1947, I lived at Kotahena. I was working as a cook under Mr. Jayasekere, Proctor. That house faces Alwis Place. The deceased lived towards the back of our house. Deceased's house is situated on a higher level than our house.

I remember the day of this incident.

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N. Ukku  
Menika,  
13th  
January  
1949.  
Examina-  
tion.

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tion's  
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N. Ukku  
Menika,  
13th  
January  
1949,  
Examina-  
tion,  
*continued.*

(*To Court* : I am a Kandyan. I am married to a low-country man.)

That morning Mr. Jayasekere went to his office at 9 a.m. as usual. Mrs. Jayasekere was in the front verandah. They have one son. He is a young man working at the aerodrome. He was not at home. That day after my master left, my mistress, myself and the two servants Sudu Banda and Ran Banda were in the house.

After preparing the morning meal I prepared curry and rice to be sent to a younger brother of Mrs. Jayasekere and put the meal in plates and took them to the table. When I was about to take the broom to sweep the kitchen I heard a noise as if somebody was coming. (*To Court* : 10  
It was then about 9.30 a.m.) The noise came from the back of the kitchen. When I heard the noise I looked that way from near the door. At once a man came into the house. Having passed the kitchen he went into Mrs. Jayasekere's room. There is a passage from the back portion of the house leading to the room. That man was going in that direction. He went into the room. He came from the back portion of our house, got on to the kitchen verandah and went straight into the house.

When I saw this I told Ran Banda : "There is a man inside, go and see." Ran Banda did not go in. The man remained inside the room for about five minutes and came out. He came out of the same door 20  
through which he entered. The man came out saying, "Nona ko, Nona ko." I said, "There is no lady here, get out." Then he came and stood at the place where Ran Banda and I were. I was near the kitchen door. He came right up to where we were. He then got out to the compound. As he was getting out to the compound he threatened to cut me with the knife he had in his hand. I raised cries and ran towards the garage. Then he went back along the same route he came and placed a bag and that knife inside a rampe bush. He again rushed back into our garden, dropped the sarong with which he was covering his head on the portico and ran down the road covering one of his eyes with his hand 30  
(demonstrates).

When the man walked into the room originally he had his head covered with a sarong and he had in his hands a bag and a knife. When he came back from that room in our direction he was carrying that bag and knife with the sarong over his head. He had to come right up to me in order to get exit to the compound. It was at that stage that he threatened to cut me with the knife he had. Ran Banda did not do anything. Sudu Banda came running on hearing my cries. He passed me and ran towards the back compound of Mrs. Seneviratne.

He placed the knife and bag in a bush. Adjoining Mr. Seneviratne's 40  
house is another house and he ran up to the boundary of that adjoining house and he placed the knife and bag in a bush. That bush is on a raised ground. That bush had a thick foliage. That tree died after about a month.

After leaving the bag and knife in that rampe bush he came back towards our house, but this time not to the kitchen side but to the front and he ran on a side towards the portico and it was as he ran towards the portico that he dropped the sarong and covered his eye. Then he ran towards Alwis Place.

(P.5 shown.) This is the bag. (P.6 shown.) This is the knife he 50  
had. This is the knife he had in his hand when he threatened to attack

me. When he left the bag at the rampe bush I saw him pulling out something from inside the bag and he placed that something in his waist. He then ran in the direction of the portico. What he took out of the bag looked something like a revolver.

This man who ran is in court. He is the first accused in the dock. That day when he passed me up and down in that house he was dressed in a white sarong and a coat. (P.7 shown.) This is the coat. There was blood on the coat here and there. (P.8 shown.) This is not the sarong he was wearing at that time. (To Court: That sarong had a certain amount of blood on it, much more than was on the coat.) (P.1 shown.) This is the sarong first accused was covering his head with. This is the sarong he dropped on the portico.

Some time after the first accused ran away I went to the junction and told people at the junction that a man had run through our house, ran down Alwis Place and ran away. I got frightened. A thing like this had never happened in our house before. The police came soon after. I made a statement to them. I gave a description to the police of the man who ran across our house. I pointed out P.5 and P.6 to the police. They were lying in the rampe bush. I took the police to the portico and pointed out P.1 lying on the portico. I showed Ran Banda and Sudu Banda to the police.

The very next morning I was taken to the Magistrate's Court and at an identification parade I identified the first accused as the man who ran through the house, carrying the bag and knife and the sarong. Between the time I saw the man in the house and the time he was put up at the identification parade I did not see the first accused.

(To Court: I had never seen the first accused before.)

*Cross-examined by Mr. Lekamage:*

At the rampe bush I saw the first accused taking out a revolver from the bag. I saw that quite clearly. I cannot say what first accused took out from the bag; it looked like a revolver. At this time I was standing near the kitchen door. The distance between the kitchen door and the rampe bush is the distance from the witness-box to the door (about 24 feet). At the time I saw the first accused take out this revolver from the bag he was turning his face towards me. I was looking at the man to see whether he had removed anything from the room.

After coming out of the room the man came and stood near me. (To Court: At first I thought him to be a thief.) He had this bag and knife in his hand at that time. I knew that he was going to leave the bag in that rampe bush. When he left me near the kitchen door and ran towards the boundary I did not know that he was going to leave that bag in that bush, but I was watching to see what he had removed from that room. When he was near the rampe tree I was watching him clearly. I am not sure, it was something like a revolver. When I saw him taking it out of the bag it struck me as something like a revolver.

That day after the police came there I was sent to a place at Maradana. I did not give evidence there. (To Court: I know a gentleman known as Coroner Mahatmaya. At Maradana I was questioned whether I saw.) I went to a place at Maradana. The police sent me there. I was asked

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N. Ukku  
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Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Lekamage.



*In the  
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Court.*

*Prosecu-  
tion's  
Evidence.*

No. 35.

N. Ukku  
Menika,  
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1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

what I knew about this and I told them. I know the Superintendent of Police seated next to the Crown Counsel. I remember him leading my evidence that day. In my evidence that day I said that the man was carrying a manna knife in his hand. When this man was running towards the rampe bush with this manna knife he tried to cut me with it. After that when he was going towards the rampe bush he did not do anything with that manna knife. He put that manna knife into the bag.

(*To Court*: P.6 is the knife I had in mind when I said that he had a manna knife. A manna knife is a big knife with which we cut firewood and other things. It has a round wooden handle.)

10

Then he kept the bag there and took out what looked like a revolver and put it into his waist. I cannot remember saying: "He then took out something from inside the bag and put it into his waist." (1D6—p. 452.) At that time I knew that what he took out of the bag and put into his waist was something like a revolver.

Thereafter I remember giving evidence in the Magistrate's Court. Then too I knew that what he had taken out of the bag and put into his waist was something like a revolver. I then said: "He took something from the bag P.5 and put it in his waist." (1AD2—p. 179.)

This man whom I saw that day I had never seen before. When he went inside the room he was covering his head. He went in there and stayed for about five minutes. At that time I knew that my lady was staying in the front verandah. Ran Banda was near the table where cups and saucers were. I asked Ran Banda to go into the room and see but he did not go. Without going through that room a person can go round that house to the front verandah. Ran Banda could have gone to the front verandah without going anywhere near the man. I did not tell Ran Banda to go and tell the lady that someone had got into her room. I did not think it necessary to run along the verandah and tell the lady that someone had got into her room; the lady was ill and I did not want to mention this to her. She had blood pressure and she gets excited for slight matters.

30

When that man came out of the room Ran Banda tried to catch him but I asked him not to do it. It would not be correct to say that Ran Banda caught him. After the man ran to the rampe bush he ran back, ran to the portico and got to the main road. Between the portico and the main road is open and can be seen by anybody on the verandah.

*Q.* After the man had run away did you go and tell the lady of the house anything?

*A.* No, hearing my cries the lady came from the front verandah and asked me to inform the police. When she said this I was in the compound near the kitchen door and I was shouting. Until the lady came and told me this I did not pass the portico.

40

(*To Court*: I am come to court from my younger sister's place at Mount Lavinia.)

I left Mr. Jayasekere's employment two months ago. I am from Kandy. I cried out and ran away as he threatened to cut me. Then the lady came running and told me this. I ran towards the garage when the man came to cut me. When the man was at the rampe bush I was in the compound near a papaw tree in front of the kitchen. When the man came to cut me I ran to the garage and I came back and looked on from

50

near the papaw tree. Then the man came back, passed me and went towards the portico and got on to the road.

As the man ran up to the rampe bush the lady came on hearing my shouts. When the man was running past me in front of the kitchen the lady was near the table in the dining hall. From there she could not have seen this man. When the lady came out on to the kitchen verandah the man had already passed the portico. Then the lady came near me. At that time I was near the papaw tree.

10 In reply to what the lady told me I said: "He is not a mad man; he must be running away after killing somebody." I told the lady that the man had run into her room. After the man had run away we went into that room. I told the lady that the man was carrying a knife in his hand and that there was blood in his body and that he must have committed murder. On instructions from the lady I went to the junction and told the people on the road.

20 The distance from where I was standing to the portico would be the distance from the witness-box to the portico (about 40 yards). From the portico to the main road is about 10 fathoms. At the portico the road takes a turn. Once a person passes the portico I cannot see him from the kitchen or the papaw tree. When you get on to the main road there is a steep incline to Alwis Place.

I saw this man covering one eye with his hand when I went to the garage and was looking on.

(*To Court*: That was after the man had dropped the sarong on the portico. He was holding his sarong with one hand and covering his eye with the other hand.)

30 It was after the man ran away that the lady came to me. At the time the man was covering his eye and was running he had his back to me. He was on the road between the portico and the main road. I did not see the man running down the main road; I saw him only getting out of the gate. From the gate on the left-hand side is this slope and on the right-hand side about 20 fathoms away is the junction. The police station is not very far away from that junction. My lady asked me to inform the police. I did not go to the police but the two Bandas ran in that direction. I do not know where they went.

40 At that time repair work was being done to the bungalow. A man was repairing the cattle shed at the time—attending to some plank. From the Seneviratne house as you come to our compound the cattle shed is on the left of the kitchen. From the front of the bungalow the garage is on the left-hand side and the kitchen is on the right-hand side. Just next to the kitchen is the cattle shed.

(*To Court*: At this time the man was repairing the cattle shed between the kitchen and the latrine.)

He could not have seen; he did not see. He was repairing the floor of the cattle shed with cement. At this time the man was mixing cement with sand.

(*To Court*: *Q.* Was there anything wrong with the planks of the shed?  
*A.* Nothing was wrong.

50 There are no planks to the cattle shed. This man was a mason. I did not refer to a plank earlier.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

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N. Ukku  
Menika,  
13th  
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Cross-  
examina-  
tion by Mr.  
Lekamage,  
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tion by Mr.  
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*continued.*

*Mudaliyar* : I may have mis-heard.

*Court* : What had this man come to do ?

A. He had come to repair the floor of the cattle shed ; it was a cement floor and it was damaged.)

After everything was over this man came to the compound. It is not correct to say that just after I asked Ran Banda not to seize the man this man came up. I cannot remember telling the coroner that this man came out before the accused put the knife into the bag and ran near the bush (1 D.7). This mason is not a witness in this case. I do not know his name. 10

From the time I first saw this man till he left the sarong on the portico he was covering his head all the time. (Witness demonstrates how first accused covered his head with the sarong P.1.) It was folded into two like that. He was not catching the sarong with his hand ; he just had it on his head. I thought he was trying to avoid detection. The sarong was covering half of his face. I had never seen this man before. The next time I saw the man was at the identification parade at the Magistrate's Court.

The police came not even half an hour afterwards. The police asked me whether I had seen the man. They spoke to me in Sinhalese. I cannot remember the actual words now. I pointed out the sarong which was on the portico. It was near the portico where it had been dropped. Nobody touched anything till the police came. I pointed out the knife and the bag in the rampe bush to the police. There was a constable on guard but I cannot say whether there was a constable there when I pointed them out. 20

Q. After this man went away and until the police came you did not go and get hold of the bag ?

A. I went and looked at the bag to find out if anything from our house had been taken. I did not examine it. I could see it was empty. 30

I did not touch either the bag or the knife. After the man left these things and until the police came nobody touched the sarong or the knife or the bag.

It is not true that whilst I was in the kitchen this man ran past the house.

Q. You saw some man running in your compound passing the portico ?

A. No.

Q. The mason, you, Ran Banda and Sudu Banda did not see the face of the man but the figure of the man ?

A. No. It is not true that I and the others saw the figure of the man. 40

Q. You saw the man had dropped the sarong on the portico and had gone out ?

A. No.

Q. You all just went round to the road side and looked round and said " He must be a madman " and came back ?

A. No. I did not hear Ran Banda or Sudu Banda at any stage say, " He must be a madman."

Q. The story about his getting into the room is entirely false ?

A. It is actually true.

Q. That you saw this man getting out of the room and going back to the rampe bush and placing this bag and taking out things—that part of the story is entirely false ?

A. That is what I actually saw.

Q. The first time you saw that there was a bag and a knife in the rampe bush was when the police found them out ?

A. No.

Q. The attempt to cut you is also entirely false ?

A. No.

10 Q. And this is why none of you went from the bungalow to the police station to make a complaint ?

A. No.

*Cross-examined by Mr. Gunasekere : Nil.*

*Re-examined : Nil.*

Adjourned for the day.

*In the  
Supreme  
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tion's  
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N. Ukku  
Menika,  
13th  
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1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

No. 36.

EVIDENCE of W. M. Ran Banda.

9.30 a.m.

17.1.49.

20 Accused present.

Same Counsel as before.

W. M. RAN BANDA—Affirmed.

14 years, servant boy working in a firewood depot. In November, 1947, I was employed at No. — Alwis Place, Kotahena. I was employed there as a servant boy. The other servants in the house were Ukku Menika, the cook woman, and Sudu Banda, a garden cooly. The occupants of the house were Mr. and Mrs. Jayasekere and their son. I remember the 7th November, 1947, the day on which Mr. Seneviratne died. That morning Mr. Jayasekere went to Office and his son went to Ratmalana.

30 Thereafter Mrs. Jayasekere and the three servants were there. That day the bath room was being repaired. There is a cattle shed in that house. The cattle shed was not being repaired. A mason was working in the house. The mason was repairing the bathroom. That is near the cattle shed, on the side where the kitchen is. That morning round about 9 o'clock I was in the kitchen along with Ukku Menika who was cooking. I was taking water to the kitchen to wash plates after the morning meal. When I was in the kitchen Ukku Menika said, "A man came into the house, go and see." Thereupon I did not go to see. Ukku Menika came out of the kitchen. I also came out, and stood near the table where the plates are  
40 washed. That is in the kitchen verandah. Then a man came from the house. I saw his face. He was dressed in a coat and a sarong. He was

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W. M. Ran  
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tion.

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tion's  
Evidence.*

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W. M. Ran  
Banda,  
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tion,  
*continued.*

covering the head with a sarong. He had a bag with him. He came in our direction. As he came in our direction I held him by his shoulder. As I held him Ukku Menika asked me not to seize him but to keep quiet. Then I released him. Then he raised his hand towards Ukku Menika as if he was going to attack her. He had a knife in his hand at the time. Thereafter he ran up to the rampe bush, left the knife there, came back and ran away. As the man was about to attack Ukku Menika she did not do anything. She raised shouts. Then this man went towards the back compound, placed his knife and bag in the rampe bush, turned back and ran towards the front verandah. He ran in the direction in which the portico is. As he ran towards the portico he dropped the sarong with which he was covering his head. He dropped the sarong near the portico and then he continued to run. (Shown P.5.) It was this sarong that he was carrying. (Shown P.6.) This is the knife with which he went to attack Ukku Menika. He placed these two productions in the rampe bush in the back compound. (Shown P.1.) This is the sarong with which he was covering his head, and he dropped it near the portico. I recognize this coat, P.7. This is the coat that he was wearing. He was wearing a sarong with checks. It was a whitish sarong. Soon after, I heard shouts from the direction of Seneviratne's house. Then I realised that a man had been murdered. Thereafter the Police came to our house and I made a statement to the Police. I pointed out the knife and bag to the Police. I pointed out the sarong also to the Police. Following day I was taken to the Magistrate's Court, Colombo. An identification parade was held in Court and there I identified the man who came to our house with the bag and the knife and the sarong. That man is the first accused in the dock. After the man left the house and before I identified him at the parade I did not see him again.

Cross-  
examina-  
tion by Mr.  
Lekamage.

*Cross-examined by Mr. Lekamage :*

Shortly after the man left I heard shouts from the direction of Seneviratne's house. The Police came and met me after I heard the shouts. The Police came and questioned me about quarter "peya" after I heard the shouts. When I heard the shouts I went up to see. I was not allowed to go into the house. I went round from the front. The Police were there at the time.

Q. Why did you not run up from behind ?

A. It was difficult to go that way.

Q. The police came to your compound about 15 minutes afterwards ?

A. Yes.

Q. You then made a statement to them ?

A. Yes.

Q. Did you show them anything ?

A. I showed the knife and the bag.

Q. At that time the knife and the bag were in the "rampe" bush ?

A. Yes.

Q. You also showed the Police the sarong which he dropped near the portico ?

A. Yes.

Q. You told us that when you heard the shouts you knew that there was a murder committed?

A. Yes.

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- Q. Did you also think that the man who ran out did commit the murder ?
- A. Yes.
- Q. When this man rushed into the house, you told us Ukku Menika told you, " Go and see there is a man in the house ? "
- A. Yes.
- Q. Why did you not go ?
- A. I did not go into the house because I had to take water.
- 10 At that time our lady was in the hall. One can go to the hall through the front entrance. You can go round the portico, enter through the front verandah and get into the hall.
- (To Court : Q. Has the room into which the first accused went any other exit outside ?
- A. No.
- Q. He had to come back again ?
- A. Yes.)
- Q. Did Ukku Menika ask you to go and tell the lady that a man had entered the house ?
- A. No.
- 20 Q. That room has only one door ?
- A. There is only one door on the bath room side.
- Q. This is the door through which the man ran into the house ?
- A. Yes.
- Q. From that room is there a door leading to the hall or to another room ?
- A. There is.
- There is a door leading to Mr. Jayasekere's room.
- Q. When that man later came out and left the articles in the rampe bush, at that time where was Sudu Banda ?
- 30 A. He was working with the mason.
- Q. At the time this man went into the house and came out where were they ?
- A. They were repairing the bath room.
- Q. Then do you remember seeing Sudu Banda that day after this man left the place ?
- A. When the man went up to the rampe bush Sudu Banda also came up.
- Q. The mason and Sudu Banda came up at that time ?
- A. Yes.
- Q. When the man ran into the room and came out what did you think the man had gone into the room for ?
- 40 A. I did not think anything.
- Q. It was a man whom you did not know ?
- A. Yes.
- Q. An unknown man rushing into the room from the back side of the house, did you not think that he might want to rob something ?
- A. I did not think anything at the moment.
- Q. Is it a usual thing for an unknown person to come into the house ?
- A. No.
- Q. Even after the man left you did not think that the man had come there to rob something ?
- 50 A. No.
- Q. He tried to cut Ukku Menika ?

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

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W. M. Ran  
Banda,  
17th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
continued.*

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tion's  
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*No. 36.  
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Banda,  
17th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
continued.*

A. I saw him raising his hand.

Q. He went and left the bag and knife in the rampe bush ?

A. Yes.

The knife was inside the bag. I saw the handle of the knife projecting out. After the man ran away I did not take the knife and look at it. I did not touch that knife or the bag before the Police came. I did not see anybody else do it.

Q. Were you not inquisitive to know what was in this bag when the man left the bag there ?

A. No.

Q. Because an unknown man rushed into your house in which you were a servant, and he tried to cut Ukku Menika, did you not think that you should go and inform the Police ?

A. I did not go as there was nobody in the house.

The Police Station is only a short distance away from our house.

Q. When you said that there was nobody in the house you meant that there was nobody besides the lady of the house, Ukku Menika, Sudu Banda and the mason ?

A. Yes.

Q. When you knew that there was a murder committed in the next 20 house you thought that this was the man who had done it ?

A. Yes.

Q. When you went up round the front side of that house you saw Police Constables there ?

A. Yes.

Q. Did you then tell any of those Police Officers that a little while ago a man brought a knife and a bag and he had left them and run away ?

A. After they came to our house I told them that.

Q. Did you tell anybody else about that place about the first accused 30 coming to your house ?

A. No.

Q. You did not think it useful to the Police to inform them about the man who came there, and hand over the knife and the bag to the Police ?

A. No.

Q. When that man went near the portico and left the place did anybody say, " pissek pissek " ?

A. Yes. Sudu Banda said that.

When I saw the man for the first time he was covering his head with a sarong. When I held the man by his shoulder he did not try to cut me. (Witness shows how he held the accused.) I held him by both shoulders, and we were close to each other and facing each other. I am from Kandy. I told the Police that the knife and the bag were in the rampe bush and I pointed out the place. It is not correct to say that the Police found the knife and canvas bag in the rampe bush and then they came and questioned me. When the Police first questioned me I was in the house. Then I told the Police that the knife and the canvas bag were in the rampe bush. I did not go with the Police to look for the productions in the bush. I was looking at the bush from the place where I was questioned. At that time there was a constable near the rampe bush. 50

*Cross-examined by Mr. Gunasekera : Nil.*

*Re-examined :*

After the Police questioned me they found the bag and the knife. Then a constable was kept to guard them till the J.M.O. came. I did not see the J.M.O. examining them.

*Re-examined with permission of Court :*

When the first accused came towards us from the room he said, "Where is the lady ?" (Nona-ko) and for which Ukku Menika said, "There is no lady here" (mehe-athi-nona-kenek-nah).

(*Court :* Mr. Lekamage, have you any questions on that ?

10 *Mr. Lekamage :* No my lord.)

*To Jury :* Nil.

10.15 a.m. adjourned till 11.30 a.m.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 36.  
W. M. Ran  
Banda,  
17th  
January  
1949,  
*continued.*  
Re-examin-  
ation.

No. 37.

**EVIDENCE of R. M. Sudu Banda.**

17th January 1949. After interval. 11.30 a.m.

RATNAYAKE MUDIYANSELAGE SUDU BANDA—Affirmed.

Age 15 ; I am now working in a boutique belonging to my uncle at Bandarawela. In November 1947 I was employed under Mr. Jayasekere who lived in a house at Alwis Place, Kotahena.

20 I remember the 7th November 1947. That morning I was assisting a mason to put up a wall in a bathroom near the cattle shed in Mr. Jayasekere's premises. Then Ukku Menika shouted out "Amme." Then I went up to see. Then I saw a man coming out from inside the house covering his head and carrying a bag in his hand. When I first saw him he had got off the kitchen verandah. I saw him actually in the compound. He was standing there and then ran away. (*To Court :* There is a papaw tree in our compound. He was standing about a fathom away from that tree.) From there he ran towards the "rampe" bush at the very edge of the compound. He left the bag near the rampe bush and  
30 ran in the direction of our portico. At the portico he dropped the sarong with which he was covering his head and got on to Alwis Place and ran. I can identify that man. (Witness looks round and says, "He is the first accused in the dock.") He was dressed in a coat and sarong at the time he ran away. (Shown P.7.) It was a coat like this. I did not see anything particular about the coat. (Shown P.1.) With this sarong he was covering his head. I cannot say what kind of a sarong he was wearing. (Shown P.5.) He had this bag in his hand that day. After he ran off I did not go near the rampe bush. The police came to our compound soon after. I made a statement to the police regarding what I saw. The following day  
40 I came to the Magistrate's Court. There was an identification parade held in Court that day and I pointed out the first accused as the man who ran through our premises on the day in question.

No. 37.  
R. M.  
Sudu  
Banda,  
17th  
January  
1949.  
Examina-  
tion.



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 37.  
R. M.  
Sudu  
Banda,  
17th  
January  
1949,  
*continued.*

*Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Cross-examined by Mr. Lekamage :*

That day I was assisting a mason. We were not repairing the floor of the cattle shed that day, but we were working on the other side of that shed. I cannot remember the name of the mason whom I was assisting that day. I did not hear his name at any time. Ukku Menika shouted out " Amme." She shouted out loud. The mason did not come running up when I came running up on hearing Ukku Menika. The mason did not come with me. I did not see him coming behind me. When the man ran away from near the rampe bush I ran after him saying " Pissek " (mad man). Before the police came to our house that day I did not go to Mr. Seneviratne's house. I did not hear any cries or shouting from the direction of that house. Until the police came I did not go near the rampe bush. 10

*Cross-examined by Mr. Gunasekere : Nil.*

*Re-examined : Nil.*

*To Jury : Nil.*

No. 38.  
Mohamed  
Khalid,  
17th  
January  
1949.  
Examina-  
tion.

No. 38.

**EVIDENCE of Mohamed Khalid.**

**MOHAMED KHALID—Affirmed.**

" 55, Mason, living in Temple Avenue, Borella. 20

I remember the 7th November 1947. On that day I was doing some masonry work in a house in Kotahena. That was No. 77, Alwis Place, Kotahena. I left home that day at about 6.30 a.m. and reached No. 77, Alwis Place, at about 7 a.m. and commenced work. That house was not occupied that day. I was asked to effect repairs to that house. That morning I shifted the tiles of that house. For that purpose I had to get on to the roof. (*To Court* : I got on to the roof at about 7 a.m.) Soon after I went there I got on to the roof. At about 9 or 9.30 a.m. I was still working on the roof. Then a man came running from the high road and turned into the gate of that house where I was working. I was working on the other side of the portico and he came running through the portico. 30 Then I saw him. While I was on the roof he ran through the portico and ran to the boundary fence which is a galvanized sheet fence. He broke the fence and jumped over. It was an old galvanized sheeting with a little space. He pushed it and passed through and went to the adjoining compound. Then I lost sight of him. The high road from which he came running ends at the bungalow where I was working. The bungalow where I was working is by the side of the road and that road ends at that bungalow. That man was wearing a shirt and a sarong. At that time I I did not see him wearing a coat, nor did he have anything on his head. 40 After he ran off I heard women in the adjoining garden crying out " A man is running away having broken down the fence." Then I told them

“ He is not any of my men.” I said that from the roof. Thereafter I came down from the roof. When I got down the ladder and came down to the ground I saw a coat among the flower plants. I did not pick up that coat. I did not see anything else.

(Shown P.7.) This is the coat.

Q. Did you see a purse ?

(*Mr. Lekamage* : I object to that question, especially after the witness has said he did not see anything else besides the coat.

10 *Court* (to witness) : Did you see a purse ?  
I did not see a purse till the police came.)

Q. How soon after you saw the coat did the police come ?

A. Not more than a minute or two after.

Q. The police were there hot on the heels of this man who ran out ?

A. Yes.

Q. And did you point out that coat to the police ?

A. Yes.

Q. Did you see the police examine the coat ?

A. Yes.

They examined it on the verandah of the house.

20 (*Court* : Q. Then did they find anything inside the coat ?

A. I saw them looking at a purse. I cannot say where they took it from.)

I was there when the police were examining the purse. There were some things like small cartridges in that purse. (*To Court* : I did not see any money. There were some pieces of paper.)

(Shown P.30.) It was something like this. I cannot say whether this is the purse.

(Shown P.27.) These are the things the police took into their hands from the coat.

30 I can identify the man whom I saw that day if I see him again. (*Witness looks round and says, “ He is the first accused in the dock.”*) I gave a description of the man to the police.

On the 10th November I was present at an identification parade held in the Magistrate’s Court and among a number of men lined up I pointed out this first accused as the man who ran through the compound of the house where I was working.

*Cross-examined by Mr. Lekamage* :

40 On that day the police came there about two minutes after the man ran through the fence. I got down from the ladder and just went up to the coat when the police came.

Q. That is, the time that took you to get down from the roof to the ground ?

A. Yes.

(*To Court* : Three or four policemen came ; they all came together.)

It would not be correct to say that the police came there two hours after I saw the coat. Until the police came and took charge of that coat I did not touch the coat.

Q. Is that your coat ?

A. No.

*In the  
Supreme  
Court.*

*Prosecu-  
tion’s  
Evidence.*

No. 38.  
Mohamed  
Khalid,  
17th  
January  
1949,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Lekamage.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 38.  
Mohamed  
Khalid,  
17th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

There were some coolies working with me there that day. At this time they had gone to bring chunam. (*To Court*: At this time I was the only person in those premises.) I was on the roof at that time.

*Q.* On that day you gave a full description of what you saw of the man who ran through that compound ?

*A.* Yes.

The police took me, the coat and the purse to the police station that day. I told the police I could identify the man if I saw him again.

On the following day also I worked in the same bungalow. Before the police left me on the day in question, after this incident, I gave my 10 name and address to the police.

*Q.* On the following day the police did not ask you to come to the Magistrate's Court ?

*A.* I cannot remember.

I went to the Magistrate's Court not on the following day, but two days after.

*Q.* After the police came to investigate into this matter, you knew that the man who ran away is alleged to have been the murderer of Mr. Seneviratne ?

*A.* Yes. 20

*Q.* In that whole area people were talking about it ?

*A.* Yes.

*Q.* On the next day did you hear that some man was produced at the Magistrate's Court ?

*A.* I did not hear that.

*Q.* The police did not tell you to come to the Magistrate's Court on the following day to see whether you could identify a man ?

*A.* I was told to come to the police station the next day.

(*Court* : *Q.* And did you go ?—Yes.

*Q.* What time ?—About 7.30 or 8 a.m.) 30

*Q.* The police asked you to come to the Magistrate's Court 3 days after, on the 10th November ?

*A.* I cannot remember the date.

*Q.* You cannot remember that 3 days after this incident you came to the Magistrate's Court ?

*A.* I cannot say whether it was after 2 days or 3 days.

*Q.* So far as you can remember you came to the Magistrate's Court 2 or 3 days after this incident ?

*A.* Yes.

*Q.* And on that day you were taken along a parade and you identified 40 the first accused ?

*A.* Yes.

(*Court* : *Q.* You saw a man in the premises on the 7th ?

*A.* Yes.

*Q.* You saw him again in court on the 10th ?

*A.* Yes.

*Q.* Between those two dates did you see him ?

*A.* No.)

*Q.* When you saw that man for the first time coming into your garden, did you see the man properly ? 50

*A.* I saw the first accused well when I saw him on the 7th.

Q. Did you see him quite clearly when he was coming into the land ?

A. I saw his face distinctly after he had passed under the portico.

Q. I want to know whether you saw his face distinctly before he came into the portico ?

A. No.

As the first accused crossed the portico I asked him " Oi Oi Moka tha." Then he said " Koluwek gahala thuwagana awa, koluwa allanda mama awa " (A boy struck me and came running, I came to catch him.) The first accused came running saying " Oi Baas, Oi Baas." Then I asked " Mokatha " (What's up). Then he said " Koluwek gahala thuwagana awa, koluwa mehen thiuwatha " (A boy struck and came running, did the boy run this way). He stopped and said this to me. At that time I saw his face quite well.

Q. When the police came you told them all about this conversation ?

A. Yes.

Q. You told the police that the first accused had told you that a boy had hit him and run and that he enquired whether you saw the boy ?

A. Yes.

Q. And that you saw his face quite well ?

20 A. Yes.

Q. Did you hear the words " Oi Baas " after the man passed the portico or before he came into the portico ?

A. He came running shouting out " Oi Baas."

After he had passed the fence I heard 3 or 4 women shouting out in the adjoining garden. In connection with this case I went to the Magistrate's Court on a number of days, and I have come to this Court also on a number of days now. I see the other witnesses for the Crown who come to Court. Among them I did not see any of those women who shouted out in the adjoining garden on that day.

30 At this time I had sent my workmen away to mix chunam and sand and bring it. They were away on the other side of the bath room, not in the same compound ; they were on the kitchen side, outside the house. My workmen came back only after the police came there.

Q. So far as you were aware from their conversation they had not seen this man ?

A. No.

It was after the police came that I saw a purse. When I first saw it, it was in the hands of a constable.

40 Q. It would not be correct to say that you found the purse first and that you opened it ?

A. I did not find it.

Until the police came I did not touch the coat or the purse, nor did anybody else touch it.

Q. It was the police who first came and took charge of those articles ?

A. Yes.

I showed the police the place where the first accused crept through the galvanised fence.

Q. The man did not jump over the fence, but he separated two pieces of galvanised sheet and crept through ?

50 A. Yes.

Q. At any stage from the time the man came running to the compound, did your workmen shout out ?

A. No.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 38.  
Mohamed  
Khalid,  
17th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 38.  
Mohamed  
Khalid,  
17th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

Q. They did not shout out for you ?

A. No.

Q. You told the magistrate this, " He jumped over the zinc sheet fence and ran, I lost sight of him, heard a woman cry out " ?

A. Yes.

Q. Then you said " Then my workman shouted out for me " (1D8) ?

A. I did not say that.

Q. The defence is that even if you saw a man running through that land that day, you did not see his face or you were not able to make out who the man was ?

A. I deny that I did not identify the man's face.

He stopped and spoke to me.

I did not know the first accused before this day.

Q. I put it to you that you came to the Magistrate's Court the next day and saw some part of the proceedings in that court with regard to this case ?

A. I did not come to the Magistrate's Court on the 8th.

Q. And I put it to you that on that day you saw the first accused in the Magistrate's Court, on the 8th ?

A. I did not come into court on that day.

*Cross-examined by Mr. Gunasekera : Nil.*

*Re-examin-  
ation.*

*Re-examined :*

Q. Do you know that the zinc fence has been replaced by a wall now ?

A. Yes.

Q. Did you put up that wall ?

A. Yes.

Q. After this event ?

A. Yes.

Q. But you point out to the police the zinc fence that day ?

A. Yes.

*To Jury : Nil.*

No. 39.  
M.  
Wickrama-  
sooriya,  
17th  
January  
1949.  
Examina-  
tion.

**No. 39.**  
**EVIDENCE of M. Wickramasooriya.**

**M. WICKRAMASOORIYA—Affirmed.**

P.C.3264, attached to Maradana Police Station. I prepared the sketch in this case. I visited the scene of this murder on the 6th December 1947 in the presence of Sub-Inspectors Lawrence and Gordon. I met witnesses Ukku Menika, Ran Banda and Sudu Banda that day and they pointed out the various points I have marked on the sketch. I took the measurements myself and swear to the accuracy of the sketch. The deceased's house is drawn to scale on this sketch, but not the house and compound of Mr. Jayasekera ; the rest of the sketch is also not drawn to scale. The sketch shows College Street running east to west, and further north is the house of the deceased.

(Witness is now told to confine himself to the deceased's house marked on the sketch. Crown Counsel states he is now going to question the witness about the black letters marked on the sketch.)

*In the  
Supreme  
Court.*

- The point A on the sketch is the place where a slipper was found.  
 B is the patch of blood on the front verandah of the deceased's house.  
 C is a chair near the patch of blood on the front verandah.  
 D is an almirah in the hall.  
 E is a box in the hall.  
 F is a glass cupboard in the hall.  
 10 G is a pool of blood near the cupboard.  
 H is a place where a hat was found fallen.  
 J is a table in the middle of the hall.  
 K is a piano in the hall.  
 L is a dining table under which the deceased was found fallen.  
 M is a pool of blood by the side of the deceased.  
 X is the spot where the deceased was found fallen.  
 P is the back door of deceased's house.

*Prosecu-  
tion's  
Evidence.*

— —  
 No. 39.  
 M.  
 Wickrama-  
 sooriya,  
 17th  
 January  
 1949,  
 Examina-  
 tion,  
*continued.*

(Now the witness is told he is going to be questioned about the adjoining garden belonging to Mr. Jayasekere.)

- 20 N along the boundary is where the knife and bag were found in the adjoining compound, pointed out by the three witnesses Sudu Banda, Ran Banda and Ukku Menika. The knife and bag were near the rampe bush.

R is where Ukku Menika was according to her.

S is where Ran Banda was according to him.

T is where Sudu Banda was according to him.

U is the place from where Ukku Menika saw the first accused throwing the sarong.

- 30 V is the place where the sarong was found. That is at the portico.  
 W is the place from where Sudu Banda saw the first accused throwing the sarong.

The arrows I have drawn on the sketch indicate the route taken by the man who ran, according to the witnesses.

On the north of the sketch is the end of Alwis Place.

Q is the entrance gate to No. 77, Alwis Place.

Y is the spot where the coat and purse were found.

Z is the exit used by the first accused in running to the adjoining compound.

- 40 There was a zinc fence at Z when I went.  
 Khalid was on the roof of house No. 77, Alwis Place.  
 Below College Street, right across is Prince College.

There is a wall right round the temple premises.

The figure " 1 " on the sketch is a locked gate of the temple on the wall opposite deceased's house.

" 2 " is the block consisting of class rooms of the second accused and the priests.

" 2A " is the kindergarten class where the second accused taught.

" 2B " is a class taken by a priest.

There is no wall in between 2A and 2B.

- 50 " 3 " is the block consisting of class rooms in Prince College.

" 4 " is the 5th standard class where the two children of the deceased were studying.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 39.  
M.  
Wickrama-  
sooriya,  
17th  
January  
1949,  
Examina-  
tion,  
*continued.*

" 5 " is a palm bush.

" 6 " is a block consisting of class rooms for the 3rd and 4th standards.

" 7 " is a tuckshop.

" 8 " is living quarters of a priest, and that is where the telephone is kept.

In 2nd accused's class room marked 2A, I have shown a table. That table faces the 5th standard class. I have marked the distances also.

X to G is 7 feet.

X to B is 20 feet.

X to A is 32 feet.

P to N is 55 feet.

N to R is 54 feet.

The distance between No. 77, Alwis Place, and Mr. Jayasekere's house is nearly about 500 yards. I produce copies of the sketch marked Sk1 to Sk7.

10

(*To Court* : I know the Kotahena police station. I have gone there several times. I do not know whether a person making a statement to the officer-in-charge of the Kotahena police station need face the road.)

*Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Cross-examined by Mr. Lekamage :*

The point A was pointed out by Sub-Inspectors Lawrence and Gordon. 20

*Cross-examined by Mr. Gunasekere :* Nil.

*To Jury :* Nil.

No. 40.  
V. S.  
Tham-  
biappa,  
17th  
January  
1949.  
Examina-  
tion.

No. 40.

**EVIDENCE of V. S. Thambiappa.**

V. S. THAMBIAPPA—Sworn.

Police Sergeant No. 2983, Photographer, C.I.D.

On the 7th November 1947 I visited the scene of this alleged murder at 107, College Street, Kotahena, and took some photographs at the request of the police. On the 9th December I again visited the scene and took some more photographs of the surrounding areas. I produce 30 a booklet of 10 photographs P.47.

P.47 (1) is a view taken from near the kindergarten of Prince College facing the main gate.

(*To Court* : I took this photograph from the kindergarten looking towards the entrance.)

(2) is a view taken from near the closed gate of Prince College showing 107, College Street.

(*To Court* : I took this photograph across the road. At that time there were two trees in the way of the picture shows. One of those trees is not there now.)

(3) is a view taken from near the front door of 107, College Street. This shows the verandah, and the black patches there show the blood

40

patches on the ground. On the left is the back of an almirah ; the entrance to that house is very much broader than you see in this picture.

(4) is a view taken from the front door leading to the hall, showing blood stains by the cupboard in the hall. By the front door I mean the gap between the almirah and the hall which you see in photo 3. There is a gramophone also shown in photograph 4. On the left is a part of a piano. I do not know whose hat is shown in photo 4. It was lying there.

10 (5) is a view taken from near the back door leading to the hall, showing dining hall, dining table, the deceased and the back door with the shutter open.

(6) is a view taken from near the kitchen door showing dining hall, dining table, deceased's basket and bundle, deceased and the pool of blood.

(7) is a view taken from the entrance to the bath room showing deceased and dining room ; also shows slipper under the right leg of the deceased.

(8) is a view taken from the back compound showing the deceased and the entrance to the hall. From the hall you have to come down two steps to get down to the dining hall.

20 (9) is a view of the back compound of 107, College Street, showing back door leading to the house ; at the extreme left of the photograph there are some steps shown leading to the back compound. The back portion of Mr. Jayasekere's house is not visible in this photograph. " B " in this photograph is a sarong put out to dry on a string. " C " indicates the passage by which one could enter the premises belonging to Mr. Jayasekere.

(10) is a view of the back compound of Mr. Jayasekere's house showing " D " the spot at which Ukku Menika stood. Ukku Menika herself is standing at " D " in this photo. Sudu Banda is standing at " E " and Ran Banda himself is standing at " F."

30 (To Court : On the 7th November at about 11 a.m. I took photographs 3 to 8 ; that was before the body had been removed.)

The other photographs were taken on the 9th.

(The sketch produced in this case is shown to this witness and he is questioned with regard to the red letters marked there.)

The red " A " is the place from where photograph 1 of the booklet P.47 was taken.

40 B is the place from where I took photograph 2.  
C is the place from where I took photograph 3.  
D is the place from where I took photograph 4.  
E is the place from where I took photograph 5.  
F is the place from where I took photograph 6.  
G is the place from where I took photograph 7.  
H is the place from where I took photograph 8.  
I is the place from where I took photograph 9.  
J is the place from where I took photograph 10.

*Cross-examined by Mr. Lekamage : Nil.*

*Cross-examined by Mr. Gunasekere : Nil.*

*To Jury : Nil.*

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*No. 40.  
V. S.  
Tham-  
biappa,  
17th  
January  
1949,  
Examina-  
tion,  
continued.*



## EVIDENCE of P. A. Simon.

In the  
Supreme  
Court.

Prosecu-  
tion's  
Evidence.

No. 41.  
P. A.  
Simon,  
17th and  
18th  
January  
1949.  
Examina-  
tion.

PASYALA ARATCHIGE SIMON—Affirmed.

30, Blacksmith, Nugegoda. I know Arnolis Dabare. He is a carpenter. He has a carpentry shed on High Level Road, Nugegoda. There is also a smithy in that carpentry shed. I work as a blacksmith in that shed. I know the first accused. I had known him by sight for about eight months before this incident. I know the first accused's medicinal shop. That is on the High Level Road, Nugegoda. The smithy where I work is about half a mile from the first accused's medicinal shop, in the direction of Avissawella, past the 7th mile post. (*To Court*: Past the turn-off to Jambugasmulla.). The smithy is by the road. Arnolis Dabare also works there. I also work there as a blacksmith. 10

I remember the 7th November 1947, the day of this incident. On that day I worked in the smithy. That was a Friday. On that day the first accused came to my smithy at about 3 or 3.30 p.m. Then Arnolis Dabare was also there. The first accused spoke to Arnolis Dabare in my presence. The first accused came there to get a certain article made. He brought the iron blade of a knife, a piece of wood and a piece of iron. (Shown P.16.) This is the blade the first accused brought. (Shown P9b.) This is the piece of iron the first accused brought. (P.16 and P9b are shown to the jury.) 20

That evening the first accused also brought with him P9e and P9g. P9e is a square washer and P9g is a large iron screw. He brought those two with P9b which is an iron bolt. (*To Court*: The first accused first spoke to Dabare in my presence. He said he wanted to get made the blade of a herb cutter. I cannot give his exact words, but he said "Make and give a herb cutter." Dabare told him to get it done by me because I am the blacksmith.) Then the first accused asked me to do it. I told him that as P.16 is a piece of iron blade it is not suitable to be made into a herb cutter. A herb cutter should be made of steel. Then he asked me to supply the steel and make one. The first accused brought a piece of wood also. That had to be used to make the herb cutter. I also told him that the wood he brought had some marks on it and that I would supply another one. The piece of wood the first accused brought appeared to me to be part of a herb cutter. On that piece of wood I found marks of the blade having come in contact with wood. I condemned that piece of wood also as unsuitable. Ultimately I threw it away. It was used as firewood at my smithy. There was a remnant of it left which I produce P.17. P.17 is part of the wood which first accused brought and which was taken from the fire. (P.17 shown to the jury.) *Q.* This is an ordinary piece of wood used as firewood in the smithy?—No. I condemned the blade P.17 and the piece of wood which the first accused gave me. The first accused asked me to supply the material and make a herb cutter. He told me he wanted the herb cutter made that day itself. I told him I would not be able to give him that day but I would give it the next day at about 8 or 9 a.m., that would be on the morning of 8th November, Saturday morning. Thereafter I constructed the herb cutter. I selected P9A as the block of wood and P9c as the blade. (P9A and P9C are shown to the jury.) I put in whatever else was wanted and made a herb cutter. (*To Court*: I finished 30 40 50

it the next morning at about 8 a.m.) (Witness is asked to build the herb cutter out of the different parts produced in court and he builds it up in the form of a herb cutter.) (*To Court*: The first accused had paid me an advance of Rs.5/-. He came to my place at about 3 or 3.30 p.m. and must have left in about five minutes. I cannot say how he came.) The following day, Saturday, the first accused did not come to remove the herb cutter. I learnt that he had been taken into custody the previous day.

(One of the screws of the herb cutter cannot be fixed properly now as witness says it is flattened.)

10 The police came to my smithy on the 11th November and I made a statement to the police and handed P9A to P9H to them. When I handed the pieces they were fitted together as it is now. I picked up the piece of wood P.17 from the fireplace and handed it to the police.

*Cross-examined by Mr. Lekamage :*

We kindle a fire in the evenings for mosquitoes and I picked up P.17 from that fireplace and handed it to the police. Dabare had put P.17 into the fireplace. One screw of the herb cutter cannot be fixed properly now because at the time it was removed it had been flattened. It was not like that when the police removed the herb cutter. It was properly  
20 fixed then. Of the herb cutter as it now stands, the first accused supplied the iron bolt P9b and the screw below P9e, and the two washers P9d and P9g ; the rest was supplied by me.

In relation to first accused's medicinal hall, my smithy is towards Colombo. (*To Court*: My smithy is about  $\frac{1}{4}$  mile from Nugegoda junction.) I know the High Level Road. I know the road that comes to Nugegoda Station and goes to Kohuwala Junction. I know the junction between that road and the High Level road near Mr. Jansz's shop. From that junction to get to my smithy I have to go along the Kohuwala road about 20 fathoms. The carpentry shed and smithy is a small place. At the time the first  
30 accused came into our shed Arnolis Dabare was nearer the entrance. He does his carpentry work in the part of the shed closer to the road. He and I both work almost at the same place. On the 7th November the first accused came and first spoke to Arnolis Dabare. He does not work as a blacksmith. He referred the first accused to me.

*Q.* After that did Dabare take any part in the conversation between you and the first accused ?

*A.* He was near by and he heard what he said.

(1.45 p.m. Adjourned for the day.)

Certified correct by me,

40

Sgd. M. ANTHONY,

Stenographer S.C.

18th January, 1949.

Accused present.

Same Counsel.

P. A. SIMON—Re-affirmed.

*Cross-examined by Mr. Lekamage (continued) :*

The block of wood first accused brought was a part of a herb cutter. I condemned that block of wood as being unsatisfactory for a new herb

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 41.

P. A.

Simon,  
17th and  
18th

January  
1949,

Examina-  
tion,

*continued.*

Cross-

examina-  
tion by Mr.  
Lekamage.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 41.  
P. A.  
Simon,  
17th and  
18th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

cutter. Arnolis Dabare put that block of wood into the fire. (*To Court* : When I asked him he said so.) That fire was lit to drive away mosquitoes from the shed. I cannot say when that piece of wood was put into the fire. When the police came it was I who picked up that piece of wood and gave it to them. The herb cutter as reconstructed by me is complete. It has to be fitted on to a table.

I have made herb cutters like this. All those herb cutters were not of the same pattern. I make a herb cutter according to the instructions of the man who wants it. In every herb cutter there is a blade and a handle. It will have a piece of iron to fix that blade to. It will have a block of wood underneath it. If you have those parts complete then a herb cutter is complete and no essential part is missing from it. (*To Court* : P.6 can be fitted on to a block of wood as a herb cutter.) 10

The block of wood first accused brought to me was also a plain block of wood similar to the block of wood P.9A. The block of wood first accused brought was about an inch shorter than the block of wood in court. It had cut marks in the middle like a drain. (*To Court* : I condemned it as the blade I was going to make would not touch that block of wood.) There were no nails or anything fixed on to that block of wood. That block of wood had no piece of metal embedded in it. Some herb cutters have a piece of metal beneath the blade to prevent the wood being cut. I have never made one with a piece of metal underneath. 20

This shed is an ordinary shed with a small room on one side. The place we work is open. The roof has kerosene oil tin sheets. The bellows and a box of tools are in that room. It is a very small room. The fire from which I picked up this piece of wood was lit at the edge of the shed outside. Every evening we light a fire to drive away mosquitoes. We do not work at night in the shed. We sleep there itself. We light the fire with a few blocks of wood. If I see the police officer I can say who it was who asked me about this herb cutter. 30

I have been working under Arnolis Dabare for about one year before this incident ; he had given this smithy over to me. I cannot remember how many times the police came to our place during that time. I saw them going along the road.

*Q.* I put it to you that it was on the instructions of the police that you made this herb cutter ?

*A.* No.

I condemned P.16 because it was made of iron. I tested it with the file.

*Q.* I will also put it to you that that part of the herb cutter and the parts which you say first accused brought were put in by you ? 40

*A.* Yes.

*Q.* They were not brought by the first accused ; they were pieces put in by you ?

*A.* Some parts I supplied and others were brought by the first accused.

*Q.* You were told by the police to make a herb cutter to fit into a hole in a table ?

*A.* No.

*Q.* This is the first herb cutter that you have ever made ?

*A.* I made this one. 50

*Cross-examined by Mr. Gunasekere* : Nil.

*Re-examined* : Nil.

## EVIDENCE of E. Arnolis Dabare.

In the  
Supreme  
Court.

E. ARNOLIS DABARE—Affirmed. 70, carpenter, Kalubowila.

Prosecu-  
tion's  
Evidence.*Examined :*

I have a carpentry shed at Nugegoda on the Kalubowila Road. It has both smithy and carpentry shed. I do the carpentry work and Simon the last witness is the blacksmith.

I know the first accused very well. He lives about  $\frac{1}{4}$  or  $\frac{1}{2}$  mile from my shed. He runs a medicine shop. I have been to that shop twice a week. I speak to him when I go there. I go there to get medicines. An Ayurvedic physician comes there. I have seen a herb cutter in first accused's shop. It was placed on a table on the front part, to the left as far as I remember. (P.10 shown.) I have seen a table like this in first accused's medicine shop. I remember seeing a table like this in the front part on the left. I have seen the herb cutter on a table like this in the front part on the left.

I have heard of Mr. Seneviratne. I heard of his death. I cannot say whether I heard of his death on the day of his death. In November, 1947, first accused came to my carpentry shed. At the time he came Simon was in the smithy. He came on a Friday about 3 or 3.30 p.m. (To Court : He came alone.) I had not then learnt of deceased's death. I learnt the next day that Mr. Seneviratne had been killed the previous day.

First accused brought with him a block of wood, piece of iron with a nut underneath, and a piece of iron which had been flattened for a knife. (P.16 shown.) He brought one like this. (P.9 shown.) He also brought P.9B with two washers and a nut, P.9D, P.9E and P.9F. He wanted a herb cutter made with these things. He said he wanted it the same day. I asked him to get it done by the blacksmith. First accused went up to Simon and I was nearby. Simon said he could have the herb cutter the next day. I did not see first accused pay Simon any money. After entrusting this piece of work to Simon first accused went away.

Simon completed the work by next day. (P.9 shown.) This is the herb cutter he made. Simon threw the piece of wood the first accused brought into the fire, and Simon must have taken another piece of wood from my carpentry shed to make the herb cutter.

That day I learnt what happened to first accused. I knew that he had been taken into custody.

I remember the police sergeant coming to see me on 11th November, 1947. I made a statement to him. Simon was also there. He also made a statement. Simon handed over to him the herb cutter P.9.

*Cross-examined by Mr. Lekamage :*

(P.17 shown.) The police picked up this block of wood in my presence from the fire. (To Court : Simon was present then.) I did not point it out. I did not see Simon pointing it out. When the police asked me where the piece of wood which the first accused brought was, I said : " It has been put into the fire and it must have been burnt."

(To Court : P.17 has smooth edges. This is a piece of wood which is part of something which has been used. It might be a part of block of wood like P9A.)

No. 42.  
E. Arnolis  
Dabare,  
18th  
January  
1949.  
Examina-  
tion.Cross-  
examina-  
tion by Mr.  
Lekamage.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 42.

E. Arnolis  
Dabare,  
18th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

*Q.* If a leg of a chair had been put into the fire and if a piece remained, it would look like P.17 ?

*A.* It is a piece of something which has been used.

I cannot say out of whose hands P.17 went into the fire. I did not put it into the fire. The fire from which this wood was found was by the side of the shed in front. This fire was lit to drive away mosquitoes and for protecting our property.

I knew first accused very well. I did not ask him : where is the old blade ? I did not notice if the piece of wood brought by the first accused had a piece of metal fixed on to it. I have seen herb cutters with a piece of metal on the wood. A piece of metal is fixed on to the wood to prevent the blade cutting into the wood. If there is no piece of metal the wood would be cut into two after some time. 10

I go to first accused's shop to meet an Ayurvedic physician who comes there, and I go there about twice a week. The day after this work was given I knew that the first accused had been arrested. By that time this herb cutter had been completed. I knew that the man would not be able to come even for a day or two or possibly more. I did not think that I should take this herb cutter and leave it at first accused's shop. I did not know that any money had been given to Simon although Simon was standing so close to me. I heard some part of the conversation. I would value a herb cutter like this at Rs.10/- or Rs.12/-. I cannot say how much I would deduct for the nail and the two washers ; it is for a blacksmith to answer. 20

I had given evidence on one occasion before in court. My evidence was believed. I gave evidence for and on behalf of an accused in a case. The accused was convicted. I have not given evidence in any other case.

*Q.* Have you given evidence in a case against a man called Edmund and two others ?

*A.* Yes in the Supreme Court. 30

*(To Court :* It is the same case I referred to.)

I gave evidence for the defence and not for the prosecution.

My shed was broken into before this incident and some of my things stolen. I did not go to court in connection with it because my children stole them.

About 11th November the police came to my carpentry shed. I deny the police asked me on the 11th November to have a herb cutter made and that they said they must have a herb cutter which could be fixed on to a table.

*Cross-examined by Mr. Gunasekere :* Nil. 40

*Re-examina-  
tion.*

*Re-examined :*

(P.17 shown.) This does not form part of any piece of wood that belonged to me before that day.

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## EVIDENCE of W. R. Chanmugam.

In the  
Supreme  
Court.

W. R. CHANMUGAM—Sworn. Government Analyst, Colombo.

Prosecu-  
tion's  
Evidence.*Examined :*

On 14th November, 1947, I received at the hands of Police Constable 1250 Gunasekere four parcels marked XB, XC, XD and XE. The parcels were sealed with the seals of the Magistrate's Court, Colombo. The seals were intact when I received them. The parcels contained :

No. 43.  
W. R.  
Chan-  
mugam,  
18th  
January  
1949.  
Examina-  
tion.

- 10 P.9, block of wood with knife attached by means of bolts and washers labelled P.9, one medicinal herb cutter with blade, block, connecting rod, washers and fixing nuts. (P.9 shown.) That is P.9 exactly as it stands now.
- P.10, a table labelled P.10 one small table.  
(P.10 shown.) This is the table.
- P.11, a hammer labelled P.11.
- P.12, two small flat pieces of iron.
- P.13, a screw driver.
- P.14, a wooden-handled chisel and the blade of a chisel.
- P.15, a metal washer.
- 20 P.16, the blade of a knife.  
(P.16 shown.) This is the blade.
- P.17, a piece of wood partly charred.  
(P.17 shown.) This one.
- P.18, a drawer.

P.9 consisted of a wooden block marked P9A by me 13 by 4 by 3 inches, with a hole bored at one end to which was fixed an iron bolt, marked P9B by me, with a screw at one end and a curved split head to which was attached a chopper marked P9C by me. The bolt was secured to the block of wood by two circular washers marked P9D, one square washer P9E and one split hexagonal nut P9F. The chopper was attached to the large iron bolt by a large screw P9G and the wingnut P9H. The curved split head of the bolt P9B leaves two roughly circular marks on either side of any piece of metal attached to it. The shapes are as follows: the dimensions on the right-hand side would be 1.25, 0.75, 1.05 and 0.9 cms. and on the left-hand side would be 1.1, 0.8, 0.9 and 1.05 cms.

P.6 was sent to me on 10th November. I got it with the seals intact. P.6 has two marks, X on one side and Y on the other side and both circular marks on P.6 correspond in shape and area to the two marks that would be produced by the inner side of this bolt. My conclusion is that P.6  
40 must have been attached to the bolt P.9B for some time. (Witness demonstrates to the jury.)

On 10th November, 1947, I received from Police Constable 1250 Gunasekere parcels marked X and XA. Both those parcels were sealed with the seals of the Magistrate's Court, Colombo, and the seals were intact. The parcels contained :

- P.1, a small blue orange and brown check sarong.  
(P.1 shown.) This is the sarong.
- P.5, a coloured mat bag stained with blood.  
(P.5 shown.) This is the one.
- 50 P.6, the blade and handle of a chopper.  
(P.6 shown.) This is the one.

*In the  
Supreme  
Court.*

P.7, a light blue and yellow check coat with stains of blood.  
(P.7 shown.) This is the one.

P.8, a torn green sarong with purple and green stripes.

*Prosecu-  
tion's  
Evidence.*

I examined those productions and submitted my report No. 3174 (C/1011) which I produce marked P.25. (Reads P.25 omitting the report on p. 8.) (Witness shows the stains he found on P.1, P.5, P.6 and P.7 to the jury.) P.5 was practically soaked in human blood. I also produce P.26, my report No. 3321 (C/1027). (Reads P.26.)

No. 43.  
W. R.  
Chan-  
mugam,  
18th  
January  
1949,  
Examina-  
tion,  
*continued.*

I also issued two receipts P.50 and P.51 in respect of these two sets of parcels. They were given to Police Constable Gunasekere. 10

11 a.m.—Interval taken.

Certified correct.

Sgd. H. E. GOMEZ.

Stenographer, S.C.

18.1.49 (11.15 a.m.) (After the interval).

(*Chanmugam*).

*Examination-in-chief (continued) :*

This iron nail P.9B can be fixed into the hole in the table P.10. This square washer P.9E makes a perfect fit into the square on the under side of the table P.10. (Witness demonstrates to the jury how it fits into the square on the under side of the table.) There is a rectangular mark corresponding to a block of wood that had been placed on the table. The mark left on the table does not tally with the size of this block of wood P.9A. It is longer than where the mark ends. 20

(The Analyst is requested to reconstruct on the table P.10, the herb cutter using the knife P.6 and other productions, such as P.9D, P.9E, P.9F, and P.9G. It is reconstructed by the Analyst. He is requested to procure by to-morrow a block of wood fitting the outline on P.10 so as to reconstruct the herb cutter as a whole.)

*Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Cross-examined by Mr. Lekamage :*

30

Q. When this table was sent to you, you were not requested to make any report about the mark that you find on table P.10 ?

A. The outline of the block of wood was there and I saw it on 14th November, 1947.

I was also sent this hammer P.11, but I have made no report on that. A screwdriver and a wooden handle chisel were also sent to me but I did not report on them. I was also sent a drawer but I did not report on it. Various things were sent to me but I did not get an umbrella. Some articles were sent to me to find out whether there was blood. A pair of sandals was not sent to me to find out whether there was blood on them. No purse was sent to me. I have marked in red wherever I found blood. I have placed a red pencil mark on the handle of P.6. That mark would indicate the presence of blood on that handle. 40

When I was reconstructing the herb cutter I found it difficult to fit P.6, the cutter, into the nail P.9B.

(*To Court :* P.6 did not fit in too easily to the nail P.9B. This may be due to rust due to lapse of time. However the blade P.6 do fit into the nail P.9B. I have demonstrated that one fit into the other.)

Q. It has to be hammered in ?

A. Yes.

(To Court : I have no doubt that one fits into the other.)

When using the herb cutter the motion of the handle of the knife is up and down.

Q. There is a certain amount of friction on either side of the blade where it is fixed on to the nail ?

A. Yes.

10 Q. At the split end of the nail P.9B and that end of the knife P.6 where it is fixed into the nail P.9B there would be circular marks ?

A. Up and down motion would be indicated by an arc of a circle, and these marks would be formed at the angle of contact. That is on either side of the blade and on the inside of the split end of the nail P.9B.

*Cross-examined by Mr. Gunasekere* : Nil.

*Re-examined with permission of Court* :

These X1 and X2 are two specimen knives known as manna knives.

*Re-examined* :

P.6 is a sharp weapon. It has got a sharp cutting edge and it is still in good condition. The blade of P.6 is steel.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 43.

W. R.

Chan-  
mugam,  
18th

January  
1949,

Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

Re-examin-  
ation.

20

No. 44.

**EVIDENCE of B. M. Gunasekere.**

B. M. GUNASEKERE—Affirmed.

30 Police Constable, No. 1250, Kotahena. On 10th November, 1947, I took P.1, P.5, P.6, P.7 and P.8 to the Government Analyst from the Magistrate's Court. They were packed in my presence by the Production Clerk and sealed with the seal of that court. The parcel was handed to me and I brought back the receipt from the Analyst. On 14th November, 1947, productions P.9 to P.18 were packed and sealed in my presence by the Production Clerk and handed to me and I handed over the parcel to the Analyst and brought back the receipt which I handed over to the clerk.

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Mr. Gunasekere* : Nil.

*To Jury* : Nil.

No. 44.

B. M.

Gunasekere,  
18th

January  
1949.

Examina-  
tion.

Crown Counsel moves to read in evidence the following :—

Deposition of G. V. de Silva.

Analyst's Receipt P.50.

Analyst's Receipt P.51.

They are read in evidence by the Clerk of Assize.



*In the  
Supreme  
Court.*

No. 45.

**EVIDENCE of K. G. D. Martin.**

*Prosecu-  
tion's  
Evidence.*

No. 45.  
K. G. D.  
Martin,  
18th  
January  
1949.  
Examina-  
tion.

K. G. D. MARTIN—Affirmed.

Police Sergeant, No. 336. On 7th November, 1947, I was attached to the Kotahena Police Station. That morning the second accused came to the Station and made a complaint which I recorded in the information book. She came there at 10 a.m. That was the first information.

*(Crown Counsel :* Please read the first information.

*Court :* Mr. Nihal Gunasekere, have you any objection ?

*Mr. Gunasekere :* No.)

10

*(Witness reads out the first information.)*

I produce a true copy of the first information marked P.54. Whilst she was making the statement Alice Nona came to the Station. Even before I started recording her statement Sub-Inspector Lawrence, P.C. 286 Rajapakse and some other constables had gone to No. 107 College Street. The A.S.P., Mr. Perera, came to the Police Station after the second accused's statement was recorded. He too went to the scene. I have noted down the officers who went to the scene. The officers who went there were : "Sub-Inspector Thambiah and Sub-Inspector Lawrence left to the spot immediately on receipt of the information. Assistant Superintendent of Police, North, who was at the station also left to the spot. The Assistant Superintendent of Police (North), Criminal Investigation Department is informed through phone. Message given to D.S.I. who is in Court to turn up and immediately to take up the inquiry. Police Constables No. 286, No. 4074 and No. 3393 also sent to the spot."

*(To Court :* A large Police Force went to the spot at the earliest possible opportunity.)

I am a Sinhalese. I was on duty at the time. The table of the officer on duty is arranged in the same position now. The person who makes a statement sits on a bench on the other side of the table. The Information Book is kept on the table whilst the statement is being recorded. The person making the statement faces the officer who records the statement. It is an open station. You can see into the station from the road. Station is by the road. I am still at Kotahena. The person who makes the statement does not face the road.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-  
examina-  
tion by Mr.  
Gunasekere.*

*Cross-examined by Mr. Gunasekere :*

The road is on my left as I sit on the table. The distance from the station to the road is about the distance from here, this witness box, to the dock. (About 34 feet.) The position of the table and the bench are now in the same position as they were on the 7th November, 1947. People passing on the road could look into the charge room and see the table, and a person seated in front of me on the bench could see the road if he or she turns the head slightly, or if he or she is seated on the bench slightly inclined to the road. After recording Mrs. Seneviratne's statement I have recorded the actions taken. As I was about to record the second accused's statement Sub-Inspectors Thambiah and Lawrence went to the scene immediately.

Q. I take it the procedure in a Police Station is, when a person comes to the station, to ask him what the trouble is ?

A. Yes.

Q. And then you start recording his statement ?

A. Yes.

Q. Before starting to record the statement you look at the clock ?

A. Yes.

The clock is kept in front of me. I started recording her statement at 10 o'clock. Mr. J. H. A. Fernando is the Assistant Superintendent of Police (North), Mr. V. W. Fernando is the Assistant Superintendent of Police (North) Criminal Investigation Department. D.S.I. is Mr. Gordon. Several constables were also sent. That day I came on Reserve Duty at 7 a.m. and I went off duty at about 12 noon for lunch and I came back at 2 p.m. on Reserve Duty as well as to attend to office work.

(*To Court* : The second accused came to the Police Station somewhere between 9.30 and 9.45. He came nearer 9.45 a.m.)

My duty is over at 6 or 7 p.m. I live at the Police Station premises. There are married quarters on the premises. I know the witness Alice Nona. I do not know whether she was sent to the Maradana Police Station for the inquest. I am not attached to any crime work. My duties are office work and reserve duty. Police Sergeant Manamperuma kept the production register. If Alice Nona had been sent for an inquest that would have been entered by the Crime Branch in the Crime Information Book and if she was brought back to the Station that fact would be noted either in the Notebook kept by the Crime Branch or in their Information Book. The Crime Notebook is kept in foil and counterfoil, that is, in duplicate. After making an entry in the Crime Notebook one sheet is pasted on to the Crime Information Book and the other is made into a file. If a person is detained at the Police Station an entry has to be made somewhere or other. If it is a person in connection with a crime it would be entered in the Crime Information Book and later in the lock-up book and in the routine Information Book when the man is handed over for detention. The lock-up book is kept by the Reserve Officer. The reason for detention would be entered in the Crime Information Book.

Q. And later I take it it is entered in the routine Information Book ?

A. The reason for detention is not given in the routine Information Book.

I am always available in office except when a sergeant is short and when I have to go out.

Q. A person who is detained in connection with a crime has to be produced before a Magistrate within 24 hours ?

A. Yes.

(*Court* : Whom have you to produce before a Magistrate within 24 hours ?

A. An accused or a suspect.)

Q. Do you put into the lock up who are not accused or suspected ?

A. We always kept them out.

(*To Court* : Q. Where are they kept, those who are not suspected or accused ?

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 45.  
K. G. D.  
Martin,  
18th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 45.  
K. G. D.  
Martin,  
18th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

No. 46.  
M. K. John,  
18th  
January  
1949.  
Examina-  
tion.

A. Either in the verandah or in the room.)

The Sergeant on Reserve Duty is in charge of those persons who are not suspected or accused, and they are kept either in the verandah or room for Police purposes. On some occasions such persons are detained. It depends on the orders of my superior officers. Alice Nona was kept at the Police Station for several days. I know that personally.

*Re-examined* : Nil.

*To Jury* : Nil.

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No. 46.

**EVIDENCE of M. K. John.**

10

M. K. JOHN—Affirmed.

42 years, trader, Nugegoda. I know the first accused. He is not a friend of mine. I know him very well. He lived next door to my boutique. His herb shop is next door to my boutique on the Nugegoda road. I go to his herb shop if any necessity arises. (Shown P.10)—This was in his herb shop. There was a herb cutter on P.10 and it was fixed on to the table. The blade of the herb cutter was one like P.6. One day I myself used P.6 and cut some herbs. The accused has brothers. He has two younger brothers and they lived in the herb shop. One is Bodhidasa aged 32 years and the other is Wilbert aged 20. I do not know whether Bodhidasa had anything to do with the Military. He had a revolver, when he lived with the first accused in that shop. I have not seen him with cartridges. I remember the 7th November, 1947. That day I met the first accused at about 7.30 or 8 a.m. I met him when he came to my boutique and spoke to me and asked me for an umbrella. I gave him my umbrella. (Shown P.4)—This is my umbrella, and this is the umbrella which I gave the first accused on the morning of the 7th. Having taken the umbrella I saw him leave my boutique with the umbrella.

(*To Court* : At that time he was wearing only a shirt and a sarong.) 30

He was not wearing a pair of slippers at the time. I have seen him wearing a pair of slippers and going about. (Shown P.28)—They were slippers like these, with straps. I met him that day on the 7th November 1947 in the evening between 4.30 and 5. He came in front of my boutique. He did not return the umbrella. On that occasion he asked me for my bicycle. I then asked him to take the bicycle from the boutique. He took the bicycle and left the place. He returned the bicycle within fifteen minutes. Then he left my house again. That day, 7th November, 1947, he did not return my umbrella at all. On 12th November, 1947, I was called upon to go to the Kotahena Police Station and there before the Assistant Superintendent of Police, Mr. Jebanasam, I was shown a number of umbrellas placed in a row on a table and I was asked to pick out the umbrella which I had given to the first accused and I picked out P.4. 40

*Cross-examined by Mr. Lekamage :*

My house is in the row of boutiques where the first accused's boutique is. Standing on the main road looking at the row of boutiques my boutique is on the Colombo side. On the right adjoining the first accused's shop is a meat-stall.

*(To Court : I sell vegetables and sundries in my boutique.)*

Meat stall is the last boutique in that row on that side. That meat stall was functioning on the 7th November, 1947. It is open from 6.30 a.m. to 8.30 p.m. I have been living there at Nugegoda since 1937, ten years  
10 before this incident.

*(To Court : When I came to do business there the first accused's shop was not there. His father also did the same business at a different place, a short distance away from my boutique. That was on the other road. That was on the road to Nugegoda Railway Station. They moved into the boutique adjoining mine two years after I came.)*

The first accused got married sometime prior to this incident, about six months before this incident. It would be incorrect to say that it was one year prior to this incident. It was at the beginning of 1947 that he got married. I know his wife. (Shown Premawathie Perera)—This is  
20 first accused's wife. I conducted my business in my shop from morning till evening. I open it at 7 a.m. and close it at 8.30 p.m. I am there the whole day. At times I go to Colombo to bring vegetables. Except when I go out on a special business I would be in my boutique. I know the time when the second accused's husband lived at Nugegoda. I knew that after they left Nugegoda they came and settled down in Colombo.

*Q.* During the time Mr. and Mrs. Seneviratne were living in Nugegoda and up to the time of this incident had you seen Mr. Seneviratne talking to the first accused ?

*A.* During the time they were at Nugegoda Mr. Seneviratne used to  
30 come to my boutique to buy cigars and on those occasions if the first accused happened to be outside his boutique Mr. Seneviratne used to offer the first accused a cigar and go to his shop and talk with him.

I had known Mrs. Seneviratne from the time I came to my boutique at Nugegoda.

*(To Court : I am from Ratmalana. I began business at Nugegoda in 1937. Since then I know the second accused.)*

If I see her I always recognize her. I know her very well.

*Q.* Have you at any time seen the second accused come to Dharmasena's herb shop ?

*A.* I have not seen.

*Q.* Have you at any time seen the first accused and second accused speaking to each other near the first accused's herb shop ?

*A.* No.

Being neighbours I drop into Dharmasena's boutique whenever I want to buy any medicine.

*(At Mr. Lekamage's request the witness is asked to be outside Court. Witness is taken out.)*

Mr. Lekamage moves that the cutter P.6 may be removed from the table P.10.

50 P.6 is taken out of P.10.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 46.  
M. K. John,  
18th  
January  
1949,  
*continued.*  
Cross-  
examina-  
tion by Mr.  
Lekamage.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 46.  
M. K. John,  
18th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

Then the witness returns.)

I have seen various cupboards and tables in the herb shop. I have also seen this table P.10 in that shop kept on the right-hand side of the verandah—on the meat stall side. The table is not fixed to the ground or something else. The table is always kept outside in the verandah, even at night. When I went to that herb shop I saw a herb cutter on that table. The cutter is kept on a block of wood.

(*To Court* : I cannot say whether that block of wood is fixed on to the table. There was no bench or some sort of seat kept in the verandah of the boutique. Now there is a bench kept on the meat stall side of the verandah. There are no iron bars above the verandah.) 10

(Shown *herb cutter* 1D9.) I have not seen a herb cutter like this on this table P.10 when the table was in the accused's shop. I cannot remember whether the herb cutter that I saw in his boutique was fixed on to the table. On this table P.10 besides the herb cutter I did not see anything else. I cannot remember to have seen a stand fixed on to the table P.10 on which a balance was hung.

*Q.* Is it that you don't remember or that you don't want to remember ?

*A.* I cannot remember.

20

When the first accused usually goes on the bicycle he wears a sarong and a coat.

(*To Court* : He borrows my bicycle frequently.)

In the morning when he borrowed my umbrella I did ask him where he was going with the umbrella. He gave me a reply. He said that he was going to Malabe, which is on Cotta road. I did not ask him why he was going to Malabe. Although he borrowed the umbrella there was no rain. He just asked the umbrella and I gave it to him. I cannot remember him wearing a cap like 1D5 when he goes on the bicycle. If anybody wants to go to Colombo and if he boards the bus near my boutique he has to be on the other edge of the road opposite to my boutique, not the edge of the road where my boutique is. The whole frontage of my boutique is kept open, similarly the meat stall is also kept open in front. People in the meat stall or in my boutique can easily see the road in front. I did not see the first accused getting into a bus on the 7th November, 1947. 30

*Q.* There are times when the first accused used to borrow your bicycle to come to Colombo ?

*A.* He used to borrow the bicycle but he does not say where he goes.

(*To Court* : He borrowed the bicycle quite freely.)

If I can spare the bicycle for half a day I used to give him.

40

(*To Court* : I have not given him my bicycle for half a day. He had not kept the bicycle away for more than two hours.)

The first accused and I had not gone on two bicycles together in any trip. (Shown P.6.) A herb cutter like this was on the table P.10 in Dharmasena's boutique. It was on the middle of the table. While I was giving evidence in the Magistrate's Court I was shown some cartridges. I had seen those cartridges before that at the Kotahena Police Station.

I had not seen those cartridges before that. I had not seen any cartridges like that before I saw them at the Police Station.

*Cross-examined by Mr. Gunasekera :* Nil.

*Re-examined :*

Generally I am busy by day in my shop.

*To jury :* Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 46.  
M. K. John,  
18th  
January  
1949,  
*continued.*  
Re-exam-  
ination.

**No. 47.**

**EVIDENCE of W. E. C. Jabanasam.**

W. E. C. JABANASAM—Sworn.

10 Assistant Superintendent of Police, Tangalle. In November 1947 I was Assistant Superintendent of Police, Nugegoda. On 10th November, 1947, at the request of the Kotahena Police I went there for the purpose of finding out whether the last witness, John, could identify the umbrella P.4. Before he came to the Station I kept nine umbrellas similar in kind and colour on a bench. Mr. Gordon took out an umbrella from the safe and I kept it among the others. Then the last witness was brought from the Grandpass Police Station where he had been kept. He was brought there by Constable Gunasekera and he was asked to pick out his umbrella. The witness picked out the umbrella given to me by Mr. Gordon.

20 (Shown P.4.) That is the umbrella which was given to me by Mr. Gordon and after the witness identified the umbrella it was handed over to Mr. Gordon. I was in charge of the parade and I took all necessary precautions to carry out a genuine parade.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :* Nil.

*To Jury :* Nil.

(Adjourned for the day.) 1.25 p.m.

Certified correct.

Sgd. D. V. JAYAMAHA,

Stenographer S.C.

No. 47.  
W. E. C.  
Jabanasam,  
18th  
January  
1949.  
Examina-  
tion.

## EVIDENCE of M. D. M. Wijesekera.

Prosecu-  
tion's  
Evidence.

19th January, 1949.

Accused present.

Same Counsel.

No. 48.  
M. D. M.  
Wijesekera,  
19th  
January  
1949.  
Examina-  
tion.M. D. M. WIJESEKERA—Affirmed, 40, wife of P. G. P. Wijesekera,  
Udahamulla.*Examined :*

In November, 1947, I was a teacher at Prince College, Kotahena. Prince College is a Buddhist school. In the college premises there is a Buddhist temple. The College is along College Street. It is a mixed school I taught there from 1943. In November, 1947, I was teaching several classes. Standard 3 was my particular class. Standards 3 and 4 were in the same hall. (Shown No. 6 on the sketch.) This is the class room. That class room faces College Street. 10

I know the second accused. I do not know the number of her house but I know the house in which she lived in College Street. Her house is right opposite Prince College. Second accused took up a teaching job at Prince College as a temporary teacher. She took up this job about 10 days before this incident. If her husband died on 7th November, 1947, she joined the college towards the end of October. Before she joined the college as a teacher her children studied in the school. They had been attending the school from about 1945. When the second accused came to teach she was assigned the Kindergarten class. Her two children studied in the 5th standard. Both of them were in the same class. (Shown No. 4 on the sketch.) This is the class room in which the two children studied. Miss Willegoda was the teacher of standard five. She has given her name to court as Leelawathie. The Kindergarten class has two sections. (Shown No. 2 on the sketch.) This is the Kindergarten class. Both the sections are in the same hall. Those sections are not separated but benches are kept separately. One section was taught by the second accused, and Miss Wimalawathie taught the other section. 20 30

I remember 7th November, 1947. That day Miss Wimalawathie did not turn up to teach as she had to take up an examination. She had absented herself on the 6th and 7th November. I attended school on the 6th and 7th. The Kindergarten class faces the road.

The first bell is rung at 8.20 a.m. When the bell is rung the assembly is held. There are two assemblies: one for the Kindergarten children and the other for bigger children. (*To Court:* The assembly for the bigger children is in the hall of standards 3 and 4 and the smaller assembly is in the Kindergarten hall.) Pansil is administered at these two assemblies by a priest. 40

On 7th November the bell went at 8.20 as usual. I was present at the assembly. (*To Court:* I went to the Kindergarten assembly as Miss Wimalawathie was absent.) If a teacher is absent I have to go and see and take that class. That day I went to the Kindergarten class when the first bell rang. I did not find the second accused there. At the time I went there was no teacher in any of the Kindergarten classes. The

- children were there. They were doing nothing. They were seated and talking to each other. I asked the children to keep quiet and made them to sit. When I went to the class the priest had not come and there was no assembly in the Kindergarten. I did not take the assembly either. After the assembly is over there is the second bell. It went about 8.30. Till then I was in the class keeping order. I was in the class room when the second bell rang. Second accused came about two minutes after the second bell. I was in the same class. I was in the section taught by the second accused. As the second accused came in I went to Miss
- 10 Wimalawathie's section. When I went there I could see what was happening in second accused's section. There was an almirah between the two sections but I could see from my table what the second accused was doing. When the second accused came into the class she brought a thermos flask. She placed it on her table. She was standing near her table and looking on towards the Kotahena Street, that is, towards the main entrance. She was looking on towards the main entrance for about one minute. I did not see her speaking to the children at this time. The children were in the same way they were at first, that is they were speaking to each other. As soon as she came she did not start to teach. When
- 20 I saw her standing and looking on I went up to her. I went somewhat close to her. She could see me. She did not speak to me. She was doing nothing. She was still in the same position.

- (At the request of the Court witness demonstrates how second accused was standing and looking at the road.) (*To Court*: She was looking rather intently.) I wanted to ask her why she had not started to teach. When I went up to her and stood near her she did not take any notice of me. (*To Court*: I went into her class up to about a fathom of her table.) I was on a side of her towards the front. (*To Court*: She could see me.) She took no notice of me. Then I asked the children to be
- 30 quiet. (*To Court*: I thought of speaking to her but I did not.) As she did not delay for more than a minute and the children were close by I did not want to ask her what she was doing. I asked the children: "Lamai nissansila wenda" ("Children keep quiet"). I said that in a loud voice to be heard by the children, and they sat down. At the time I went there one or two children were standing and others were seated. There was generally some talking. As the children were standing I wanted to make them quiet. Even when I spoke to the children second accused did not take any notice. I went away. When the children sat down
- 40 I left that class room and went to my class room in another building where 3rd and 4th standards are. Having gone to my class room I set some sums to the children. From my class room I could not see the second accused unless I got out. Thereafter I did not see what was happening in second accused's class.

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At this stage Crown Counsel states that the Government Analyst is required to be at the Galle Assizes at 2 p.m. to-day. A telegram had been received from that court. The witness is requested to stand down.

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*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

—  
No. 48.  
M. D. M.  
Wijesekera,  
19th  
January  
1949,  
Examina-  
tion,  
*continued.*



*In the  
Supreme  
Court.*

No. 49.

**EVIDENCE of W. R. Chanmugam (recalled).**

*Prosecu-  
tion's  
Evidence.*

W. R. CHANMUGAM—Sworn.

*To Court:* I have prepared a block of wood which fits the outlines left on the table P.10 and I have reconstructed the herb cutter using P.6 and the P.9D series. (Witness demonstrates.) I have since yesterday put in oil into the wing nut and the bolt to remove rust. The herb cutter now works smoothly at all angles. (1.D9 shown.) This block of wood is too long.

No. 49.  
W. R.  
Chan-  
mugam  
(recalled),  
19th

January  
1949.

Examina-  
tion.

Cross-  
examina-  
tion by Mr.  
Lekamage.

*Cross-examined by Mr. Lekamage:*

In this herb cutter the block has a rectangular block of wood. I had a block made to fit the marks of the previous block left on the table. As fixed at present only one end of the cutter comes in contact with the block. As fixed at present only the point of the blade near the handle touches the wood in whatever way the blade is turned. On a rectangular piece of wood the whole of the edge of P.6 will not lie along the surface of the block. If the shape of the block is a little higher where the pivot is then the cutter would lie along the surface. If the block of wood slanted upwards the washer would also rise up. At the end where the bolt is the space between the edge of the blade and the block is about  $\frac{3}{4}$ ". The block of wood must be parallel to the cutting surface of the blade at a level  $\frac{3}{4}$  inch higher. At this stage the Court states that it would be more satisfactory if a block of wood fitting the outlines of the marks on the table, the surface of which would lie parallel to the cutting edge of the blade, is constructed.

Further cross-examination reserved.

(The block of wood produced by the Analyst is marked X.3.)

No. 50.  
M. D. M.  
Wijesekera  
(recalled),  
19th and  
20th  
January  
1949.  
Examina-  
tion.

No. 50.

**EVIDENCE of M. D. M. Wijesekera (recalled).**

M. D. M. WIJESEKERA—Re-affirmed.

*Examined (continued):*

I left the Kindergarten class as the priest came. The priest is Rev. Seelaratne. The arithmetic period is 35 minutes. That was the first period that day for the third class. Then I went on to the fourth standard in the same hall. While teaching the fourth standard I saw Mrs. Christie going towards the Kindergarten class. She had to go across the compound passing my class room. I knew her for about 20 years. It was then about 9.10 a.m. After she went in the direction of the Kindergarten class I saw her returning.

It was then about 9.20. I did not see her talking to anybody in the Kindergarten class. About ten minutes later I saw her coming back with the second accused. They were together near a palm bush which is near

the 5th standard class. I saw them going away with the two children. I saw the two children coming out of the 5th standard and joining the mother. I saw Miss Willegoda standing near the two children at the exit to the class but I did not notice her talking. I saw the two children joining the mother and going out of the gate. When they left I instructed a boy named Suganadasa in the 4th standard to find out from the teacher of the 5th standard why the children were taken away. I did this because the children were taken away suddenly. Suganadasa told me that she did not know the reason why the children were taken away suddenly. I continued to teach in the class. Then I realised that a crowd had collected near the road.

I heard the noise. I looked out but could not see. (*To Court* : It was now about 9.27. I could be precise according to the amount of work I had done.) I wrote two other sums on the board for the children to work and I went up to the small gate by the road side and looked. That is a small gate which is permanently locked. I could see the front portion of the second accused's house. I saw the second accused. She was in the front verandah of her house. She also saw me. She called out to me and beckoned me : "Mrs. Wijesekera, wegahatta enda." (Mrs. Wijesekera, come up soon.) I handed the book and pencil in my hand to a child there and hurried up the main gate and went round to the house of the second accused. I asked the second accused what the matter was and she said, "Iyo balanda mahataya kapala dhala." (Alas look, my husband has been cut.) At the time I went up there were some people by the side of the road. Second accused was standing on the verandah when she said this. The two children were also standing in the verandah. (*To Court* : I did not see Alice. At that time I had seen Alice.) I had known that there was a cook woman in the house. I did not notice where she was. When second accused said this I looked at the two children and asked them what the matter was. Both of them were weeping and they said : "Aiyo teacher, father has been killed." I asked them, Where ? They said, Inside. I asked the second accused then : Where ? She also said : Inside. I thought of going inside and seeing. I saw a track of blood and I walked along that track. The police had not come. When I went in I saw Mr. Seneviratne lying fallen under the dining table in a pool of blood in the room adjoining the kitchen. Having seen that I cried out spontaneously : "Apo aparathe." (What a tragedy.) I came back to the verandah. Second accused was there. I asked the second accused where the cook woman was and she said she did not know. Then I asked the children where the cook woman was. They said : "We do not know : she may be there." I asked the second accused where the two dogs in the house were. She said she did not know. I knew before that there were dogs in the house. At the time I went in I did not see any dog. There was a crowd on the road opposite this house. I said : "It looks as if the cook woman and the dogs have also been killed. Hurry up and inform the police." Second accused did not go into the house. (*To Court* : She remained in the verandah all the time I was in the house. Whether she went in earlier I cannot say.) When I asked the second accused that she should hurry up and inform the police she asked me to inform the police. I told her, "It is not for anybody else to go ; you should go." She said she could not go leaving the children. I then told her "I would look after the children : you better go." Then she went. I was standing on the

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 50.  
M. D. M.  
Wijesekera  
(recalled),  
19th and  
20th  
January  
1949,  
Examina-  
tion,  
*continued.*

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 50.  
M. D. M.  
Wijesekera  
(recalled),  
19th and  
20th  
January  
1949,  
Examina-  
tion,  
*continued.*

verandah with the two children. Second accused went to the police about 9.40. The police came immediately afterwards. The police dispersed the crowd. I was allowed to remain on the verandah with the two children for some time. Thereafter I went back to the school with the children.

(*To Court* : That was about 9.45.)

*Court* : The Jury will to-day view the Kotahena market ; the tree near it, the Kotahena police station ; Prince College, Kotahena, 107 College Street, Kotahena ; 9 Alwis Place, Kotahena ; and 77 Alwis Place, Kotahena. The Clerk of the Assize will be the officer in charge of the jury. Exactly the same procedure as on the previous view will be followed. Trial 10 adjourned till 9.30 a.m. tomorrow.

Court adjourned for the day.

Certified correct.

Sgd. H. E. GOMEZ,

Stenographer, S.C.

20th January, 1949.

Accused present.

Same counsel.

Mrs. M. D. M. WIJESEKERA—Re-affirmed.

*Cross-examined by Mr. Lekamage* : Nil.

20

*Cross-examined by Mr. Gunasekera* :

*Cross-  
examina-  
tion by Mr.  
Gunasekera.*

Prince College is in the premises of the Kotahena temple. The Rev. M. Jinananda is the high priest. The principal of the school at the time of this incident was Mr. Dahanayake. He is not the principal now. The present principal is Mr. Iyer. The gate leading to the school from College Street is kept locked. For about three or four years now it has never been opened. The entrance now is from Kotahena Street. In 1946 second accused was teaching music in our school. (*To Court* : In October, November and December, 1946, she was teaching music.) She stopped from January, 1947, and re-joined in October, 1947. In November, 1947, 30 she was in charge of upper and lower Kindergarten numbering about 80 children. The youngest boy would be about 5 years old and the eldest about 6 years old. In part of the same class room in which the second accused taught there was another class. That class was 2nd standard. (*To Court* : 2A is building 2 in the sketch is upper and lower Kindergarten. 2B is standard 2. Between the two is an almirah.) Standard one is upper Kindergarten. The upper Kindergarten children would be between ages six and seven. I cannot say how many children there were in the upper Kindergarten. The ages in standard two would be between 7 and 8. About 30 children were in standard two. Altogether in room two on the 40 sketch there were about 110 children on the morning of the 7th November. They do not make any noise. Before assembly the children will be in their classes. At times they are noisy. It is more difficult to control younger children. On 7th morning I told the children of standard one and the lower Kindergarten to be quiet. I did not ask the children of standard two to be quiet. (*To Court* : Second accused taught standard one

and lower Kindergarten. Miss Wimalawathie taught standard two. When I went in there was no teacher in any of the classes. I asked only the children of the upper and lower Kindergarten to be quiet. The children of standard two were quiet.) Having seen Rev. Seelaratne, teacher of standard two for that day, coming I turned back and went away. The usual teacher was staying away for an examination.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

10 I knew the second accused was a Roman Catholic before this incident. The small assembly is in standard two. Rev. Nanthar generally administers pansil to the smaller assembly. Rev. Ariyargnam administers pansil to the bigger assembly, in the hall where standard three and four are. On the morning of the 7th pansil was administered to the bigger assembly. I did not see the priest who actually came. I did not hear pansil being administered. I saw the children going to that assembly hall. Before I went to room 2 in the sketch pansil had not been administered to the smaller assembly. I think no pansil was administered that day to the smaller assembly.

No. 50.  
M. D. M.  
Wijesekera  
(recalled),  
19th and  
20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekera,  
*continued.*

20 In fact that day I did not see the priest who usually administers pansil to the smaller children. (*To Court*: A priest learning in the school himself administers pansil. Rev. Nanthar lives in another temple. He comes every morning through the main entrance to administer pansil. Rev. Ariyargnam lives in the Kotahena temple premises.) If the priest who administers pansil were to be a few minutes late a teacher used to administer pansil. That would be a teacher who is a Buddhist. A Christian teacher cannot administer pansil.

Q. It would not be improper for a Christian teacher to wait for a few minutes if the priest were to be late?

A. I cannot say that.

30 (*To Court*: On previous occasions Rev. Nanthar had not been late to my knowledge. After the second bell is rung classes begin whether pansil is administered or not. That is the order.) I have been teaching four years. I am not a trained teacher. I passed the Teachers' Preliminary twenty years ago. I am still teaching in the same school. In November, 1947, there were about ten teachers—three ladies and others male. Miss Wimalawathie had taught for two years and the other teachers were experienced teachers. Those experienced teachers should have known the procedure in school—all the teachers except the second accused.

40 On the morning of the 7th I did not see the deceased coming to school or leaving the school. I made a statement to the police but I cannot remember the date. It may be four days after the incident. It was on 11th November. Between 7th and 11th there may have been a lot of talk in this area about the death of Mr. Seneviratne. There must have been. I did not speak to anybody about it—not even to fellow teachers. In the school premises we have a teacher's common room. The teachers did not like to discuss about the death of Mr. Seneviratne. (*To Court*: This was not discussed in my presence there.) I did not like to discuss about it.

50 At this time I was living at Udahamulle. I came to school by train. I heard people in the train discussing the circumstances about his death. I heard a discussion in the train on the Sunday after the death. That

*In the  
Supreme  
Court.  
Prosecu-  
tion's  
Evidence.*

No. 50.  
M. D. M.  
Wijesekera  
(recalled),  
19th and  
20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

was the third day after the death. I mentioned this to my husband. He was the only person with whom I spoke about this. I have friends at Udahamulle. There are several houses close to mine. I am friendly with the womenfolk of those houses. None of them asked me about this matter. Except when I mentioned this death to my husband I did not think about it till I mentioned the matter to the police.

On the morning of the 7th I had absolutely no reason to think that Mr. Seneviratne was going to be killed. On the 11th when I made my statement to the police I gave them a general impression of what happened on the 7th morning. 10

Standard three and four are in the preaching hall (dharma-salawa). The Kotahena Street gate is not 100 yards away from second accused's class. It is about 25 fathoms away. Between room 2 and the Kotahena Street gate I think there are only one palm bush and six or seven coconut trees.

(*To Court:* Can you get much of a view of the road from the Kindergarten class ?

A. Some parts of the road are visible.)

I saw Miss Willegoda and second accused standing close to each other, but not talking. I saw Mrs. Christie in that group. I saw her saying 20 something, and moving her hands. (Witness demonstrates.) When I went later to second accused's house and saw the body I did not touch the body. When I went second accused was on the verandah.

Q. She was looking shocked and dazed ?

A. She appeared to be excited.

Q. You were shocked and excited ?

A. I was very much shocked and excited.

Q. And the second accused herself looked shocked and excited ?

A. Yes.

Re-examin-  
ation.

*Re-examined :*

30

I was on good terms with the second accused. I have no grievance of any kind against the second accused. When the police arrived at 107 College Street that morning I was in the verandah. I took the children away after the police asked me to go away. The police came and cleared the crowd. The two children and I were allowed to remain. Later I was asked to stand in the compound. After some time I went to school. Thereafter the police came to my school on the 11th. That day the police spoke to me and they may have spoken to other teachers too. I was sent for to the library. There was nobody else there then. Then I made my statement. It was taken down in writing. I know the second accused 40 was arrested long after I made my statement to the police.

If the priest is absent a Buddhist teacher would administer pansil.

Q. If there was no Buddhist teacher in that class then what happens ?

A. There was no such occasion before. On this occasion the smaller assembly had no pansil, because Rev. Nanthar did not turn up. I did not commence teaching soon after I went to that class. I made the children to sit down. I was keeping the class fairly quiet till the permanent teacher came. After I went, as there was not sufficient time to administer pansil, I did not administer pansil. The second accused did not turn up

before the second bell went ; she came after. There was no question of pansil after the second bell. As soon as a teacher arrives after the second bell that teacher would start teaching. That morning the attitude of the second accused appeared to be unusual in class.

(*To Court* : When I told the children, "Children be quiet," I said it loud enough for the children to hear. Second accused could have heard me say that. She did not then say : I am awaiting for the priest to administer pansil. She did not speak to me.)

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 50.  
M. D. M.  
Wijesekera,  
(recalled)  
19th and  
20th  
January  
1949,  
Re-examin-  
ation,  
*continued.*

No. 51.

EVIDENCE of Beatrice Christie.

10

BEATRICE CHRISTIE—Sworn. 40, wife of F. A. Christie, Peliyagoda.

*Examined :*

In November, 1947, I was living in Billingwatte in Kotahena. (*To Court* : In November, 1947, my husband was ill. Before that he was a motor mechanic in Messenger Street.) I know the house of the second accused. It was out of sight from my house. It is not even 100 yards away from my house. I was living in front of the latrines. I was living about 100 yards from the second accused's house. I used to pass up and down College Street, I do the marketing. In order to go to market I had  
20 to pass second accused's house. I do that practically daily. Before 7th November, 1947, I knew the deceased well. His uncle was adopting a younger sister of mine. Later I came to know the second accused. I had spoken to second accused before this incident. (*To Court* : I had known her for about six months before this incident.)

I remember 7th November, 1947. That morning I went to market. I left home about 9 or 9.30 a.m. that day. I had to pass second accused's house. As I came near second accused's house Karuppa asked me to see what the noise was about. Karuppa is a latrine cooly who cleans the drains. He was cleaning the drain that day past the deceased's house. Karuppa  
30 had seen me but I had not seen him before that day. As I came up Karuppa told me : "Nona, enna satham endu poyettu paru." (Nona, what is the noise about, go and see.) I said "Namaku elathu, unaku poiettu paru." (I cannot, you better go and see.) He pointed out to deceased's house and asked me to go and see. I passed off to the next house. I did not have a peep into the house. I was going along when a lady of next house called me and told me something. As a result of what she told me I went to the deceased's house. I went to the compound, got on the steps and saw blood in the verandah. I did not enter the verandah. I saw nothing except  
40 blood on the verandah. I told the lady next door. There is blood there. That lady told me something. As a result of what she told me I went to Prince College through the main entrance. I went right up to the Kindergarten class. I saw second accused inside a class. I stood outside the class. From where I stood I beckoned to her. She came out of the class

No. 51.  
Beatrice  
Christie,  
20th  
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1949.  
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tion.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 51.  
Beatrice  
Christie,  
29th  
January  
1949,  
Examina-  
tion,  
*continued.*

to where I stood. I told her, "There is a lot of blood there in the verandah there; hurry up and come." I pointed out to her house. When I said that second accused said, "What is the matter? What is the matter?" I said, "I cannot be speaking to you, come, hurry up and go." She came out. She then went to the class where the two children were. She was weeping there and the children were also weeping there. She called out to the children and the children came out. She said nothing to the children; she was weeping. (*To Court*: I was by her. If she had said anything to the children I would have heard.) She spoke something to the teacher; I cannot say what. When the two children came the teacher also came up. (*To Court*: Second accused went with me up to standard five. She did not enter the class. Standing outside she called both the children by their names. They came out. She did not speak to the children when they came out. I saw the children weeping too. Then the teacher of the class seeing this came out of her own accord. She spoke to the teacher. I did not hear what she said.) Then the children went into the class, picked up their books and came out. The teacher went back to the class. I said: "Hurry up, it is getting late," and pulled her by her hand as she did not come. Mrs. Seneviratne, the children and myself walked out of the main entrance and came up to the house of the second accused. I too went. After going there I went into the house with the second accused. 10

She also came into the house. I got on to the verandah. She also got on to the verandah. So did the children. There was blood there. I saw a pair of glasses in the verandah near the blood. One of the lenses was broken.

*Q.* When the second accused saw the blood and the glasses did she do anything or see anything?

*A.* No.

She went in. I also went in. When I saw the blood and glasses I did not say anything. I knew they were Mr. Seneviratne's glasses. Both of us went in. (P.23 shown.) This is the pair of glasses. I noticed nothing in the next room. I went on to the third room with the second accused. I saw the deceased fallen, cut, under the table. Second accused saw that too. Then she cried out in a loud voice, "Iyo mage mahataya marala." (Iyo my husband has been killed.) I did not notice where the children were. I did not touch the body. I did not see the second accused touch the body. I was there and if she had done it I would have seen.

*Q.* How far near the body did she go?

*A.* Second accused went down the steps.

*Q.* Did you go too?

*A.* So did I.

We got into the dining hall. I turned back and went away. Second accused was there. I left the house. I remained on the road. When I came out the persons inside the house were the second accused and the two children. When I came to the road there were persons outside on the road. Before I came out to the road I raised no cries. I did not see Mrs. Wijesekera. When the second accused went off to the police station I did not see the children with another lady. I do not know where the children were when second accused left for the police station. Second accused left for the police station with two male teachers of the school. One was Mr. Dahanayake. I do not know the name of the other male 40 50

teacher, I cannot say whether he was a Burgher gentleman. I do not know how they came there. (*To Court*: When I saw all this I became dazed.) Coming back to the house with Mrs. Seneviratne and the two children from the school, second accused entered the verandah first. I entered immediately after. From the scene of this incident I went to the market. From the market I went to Mrs. Bastianpulle's house and then went home. I had to pass the second accused's house. There was a large crowd and the police were there. I went home. That evening the police contacted me. I made a statement to the police the same evening.

10

Adjournment taken. 11.07 a.m.

Certified correct.

Sgd. H. E. GOMEZ,

Stenographer, S.C.

20.1.48 (11.30 a.m.)

(Mrs. Christie.)

*Cross-examined by Mr. Gunasekera :*

When I was going on the road the Tamil man asked me, "There is a noise go and look." I said, "I can't, you had better go and look." So I eventually went because of what the lady in the next house said. I went up to the front door and looked in. I did not notice the deceased lying under the table. I did not see blood in the dining room. I saw blood on the verandah near a chair. At the same time I saw a pair of spectacles broken. I saw it the first time I looked. It was in the pool of blood. That is P.23 which was shown to me by Crown Counsel. When I first looked into the house I saw a dog and it was barking at the time. The dog was in the verandah and it was barking and it would not allow anybody to enter. That was Mr. Joachim's dog. I know that dog well. I pass that place every day. When I saw the blood and the pair of spectacles I got quite excited.

30 Q. You feared that somebody had been seriously injured or killed ?

A. Yes.

Q. When you went to the school you told the second accused that something terrible had taken place ?

A. I did not say so.

(*To Court*: I knew that the deceased also had a dog. That dog was also there. No, I saw one dog that day. I saw Mr. Joachim's dog. When the lady in the next door spoke to me I did not see the deceased's dog. I saw a black and white dog. That is Mr. Joachim's dog. I do not know whether Mr. Seneviratne had a dog or not.)

40 The Tamil man told me that he heard a noise but I did not hear a noise. I did not hear a noise when I went inside the premises.

When you went and spoke to the second accused did you tell her that there was a pool of blood in the verandah ?

A. Yes.

Q. And you told her, "Come soon there is some trouble" ?

A. I only said, "Hurry up and come."

Q. Did you say, "There is trouble, come soon" ?

A. No.

*In the Supreme Court.**Prosecution's Evidence.*No. 51.  
Beatrice Christie,  
20th  
January  
1949,  
Examination,  
*continued.*

Cross-examination by Mr. Gunasekera.



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 51.  
Beatrice  
Christie,  
20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

Q. Did you tell her that the dog was barking and would not allow anyone to enter ?

A. I said that.

Q. Did you make this statement to the Magistrate : " There is trouble, come soon " ?

A. I did not tell the Magistrate that.

(Passage is marked 2D4.)

Q. Did you catch the second accused by her hand and pull her ?

A. Yes.

Q. You were so excited you thought that the second accused should 10  
go to her house at once ?

A. Yes.

Q. The second accused said that she would inform the priest and  
come ?

A. Yes.

Q. You saw a priest in the same room where the second accused was  
teaching ?

A. Yes.

Q. The priest was taking the adjoining class ?

A. Yes. 20

Q. The second accused spoke to him and came out ?

A. Yes.

Q. And then she went up to a palm bush in the compound and  
beckoned to her children ?

A. Yes.

Q. She called out to Sumana by name ?

A. Yes.

Q. They came out and so did the teacher in the class ?

A. Yes.

Q. So the five of you were in a group for a minute or two under the 30  
palm bush ?

A. Yes.

Q. You were so excited that you have no recollection of what happened  
when you were in that group ?

A. Yes.

Q. Your anxiety was to take the second accused as early as possible  
to her house ?

A. Yes.

Q. While you were in the group did you make a sign with your hand ?

A. I do not remember. 40

Q. While you were in that group do you remember saying anything ?

A. I do not remember.

Q. Then four of you went to the second accused's house ?

A. Yes.

Q. Would it be correct to say that first of all you stopped near the gate  
in the compound, that is, on your second visit with the second accused  
and her children ?

A. I did not stop near the gate.

Q. Did you stop near the compound till the second accused and her  
children went inside and came out ? 50

A. No.

Q. Did you tell the Magistrate this: "I stood by the gate in the compound. The second accused and the two children went inside... I too went into the house and looked"? (page 118).

A. I said so.

(The page is marked 2AD1.)

(To Court: Q. Which is correct?

A. The truth is that I went in with the second accused and her children, as they went up.)

10 Q. The fact is that all this took place in a short while and you were confused?

A. Yes.

Q. Did you see a dog when you went in a second time?

A. Yes.

Q. The same dog?

A. Yes.

Q. That dog did bark for Mrs. Seneviratne and her children?

A. Mrs. Seneviratne tied the dog.

Q. It was after that you went inside the house?

A. I followed Mrs. Seneviratne to the house.

20 Q. Is it not the fact that Mrs. Seneviratne went inside the house, came back, tied up the dog, and then went in?

A. She tied up the dog before she went in.

Q. When you went inside the second accused started to weep?

A. Yes.

Q. The children also began to weep?

A. Yes.

Q. In your presence nobody touched the body?

A. No.

Q. Or moved anything from the body?

30 A. No.

Q. From the dining room the four of you came out to the compound?

A. Yes.

Q. Did you hear the second accused speaking to Mrs. Wijsekera?

A. I did not hear.

Q. Did you see Mrs. Wijsekera standing near the College Street School gate?

A. I did not see.

Q. Did you see Mrs. Wijsekera coming into the second accused's?

A. I did not see.

40 Q. Or leaving the place?

A. No.

Q. Then is it that you did not see Mrs. Wijsekera at all that day?

A. I did not see her.

Q. You stood by the second accused's gate till you saw her going to the Police Station?

A. I was on the road.

Q. Near the second accused's gate?

A. A short distance away from the gate.

Q. There was a crowd of people on the road?

50 A. Yes.

Q. Did any of those people come into the compound after the dog had been tied?

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 51.

Beatrice  
Christie,  
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January  
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examina-  
tion by Mr.  
Gunasekere,  
*continued.*

*In the  
Supreme  
Court.*

A. There was a crowd near the gate but I did not know whether they entered the gate.

When I was returning from home I saw a Police Officer on the road.

*Prosecu-  
tion's  
Evidence.*

(*To Court* : I was on the road till the second accused went to the Police Station. Then I went home and when I came back thereafter I saw a Police Constable on the road.)

No. 51.  
Beatrice  
Christie,  
20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

*Re-examined* : Nil.

*To Jury* : Nil.

No. 52.  
K.  
Karuppiah,  
20th  
January  
1949.  
Examina-  
tion.

No. 52.

EVIDENCE of K. Karuppiah.

10

K. KARUPPIAH—Affirmed.

27 years, labourer, Municipality, living at Deans Road. I have not seen this lady, the second accused, before the day of this incident. (*To Court* : I have only one eye.) I remember the month of November 1947. I was then employed by the Municipality to clean the drains in College Street, Kotahena. I remember the 7th November, 1947. That morning I did my work as usual. While I was cleaning the drains at about 9 a.m. I heard a noise from inside house No. 107. The noise I heard was " Ah " sound. When I heard that sound I was about three fathoms from the gate of that house. The sound appeared to me to be from inside the house. I heard the sound only once. Then I saw a lady passing along the road. I told that lady, " There is a noise in that bungalow go and see what it is." I pointed out the bungalow to that lady. The lady said, " I cannot do it, you had better go in and see." I said, " If you cannot do it, nor can I." Then I attended to my work and I was moving along the drain. I was then washing the drain and going down the street. I went up to the end of the drain and returned when I saw a crowd of people. By that time the Police had come.

Cross-  
examina-  
tion by Mr.  
Lekamage.

*Cross-examined by Mr. Lekamage* :

I started to work on the road at 9 a.m. I started from the Kotahena 30 market end.

*Cross-examined by Mr. Gunasekere* : Nil.

*Re-examined* : Nil.

*To Jury* : Nil.

## EVIDENCE of A. Seelaratna.

*In the  
Supreme  
Court.*

## A. SEELARATNA—Affirmed.

*Prosecu-  
tion's  
Evidence.*

No. 53.  
A. Seela-  
ratna, 20th  
January  
1949.  
Examina-  
tion.

21 years, Buddhist monk, Deepadatharamaya, Maradana. I know Prince College. I was a teacher there and resided there. Priests' quarters are adjoining the College. Mr. K. Dahanayake was the Principal of the College. I remember the second accused took a teaching employment there in the Prince College. That was a temporary employment. She started teaching about two weeks before this incident. That was some  
10 time late in October, 1947. I do not know what salary she was given. I was not a permanent teacher there and therefore I cannot say how much the second accused was paid. I was not there when she taught music in the school. At the time of this incident the second accused was a teacher for the kindergarten class. In the hall there are two classes. The lower kindergarten, the first standard and the second standard. The second accused taught the lower kindergarten and the first standard. Miss Wimalawathie taught the second standard. I remember the  
20 7th November, 1947. On that day Miss Wimalawathie was absent. I was in the habit of acting for teachers who are absent. On the 7th November,  
1947, I acted for Miss Wimalawathie. Shortly after the second bell which was rung at 8.30 a.m. I went to the class, second standard. I also went to the same class before the second bell. That was soon after the first bell. The first bell is at 8.25 a.m. At that time Mrs. Wijesekera was standing in the standard two. Then I went back to my room as I thought it was pansil. I came back soon after the second bell. When I first went the second accused was not in her class. When I next went there after the second bell I saw the second accused in her class. As I went in Mrs. Wijesekera left the class. According to the time table the first period was for transcription. I sat at the table and from there I could see the  
30 place where the second accused was. At that time the second accused was standing and she was teaching at the time. I cannot say what she was teaching. I saw the second accused going out of the class in the direction of the room where the telephone was. That was in the direction of the priests' quarters. I did not know then why she was going at that time. There is a telephone in the priests' quarters. The second accused went towards the telephone during the first period which is over at 9.15 a.m. She went that way about 15 minutes before the first period was over. I did not see one Alfred going that way before that. I know the tuck-shop-keeper Alfred. I did not see him coming to the second  
40 accused's class. She came back to the class about five or six minutes later. Having come back to the class she sat on her chair at the table and was keeping herself quiet without teaching. She was there in that way for about seven or eight minutes. Her hands were over the table and in one hand she was holding a pencil and gazing at the pencil. (Witness indicates how she was doing that.) She was in that gesture for about seven or eight minutes. During that period the children were making a noise. Some of the children were out of their seats and some were surrounding her. She made no attempt to control them. Then I went to the other end of the class. Then the second accused came up to me  
50 and asked me to look after the class saying, "There is some trouble at

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Court.*

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tion's  
Evidence.*

No. 53.  
A. Seela-  
ratna, 20th  
January  
1949,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Gunasekera.

home. I am going home. Look after the class." (Gedera mokakdhe kalabalayak karunakarala classeka balaganda. Memma gedera yanawa.) I consented to look after the class. She then went in the direction of the main gate. About two minutes later I went up to the entrance of the kindergarten class and I saw the second accused, her two children, Miss Willegoda and another lady near the palm bush. Now I know the other lady. She is Mrs. Christie. I then went back to my class. Short while after, I heard about the death of Mr. Seneviratne. On the 11th the Police came to my school and I made a statement to the Police. The same day the other teachers too made their statements to the Police. 10

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :*

I took robes in January 1945. I had been teaching for about a month when this happened. I had been teaching the standard two for about four or five days when this happened. There are about thirty children in the second standard. In the second accused's class there were about eighty children. There are no chairs for all the children in that class. Some children sat on benches attached to desks, two in each bench. Three children could sit on each bench with difficulty. At times three children used to sit in order to accommodate all the children with seats. In the 20 second accused's class almost all the children could sit. All the children had seats. That is why sometimes three children used to be seated on each bench. In my class the first period began with transcription. First period is over after 45 minutes. That is standard two.

*Q.* Periods in the kindergarten are less than 45 minutes ?

*A.* Some periods. There is one time-table for the standard two and the kindergarten. I mean the time is same for each class.

The bell goes after each period. When I went to class on the 7th morning Mrs. Wijesekera was there. She left the building only as I went up to the class. She having seen me coming to the class at a distance left the 30 class. I came in one direction whilst she went in the opposite direction. At the time of this incident one of the kindergarten teachers was absent. I do not know her name. The second accused was in charge of both classes.

*Q.* The second accused was not the teacher of both kindergartens ?

*A.* That was my impression. I am not sure whether it was so because I had been there only four or five days.

That day I first saw the second accused teaching the class. She was standing and telling something to the children in the class.

*Q.* She went on teaching for about 20 minutes ?

*A.* I cannot say how long. She went on teaching for some time. 40 For about ten or fifteen minutes I think.

*Q.* Would it be correct to say that the second accused went towards the telephone about twenty minutes after you came to class ?

*A.* May be about twenty minutes.

*Q.* It may be 25 minutes ?

*A.* I cannot say.

*Q.* May be ?

*A.* I had no clock or timepiece at the time. It may be 15 or 20 or 25.

I have taught the kindergarten children and I go by the time-table. When there are long periods we can teach the children in such a way to 50 keep them contented. Having gone towards the telephone the second accused came back within about five minutes and she sat on the chair.

Q. Whenever she sat at the table did you observe her during the three or four days you were teaching the second standard ?

A. I have seen her seated but teaching.

Q. Teachers sometimes sit at the table and do nothing ?

A. Yes.

I know that the children are restive. I did not see Mrs. Christie beckoning the second accused.

Q. The second accused told you that there was some trouble at home and that she was going home ?

10 A. Yes.

*Re-examined* : Nil.

*To Jury* : Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 53.  
A. Seela-  
ratna, 20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

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No. 54.

EVIDENCE of Rev. Pagnasekere.

REV. PAGNASEKERE—Affirmed.

19 years, residing at Kotahena Buddhist Temple. I live there at the Priests' quarters. On the 7th November 1947 I was in the Priests' quarters. That day at about 9 a.m. there was a ring at the telephone. That call was answered by me. I could not make out whether it was a man's voice or a woman's voice. I have been talking on the phone on several occasions. The speaker first spoke in English and I replied in Sinhalese. Then the speaker spoke in Sinhalese. I did not understand what the speaker said in English. When he spoke in English the name of Mrs. Seneviratne was mentioned. When I spoke in Sinhalese I realised that somebody wants to speak to Mrs. Seneviratne. I told him that that was the teaching time and added, "I shall send a message to her, till then 'hold the line' for a time." I then asked the tuck-shop keeper Alfred to go and inform Mrs. Seneviratne that she was wanted at the telephone. The tuck shop is quite close to the place where the phone is. Mrs. Seneviratne came and I told her that somebody wanted to speak to her. She took the receiver and spoke to somebody. As the second accused began to speak I left the room. I cannot say whether she began to speak in Sinhalese. She spoke for about 1½ or 2 minutes. At the time she spoke there was no one else in the room. Then she left. Earlier that day there had been a wrong number on the phone.

20

30

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Mr. Gunasekere* : Nil.

*To Jury* : Nil.

No. 54.  
Rev.  
Pagna-  
sekere,  
20th  
January  
1949.  
Examina-  
tion.

## EVIDENCE of K. G. Alfred.

Prosecu-  
tion's  
Evidence.No. 55.  
K. G.  
Alfred,  
20th  
January  
1949.  
Examina-  
tion.

K. G. ALFRED—Affirmed.

37 years, tuck-shop keeper, Prince College, Kotahena.

On the 7th November, 1947, I was tuck-shop keeper of Prince College, Kotahena. That morning Rev. Pagnasekere asked me to convey a message to the second accused. He told me that the second accused was wanted at the telephone. I conveyed the message to her. At the time I conveyed the message she was inside the class. I went inside the class and conveyed the message to her. Then she went in the direction of the telephone. 10

*Cross-examined by Mr. Lekamage* : Nil.*Cross-examined by Mr. Gunasekere* : Nil.*To Jury* : Nil.No. 56.  
W. A. D.  
Leela-  
wathie,  
20th  
January  
1949.  
Examina-  
tion.

## EVIDENCE of W. A. D. Leelawathie.

W. A. D. LEELAWATHIE—Affirmed.

25 years, spinster, School Mistress, living at Kelaniya. I am also known as Miss Willegoda. I know the second accused. She was teaching in Prince College, Kotahena, in November 1947 where I was also teaching. I taught the fifth standard. I am a permanent teacher at the school. 20  
I have been teaching there about six months when this happened. At that time I was paid Rs.128/- per month. I am a trained teacher. I cannot say what the second accused was paid when she came to teach the kindergarten. The untrained teachers are paid Rs.40/- per month as their initial salary. The second accused had two children. Sumana and Oranda, in my class. I knew Mr. Seneviratne. He was in the habit of coming to my class to inquire about his children. I remember the 7th November 1947. That day at the first bell I went to the assembly. I cannot say whether Oranda and Sumana were also in the assembly at the time. The class began at the second bell. When I went to the class 30  
at the second bell Oranda and Sumana were there. Then started to teach the children. During the first period I had to teach arithmetic. Whilst teaching the children Mrs. Seneviratne came there. At that time the two children of Mrs. Seneviratne were in the class. She came just as the period started. That was about 8.30 a.m. and soon after she went away. She went away a minute or two after she came there. I cannot say whether she spoke to her children then. Thereafter I taught the children in the class. The second accused's children were also there. Later the second accused came again to my class when I was still teaching arithmetic. First period is 45 minutes. There are periods of 35 minutes. 40  
When the second accused came again the first period was still going on.

She came and stood outside the class. She came there with Mrs. Christie. She stood near the palm bush and she called out to her children. She did not speak to me. When she called out to the children the children and I went up together. I went up only to the door of the class. The second accused did not ask me permission to remove the children. When I went up to the doorway I asked the second accused why she wanted to take her children away. She did not say anything in reply. Then she went away with the two children. The two children left my class that day without my permission. Mrs. Seneviratne, the two children, and Mrs. Christie went away by the College gate. Thereafter nobody came up to me. Yes, one Sugunadasa came up. He is a boy in Mrs. Wijesekera's class. He came and said, "Teacher wants me to find out why Mrs. Seneviratne took the two children away." I said "I do not know the reason." Soon after I saw Mrs. Wijesekera going up to the gate which was closed. I saw her looking over the gate across the road. I maintain an attendance register in my class. P.22 is my attendance register. Sumana's name is given there as B. C. de S. Seneviratne and the boy's name is given there as J. D. B. de S. Seneviratne. On the 7th November, 1947, these two children were marked present. I marked their attendance in the morning and in the afternoon. They are not marked present in the afternoon. They were absent in the afternoon. Sumana was absent for three or four days that week. That week commenced on 3rd November. Sumana was absent on the 3rd, 4th and 5th. On the 6th she was absent. On the 7th she was present in the morning. Oranda was present right throughout that week.

(To Court : Week preceding, week beginning on 27th October, 1947, B. C. de S. Seneviratne on the 27th October she was absent, but the rest of the week she was present.)

*Cross-examined by Mr. Lekamage :* Nil.

30 *Cross-examined by Mr. Gunasekere :*

Mrs. Seneviratne came to my class soon after the second bell. Shortly after 8.30. She remained about one or two minutes. She did not speak to the children. She spoke to me. I have not taught the kindergarten class. I have not taught the kindergarten class in this school, or any other class except the fifth standard. Different schools have different periods for the kindergarten. I cannot say what are the periods the kindergarten in this school had. I do not know whether the periods for the kindergarten are shorter than the periods for the second standard. I suddenly saw the second accused's children leaving the class.

40 Q. Before you could ask them where they were going the children had got out of the class ?

A. When they were called out they went away.

Q. So you followed them ?

A. Yes.

Q. And you asked them where they were going ?

A. Yes.

Q. They were then near Mrs. Seneviratne and Mrs. Christie ?

A. While they were in the class itself I questioned them.

Q. They did not reply ?

50 A. Yes.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 56.  
W. A. D.  
Leela-  
wathie,  
20th  
January  
1949,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Gunasekere.



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 56.  
W. A. D.  
Leela-  
wathie,  
20th  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

*Q.* So you followed them into the compound ?

*A.* I followed them up to the doorway.

*Q.* And then you went past them near the palm bush ?

*A.* Not so close to the palm bush.

*Q.* Fairly close to the palm bush ?

*A.* About a foot away from the class.

*Q.* Where was Mrs. Seneviratne at the time ?

*A.* Mrs. Seneviratne was under the palm bush, three or four feet away from me.

Mrs. Christie was by her. From where I was then I did not ask the 10 children again where they were going. I did not ask them why they were going. I asked Mrs. Seneviratne short while after, why she was taking the children away. Mrs. Christie did not reply when I questioned Mrs. Seneviratne.

*Q.* Did Mrs. Christie make a movement of the hand like this (shows) ?

*A.* No.

*Q.* Is it possible that Mrs. Christie said something for which you paid no attention ?

*A.* I cannot say.

*Q.* That morning did you go to the second accused's house after you 20 heard about this tragedy ?

*A.* No.

*Q.* When was the deceased's funeral ?

*A.* I do not know.

*Q.* Did the teachers of Prince College attend the funeral ?

*A.* I do not know.

I did not meet Mrs. Seneviratne after that. The news of the tragedy shocked you as well as it was in the case of anybody else.

*Q.* Did you and others started talking about this case ?

*A.* I had nothing to talk about it. 30

*Q.* In your teachers' common room the question of the death of Mr. Seneviratne ever discussed ?

*A.* We did not.

*Q.* No teacher of Prince College tell you what a shocking tragedy it was ?

*A.* No.

*Q.* Did you not tell any one of your fellow teachers what an awful thing it was ?

*A.* No.

*Re-examined :* Nil.

*To Jury :* Nil.

No. 57.

## EVIDENCE of H. A. Sugunadasa.

In the  
Supreme  
Court.

H. A. SUGUNADASA—Affirmed.

Prosecu-  
tion's  
Evidence.

13 years, school boy, Hills Street, Student of Prince College, Kotahena.  
I remember the 7th November, 1947. At that time I was in the  
4th standard. My regular teacher then was Mrs. Wijesekera. That  
morning, 7th November 1947 Mrs. Wijesekera asked me to go to Miss  
Leelawathie's class and ask her why Mrs. Seneviratne had taken away her  
two children. I conveyed the message to Miss Leelawathie and she said  
10 that she did not know why Mrs. Seneviratne had taken the children away.  
I went back to my class and told Mrs. Wijesekera what Miss Leelawathie  
told me.

No. 57.  
H. A.  
Suguna-  
dasa,  
20th  
January  
1949.  
Examina-  
tion.*Cross-examined by Mr. Lekamage* : Nil.*Cross-examined by Mr. Gunasekere* : Nil.*To Jury* : Nil.

(*Mr. Nihal Gunasekere* requests the Court to let the second accused  
be permitted to speak to her brother as it is necessary for the purpose of  
her defence.)

*Order* : She may do so for ten minutes in this Court after the adjourn-  
20 ment, in the presence of the Fiscal.

(Court adjourns for the day—1.30 p.m.)

Certified correct.

Sgd. D. V. JAYAMAHA,

Stenographer S.C.

No. 58.

## EVIDENCE of A. C. Lawrence.

No. 58.  
A. C.  
Lawrence,  
21st  
January  
1949.  
Examina-  
tion.

21st January 1949. 9.30 a.m.

Accused present.

Same Counsel as before.

30 A. C. LAWRENCE—Sworn.

Sub-Inspector of Police, Kotahena.

In November 1947 I was the Officer-in-charge of the Kotahena police  
station. At the Kotahena police station there were two branches, the  
Uniform section and the Investigating section. I belonged to the Uniform  
section.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 58.  
A. C.  
Lawrence,  
21st  
January  
1949,  
Examina-  
tion,  
*continued.*

On the morning of the 7th November 1947, I was at the station—in my office. The second accused came to the police station at about 9.30 a.m. Her statement was recorded at 10 a.m. by Sergeant Martin. As soon as she came into the police station I learnt what had happened in her house. As soon as I heard about it I left for the scene promptly having ordered Sergeant Martin to record the second accused's statement. I left the station with a party of about five police officers. Constable Rajapakse accompanied me on that visit. Constable Peris I was told came later. I went walking to the deceased's house. I saw a small crowd outside the gate. I cleared the crowd and placed a constable on duty outside the house. 10 I asked that constable not to allow any person to get into the premises. Then I entered the house. I got on to the verandah. I saw blood on the verandah and a pair of spectacles on the ground on the verandah. I also saw an umbrella placed against the wall on the verandah. I did not pay much attention to it at that stage. Then I went into the hall. There was another pool of blood, in the hall. Then I went to the dining room and there I saw the deceased lying in a pool of blood. There was a table in that dining room. On the table I saw five bundles of Gotukola and a matbag containing some vegetable and some beef. (Shown P.4.) This is the umbrella I saw. (Shown P.23.) This is the pair of spectacles I saw on the 20 verandah. (*To Court*: I did not touch the body at any stage.) I then went to the back compound and from there I proceeded to the adjoining compound by crossing the boundary wall behind. I went there to look for any possible clues. (*To Court*: I have been in the Force close upon 8 years.) Having gone into the adjoining compound I noticed a matbag and a knife, independently of anyone showing it. That was the first thing I noticed as soon as I went there. (Shown P.5.) This is the matbag I saw in the adjoining compound. (Shown P.6.) This is the knife I saw there. They were lying close to a bush, close to the back boundary of that house. I did not touch P.5. or P.6 at that stage. I observed them closely. 30 I saw blood on the knife and on the matbag. I placed Constable Rajapakse to guard those productions and then I went to the compound behind the deceased's house, that is the back compound of Mr. Jayasekere's house. There I met the cook woman Ukku Menika. She pointed out the direction in which a man had run away. She also pointed out the sarong which had been dropped by that same person. (Shown P.1.) This was the sarong which she pointed out to me. P.1 was near the portico. Ukku Menika also pointed out the direction where the knife and matbag were placed, but I had already seen them.

At about 12 noon the same day I went down Alwis Place with 40 Constable Diyabalanage and I met witness Khalid who was on the roof of No. 77, Alwis Place. He was still on the roof. I questioned him. He pointed out a coat to me. (Shown P.7.) This was the coat he pointed out. This was near the entrance to the house. This was on the ground near a low bush. I picked it up. I also found a purse. (Shown P.30.) This was the purse I found. I found this purse by the side of the coat in that bush. I examined the purse and I found seven cartridges in it. Six of them were .22 cartridges. (Shown P.27.) These are the .22 cartridges. One was a .32 cartridge. (Shown P.46.) This is the .32 cartridge. They were all live cartridges. I took charge of the coat P.7 50 and those cartridges P.27 and P.46 and gave them to Constable Diyabalanage. (*To Court*: There was also a piece of paper inside the

purse. The names and addresses in Sinhalese of some persons were written on it. I did not find anything else inside the purse—no money, no key. I examined the pockets of the coat. All the pockets were empty.) Witness Khalid also pointed out to me the fence which was one boundary of that house. It was an old zinc fence. It was a fence that could be separated by pushing through. A person could separate the sheets and creep through. (*To Court*: That fence is no longer there. There is a parapet wall there now.) A person creeping through that fence and running over private gardens could get to a place called Berawamulla and from there  
 10 to Pansala Road leading to Blomendhal Road and to Armour Street junction.) Before I left for Alwis Place, the Investigating Section of the police had arrived on the scene. The Investigating Section of the police had come at 10.15 a.m. They were Constable Diyabalanage followed by Sergeant Jayatissa, followed by Sub-Inspector Gordon. The A.S.P. Mr. B. W. Perera had arrived at 10.15 a.m. and he was in charge of the Investigation.

*In the Supreme Court.*  
 —  
*Prosecution's Evidence.*  
 —  
 No. 58.  
 A. C.  
 Lawrence,  
 21st  
 January  
 1949,  
 Examination,  
*continued.*

After I contacted Khalid I came back to the second accused's house. Then I saw the second accused in her house and I saw Alice Nona also in that house at that time. Then I went to the dining hall of that house.  
 20 On the table in that dining hall there was another bag. (Shown P.2.) This was the bag. I examined it at that time. There was meat and some vegetables in it. The second accused continued to remain in that house even after the funeral of the deceased. (*To Court*: I am not aware who removed the body to the mortuary.) The body was removed for the inquest, but I do not know at what time. It was brought back to the house for the funeral which was on the next day.

*Cross-examined by Mr. Lekamage :*

When I went to the deceased's house I saw blood on the verandah, and also a broken pair of spectacles and also an umbrella. I gave evidence  
 30 in the Magistrate's Court on the 20th January 1948.

*Q.* You made no mention of an umbrella in that evidence ?

*A.* I was not questioned about it.

After I examined the deceased's house I went to the adjoining garden. By that time Sub-Inspector Gordon had not arrived. From the time I went to the deceased's house I must have taken about 10 minutes before I crossed over to the next garden. In the next garden I saw the matbag and the knife near a bush near the boundary. The knife was lying by the side of the matbag. There was blood on that knife and on that matbag. Then I met Ukku Menika and she pointed out the direction in which the  
 40 man went and the sarong. I saw blood on that sarong. (*To Court*: There I met Ran Banda and Sudu Banda also.) I saw the mason who was working in those premises.

*Q.* You say you *met* witnesses Ukku Menika, Sudu Banda and Ran Banda, and you *saw* the mason. Please tell me the difference ?

*A.* I did not question the mason, but I questioned Ukku Menika, Sudu Banda and Ran Banda.

I got to the next compound roughly about 10.15 a.m. By about 12 noon I went to No. 77, Alwis Place, and there I saw Khalid who was still on the roof.

50 *Q.* By 12 noon did you see whether there were still crowds in front of the deceased's house, or had the crowd dispersed ?

Cross-examination by Mr. Lekamage.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*No. 58.  
A. C.  
Lawrence,  
21st  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Lekamage,  
continued.*

A. As far as I remember there was a crowd collecting outside the house and the police were keeping the crowd away.

Q. Were you aware that the news of this incident had by that time spread within Kotahena area ?

A. I am not aware of that.

When I got to No. 77, Alwis Place, I saw Khalid on the roof of that house and from the roof itself Khalid showed me the coat and subsequently he came down the roof. I saw blood stains on that coat. By that coat I found a purse containing seven cartridges and a piece of paper with names and addresses in Sinhalese written on it. It would not be correct 10 to say that there was a letter inside that purse. I asked Constable Diyabalanage to take charge of that purse, the cartridges and that piece of paper.

Q. Did Khalid tell you he had seen this man who had run through ?

A. Yes.

Q. Did he tell you he had spoken to him ?

A. Yes.

Q. Did he tell you he saw his face quite clearly ?

A. Yes.

Q. And that if he was confronted again with that man he would be 20 able to identify him ?

A. Yes.

Q. You saw the zinc fence through which this man is alleged to have crept through ?

A. Yes.

(*To Court* : Khalid showed me the place from which the man had got out.)

I examined that place. The zinc sheet there was about six feet high.

Q. Did it appear to you more probable that the man had crept through than that he had jumped over ? 30

A. The man had crept through. He could not have jumped over.

Q. Do you know what happened to the coat and purse after that ?

A. They were taken charge of by Constable Diyabalanage and removed to the Kotahena police station.

Q. Are you aware that a photographer had arrived at some stage ?

A. Yes.

He did not come near No. 77, Alwis Place. I cannot say with certainty whether he had gone away by the time I came to No. 77, Alwis Place. I am aware that an officer from the Finger Print Bureau was also summoned to the scene that morning. I cannot say even approximately at what 40 time he came there or at what time he left.

When this incident occurred I had been stationed at the Kotahena police station for about two years. I know the locality round about quite well. Going from the deceased's house towards the police station one comes to the junction of College Street, Alwis Place and Mayfield Road. At that junction there is a steep decline towards Alwis Place. Just as the decline starts, on the right-hand side there is at present an Ayurvedic medicinal shop. (*To Court* : It was not there before this incident as far as I remember.)

Q. Did you make any special search for herb cutters round that area ? 50

A. No.

(*Court* : *Q.* You said you know the locality for 2 years ?

*A.* Yes.

*Q.* You do not remember seeing that medicinal shop at the Alwis Place junction then ?

*A.* No.

*Q.* When did you see that shop ?

*A.* About six months ago.)

I know the junction of Wasala Road and Kotahena Street. Going past that junction towards the police station along Kotahena Street, on the left there is another Ayurvedic medicinal shop, about 150 yards from the police station. (*To Court* : That medicinal shop has been there for a very long time.

*Court* : *Q.* Do you or do you not know whether these Ayurvedic medicinal shops generally have herb cutters ?

*A.* I do not know.)

*Q.* As a police officer, and even before, you are not aware of the fact that a herb cutter is always found in an Ayurvedic medicinal shop ?

*A.* I am not aware of that.

Between the Kotahena market and the police station there are three junctions and the junction of Wasala Road and Kotahena Street would be the third junction coming from the market. At that junction when you turn right and go along Wasala Road, on the right there is another medicinal shop before you come to Mayfield Road junction. That medicinal shop was in existence before this incident. Going from the Kotahena market towards the police station, the second junction is the junction of Pickerings Road and Kotahena Street. Going along Kotahena Street from the market towards the police station, between the first and second junctions on the left-hand side there is another Ayurvedic medicinal shop. That shop was in existence before the time of this incident. (*To Court* : I know of three Ayurvedic medicinal shops which were in existence in that locality before this incident.) I had never seen a herb cutter before this incident. When I found knife P.6 I was not aware what sort of instrument it was.

(*Court* : You took it for some form of knife ?—Yes.)

When I saw P.6 that day there was a hole at the end of it.

I finished my investigations and got back to the police station that day at about 1.30 p.m. During the time I was making investigations I met several other police officers there. I learnt that day that the knife P.6 which I found was a herb cutter.

*Q.* Your duties as far as this incident was concerned finished up at 1.30 p.m. and you did not do anything thereafter ?

*A.* Yes.

(*To Court* : After the investigation section took over I had nothing whatever to do.)

*Cross-examined by Mr. Gunasekera :*

When I went to the deceased's house there was a small crowd outside. There was nobody inside the house. I went up to the body, but I did not touch it. It was a ghastly sight. The natural reaction of a layman to that would be to get away from the place. The deceased was dressed in a white shirt and a pair of white long trousers. I immediately placed a

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 58.  
A. C.  
Lawrence,  
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Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Gunasekera.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 58.  
A. C.  
Lawrence,  
21st  
January  
1949,  
Cross-  
examina-  
tion by Mr.  
Gunasekere,  
*continued.*

constable to guard over the body. I cannot remember who that constable was. I did not see a string or chain round the deceased's neck. (*To Court* : I had a close look at the body. The deceased was dressed in an open shirt. Photograph No. 8 of P.47 shows how the body was lying. I did not notice a piece of string round the deceased's neck.) I was not there when the body was removed to the mortuary, but according to practice the body would have been removed to the mortuary by the police. Until the body was removed the police would have been guarding the body. (*To Court* : That is a fundamental practice.) At the mortuary the J.M.O. would remove the clothes and anything else on the person of 10 the body. (*To Court* : Not the J.M.O. but a cooly under his supervision would remove them.) ; and the clothes etc. would be handed over to the police.

I was in the deceased's house till about 12 noon on the 7th November and then I went to Alwis Place and came back to the deceased's house at about 1 p.m. and remained there till about 1.30 p.m. I may have come there again in the evening, but I cannot say that with any certainty. While I was in the deceased's house the I.G.P. or the Prime Minister or the Minister of Home Affairs did not come there. When the second accused came to the police station that morning I was in my office and through my 20 window I saw her coming to the police station. She came crying.

*Re-examina-  
tion.*

*Re-examined (with leave) :*

I had known the second accused before this incident. When the second accused came up crying to the police station I went up to my doorway and ascertained what had happened and then I rushed up to the second accused's house. In the dining hall under the deceased I saw one slipper. I saw the other slipper just outside the outer verandah, on the right as one enters. (Shown P.28.) This is the pair of slippers.

(*Mr Lekamage states this does not arise under cross-examination.*)

(*To Court* : I noticed that single slipper as I entered the house.) 30

(Crown Counsel reserves his right to recall the witness in regard to the identification parade.)

*Further  
Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Further cross-examined by Mr. Lekamage (with leave) :*

*Q.* You made no mention in your evidence in the Magistrate's Court about either of these slippers?

*A.* I was not questioned.

*No further cross-examination by Mr. Gunasekere.*

*To Jury* : Nil.

(Mr. Lekamage points out that he has found certain police officers outside the Court. The Fiscal's clerk states that all police officers below 40 the rank of Inspector come to Court from the witness shed and go back like any other witness without contact with other persons. As regards officers of the rank of Inspector and above, they remain in the corridor of the Court away from all hearing distance and they do not contact any other person after they have given evidence.)

## No. 59.

**EVIDENCE of R. W. D. N. Rajapakse.**

R. W. D. N. RAJAPAKSE—Affirmed.

P.C. 286, attached to the Kotahena police.

On the 7th November 1947 I accompanied Sub-Inspector Lawrence to the scene of this incident. He directed me to guard the knife P.6 and the matbag P.5 in the adjoining garden. I kept guard over them for about two hours till P.C. 581 Peris took over the guard from me. Till he took over from me nobody touched the productions P.5 and P.6.

10 *Cross-examined by Mr. Lekamage and Mr. Gunasekere* : Nil.

*To Jury* : Nil.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 59.  
R. W. D. N.  
Rajapakse,  
21st  
January  
1949.  
Examina-  
tion.

## No. 60.

**EVIDENCE of M. W. Peris.**

M. W. PERIS—Affirmed.

P.C. 581, attached to the Kotahena Police.

On the 7th November 1947 I came up to the house of the deceased at about 10.30 a.m. I went to the adjoining compound of Mr. Jayasekere and there I saw Constable Rajapakse guarding productions P.5 and P.6. I took over guard from him while he left. While I was guarding the productions the J.M.O. arrived and I saw him examining the knife P.5 and the bag P.6. I cannot say whether he took some hair from the knife P.6, but I saw him examining that knife. I cannot remember whether he took the knife into his hand. Sub-Inspector Gordon was also there at that time. Thereafter P.5 and P.6 were handed over to Sub-Inspector Gordon who took charge of them.

*Cross-examined by Mr. Lekamage and Mr. Gunasekere* : Nil.

*To Jury* : Nil.

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## No. 61.

**EVIDENCE of P.C. 869 Diyabalanage.**

30 P.C. 869 DIYABALANAGE—Affirmed.

I am attached to the Kotahena police.

I was the first officer of the Investigating Branch who arrived at 107, College Street, on the morning of the 7th November 1947. I got there at about 9.45 a.m. By that time Sub-Inspector Lawrence and some other constables had gone there. I made a record of the observations I made at the scene. I saw the deceased dead. I saw bag P.3 on the table. I saw one slipper outside and one slipper inside the house. From there I went to Mr. Jayasekere's compound and there I saw the knife P.6

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and bag P.5. I was also shown the sarong P.1. Mr. Lawrence was there when I went to the scene and it was in his presence that I made all the entries in my notebook. Then I went to No. 77, Alwis Place, and there I met witness Khalid. I took over from Sub-Inspector Lawrence the coat and purse which I subsequently handed over to Sub-Inspector Gordon. As part of my investigation, later on I recorded the statements of Mrs. Walles, Miss Walles, Mrs. Paul and the second accused's daughter Sumana.

*Cross-examined by Mr. Lekamage :*

Q. You saw that umbrella also that day in the deceased's house ? 10

A. Yes.

Q. It was Sub-Inspector Lawrence who showed you all the things that he had observed ?

A. Yes.

I gave evidence in the Magistrate's Court on the 20th January 1948.

Q. There you mentioned in your evidence a number of things which you noticed on that day ?

A. Yes.

Q. You made no mention of an umbrella in that evidence ?

A. Yes.

Q. I put it to you that you made no mention of any slippers in that evidence ?

A. Yes.

Q. You have said there " Sub-Inspector Lawrence showed me all that he had observed " ?

A. Yes.

Q. You have mentioned various other things that you noticed in that place, and ultimately did you say this (page 333 of record) " I only saw the articles which I have mentioned "—(1AD3) ?

A. I said that.

Q. Is that correct ?

A. Yes.

(*Court :* Q. So that the position is that you mentioned the various articles that you saw, and you did not see the umbrella or the slippers. Is that correct ?

A. I cannot remember.

In the Magistrate's Court I was questioned by some officer. In this court also I did not mention the umbrella when Crown Counsel was examining me.

Did you introduce the umbrella or the slippers ?—(No.)

*Cross-examined by Mr. Gunasekere : Nil.*

*Re-examina-  
tion.*

*Re-examined :*

I attached no importance to the umbrella when I saw it. I thought it belonged to someone in the house. The A.S.P. himself took charge of the umbrella after that. Mr. Gordon was there at that time. I saw the slipper in the dining room.

*To Jury : Nil.*

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L. D. C. GORDON—Sworn.

Sub-Inspector of Police, Kotahena.

On the 7th November 1947 I reached the scene of this murder, 107, College Street, Kotahena, at 1.30 p.m. That morning I was attending the Colombo District Court. I took over the inquiry from Sergeant Jayatissa who was at the scene as soon as I went there. Mr. B. W. Perera, A.S.P. and several other police officers were there when I went. I saw the  
10 deceased's body there.

(Court: Did you have a close look at the deceased's body?—Yes.

You belong to the Investigation Branch?—Yes. I am 14 years in service. I did not see a string round the deceased's neck. It was not there.)

On my arrival there I checked up the observations made by Sergeant Jayatissa. I myself saw a table in the dining room. There was a wicker basket P.3 and a matbag P.2 on that table. Alice Nona and the second accused were in the house when I went there. I examined the contents of P.2 and P.3. In both bags there was beef and vegetables. There were  
20 also five bundles of Gotukola on that table. The J.M.O. was there when I went. I was present when he removed some hair from the knife P.6. It was in the adjoining compound that he removed the hair from the knife P.6. He had to handle the knife in order to take the hair from the knife. I also saw this bag (shown P.5) there. It was bloodstained. I saw a slipper under the deceased's body. In the front compound I saw the other slipper. There was a pool of blood and a broken pair of spectacles on the verandah. There was an umbrella leaning against the wall close to that pool of blood on the verandah. I took charge of the umbrella. (Shown P.4.) This is the umbrella. (Shown P.28) This is the pair of  
30 slippers one of which I found under the deceased's body and the other I found in the compound.

11 a.m.—15 Minutes' Interval.

After interval.

L. D. C. GORDON (on the same oath).

*Examination* (continued):

Umbrella P.4 was unclaimed by any person. So I took it to the police station and left it in the strong box. Thereafter I took it out only when Mr. Jebanasam was called upon to hold an identification parade two days later. I was also shown sarong P.1 which was found under the portico of  
40 Mr. Jayasekere's house.

At the request of the J.M.O. the deceased's body was removed to the mortuary by the police about 3 p.m. for the purpose of holding an inquest. The City Coroner held an inquest over the body that evening at about 4 p.m. On a message sent by the City Coroner I sent witness Alice Nona to the inquest. She had been questioned very casually by the police by that time, but no statement had been recorded from her. Her statement

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was recorded at 7.30 p.m. that night. (*To Court* : Alice Nona was in the house from the time I went there at 1.30 p.m. till the inquest. I sent her to the inquest through a constable by car. She left the house about 3.30 p.m. The second accused did not go to the inquest.

*Q.* So, Alice Nona was with her mistress in the house from 1.30 p.m. to 3.30 p.m. so far as you know ?

*A.* Yes.

After the inquest, Alice Nona had been taken to the Kotahena police station by the same constable and she was there till the 12th November when she was sent to the Jayasekere home.)

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Alice Nona's statement was recorded by me at the Kotahena police station at 7.30 p.m. on the 7th November 1947. After that I went to Nugegoda with Alice leaving the Kotahena police station at 8.30 p.m. by van. I went there as a result of a statement made by Alice. At Nugegoda she pointed out to me a house and I went into that house. That was a medicinal shop. I now know that that is the house and medicinal shop of the first accused. I went to that house at 9.45 p.m. The first accused was not there when I went. I searched the first accused's house. (*To Court* : The first accused's mother, wife and brother were in the house at the time I went there.)

20

I searched the house and took into my custody a sarong. (Shown P.8.) This is the sarong. It was hanging on a peg by the bed. I also took into my custody a coat which was also hanging on the peg, and a black sash which was under the pillow on the bed. The coat and sash are not productions in this case. I saw this table P.10 there. (*To Court* : It was in the hall in the front part, on the left-hand side as one enters.) When I went the shop was closed and the table had been taken in. (*To Court* : I saw a knife on the table. It was an old herb cutter, similar in shape to P.6. There was nothing else on the table. The knife was fixed on to the table. I cannot remember whether it was fixed on a block of wood. There were railings on the verandah between the roof and the top beam holding the planks of the door. I do not remember whether there was a bench.)

I arrested the first accused at about 10 p.m. As the police party got out of the house and an Inspector flashed a torch the first accused was seen on the road opposite the house.

*Q.* What made you take him into custody ?

*A.* Alice Nona pointed him out.

From there I brought the first accused to the Maradana police station and I searched the first accused myself and finding an injury on his leg with medicine on it I took him before the J.M.O. with his consent. I got there about 11 p.m. and I had the first accused examined by the J.M.O. in his office. I telephoned the J.M.O. and he wanted me to bring the first accused to his office. That is where normally examinations of injured people are conducted. Then I brought the first accused back to the Maradana police station and kept him there. The following morning the first accused was taken to the Colombo Magistrate's Court from the Maradana police station by Sub-Inspector Lawrence for an identification parade. Witness Khalid's statement was recorded on the 8th November at 1.45 p.m.

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by Sergeant Jayatissa. I made an effort to get at Khalid earlier. I sent a constable earlier to No. 77, Alwis Place, to contact him. He was expected to work at that building on that day. He was not contacted till late in the evening. By the time he was contacted the identification parade was over with regard to some other witnesses. So another identification parade had to be held on the 10th.

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(*Court : Q.* Had Khalid any opportunity to see the first accused till the identification parade on the 10th ?

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*continued.*

A. No.)

10 On the 9th November I again went to 107, College Street, Kotahena, at 10.30 a.m. (*To Court :* The second accused was in the house on the 7th. The funeral was the next evening. The second accused was still in the house when I went there on the 9th.) I examined the house in her presence on the 9th. (*To Court :* In the house there were two very large almirahs. Each almirah had a mirror on one of the shutters. So far as I remember they were similar almirahs. One belonged to the deceased and one belonged to the wife. I first opened the deceased's almirah. The second accused opened the deceased's almirah for me with a key. I do not know from where she got the key. I understand the almirah had to be forced  
20 open the previous day. When the deceased's almirah was opened on the 9th I found men's clothes inside it. It had one large shelf on the left and a second shelf in the centre. I cannot remember whether it had drawers. The men's clothes I referred to were packed in cardboard boxes ; there were many good suits, tweed suits ; then there was linen, a sewing machine and several duplicate keys, all labelled, and hung up on little nails in the second shelf.

In that same almirah I found three Post Office Bank Books P.31, P.48 and P.36 which I took charge of. There were no other pass books or cheque books. I cannot remember from which part of the almirah  
30 I took these bank books. (*To Court :* There was no money at all in that almirah nor any articles of jewellery, nor any valuables like fountain pens or watches ; there were just these clothes and these bank pass books).

The articles were taken out of the almirah one by one and searched and then placed on the bed, and I left them there. Thereafter the second accused opened her almirah with a key. I cannot say if it was the same key. In her almirah there were a few bits of ladies clothing. (*To Court :* Nothing like the clothing in the deceased's almirah. There were four or five tweed suits in the deceased's almirah. I remember only one expensive looking saree in the second accused's almirah.)

40 From the second accused's almirah I took Savings Bank Book P.49 which belonged to the second accused herself and also some letters. I found there a letter written by Sathasivam, P.37, and letter written by Sally, P.42. (*To Court :* Letter P.42 I obtained from the second accused's almirah in her presence on the 9th.)

On the 10th November I brought the Joachims and Khalid for the identification parade at about 9.35 a.m.

On the 11th November I recorded the statements of Mrs. Wijesekere, Miss Willegoda, Alfred, and Rev. Seelaratana and Rev. Pannasekera in the school premises. On the same day I recorded Podinona's statement.

50 On the 12th there was an identification parade for the umbrella and I gave the umbrella to Mr. Jebanasam, A.S.P., from the strong box.

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On the 16th I took the second accused into custody. Till then she was living at 107, College Street.

On the 16th morning witness Gunatilleke produced before me a box of jewellery entrusted to him by the deceased. It was opened in my presence and in the presence of the second accused. She examined the jewellery but did not make any complaint of any shortage. In that box I found a receipt P.43 and receipt P.44, both of which I produce.

On the 17th November I went to Windsor hotel and there on the wall I found a large painting of a lady pouring out tea and a gentleman serving biscuits. On the same day I recorded the statement of the 10 deceased's brother, Proctor Seneviratne.

On the 19th November I recorded the statements of Maihamy and Hinnihamy, and from Hinnihamy I recovered pawn ticket P.24. On the same day I recorded the statement of Girigoris and recovered hair pin P.24A and ring P.24B and pawn ticket P.35 from him.

On the 21st November I recorded Sally's statement and I saw some letters which had been torn and which I took into my custody.

On the 4th December I recorded the statements of the butcher Valentine and of Sathasivam, money lender.

On the 6th December I was present when Constable Wickramasuriya 20 came to prepare a sketch of the scene. Sub-Inspector Lawrence and witnesses Ukku Menika, Ran Banda and Sudu Banda were also present. They pointed out the various spots which have been marked on the sketch produced in this case.

*Cross-  
examina-  
tion by Mr.  
Lekamage.*

*Cross-examined by Mr. Lekamage :*

On the night of 7th November 1947 when I arrested the first accused I searched him, but I found nothing incriminating on him. That night when I took him to the J.M.O., the J.M.O. cut off his finger nails, and he examined the wound on the first accused's ankle. I went to Nugegoda on the 7th night after recording Alice Nona's statement. 30

*Q.* When she came to the police station after having gone to the inquest proceedings, I put it to you that you went and questioned her ?

*A.* Yes, I questioned her at the police station.

*Q.* I put it to you that you asked her what she did from early morning up to the time she came to the police station on her way from the market ?

*A.* Yes.

*Q.* I put it to you that you asked her who were the people who come to this house—visitors ?

*A.* I did not ask that.

*Q.* I put it to you that you asked her what she did on the previous 40 day too ?

*A.* I did ask her that.

*Q.* It is as a result of what she said that you went to Nugegoda ?

*A.* Yes.

*Q.* You said that before you sent Alice to the inquest you questioned her ?

*A.* Yes, I casually questioned her in the house.

*(Court :* Was the second accused present when you questioned Alice in the house ?

A. I cannot remember, but the second accused was in the house at the time.)

Q. As a matter of police procedure, when you question any person you usually do it out of the hearing of any person ?

A. Yes.

When I went to the deceased's house that day I noticed an umbrella. It was near the pool of blood leaning against the wall. I also noticed a slipper in the compound outside the house. I noticed the other slipper under the deceased's body. On that slipper there were blood stains. 10 I took the umbrella I found there to the police station and kept it in the strong box. I took the other productions also which I found at the spot, namely, the pair of slippers, the coat P.7 and the purse with cartridges and a piece of paper inside it. On that piece of paper there was something written in Sinhalese. It was not a letter. All these things were kept in the strong box.

Q. On the 10th November you produced some of these articles which you found, at the Magistrate's Court ?

A. Yes.

Q. You produced the canvas bag with stains P.5, knife with bloodstains 20 P.6, coat with bloodstains P.7, sarong found in first accused's house ?

A. Yes.

Q. On that day application was made to the Magistrate that these articles be sent to the Government Analyst ?

A. Yes.

Q. On that day or thereafter the slipper with stains of blood was not produced before the Magistrate with a request that it be sent to the Government Analyst ?

A. No.

On the 12th November you produced the umbrella to A.S.P. Jebanasam 30 and an identification parade was held ?

A. Yes.

Q. And it was identified by John Singho as his umbrella ?

A. Yes.

Q. So that by the 12th you were aware that this umbrella was a vital piece of evidence in this case.

A. Yes.

Q. On the 6th December Constable Wickramasuriya came there to draw the plan ?

A. Yes.

Q. You and Sub-Inspector Lawrence accompanied him and pointed 40 out all the spots ?

A. Yes.

Q. You pointed out to him spot A where the slipper was found in the compound ?

A. Yes.

Q. You even pointed out where a chair was in the verandah ?

A. Yes.

Q. You pointed out where the pool of blood was ?

A. Yes.

50 (To Court : You forgot the umbrella ?—Yes.)

Q. Did you point out the spot where the umbrella was —

A. No.

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I came to the deceased's house at about 1.30 p.m. The slipper in the compound had been noticed earlier. It was pointed out to me by a police officer who was there.

*Q.* When you found this pair of slippers and later when you got this umbrella which was first of all unclaimed and later claimed by John Singho, you knew that both the slippers and the umbrella were very essential for fixing the identity of the man who had committed this crime ?

*A.* They were essential.

*Q.* So that on the 20th January when evidence was being led in the Magistrate's Court you were aware of this fact ?

*A.* Yes.

*Q.* And on the 20th January Mr. B. W. Perera, A.S.P., and you led the prosecution evidence ?

*A.* Yes.

*Q.* When the A.S.P. was leading evidence you were by his side ?

*A.* Yes.

*Q.* Inspector Lawrence was not asked a single question about the finding of the umbrella ?

*A.* I do not remember.

*Q.* If it is not on record will you say that no question was asked ?

*A.* Yes.

*Q.* Lawrence was also not asked any question about the slipper. Do you remember that ?

*A.* No.

*Q.* The evidence of P.C. Diyabalanage was also led on the same day ?

*A.* Yes.

*Q.* And he gave a list of the articles which were pointed out to him by Inspector Lawrence ?

*A.* Yes.

On the 7th November the umbrella and the slippers and the coat were not claimed by anyone in the deceased's house, nor by the witness Khalid.

*Q.* No identification parade was held regarding the other articles except this umbrella ?

*A.* Yes.

*Q.* When this umbrella was unclaimed, you presumed it was the umbrella of some person who had come to that house ?

*A.* Yes.

*Q.* You also presumed that the slipper also did not belong to that house ?

*A.* Yes.

When I went to the first accused's house on the 7th at 9.45 p.m. the first accused's wife, mother and one brother, Wilbert, were at home.

*Q.* Was there one brother called Bodhidasa at home ?

*A.* No.

*Q.* Did you enquire as to the whereabouts of Bodhidasa that day ?

*A.* No.

*Q.* Were you aware during your investigations that he had left the house some time back ?

*A.* Yes, I learnt that he had left the house. I saw this table P.10 inside the hall of the first accused's house and on that table was a herb cutter. That herb cutter was something similar to 1D9 (shown 1D9).

(*To Court* : I did not move the herb cutter which was on that table, nor did I test to see whether it was fixed to the table. I had seen herb cutters before.) I have seen them in Ayurvedic medicinal halls. (*To Court* : I had seen the knife P.6 that morning. When I saw it I recognised it as a herb cutter. It did not occur to me to have a closer look at the herb cutter I found in first accused's house.)

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Q. This table P.10 was not found outside on the verandah on the right-hand side as you enter ?

A. No.

10 The productions I took from the first accused's house were a sarong P.8, and a coat and a sash which are not productions in this case. I deny I removed umbrella P.4 or the pair of slippers P.28 from the first accused's house on the night of the 7th November.

Q. I put it to you that the slipper found under the deceased's body is not here as a production ?

A. This is the slipper found under the body of the deceased.

Q. In the Magistrate's Court it did not strike you to move that the umbrella should be sent to the Government Analyst to see whether there were blood stains on that ?

20 A. It did not strike me.

When I saw the knife P.6 on the 7th I recognised it as a herb cutter.

Q. Within a radius of a quarter mile of that area in Kotahena there are four Ayurvedic medicinal shops and Inspector Lawrence has spoken to three, one near the Wasala road junction, one near Pickerings road junction and one along Wasala road ?

A. I know of two only. I did not enquire about the third medicinal shop.

Q. Did you conduct enquiries in these medicinal shops to ascertain whether this herb cutter P.6 belonged to any of those shops ?

30 A. No.

Q. As soon as you took up the investigation and you knew that this was a herb cutter, you did not think it necessary to delegate some officer to go round and check up the herb cutters in the medicinal shops in the neighbourhood ?

A. No.

Q. Till Alice Nona made her statement at 7.30 p.m. on the 7th had you any clue of the identity of the assailant ?

A. No.

40 (Mr. Lekamage brings to the notice of the court at this stage that the officer from the Finger Print Bureau whom he intends to call as a witness is in court, and he is asked to leave court.)

*Evidence continued :*

When I went to the deceased's house that day the officer from the Finger Print Bureau was there. (*To Court* : He is Sub-Inspector Vincent.) On the 7th November by 1.30 p.m. the umbrella P.4 had been found, the slippers P.28 had been found, knife P.6 with blood stains on it had been found, the mat bag P.5 had been found, the sarong P.1 had been found, the coat P.7 had been found and the purse P.30 was also available by that time.

50 Q. The spot where the assailant is alleged to have crept through the zinc sheets was also known at that time ?

A. Yes.

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Gunasekere.*

The knife or the umbrella was not given to the Finger Print Expert. It was not I who removed the table P.10 from the first accused's house. (To Court : Sergeant Jayatissa removed it on the 11th November.)

Q. I put it to you that you were aware when this table was removed because you were in charge of the investigations ?

A. Yes.

Q. I put it to you that this table P.10 was removed on the following day from the first accused's house ?

A. No.

*Cross-examined by Mr. Gunasekere :*

Alice Nona was taken to the Jayasekera Home on the 13th November late in the evening. Three statements of hers were recorded between the 7th and 13th November, all three by me. No other statement of hers was recorded by any other police officer. The first statement was on the 7th November at 7.30 p.m. The second statement was on the 8th morning about 12.15 a.m. that is, shortly after midnight of the 7th, and the third statement was recorded on the afternoon of the 13th.

Q. It was as a result of the third statement that the second accused was arrested ?

A. Yes.

I did not see the I.G.P. at the deceased's house on the 7th November. I went to the house at about 1.30 p.m. and I was moving about. I learnt that the I.G.P. had come there. I also learnt that the Prime Minister and the Minister of Home Affairs who was at that time Sir Oliver Goonetilleke had also come there.

Q. For several days after this tragedy people were forming various theories as to how this had happened ?

A. Yes.

Q. This tragedy was the talk of the town ?

A. Yes.

Alice Nona gave evidence in the Magistrate's Court for the first time in this case on the 8th November. By that time I had recorded two statements of hers.

Q. This is what you have told the Magistrate on that point, " Alice Nona made only one statement to the police before she gave evidence in Court " ?

A. That is a mistake.

*Re-examin-  
ation.*

*Re-examined :*

The second statement of Alice was merely pointing out the first accused. That is what I called the second statement of hers. When I went to the deceased's house on the 7th I found a slipper under the deceased's body and that appears in photograph No. 7 of P.47, taken at about 11 a.m. that day. I went to the first accused's house at 9.45 p.m. that night, but I took no slipper from the first accused's house. I was satisfied that there was nothing but human blood on that slipper. There was human blood on all the clothes of the deceased. I did not send any of those clothes to the Government Analyst. John Singho had made a statement on the 8th November, at about 11 a.m. to the Mirihana police.

(Court : Till that statement no importance was attached to the umbrella P.4 ?—Yes.

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This is a common article?—Yes.)

I did not expect any blood to be found on that umbrella.

(*To Court*: Blood on the umbrella would have proved nothing?—Yes.)

*Q.* It showed that a man had come with an umbrella and had left immediately after committing the deed leaving behind the umbrella?

*A.* Yes.

On the 12th November an identification parade was held for the umbrella. The sketch was made on the 10th November, and I forgot this umbrella then. (*To Court*: By the time John made his statement a number of persons had handled the umbrella. I had handled it that very day. Therefore it was not sent to the Finger Print Expert.)

*Q.* You did not set out on a voyage of discovery, trying to prove all the herb cutters in the Island?

*A.* No.

*To Jury*: Nil.

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**EVIDENCE of L. Jayatissa.**

L. JAYATISSA—Affirmed.

20 *Police Sergeant 2301, attached to Kotahena police. I belong to the Investigation Branch of the Kotahena police. On the 7th November 1947 I went to No. 107, College Street, Kotahena. I got there at 11.05 a.m. and I saw P.C. Diyabalanage making inquiries there and I took over from him. I recorded the statements of Ukku Menika, Ran Banda and Sudu Banda that day.*

On the 8th November I recorded the statements of Khalid and Mrs. Christie.

On the 11th November I went to the house of Arnolis Dabare and recorded his statement and that of witness Simon Singho.

30 *Q.* It was after recording the statement of Arnolis Dabare that you looked for a table?

*A.* Yes.

(*Mr. Lekamage* objected to this question as he states it does not arise on the lower court evidence.)

*Q.* Have you made detailed notes in your notebook?

*A.* Yes.

I found this table P.10 in the first accused's house on the 11th November.

(*To Court*: I took it into my custody.)

40 *Q.* When you took it into your custody were there those outlines of a block of wood on the table, and a hole?

*A.* Yes.

*Q.* Was there anything attached to the table when you found it on the 11th?

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Jayatissa,  
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tion.

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tion's  
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tion,  
*continued.*

A. I found an old herb cutter which had been kept on the table. It was not fixed to the table. It was loose and could be moved about. It had an old knife. I did not take the old herb cutter as a production. I left it behind in the first accused's house. I only took the table into my custody.) I produce table P.10. I also recovered P.9 to P.17.

*Mr. Lekamage* : I desire that my objection to the question put by learned Crown Counsel may be recorded.

*Court* : Certainly. "The question proposed to be put by Crown Counsel was 'Was it after the statement of Arnolis Dabare that you looked for a table?' I have allowed the question." 10

*Crown Counsel* : May I be permitted to put one or two questions more ?

*Court* : Allowed.

*Mr. Lekamage* : I object.

*Crown Counsel* : I propose to ask the witness to refresh his memory with his notes of inquiry and thereafter make the whole of the notes available to the defence.

*Court* : Allowed.

*Crown Counsel to witness* :

Kindly turn to your notes of inquiry with regard to the events of the 11th November (at page 28 of your notes). 20

*Mr. Lekamage* objects to the witness looking at his notes of inquiry. He submits that Jayatissa did not require to refresh his memory by looking at his notes.

*Court* : There is substance in that submission. Let the cross-examination proceed.

Cross-  
examina-  
tion by Mr.  
Lekamage.

*Cross-examined by Mr. Lekamage* :

Q. I put it to you that it was on the 8th November that you went and removed this table from the house of the first accused ?

A. I deny that.

Q. And I put it to you that it was after you removed the table on the 30 8th that you approached Arnolis Dabare ?

A. I deny that.

Q. You deny that Arnolis Dabare made a statement as dictated to him by you ?

A. I deny that.

Q. You deny that it was on your instructions that Simon Singho made the new herb cutter P.9 which was produced here ?

A. I deny that.

Q. I put it to you that you got Arnolis Dabare's statement in order that you might find corroboration for Simon Singho's story ? 40

A. I deny that.

Q. I put it to you that when you gave evidence in the lower court no mention was made of the removal of this table from the first accused's house ?

A. I cannot remember whether I mentioned this table or not. (*To Court* : I only answered questions.)

Q. The date on which you removed the table P.10 was not mentioned in the lower court?

A. I cannot remember that.

(Mr. Lekamage expresses his regret for the suggestion that the witness had not stated to the magistrate about the removal of P.10. This is incorrect.)

On the 7th November I recorded the statements of Ukku Menika, Ran Banda and Sudu Banda.

10 Q. Did you know at that time that there had been a mason also working in Proctor Jayasekere's compound?

A. I recorded the statement of that mason also on the 7th November.

Q. Can you remember his name.

A. He is Mututantrige Joseph Perera. (Witness gives this answer after refreshing his memory from his notes.)

I also recorded the statements of a number of other people. Some of them are not witnesses in this case. I also recorded the statement of one Richard Fernando. I did not record the statement of J. A. M. Wijegunawardena of Pickerings Road, Kotahena. (To Court: I cannot explain how his name is on the list of witnesses filed in the Magistrate's Court.)

20 I did not record the statement of H. O. Noris Appuhamy. In addition to those whom I have already mentioned, I have also recorded the statements of W. A. Alwis Singho, Dharmasena (not the first accused), Jelin Nona, Marshall Setunga, Albert and Peris Fernando.

*Cross-examined by Mr. Gunasekera*: Nil.

*Re-examined*: Nil.

*To Jury*: Nil.

*In the Supreme Court.*

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examina-

tion by Mr.

Lekamage,

*continued.*

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**EVIDENCE of V. T. Pandita Gunawardene.**

V. T. PANDITA GUNAWARDENE—Affirmed.

30 I am the Additional Magistrate of Colombo. I heard the non-summary proceedings in this case. In connection with this case there were two identification parades held. They were held in court under my supervision. In my experience I have supervised a number of identification parades. There are certain rules that have to be observed and I observed those rules in connection with the identification parades in this case. The first identification parade was on the 8th November. I have made notes of it. (Witness looks at his notes beginning with page 14 of the record.)

40 Mr. B. W. Perera, A.S.P., moved that an identification parade be held to have the suspect identified. The suspect on that day was Kannangara Aratchige Dharmasena, the first accused in this case.

I did so in the body of the court. The suspect K. A. Dharmasena who was at the Maradana police station was taken to the Fiscal's cell by Sub-Inspector Lawrence and detained there by him at 10.30 a.m. The witnesses Ukku Menika, Ran Banda, Sudu Banda and Richard Fernando who were at the Grandpass police station were brought in the

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tion,  
*continued.*

police van escorted by Inspector Goonetilleke at 11 a.m. The van was halted opposite the District Court premises from where the witnesses could not see into the premises of my court. Ten persons of about the same age, appearance and build similarly dressed as the suspect were lined up in the court. The suspect who was undefended was asked to take up any position he liked in this line of men. He was also told of his right to change his dress if he so desired. The suspect took off his coat and green shirt and wore a yellow shirt of another man in the line. The suspect stood 7th in the line. The Court Aratchi was sent to bring the witnesses. Court Inspector Marc South was in charge of the parade. The witness Ukku Menika was brought 10 by the Court Aratchi from the District Court premises about 200 yards away from where the identification parade was held.

The District Court is here (pointing to the District Court premises) and the Magistrate's Court is across the road on the other side.

The witness Ukku Menika was asked to point out the man who came into her premises armed with a knife and having dropped the knife and sarong ran away. The witness walked down and picked out the suspect without hesitation. The witness was then sent away to the "B" Magistrate's Court room, that is, to an adjoining court. "B" Court was not sitting at the time. 20

The suspect was then informed of his right to change his place and clothes once again. The suspect stood 3rd in the line now and put on a coat. The witness Ran Banda was brought in from the District Court premises. He was asked to point out the man in this line who rushed to his house with a knife and ran away leaving the knife and sarong. He picked out the suspect without hesitation. This witness was also sent to the "B" Magistrate's Court room.

The suspect chose to remain in the same position and in the same dress. The witness Sudu Banda was brought in by the Aratchi and was asked to point to the man in this line who was seen in the garden with a knife inside 30 a small bag which that man dropped on the ground and ran away, also dropping the sarong which that man had on the head. The witness walked up to the line and pointed to the suspect without hesitation.

The suspect chose to remain as he was in the same dress. Then one Richard Fernando was presented to the parade.

At the close of the parade the first accused stated that the men in the parade were not exactly like him with the hair so close cropped. I then made the following note :

"The men are all about the same build and appearance. That is all I can say." 40

Thereafter I dismissed the parade.

I held another parade on the 10th November 1947 (witness looks at his notes beginning from page 33 of the record).

On this day the first accused was represented by Mr. Samarajeewa. Mr. B. W. Perera moved that a parade be held that day to have the accused identified by witnesses. I proceeded to do so in the body of the court. Chief Inspector Marc South was in charge of the parade. Ten men were lined up in the body of the court. They were of approximately the same age, appearance and build as the accused Dharmasena. The accused was detained in the Fiscal's cell since 9 a.m. that morning. He was brought 50

from the remand jail straight to the Fiscal's cell. The three witnesses Noreen Joachim, Mervyn Joachim and Khalid who were at the Pettah police station were telephoned for at 12.30 p.m. They arrived in charge of Sub-Inspector Lawrence of the Kotahena police and they were detained by him at the District Court premises from where they could not see into my court premises. Mr. Samarajeewa for the accused selected the persons who formed the parade. The parade was then arranged. Ten men were lined up. The accused was asked to take up any position he liked and was told of his right to change his dress. He wore a white shirt and white cloth and stood 10th in the line. The Court Aratchi was sent to fetch the witnesses singly. Witness Noreen Joachim appeared and was asked to point out the person Baas who used to visit the deceased's house. The witness was presented to the parade. She walked down the line and pointed to the accused. The witness was then sent to the office to the charge of the Chief Clerk of the Court.

(This witness Noreen Joachim is now Mrs. Anderson.)

The accused was then told of his right to change his place and his attire if he so chose. The accused put on a grey coat and took up the 5th place in the line of men. The Aratchi was sent to fetch Mervyn Joachim. He was brought in and asked to point out the man called Baas from among the line of men, who used to visit the deceased's house. The witness went up and pointed to the accused without hesitation. This witness was also sent to the office in charge of the Chief Clerk of the Court. The accused then changed his place to 8th in the line. He did not change his attire.

The Court Aratchi was then sent to fetch Khalid. He was brought in and asked to point to the man whom he saw running away breaking a fence on 7.11.47. The witness walked down the line and picked out the accused without hesitation.

Mr. Samarajeewa for the accused had no complaint to make. Thereafter I dismissed the parade.

*Cross-examined by Mr. Lekamage :*

At pages 1 and 2 of the record I find Mr. B. W. Perera, A.S.P.'s motion asking for the first identification parade. In the third paragraph of that motion Mr. B. W. Perera states that Ukku Menika, Ran Banda and Sudu Banda stated that they could identify the person who entered the premises of Mr. Jayasekere. One Richard Fernando was also presented to the first identification parade. He walked down the line and pointed to someone other than the first accused. I asked Richard Fernando to point to the man who came running towards him from the direction of the deceased's house.

A report to Court under section 121 and a plaint under section 148 were filed in Court on the 8th November. To that plaint was attached a list of witnesses.

*Court :* Is there a list of productions to that plaint ?

*Witness :* No.

*Court :* I see a page with names numbered 1 to 10 attached to this plaint.

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tion's  
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V. T.  
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tion,  
*continued.*

Cross-  
examina-  
tion by Mr.  
Lekamage.

*In the  
Supreme  
Court.*

*Crown Counsel* : This is a list which has nothing to do with this case. It seems to have got into the record by error.

*Court* : Whose are the initials on that page ?

*Witness* : Mine.

*Court* : You cannot remember when you put in those initials ?

*Witness* : I cannot remember in what connection or whether this is part of some other record I cannot say.

*Court* : Mr. Lekamage wishes it to be recorded that the plaint dated 8th November has at the foot of it the words "List of productions attached." 10

*Cross-examination by Mr. Lekamage continued* :

Another plaint was filed on the 1st December, 1947. That plaint has attached to it a list of productions. In that list item 17 is P.17, one charred piece of wood, and item 10 is P.10, one small table.

*Cross-examined by Mr. Gunasekere* : Nil.

Re-examination.

*Re-examined* :

On the first plaint filed on the 8th November, only the first accused is made an accused. On that plaint is a list of witnesses. At the very end of that list of witnesses there are the words "List of productions" appearing. 20

(*Crown Counsel* moves to mark this X.4.)

*Court* allows it.)

Next to that is a white foolscap sheet of paper (*Crown Counsel* marks this X.5.) X.5 contains a list of names which begin again with No. 1. (*To Court* : Mine is a busy Court.)

*Q.* Do you concede the possibility that by error this sheet X.5 may have got into the record ?

*A.* On this particular date I was doing the work of two courts.)

Not one of the persons named in X.5 has been called as a witness in this case although 72 witnesses were examined by me. 30

(*Court* : *Q.* So do you think this is a sheet of paper belonging to some other record ?

*A.* It may be. The addresses on X.5 are Kotahena, Pettah, Modera.) (X.4 and X.5 are shown to the Jury.)

In the second plaint that was filed both the first and the second accused were made accused. To that plaint was attached a list of productions. Item No. 4 on that list of productions is an umbrella and item No. 19 is one pair of sandals.

*To Jury* : Nil.

1.45 p.m.—adjourned for the day. 40

Certified correct by me.

(Sgd.) M. ANTHONY,

Stenographer, S.C.

No. 65.

## EVIDENCE of A. C. Lawrence (recalled).

In the  
Supreme  
Court.

24th January, 1949.

Accused present.

Same Counsel.

*Crown Counsel moves to recall.*Prosecu-  
tion's  
Evidence.No. 65.  
A. C.  
Lawrence  
(recalled),  
24th  
January  
1949.  
Examina-  
tion.

A. C. LAWRENCE—Re-sworn.

*Examined :*

On 8th November, 1947, first accused was at the Maradana Police Station in the morning. I brought him from the Maradana Police Station to the Fiscal's office at about 10.30 a.m. on instructions from Mr. Perera, A.S.P. That was for the purpose of an identification parade which was to be held at the Magistrate's Court. The Fiscal's office where I kept the first accused is not within sight of the Magistrate's Court premises at all. Whilst first accused was in my charge Police Constable Peiris came and took him on to the Magistrate's Court when the parade was ready at the Magistrate's Court. He was taken through the gate that connects the Magistrate's Court and the Fiscal's office, that is the back gate.

20 Again on 10th November, 1947, I was given in charge of Noreen Joachim, Mervyn Joachim and Khalid. I kept them at the District Court premises, about 30 to 40 yards away from the Magistrate's Court premises. From where I was I could not see what was happening in the Magistrate's Court premises. While they were in my custody the Court Aratchi Rogus came there and took the witnesses one by one to the Magistrate's Court.

*Cross-examined by Mr. Lekamage :*

I brought the first accused on the 8th morning by car from Maradana Police Station to the Fiscal's office. It was not a closed van. I halted the car inside the back premises of the Fiscal's office. I kept the car there till about 11.35 a.m. The accused was in that car all that time. The Fiscal's office and the compound round it, I am not aware, is open to the public. People having business in the Fiscal's office can walk in and out. There is no special permit required for people to get into the Fiscal's office and compound. From there Constable Peiris took the first accused walking to the Magistrate's Court.

Cross-  
examina-  
tion by Mr.  
Lekamage.

Q. Any person on the road between the Fiscal's office and the Magistrate's Court could have seen him being taken to court ?

A. Not unless he entered the Magistrate's Court premises.

40 The public have access to the compound of the Magistrate's Court. There used to be people in that compound. Any of those people could have seen the first accused being taken into the Magistrate's Court. I am not aware that Khalid was in that crowd on the first day.

*Cross-examined by Mr. Gunasekere : Nil.*



*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 65.  
A. C.  
Lawrence  
(recalled),  
24th  
January  
1949,  
*continued.*  
Re-examin-  
ation.

*Re-examined :*

When I brought the first accused on the 8th for the identification parade I learnt that the identifying witnesses were in the Grandpass Police Station.

*To Court :* I cannot say how long witness Alice Nona was at the Kotahena Police Station. I saw her at 107 College Street at about 11.30 a.m. on the 7th. I saw the second accused too there. I saw both of them together.

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No. 66.

EVIDENCE of K. G. Peiris.

10

K. G. PEIRIS—Affirmed, Police Constable 4075, Maradana.

No. 66.  
K. G. Peiris,  
24th  
January  
1949.  
Examina-  
tion.

*Examined :*

On the 8th November, 1947, I was sent from the Magistrate's Court, Colombo, to the Fiscal's office to bring the first accused for an identification parade. When I went to the Fiscal's office first accused was in the custody of Sub-Inspector Lawrence. I brought the first accused to the Magistrate's Court through the back gate which leads to the Magistrate's Court. When I was bringing him from the Fiscal's office to the Magistrate's Court it was not possible for any one in the District Court premises to see him.

*Cross-examined by Mr. Lekamage :* Nil.

20

*Cross-examined by Mr. Gunasekera :* Nil.

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No. 67.

EVIDENCE of S. F. Gunatilleke.

S. F. GUNATILLEKE—Sworn. Sub-Inspector of Police, Pettah.

No. 67.  
S. F. Guna-  
tilleke,  
24th  
January  
1949.  
Examina-  
tion.

*Examined :*

On 8th November, 1947, witnesses Ukku Menika, Ran Banda, and Sudu Banda were in my custody at the Grandpass Police Station. I first saw them at 10 a.m. I took charge of them. When I was there I got a message from the A.S.P. about 10.50 a.m. and as a result of it I took them to the Colombo District Court premises. While we were in the 30 District Court premises the Court Aratchi Rogus came and took the witnesses one by one to the Magistrate's Court for the purpose of identifying the accused. No outsider held any conversation with any of the witnesses while they were in my custody.

*(To Court :* I knew these witnesses were in my custody for a parade. They were kept together so that they could not see the persons whom they were to identify.)

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :* Nil.

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No. 68.

## EVIDENCE of P. B. Rogus.

P. B. ROGUS—Affirmed. Court Aratchi, Magistrate's Court, Colombo.

*Examined :*

On 8th November, 1947, an identification parade was held by the Additional Magistrate Mr. Pandita-Gunawardene at the Magistrate's Court. After the parade was arranged I was directed by the Magistrate to go to the District Court premises and bring the witnesses one by one. I came to the District Court and found Inspector Gunatilleke in charge of the three witnesses. I took Ran Banda, Sudu Banda and Ukku Menika to the Magistrate's Court. While each witness was being taken to the Magistrate's Court he was not in a position to see where the accused was standing in the parade before he entered the Magistrate's Court. There was another identification parade on 10th November, 1947. On that day too I was ordered to go to the District Court premises and bring the witnesses one by one. I adopted the procedure which I adopted on the 8th of November. Till those witnesses were produced before the Magistrate they had no opportunity of seeing the first accused in the parade, nor did they hold any conversation with any outsider before the identification parade.

*Cross-examined by Mr. Lekamage :* Nil.*Cross-examined by Mr. Gunasekere :* Nil.*In the  
Supreme  
Court.**Prosecu-  
tion's  
Evidence.*

No. 68.

P. B.  
Rogus,  
24th  
January  
1949.Examina-  
tion.

No. 69.

## EVIDENCE of S. P. Rupasinghe.

S. P. RUPASINGHE—Affirmed. Peon, Magistrate's Court, Colombo.

*Examined :*

On 8th November, 1947, I was a peon in the Magistrate's Court. That day an identification parade was held in respect of the first accused in the A Court. The B Court did not sit that day. In fact the Magistrate in the B Court held the identification parade in the A Court. As witness by witness came up from the District Court premises to identify the first accused at the parade I took charge of each witness and took him to B Court after the witness had identified at the parade.

Those witnesses who were in my charge in the B Court did not leave the B Court before the parade was over. From the place where those witnesses were they could not see what was happening in the A Court nor could they see the witnesses being brought to the Magistrate's Court.

*Cross-examined by Mr. Lekamage :* Nil.*Cross-examined by Mr. Gunasekere :* Nil.No. 69.  
S. P. Rupa-  
singhe,  
24th  
January  
1949.  
Examina-  
tion.

*In the  
Supreme  
Court.*

No. 70.

**EVIDENCE of W. E. Peiris Singho.**

*Prosecu-  
tion's  
Evidence.*

W. E. PEIRIS SINGHO—Affirmed. Fiscal's Guard, Colombo.

*Examined :*

On 10th November, 1947, first accused was in the Remand Jail in the morning in connection with this case. I brought him from the Remand Jail to the Fiscal's office and from there I took him to the police cell in the Magistrate's Court. I put the first accused in the police cell on the 10th at 9 a.m.

No. 70.  
W. E.  
Peiris  
Singho,  
24th  
January  
1949.  
Examina-  
tion.

*Cross-examined by Mr. Lekamage :* Nil.

10

*Cross-examined by Mr. Gunasekera :* Nil.

No. 71.  
T. B.  
Dissan-  
ayake,  
24th  
January  
1949.  
Examina-  
tion.

No. 71.

**EVIDENCE of T. B. Dissanayake.**

T. B. DISSANAYAKE—Affirmed. Police Sergeant 1336, Kegalle.

*Examined :*

On 10th November, 1947, I was the Court Sergeant in the Magistrate's Court, Colombo. That day first accused was one of the remand prisoners brought to the police cell in the Magistrate's Court. He was brought by the Fiscal about 9 a.m. Thereafter he was in my charge. During the time he was in my charge in the police cell no outsider had any 20 communication with the first accused.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :* Nil.

No. 72.  
B. N.  
Goone-  
sekera,  
24th  
January  
1949.  
Examina-  
tion.

No. 72.

**EVIDENCE of B. N. Goonesekera.**

B. N. GOONESEKERA—Affirmed. Police Constable 1250, Kotahena.

*Examined :*

I remember 12th November, 1947. That day I was instructed by A.S.P. Jebansam to go and bring witness John Singho to the Grandpass Police Station. I brought him to the Grandpass Police Station in the 30 morning. I was then asked by A.S.P. Jebansam to bring him to the Kotahena Police Station. I brought him there. He was present at a parade of umbrellas. John Singho had no opportunity to see the umbrella before he was present at the parade.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Mr. Gunasekera :* Nil.

## No. 73.

## EVIDENCE of Orandha Seneviratne.

In the  
Supreme  
Court.

## ORANDHA SENEVIRATNE.

*To Court* : I will be 11 years this June. I was born on June 20th. I go to St. Thomas' school. I am in the sixth standard.

(Witness is affirmed.) 11, student, son of the deceased, Nugegoda.

*Examined* :

(P.1 shown.) This is my sarong. I remember the morning my father died. That morning I left this sarong on my bed. I wore it the previous night. There is no reason for blood to get on to that sarong. When I got up the next morning I wore a pair of shorts and went to school leaving the sarong on my bed. Normally when I go to school the sarong is put out to dry.

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Mr. Gunasekere* : Nil.

Prosecu-  
tion's  
Evidence.No. 73.  
Orandha  
Sene-  
viratne,  
24th  
January  
1949.  
Examina-  
tion.

## No. 74.

## EVIDENCE of W. R. Chanmugam (recalled).

No. 74.  
W. R.  
Chan-  
mugam  
(recalled),  
24th  
January  
1949.  
Examina-  
tion.

Court recalls :

W. R. CHANMUGAM—Sworn.

*To Court* : I have used X.3 again in such a manner that the cutting edge of the blade is now parallel to the surface of the block. I have some specimens of herb. (Witness demonstrates to the Jury how the herbs can be cut with the herb cutter.) There are two methods of making the herb cutter parallel to the surface of the block ; one is by shaping the block so that it is parallel to the surface of the block, and the other is by sinking the bolt to the extent that the cutting edge of the blade is parallel to the surface of the block of wood. In this instance I have lowered the bolt so that the cutting edge is now parallel to the surface of the block. If the herb cutter was used in the manner in which I have used it now, after some time a drain would be left down the length of the block. (The mark on the block of wood is shown to the Jury.)

*Cross-examined by Mr. Lekamage* :

(At Mr. Lekamage's request the herb cutter is dismantled.)

In order that the blade of P.6 should be parallel to and touching the surface of the block of wood I had to bore a larger hole in the block of wood and send the washer in. When the hole was smaller on the top surface of the block of wood as on the last occasion the end of the blade stood half to three quarter inch away from the block of wood. I had to bore a hole between half to three-quarter inch deep to fit the circumference of the

Cross-  
examina-  
tion by Mr.  
Lekamage.

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Supreme  
Court.*

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tion's  
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W. R.  
Chan-  
mugam  
(recalled),  
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examina-  
tion by Mr.  
Lekamage,  
*continued.*  
Re-examin-  
ation.

washer. Originally when the iron bolt P9B was sent to me the blade P9C was sent along with it. P9C was alleged to have been made by Simon Singho for P9B and the wooden block P9A was fitted to it. The blade of P9A as compared to P.6 is much wider on the pivoting end of the knife. (P9A and P.6 shown to the Jury.) When P9C was attached to P9B the edge of the blade was more or less in line with the block of wood. You want a little pressure even now to insert P.6 to the bolt P9B. On the thread of P9B there is a little projection half-way through. It is difficult to get the nut beyond that projection. I am unable to say whether normally that nut is sent beyond the projection. On this occasion I had to send the nut 10 beyond the raised edge.

*Cross-examined by Mr. Gunasekere : Nil.*

*Re-examined :*

Without seeing the block of wood to which P.6 was attached originally I am not in a position to say what the nature of that block of wood was.

*To Court :* All that I have done was to demonstrate with a piece of wood corresponding to the outlines on the table P.10 that this knife could have been used on the block to leave a drain.

No. 75.  
B. W.  
Perera,  
24th  
January  
1949.  
Examina-  
tion.

No. 75.  
EVIDENCE of B. W. Perera.

20

Court calls :

B. W. PERERA—Affirmed. A.S.P. Colombo West.

*To Court :* (Shown plaint dated 8th November, 1947, filed on record in the Magistrate's Court.) I signed that plaint. There is a list of witnesses on the face of the plaint. There are eleven on that list. All the eleven in this list had been examined in the Magistrate's Court. Below that list are the words: "List of productions attached." Ordinarily a list of productions would be attached with a plaint. When I turn over I find a piece of paper with ten names. There is no list of productions. None of those ten names in that paper has been examined as witnesses in this case. 30 Therefore I say that that list has nothing to do with the case as witnesses. I remember a list of productions being attached to this plaint. I cannot remember now whether there was a reference to the umbrella P.4 in that list. I cannot remember whether there was a reference to the pair of slippers P.28 in that list.

I went to this house 107 College Street on 7th November, 1947, at 10.15 a.m. I made an attempt to open the wardrobe of the deceased on the same day, as far as I can remember at 1.30 p.m. This wardrobe was in the bedroom. There was another wardrobe belonging to the second accused outside. I was not able to open the wardrobe. I tried to open 40 it in the presence of the second accused. No key was produced before me. So I had to force it open with an instrument put between the blades of the

wardrobe. Second accused was present when I did this. I cannot remember whether Alice Nona was present then. After opening the wardrobe I searched the wardrobe. I heard Inspector Gordon's description of the contents of that wardrobe. That is correct. I put all the things back. I did not find in that wardrobe any cash or any jewellery or any other article of immediate cash value such as a watch or a ring in the wardrobe. I found a bunch of keys inside the wardrobe. I was able to lock the wardrobe with one of the keys. I handed the whole bunch of keys to the second accused after locking the wardrobe. I did not test at any time whether the same key fits both wardrobes. No complaint was made to me about the search. No complaint of theft was made to me.

*Cross-examined by Mr. Lekamage :*

On the sheet X.5 there are ten names numbered one to ten. You find such names as Wijegunawardene of Pickerings Road, Kotahena ; Noris Appuhamy, of Pickerings Road, Kotahena ; Podi Appuhamy of Dias Place, Pettah ; Albert Singho of Alutmawatte Road, Modera ; Simon of Pickerings Road, Kotahena ; and Razak of Silversmith Street, Kotahena. This list has been initialled by the Magistrate and dated.

The list of productions attached to the plaint of 1st December is not identical with the list of productions which I gave on the 8th of November.

I was conducting the entire investigations into this case. I got to the scene at 10.15 a.m. I can say that there are on this list productions which I found after the 8th. There is for instance the table P.10. There are also a hammer, two pieces of small iron, one screwdriver, two chisels, one washer, one blade of a knife, a charred piece of wood and a drawer. I did not keep a copy of this plaint in the police file. I would have entered all the productions which were available and which I thought were relevant to the case in that list of productions.

*(To Court : All productions available would have been in.)*

The umbrella was found on the 7th, and also the pair of slippers. In the ordinary course of routine if the umbrella and the pair of slippers had been found on the 7th they would have been included in the list on the 8th. I heard Inspector Gordon saying that the umbrella was kept in the strong box of the Kotahena police station till the 12th. Although the productions were not in court I would have listed them. Even in the case of witnesses who can speak to important facts in the case are listed as witnesses even though they may not be present in court that day. On the 8th I have a man called Richard Fernando. After the first identification parade he had faded out of the case. The blade P.6, the mat bag, the coat, the cartridges were also found on the 7th. Khalid was the man who pointed them out. His full name was not known then ; I knew him as a person working at No. 77. In our investigations we inquire from a witness what he knows about a matter and we record his statement unless other circumstances do not permit it. On the 7th he made no written statement. Where a witness gives some valuable information it is customary for us to take down his name and address. In the case of Khalid his name and his address were not taken down. I am not aware that Khalid reported at the Kotahena Police Station that night as well the next morning, but I know that he came the next day.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

*— —  
No. 75.*

*B. W.*

*Perera,*

*24th*

*January*

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*tion,*

*continued.*

*Cross-*

*examina-*

*tion by Mr.*

*Lekamage.*

*In the  
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Court.*

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tion's  
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B. W.  
Perera,  
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examina-  
tion by Mr.  
Lekamage,  
*continued.*

I made a report to the Magistrate on the 8th. In the third paragraph I say "Witnesses Ukku Menika, Ram Banda and Sudu Banda stated that they could identify the person who entered the premises of Mr. Jayasekere." In the next paragraph I say that "Richard Fernando and several others stated that they saw the suspect running along the road from the direction of the deceased's house. All witnesses stated they could identify the person if seen." (The report is marked 1AD4.)

On the 8th Richard Fernando pointed out somebody else other than the accused. Thereafter on the 10th I arranged an identification parade and brought in some of the members of the Joachim family. I could not present Khalid to the parade on the 8th. The officer from Finger Print Bureau came after I went there. He came before Inspector Gordon came there. I led most of the evidence in this case in the Magistrate's Court. I am aware that at a certain stage an application was made to the Magistrate to get the finger and palm impressions of the first accused and to send them to the Finger Print Bureau and that the Magistrate allowed the application. 10

Of the items we found at the scene, the umbrella and the pair of slippers were not claimed by any of the inmates of the house. The impression I had at that time was that the umbrella might have belonged to somebody who had come there to see this incident and left there. The umbrella was the only article which I thought belonged to that category. One sandal was found under the body and I paid special attention to it. 20

The umbrella was found in the verandah. With regard to the slippers I thought that might belong to the assailant. When I saw the slipper it had blood on it. I saw the blade P.6. There was blood on it. I saw the mat bag P.5. There was blood on it. I saw the sarong P.1. There was blood on it. All those items were sent to the Government Analyst. Among the items sent to the Government Analyst were also the table P.10, the hammer, screwdriver, chisel, blade of a chisel and blade of a knife. I did not consider it necessary to send the slippers to the Government Analyst. One slipper was found immediately under the body of the deceased. The pair of slippers was seen by me within two or three minutes of my going there. I was not the first person to see that slipper. The pair of slippers was good evidence. I considered it strong. Once I established the identity of the umbrella I presumed that that was also strong evidence. If the record shows that I led the evidence of Inspector Lawrence on 20th January that would be correct. That would be about two months after the incident. That day I led the evidence of Inspector Lawrence to indicate some of the productions which were found in the house. I may have missed getting out of Inspector Lawrence any evidence regarding the pair of slippers. I got out no evidence from Inspector Lawrence regarding the umbrella. On the same day I led the evidence of Police Constable Rajapakse who merely spoke to having found the knife P.6 and mat bag P.5. They spoke nothing about the umbrella or the slippers. Peiris also spoke nothing about the umbrella or the slippers. 30 40

Then on the 24th of February 1948, I led the evidence of Inspector Gordon to say that he found this umbrella P.4 on the verandah of the deceased's house. That was the first time I led evidence regarding the umbrella. Possibly I led no evidence in February about the slippers from Inspector Gordon. 50

Q. Is it your position that you overlooked the slippers right through the inquiry in the Magistrate's Court ?

A. It is on the list of productions on 1st December.

I got the officer from the Finger Print Bureau. I asked him to examine the scene for finger print and also the knife. I know he was there for about three hours. I thought it quite possible that the assailant might have had some blood on his hand at some time. He might have handled the sarong P.1. Finger prints are not expected on articles like the sarong and the purse. There was a zinc sheet. It was rusty and it is impossible to find finger prints on it.

*Cross-examined by Mr. Gunasekere :*

I know that a person called H. S. Collette, who lives a few yards away from the house of the second accused's mother, had been questioned. I do not know who gave the order to question him. Sergeant Jayatissa questioned him and recorded his statement. I know he was making preparations to leave the Island. I believe to Australia ; but I am not aware that he has actually gone.

I opened deceased's almirah on the 7th itself about 1.30 p.m. I asked the second accused for the key of the deceased's almirah. She said that the deceased wore it round his neck. No such key was found round his neck.

*Re-examined :*

The dates of inquiry in the Magistrate's Court are fixed by the Magistrate. On the 8th I did not come ready to file a plaint in the Magistrate's Court. On the 8th morning I filed a report to court and I moved that an identification parade be held that day. That report is 1AD4. After the identification parade I wanted to get the evidence of Alice Nona recorded. I was not allowed to do that as the plaint had not been filed. Therefore I had to file a plaint. The plaint was prepared in the court house itself using the Magistrate's typewriter. The list of productions was also typed on that typewriter. (X.5 shown.) I now remember what these names are. This list contains the names of persons who took part in the identification parade. That has somehow crept into the record instead of the productions.

I could not present Khalid at the parade on the 8th November. He could not be got at at any time on that day.

The Government Analyst was present at the scene of this incident on the day the deceased died and he saw the slippers. He came to 107 College Street about 11 a.m. or 12 noon. He instructed me as to what matters required analysis. The slippers are made of leather. Foot prints or finger prints are found on hard and shining surface.

(*To Court :* It is practically impossible to leave finger prints on any old cloth or on slippers. Without an accused person's consent I cannot make him put on a pair of slippers.)

Crown Counsel moves to read the statements of the accused to the Magistrate.

*In the  
Supreme  
Court.*

*Prosecu-  
tion's  
Evidence.*

No. 75.

B. W.  
Perera,  
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Cross-  
examina-  
tion by Mr.  
Lekamage,  
*continued.*  
Cross-  
examina-  
tion by Mr.  
Gunasekere.

Re-examin-  
ation.



*In the  
Supreme  
Court.*

Crown Counsel closes his case.  
*Court* : I call upon the defence.

*Mr. Gunasekere* : At the close of the case for the Crown I would ask Crown Counsel whether certain witnesses are in attendance as it may be necessary for me to call them for the defence. I refer to S. P. Joachim, Mary Joachim, H. F. Mills, Mrs. M. I. W. Peiris and Inspector D. H. R. A. Corea.

Court directs that these witnesses should be made available forthwith.

*Appellant's  
Evidence.*

**EVIDENCE FOR THE APPELLANT.**

**No. 76.**

10

**EVIDENCE of A. Y. Vincent.**

No. 76.  
A. Y.  
Vincent,  
24th  
January  
1949.  
Examina-  
tion.

*Defence.*

*Mr. Lekamage* calls.

A. Y. VINCENT—Sworn. Assistant Registrar of Finger Print Bureau, Colombo.

*Examined :*

On 7th November, 1947, I went to the scene of this incident, 107 College Street. I reached the scene at 10.30 a.m. and left the place at 4 p.m. The finger and palm prints of the first accused were sent to me from the Magistrate's Court on 5th February 1948. I sent a report to the Magistrate. (The report is marked 1D10.) I produce that report. In the lower court this inquiry bore the number 36089. (Witness reads his report.)

Interval taken.

11.30 a.m.

Certified correct.

Sgd. H. E. GOMEZ.

11.45 a.m.

24.1.49.

*A. Y. Vincent.*

*Examined by Mr. Lekamage :*

I read the report and it is to the effect that the finger and palm prints found at the scene of murder in connection with the above murder case did not tally with the finger and palm impressions of the accused, K. Dharmasena, the first accused in this case. This report of mine was made on 12th February, 1948. Thereafter no request was made by the Magistrate. I made my own search.

*Cross-examined by Mr. Nihal Gunasekere :* Nil.

*Cross-examined by Crown Counsel :*

Cross-  
examina-  
tion by  
Crown  
Counsel.

I examined some finger prints found on a glass cupboard. They were the only decipherable finger prints that I found in all the articles that I examined in the house. This glass cupboard was in the centre room. At the time I went the Police Officers were there on the scene. I compared those finger prints with the finger prints of the occupants of the house and a report was sent. I did not find any decipherable finger prints in any other place.

*Re-examined :* Nil.

*To Jury :* Nil.

## EVIDENCE of Premawathie Perera.

*In the  
Supreme  
Court.*

PREMAWATHIE PERERA—Affirmed.

*Appellant's  
Evidence.*

23 years, wife of K. Dharmasena, Nugegoda. Wife of the first accused. I got married to him on the 28th October, 1946. That is just over a year before Dharmasena was arrested. After I got married to him I lived with him at his house. I was there with him for the entire period, from the day I got married to him until he was arrested. At the time I got married and went there the other occupants of the house were : Bodipala  
10 (a brother of the accused) his wife, my mother-in-law, my sister-in-law and her children. The younger brother of the accused, Wilbert, was also in the house at the time Dharmasena was arrested. All these occupants are still in the same house. Bodipala and his wife are not there, they had left the house about six months before Dharmasena was arrested.

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Perera,  
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tion.

Q. During the entire period you lived in that house did you see any firearm in that house, a gun or a pistol ?

A. No.

Q. Had you seen any cartridges in the house ?

A. No.

20 Q. (Shown cartridges, P.27) Had you seen things like that in that house ?

A. No.

Q. (Shown P.7, a coat) Does this coat belong to Dharmasena, your husband ?

A. No.

(Shown P.6, knife) This is a part of a herb cutter. I have not seen this P.6 in my husband's house. The front part of that building is used for selling medicinal herbs. For that purpose there was a herb cutter in the shop.

30 Q. (Shown 1D9) This is a herb cutter ?

A. Yes.

Q. You produce 1D9, the herb cutter, in Court ?

A. Yes.

Q. That was the herb cutter, 1D9, which you used ?

A. Yes.

Other than this herb cutter, 1D9, there was no other cutter which we used in the boutique.

Q. Are you aware that medicinal herb cutter was in that shop ?

A. I knew that it was there from the time of the first accused's father.

40 Q. You understood that ?

A. Yes.

Q. It can still be used ?

A. Yes.

Q. During the entire time you had been in that house had you seen Mr. Seneviratne, the deceased ?

A. Yes.

Q. Where had you seen him ?

A. He had been to our medicinal shop.

50 Q. Have you seen his children too ?

A. Yes.

*In the  
Supreme  
Court.*

*Appellant's  
Evidence.*

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Prema-  
wathie  
Perera,  
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tion,  
*continued.*

*Q.* In whose company did you see his children ?

*A.* In the company of their father, Mr. Seneviratne.

*(To Court : Q.* Mr. Seneviratne used to come to your herb shop with his children ?

*A.* Yes.)

*Q.* Before the day Dharmasena was arrested had you seen the second accused there ?

*A.* No.

*Q.* As far as you are aware has the second accused come to your medicinal shop ?

*A.* No.

*Q.* You see this table P.10, where is it usually kept in your shop ?

*A.* In the verandah.

It is kept on the side of the meat-stall. From the road as you get into the shop it is on your right. In the night this table is left in the verandah itself at the same place. During the day a pair of scales is kept on the table and the herb cutter 1D9 is also kept on the table. In the middle of the table there is a hole.

*Q.* Was that block of wood kept on that hole ?

*(Crown Counsel : I object.)*

*Q.* Was this herb cutter 1D9 fixed on to the table or just placed on it ?

*A.* It was just placed on it.

There was an iron bar which was fixed to the table and the pair of scales was attached to that iron bar.

*Q.* (Shown 1D11) This is the iron, to which the pair of scales was attached ?

*A.* Yes.

This iron was fixed to the hole encircled in blue.

*Q.* Was this fixed on to the table itself ?

*A.* Yes.

*Q.* This was fixed directly on to the table or was it fixed some other way ?

*A.* It was affixed to the table through a piece of block of wood.

*Q.* This was the block of wood ?

*A.* Yes.

*Q.* On that this 1D11 was fixed ?

*A.* Yes.

*Q.* Why was this fixed for ?

*A.* A pair of scales was hung on the top of the rod.

*Q.* Have you seen this fixed on to this table ?

*A.* Yes.

*Q.* Had you seen this being fixed on to the table ?

*A.* I was present and saw the iron rod and the scales being fixed.

I have seen the first accused fixing it. A nut is fixed underneath the table. A small piece of iron square in shape and a nut is fixed to the rod. It was a piece of iron like this P.9E. I have seen it before. That is the square piece of iron that used to be fixed. It was fixed with a nut like this P.9F. (*Mr. Lekamage* assembles them.) This was fixed like this.

*Q.* How many pairs of scales were fixed on to this ?

*A.* Two pairs of scales.

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One balance is smaller than the other. (Shown 1D12 and 1D13.) They were these balances. (Witness shows how they were kept hung on the iron bar.) (Witness then places the herb cutter 1D9 on table P.10 to indicate how it used to be kept.) Medicinal herbs and things like that are weighed in the bigger pair of scales while salts and other smaller articles are weighed in the smaller pair of scales. There were weights for the balances and the weights were kept in the drawer in the same table P.10. There were small weights like coins and "madatiya" seeds. There was a  $\frac{1}{2}$  pound weight also. During the day they (scales) are fixed like this, but in the night they are removed. In the night the iron rod and the balances are taken in. The herb cutter is kept on the floor near the almirah in the hall. The iron rod is also placed there. The nut and the square piece of iron are kept in the tool box. The first accused has a tool box. Besides selling medicinal herbs he does carpentry work. He goes outside and does carpentry work. When he goes out I attend to the medicine shop. I was instructed as to how I should attend to the sales of various medicine and herbs. I remember the day on which Dharmasena was arrested in connection with this case. That morning he got up rather early and opened the boutique, had his tea, borrowed Johnaiah's umbrella saying that he had to go to Malabe. Johnaiah lives in the adjoining boutique, on the Colombo side. Dharmasena had borrowed this umbrella even on previous occasions. Before borrowing the umbrella he worked for a short while in the herb shop, then he went to sleep saying that he was feeling feverish. This was not the first day after I got married to him that he got into bed saying that he was feeling feverish. He used to get such attacks even before that. Before going to bed he swallowed two tabloids of medicine, and drank some water. After that he was sleeping till about meal time. Then he got up and he was in the boutique portion of the house. Then he asked me to look after the boutique saying that he was going somewhere. Then he went out. This was approximately about 12 noon.

Q. Your position is that in the morning shortly after tea he got into bed and he did not get up till about 12 noon?

A. Yes.

He got out of bed about 12 noon and he came back about 15 minutes or half hour later. He came back and he had his noon meal. For the noon meal that day he ate bread. After he had his noon meal till about 5 p.m. he was in the house. He was lying on the bed thereafter. He got up about 5 o'clock, went to Johnaiah's boutique, borrowed a bicycle and went towards the Gansabawa junction. Then he came back within about 15 minutes. Having come back he was working in the boutique. He returned the bicycle to Johnaiah. Then he was inside the boutique till about 7.30 p.m. Then he went out saying that he was going to Nugegoda. On that occasion he went out after dinner. On that day when he went at about 7.30 p.m. this table P.10 was outside, but the herb cutter, the iron rod and the balances were inside the house. Dharmasena had kept them inside before he left. After he left, we inmates of the house had our dinner, closed the doors and went to bed. We closed the doors and slept as he was getting late to return. We were expecting him that night. Then after we all got into bed somebody came and tapped at the door. Thereupon all of us asked "Who is that"? Then we were told that the Inspector of Police Mirihana had come there. We opened the door.

*In the  
Supreme  
Court.*

*Appellant's  
Evidence.*

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wathic  
Perera,  
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tion,  
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tion,  
*continued.*

When the door was opened I noticed some police officers. There were two cars and a van on the road. I was questioned by the police and they asked me where Dharmasena was. I told them "He was here a little while ago. He had gone to Nudegoda." Then they began to search the house.

*Q.* Did they ask for any special article from the house ?

*A.* Yes.

*Q.* What ?

*(Crown Counsel objects. Objection is upheld.)*

Police officers searched the house. From the house they took a coat, 10  
a sarong, a handkerchief, an umbrella and a pair of sandals. The coat  
was hanging on a peg which was near the bed. (Shown the coat produced  
in the case.) This was not the coat which they removed from the house.  
The coat that was removed by the police is not on this table. (Points  
to the table on which the productions are kept.) (Shown sarong P.8.)  
This is the sarong which they removed. It was a big handkerchief and  
that handkerchief is not here among these productions. (Shown P.4.)  
I cannot say whether it was this umbrella that they removed. It was  
one like that. That too was hanging on the peg. The pair of slippers  
was under the bed. (Shown P.28.) It was a pair of slippers like this. 20  
In reply to questions put to me by the police I showed the herb cutter.  
I showed this herb cutter, 1D9. They looked at it and went away without  
removing it. After taking these articles to their custody some of the  
police officers remained in the verandah and some were on the road. The  
inmates of the house were also standing in the verandah. Then the first  
accused came from the direction of Colombo at about 9 or 9.30 p.m.  
I saw him coming. I am not aware whether the police saw him coming.  
The police called out to him. Then Dharmasena came up. When he  
was called he went up and the police searched him and examined him.  
After they examined him the police took him away in the van. The coat, 30  
the sarong, the handkerchief, the umbrella and the pair of slippers were  
all removed by the police that night. Any of the inmates of the house  
was not given any writing to show that the police had removed those  
articles. Having taken those articles they did not ask me to sign any  
book to show that they had removed those articles. Next morning my  
mother-in-law and I went to Mirihana Police Station which is about half  
a mile from home. Having gone there I asked the police where Dharmasena  
was, and then as a result of what they said we returned home. At that  
time my husband was not at the Mirihana Police Station. Having returned  
home, leaving mother-in-law at home, myself, my sister-in-law and 40  
brother-in-law went to the Kotahena Police Station. I did not find  
Dharmasena even there. Then we went to Maradana Police Station.  
He was not even there. From there we came to the Magistrate's Court.  
Dharmasena was in the Magistrate's Court. We left the Magistrate's  
Court at about 2.30 p.m. Then we returned home. When we returned  
home I found that the table and some pieces of iron from the tool box  
and a piece of log that was on the table had been removed by the Police.  
That was on the 8th November at about 3.30 p.m. My mother-in-law  
was at home at the time we left the house for the Kotahena Police Station.  
No receipt had been given to my mother-in-law for removing those articles. 50  
My mother-in-law is about 65 years old. She falls ill often. After the

accused was arrested her state of mind was disturbed. In the night this iron rod 1D11 and the herb cutter 1D9 are removed by Dharmasena and they are kept inside the house. The table P.10 is not removed as there is no room in the house to keep the table. My sister-in-law and her children sleeps in the shop (Shown P.16.) I have not seen this before. It does not belong to us. I have seen Alice Nona only after I came to Court in connection with this case. I had not seen her before Dharmasena was arrested.

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Evidence.

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tion,  
*continued.*  
Cross-  
examina-  
tion by  
Crown  
Counsel.

*Cross-examined by Nihal Gunasekera : Nil.*

10 *Cross-examined by Crown Counsel :*

I came to know the deceased after I married the first accused. Before I married the first accused I lived with my parents in their house at Nawala. My parents' house is about 1½ miles from the first accused's house. After I got married and came to the shop Mr. Seneviratne had come there three or four times. He used to come there once in two or three weeks or once a month. I cannot remember the last occasion he came there. I think he came there about a month before his death. He had not been to our house with the children but I have seen him going along the road with his children. I have seen him going along the road  
20 with the children past our house. I sometimes attend to the herb shop and I attend to the work in the kitchen. When the husband is in the herb shop I used to be in the kitchen. It is when the husband is out of the herb shop that I go to the medicinal hall and attend to the work there.

*Q.* Otherwise you would be attending to the household work and the work in the kitchen ?

*A.* Yes. Sometimes I used to come to the front portion as well.

Mr. Seneviratne had come to the herb shop even when the first accused was away. I am aware that the deceased was well known to the first accused, my husband. In point of fact they were on good terms.

30 *(To Court : Q.* Do you mean to say that Mr. Seneviratne would have come to your herb shop when your husband was not there ?

*A.* He used to come where there was a necessity. He used to come there when he had to get some work done by my husband.

It is an open shop and sometimes when my husband is inside the house he used to come there to find out whether my husband was in.)

40 I never saw the deceased going along the road in the company of the second accused. I knew that the deceased was living at Kotahena. The deceased came all the way to Nugegoda because the second accused's mother was living there. I am aware that the second accused's mother  
40 was living at Nugegoda at that time. I did not know where her mother lived. I know the turn off at the 7th mile post, and the deceased used to take that turn.

*(To Court :* During the year I was married to the first accused the deceased was living at Kotehena.

*Q.* He must have been very fond of his mother-in-law, jumped in so many times to her place ?

*A.* Yes.

*Q.* Sometimes with his children ?

*A.* Yes.

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Q. Do you tell us truly that you did not see the second accused go to her mother's house during the year you were married to the first accused ?

A. I did not see her going to her mother's house.

Q. First accused was in the habit of going to the deceased's house at Kotahena ?

A. Yes.

Q. Did you know that your husband knew the second accused ?

A. Yes.

Q. Were you aware that your husband did certain jobs of work for the second accused ?

A. I cannot remember.

Q. Your husband apart from being a medicine seller was a carpenter ?

A. Yes.

Q. He was also a mason ?

A. Yes.

Q. He was a painter and a polisher ?

A. Yes.

Q. He was a Jack of many a trade ?

A. Yes.

Q. His services were obtained by the deceased and his wife ?

A. Yes.

Q. You were aware that he used to go to the house of the second accused for effecting repairs and polishing furniture ?

A. Yes.

Q. In point of fact your husband was in the habit of calling at the deceased's house whenever he went to Colombo ?

A. I do not know.

Q. Your husband went once in a way to Colombo, to Gabo's Lane, Pettah, to buy herbs ?

A. Yes.

Q. On those occasions do you know the first accused visited the house of the deceased ?

A. Yes.

Q. You also knew that he was in good terms with both the deceased and his wife ?

A. I did not know that.

Q. Please tell us whether you can remember having seen the second accused before you came to this Court ?

A. I have not seen.

Q. Have you not even seen her ?

A. Not even seen her.

(*To Court* : I did not know that she had two houses dowried to her at Nugegoda, close to her parental house. I did not know whether there were two such buildings close to our medicine shop.)

My husband built a shrine room for the second accused's mother. He built an altar too for her. He had a number of dealings with her.

(*To Court* : Q. You have seen the deceased and you have seen his children, and how is it that you have not seen the second accused, his wife ?

A. I have not seen her going past our house.

Q. Had you seen her outside ?

A. I have seen her only after this case started.)

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Q. Had you seen her going to her mother's house, passing your house, or getting down from the bus close to your house ?

A. She does not get down close to our house.

(To Court : Q. How did you see the deceased, not the second accused ? Surely the daughter would visit the mother more often ?

A. (No answer.)

On the 6th, the day before my husband was arrested, I attended to the work in the medicine shop and also to the work in the house. My husband was in the shop that day. He was there towards afternoon that evening. He was there in that section of the house where medicines were sold.

Q. What were you doing that day ?

A. I was at home.

Q. Were you in the kitchen side ?

A. I was in the kitchen side and also in the medicine hall.

Q. Is it possible that if a person came to see your husband you may not have noticed him ?

A. Yes.

Bodipala is a brother of the first accused. He lived with his wife in our house. He lived with us about six months before the day of this incident when my husband was arrested.

Q. Was there any of his personal belongings in your house ?

A. He had his clothes.

Q. Even those clothes he did not remove when he left your house ?

A. He took the clothes away.

Q. All his clothes or some of them ?

A. All his clothes.

Q. He did not go to set up another house ?

A. No.

After he left, his wife did not stay with us. I do not know where she went to.

Q. Up to date you are not aware where your brother-in-law's wife went to ?

A. No reply.

John Singho is a friend of my husband. He is in and out of my house. He has no kind of grievance against my husband. We used to lend and borrow. Bodipala did not possess a revolver.

Q. John Singho says that Bodipala had a revolver in your house. Why should he say so ?

A. I do not know.

My husband had no umbrella. There was no umbrella in our house. (Shown P.4.) This is John Singho's umbrella. That is the umbrella which my husband borrowed from John Singho on the day my husband was arrested.

(To Court : My husband got fever about half an hour after he borrowed the umbrella.)

That morning my husband got up hale and hearty. He got up quite well as usual. He had his tea as usual. He had his hoppers as usual. Then he decided to go to Malabe. He did not dress up to go to Malabe, he was then wearing his banian and the sarong. He then went to John Singho's house and borrowed the umbrella.

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(*To Court : Q.* That he would do when he had dressed up. Is that what people generally do ?

*A.* Yes.)

Then he came back and went to bed. He went to bed about half an hour after he borrowed the umbrella. That is to say, he was unfit to go on that journey.

*Q.* Why did you not return the umbrella ?

*A.* I did not think of doing it.

*Q.* Your husband took an umbrella from him in the evening and within 15 minutes he returned the bicycle ?

10

*A.* Yes.

*Q.* He had recovered by then ?

*A.* He was somewhat fit.

*Q.* You must have seen the umbrella hanging from the peg when you went to bed that night ?

*A.* Yes.

*Q.* You have seen it hanging the whole day ?

*A.* Yes.

*Q.* It did not strike you to return it that day ?

*A.* I was not in the habit of returning whatever things my husband 20 borrows. I leave it to him.

*Q.* I put it to you that the umbrella was never there ?

*A.* No answer.

*Q.* I put it to you that your husband put it elsewhere ?

*A.* No answer.

(*To Court : John Singho did not send for it.*)

*Q.* John Singho is in and out of your house ?

*A.* Yes.

*Q.* John Singho says that this herb cutter P.6 was in your house ?

*A.* No.

*Q.* Can you assign a reason why John Singho should say a thing 30 like that ?

*A.* I cannot.

*Q.* He says further that this was fixed on to that table P.10 ?

*A.* No answer.

*Q.* He also says that he saw another herb cutter after that day, is that false ?

*A.* Yes.

*Q.* This was not the first day your husband fell ill ?

*A.* He has fallen ill before.

*Q.* He was a chronic malarial subject ?

*A.* Yes.

*Q.* After he borrowed the umbrella he got high fever ?

*A.* Yes.

*Q.* That is why he did not undertake the journey ?

*A.* Yes.

*Q.* You advised him not to undertake the journey ?

*A.* Yes.

*Q.* He swallowed some pills ?

*A.* Yes.

*Q.* He did not take any ayurvedic medicine for that ?

*A.* He did not.

*Q.* At 12 o'clock he went out ?

40

50

A. Yes.

Q. Did you not advise him not to expose himself ?

A. No.

(To Court : He went to bed with fever about half an hour after he borrowed the umbrella. That was about 9 a.m.

Q. It was pure coincidence that when Mr. Seneviratne was breathing his last your husband was on bed ?

(A. No answer.)

Q. At 12 o'clock your husband was well enough ?

10 A. Yes.

Q. He had some slices of bread and then he was lounging on bed ?

A. Yes.

Q. Then he borrowed a bicycle and went to the Gansabawa Junction ?

A. Yes.

Q. What was the urgent need to go to the Gansabawa Junction ?

A. He went to see a vederala.

Q. You did not know why he went to see a vederala ?

A. I did not know.

20 He came back within fifteen minutes from the vederala. I did not ask him what the vederala told him. After coming from the vederala he remained in the boutique. He did not say what happened in the vederala's house. He did not get a decoction prepared at home.

Q. You see when the Police came to arrest him they found him having an injury on his leg ?

A. Yes.

Q. How did he get that injury ?

A. After he returned from the vederala's house he got that injury.

Q. After he returned from the vederala, he got into the house and sustained that injury ?

30 A. When he was returning from the vederala's house he had that injury.

Q. Was he bleeding at the time ?

A. He had some medicine applied.

Q. Did you ask your husband how he sustained that injury ?

A. Yes.

Q. What did he say ?

(Mr. Lekamage : I object.

Court : I allow it.)

A. He said the vederala's dog had bitten him.

40 (To Court : Q. Then your earlier statement must be false ? You said earlier that when your husband went out at 5 p.m. and came back from the vederala's house your husband did not tell you what happened in the vederala's house. Either your earlier statement is false or the other statement is false ?

(A. No answer.)

Q. Did he say that the vederala treated for the injury ?

A. Yes.

Q. You saw the injury for yourself ?

A. I saw some medicine pasted.

50 Q. On one side of the leg ?

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A. Yes.

Q. Did you think that it was a serious thing to have a dog bite ?

A. Dog bite is a serious thing.

Q. If the wound get infected it is a serious thing ?

A. Yes.

Q. Your husband a physician ought to know that ?

A. Yes.

That night I did not advise my husband not to get out as he had malaria and a wound on the leg. I do not know why he went out.

Q. Was there any urgent business on which he went out after dinner ? 10

A. I do not know.

(*To Court* : So far as I was aware he had no urgent business.)

Q. Is it that your husband left the house on the arrival of the Police ?

A. No.

1.45 p.m. Certified Correct.

Sgd. D. V. JAYAMAHA.

25th January 1949. 10.30 a.m.

Accused present.

Same Counsel as before.

PREMAWATHIE PERERA—Re-affirmed.

20

*Cross-examination by Crown Counsel continued :*

When our medicinal shop was open, there were days when four or five people used to come, and there were other days when only two or three used to come there.

Q. So the maximum number of persons who turn for a day is four or five ?

A. That is so.

Q. They come to buy medicine ?

A. Yes.

I remember the 7th November, the day my husband was arrested. 30  
I have no recollection how many people came to our shop that day before noon, or by whom they were served. That day between 9 a.m. and 12 noon my husband was in bed. During that period I served those who came to the shop. About two persons came to the shop during that period and they bought medicinal herbs and went away. I cannot remember who they were. They did not ask for my husband. In our house in the medicinal hall there are some cupboards where medicines are kept. There is a drawer in one of those cupboards.

Q. What is generally kept in that drawer ?

A. Medicinal herbs are also kept.

40

Q. Anything else ?

A. The balances taken out are also kept in it.

Q. You can see that drawer as you enter the hall ?

A. Yes.

It is on the front side of the cupboard.

Q. Have you seen Bodhipala's pistol in that drawer ?

A. No.

My husband had no purse. He carried his cash in his coat pockets. I have not seen a black purse in our house. (Shown P.30.) I have not

seen this purse in our house. This does not belong to any member of our household.

*Q.* Do you know a blacksmith called Simon living close to your house ?

*A.* There is no one whom I know as Simon.

Arnolis Dabare has come once to our boutique and I have seen him.

*Q.* He has a carpentry shed under a  $\frac{1}{4}$  mile from your house ?

*A.* I am not aware.

*Q.* You knew he was a carpenter ?

*A.* Even that I do not know.

10 *Q.* How did you know Arnolis Dabare by name ?

*A.* Not that I know his name ; I know the man as he came to our shop on two occasions to buy medicinal herbs.

I do not know whether he was on good terms or bad terms with my husband.

(Shown P.9B.) I have not seen these washers.

*Q.* But you have seen that square washer P.9E that was fitted to the balances last morning ?

*A.* Yes.

*Q.* That belongs to your husband ?

20 *A.* Yes.

(Shown P.9H.) This is not ours.

The police came one day to our house and removed certain things— a coat, a sarong, a big handkerchief, an umbrella and a pair of sandals. They removed those things on the night of 7th November. The next day I went to various police stations in search of my husband and ultimately I found in the Colombo Magistrate's Court. That afternoon when I went home I found that the police had come and removed certain other things from our house. They were table P.10, a log of wood that was on the table and some pieces of iron that were in the tool box, including  
30 the square washer. P.16 (the blade of a knife) had not been taken by the police.

*Q.* On that day when the police came, where were these balances ?

*A.* They had been taken off on the 7th night and were there. The dismantled balances were kept on the ground near the almirah in the hall.

*Q.* Both these balances were on the ground ?

*A.* No. Only the iron stand 1D11 was lying on the floor, but the two balances were lying in the drawer.

The iron stand 1D11 was lying on the ground and was visible to the police. The police did not take 1D11 away.

40 *Q.* If the police had removed it, you could not have demonstrated it yesterday ?

*A.* That is so.

(*Court* : *Q.* If they took away odd bits of iron, why not this ?

*A.* I am unable to say why.)

I do not know whether the police have now fabricated some pieces of iron to fit into that table P.10, and left behind the iron rod 1D11. This iron rod 1D11 is fixed on to a block of wood and there was a hole in that block of wood for the iron rod to be fixed. That hole was not in the middle of the log of wood, but in a corner. That log of wood was placed

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as a support to fix the iron rod. Even when I first came to live there that log of wood was in that position. I do not know for what other purpose it had been used. When medicinal herbs are weighed the excesses or anything remaining are left on that log of wood.

*Q.* Not when excesses of medicines are left when the herbs are cut with the herb cutter ?

*A.* No.

*Q.* Do you think it is more reasonable to make a hole in the middle of the log of wood if the iron rod is to be supported so that the medicines can be put on either side of it ?

*A.* I do not know.

*(Court : Q.* Is it not possible to hold a pair of scales like this (His Lordship holding the scales in his hand) and then weigh whatever is to be sold ?

*A.* It is difficult to weigh it like that.

*Q.* You say it is easier to get hold of a table, fix a log of wood on it, make a hole on that log and fix an iron rod to it and hang the balance on to it and then weigh ?

No answer.

*Q.* Do you see that iron stand as it was fixed on that table yesterday 20 is shaky ?

*A.* Yes.

*Q.* At night you say this table P.10 is left outside and the iron rod is taken in ?

*A.* Yes.

*Q.* Which is more valuable, the table or that piece of iron. If the table cannot be removed inside why not keep that piece of iron also fixed on to that log of wood on that table ?

*A.* I do not know.)

*Q.* You would undo this at night when your husband is not at home? 30

*A.* No.

*Q.* Who would undo it if your husband is not at home ?

*A.* He never leaves the house. He is always found in the house.

*Q.* You mean to say every night it was he who undid that and took the piece of iron inside the house ?

*A.* Yes.

I have never dismantled it. A half pound weight is not used in these scales produced in court. There are other scales for that.

*Q.* Do you agree that a hole could necessarily be made on the end of a log of wood if it is to be used for the purpose of fixing a herb cutter ? 40

*A.* I am unable to say because that log of wood had been in that position from that time.

This piece of iron 1D11 was brought to court by the first accused's mother from our house.

*Q.* For the purpose of the first accused's defence ?

*A.* Yes.

*Q.* What happened to the block of wood which supported this piece of iron ?

*A.* When the table was removed the police had removed that log of wood also.

(Court: Q. Since the arrest of your husband, has your medicinal shop been closed? A. For about two months after his arrest the shop was run.)

Q. After the police had removed that block of wood you must have made another block of wood to fix the iron rod?

A. No.

(Court: Q. After your husband's arrest the balances were used for weighing without the use of the iron rod, but by holding it in the hand?

A. Yes.)

Q. Merely because that block of wood was removed by the police?

10 A. Yes.

(Shown P.28.) This pair of sandals is similar to a pair used by my husband. I cannot definitely say that this is my husband's pair of sandals. He has a pair very much similar to this.

Q. It may be this pair, P.28?

A. It was a pair similar to this.

On the night of 7th November the police removed from our house a pair of sandals similar to P.28. I do not know that one of these sandals was found under the deceased's body.

20 (Shown bag P.5.) I have not seen this bag in our house. There is a bag made of gunny in our house.

(Shown 1D5.) I have seen this cap. This is my husband's cap. If my husband was setting out on a distant trip during the day he would use this. He used to wear this cap when he sets out to bring medicinal herbs from Pettah. I do not know whether he wore it whenever he went to see the deceased.

(Shown P.8.) This is my husband's sarong. This was in our house on the night of 7th November. That evening this sarong was not washed and left to dry.

(P.8 shown to the jury.)

30 I heard of the deceased's death at about 12.30 p.m. on that same day. I heard it from my husband at the time he got out of the house. Before he got out of the house he had not told me that the deceased was dead. He went out at about 12 noon and came back in about half an hour. It was then that he told me. I know the timber merchant, George Perera.

Q. He says your husband mentioned the fact of the deceased's death at about 1½ noon that day?

A. I do not know that.

I knew that my husband went to the house of the second accused's mother on that day. He went there at about 12 noon; he went walking.

40 It is close by.

Q. It was then that he told you that the deceased had died?

(Mr. Lekamage objects to this question.)

Q. Did he tell you that the deceased had been murdered?

(Mr. Lekamage objects to this question also.)

A. What my husband told me was that the deceased had been murdered and that he learnt it at the second accused's mother's house.

Q. He must have been very much perturbed at that?

A. I do not know.

50 Q. Why not? The deceased was a very good friend of his; he used to go and see the deceased and the deceased used to come to your house. He must have been very much perturbed?

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A. I am unable to say.

Q. Did you tell your husband "Oh, Mr. Seneviratne—somebody must have done him to death; go and see"?

A. No.

Q. Did he say "I must go and pay my last respects to him"?

(*Mr. Lekamage objects to this question.*)

A. No.

My husband took only a slice of bread for lunch that day.

Q. Was that because of his grief over his friend's death?

A. No, but because he was ill.

10

He did not have a rice meal that day for lunch. He took bread and a vegetable curry. He washed his hands after his meal.

Q. In the evening did you ask him to go to Kotahena and find out what had happened?

A. No.

(*To Court:* He remained in bed till about 5 p.m. that day.)

That night he had a meal of rice and curry.

Q. What was he doing opposite his house round about 9 or 10 p.m. that night when the police came?

A. He was doing nothing.

20

Q. You said he wanted to go towards Nugegoda?

A. That was about 7.30 p.m.

Q. Thereafter he came back?

A. Yes.

Q. And took his dinner?

A. No, he left after he had his dinner at about 7.30 p.m. and came back at about 9 or 9.30 p.m. He left saying he was going to Nugegoda.

He did not leave the house again at bed time. When the police came that night my husband had not returned from Nugegoda. I did not make a statement to the police when they came there that night.

30

Q. But you will realise that your husband was taken into custody over the murder of the deceased?

A. I did not know.

Q. What do you think the police came and took him away for in two cars and a van?

A. At that time it did not strike me.

Q. And they walked into your bed room, took his pair of slippers and an umbrella, a handkerchief, a coat and a sarong?

A. Yes, they did take them.

Q. Did you know why they were taking all these?

40

A. About 25 police officers came, we were in fear and we got to a side.

Q. Did you not tell the police officers, "My husband has been ill the whole day, why are you taking him away"?

A. No.

My husband had no reason to kill the deceased so far as I know. He was on good terms with the deceased so far as I know.

*Re-examina-  
tion.*

*Re-examined:*

I said just now that I did not make a statement to the police that night.

Q. Did you answer any questions which were asked by the police?

- A. I have no recollection.  
 (Shown P.15.) I think there was only one square washer like this  
 in our house.  
 Q. Is that medicinal shop being run now ?  
 A. Yes.  
 Q. Who is doing it ?  
 A. An Ayurvedic Physician has taken charge of it.  
 Q. Did he take over the entire medicinal shop of your husband ?  
 A. Yes.  
 10 Q. Has he brought anything of his own into the medicinal shop ?  
 A. Yes.  
 (Court : Q. Has that physician got a contrivance like this, an iron  
 rod fixed on to a table ?  
 A I do not know.  
 Q. If he has one like this it would be easy to bring it to court ?  
 No answer.)  
 (Shown 1D9.) This herb cutter is not used by that Ayurvedic  
 Physician. He has got his own herb cutter. Mr. Seneviratne has come  
 to our shop on some occasions.  
 20 Q. Have you at any time asked him why he came to Nugegoda ?  
 A. No.  
 I know that his mother-in-law lives in that neighbourhood.  
 Q. (Shown P.9D.) Were washers like this used when fixing this  
 iron stand ?  
 Court disallows the question.  
 (To Court : I do not know for what purpose this washer P.9D is used.)  
 Q. You have told the Court that you have not seen those washers in  
 your house ?  
 A. Yes.  
 30 To Jury : Nil.  
 (Mr. Lekamage states he will call Inspector Grey to prove the death  
 of Mr. Albert Peiris, the City Coroner.)

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EVIDENCE of E. I. Grey.

- E. I. GREY—Sworn.  
 Inspector of Police, Fort. I have known Mr. Albert Peiris. He was  
 the City Coroner in Colombo in 1947. He was the person who enquired  
 40 into sudden deaths. I am aware that he died on the 16th May 1948.  
 I attended his funeral. I was present when he was buried.  
*Cross-examined by Mr. Gunasekere :*  
 I saw the dead body of Mr. Albert Peiris.  
*Cross-examined by Crown Counsel :* Nil.  
*Re-examined :* Nil.  
*To Jury :* Nil.  
 (Mr. Lekamage moves to read the deposition of Mr. Albert Peiris  
 and calls the officiating Registrar of this Court to produce the record.)

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## EVIDENCE of Mudaliyar J. B. Jayasekere.

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MUDALIYAR J. B. JAYASEKERE—Sworn.

I am the Officiating Registrar of this Court. I hold in my hands the record of the Magisterial proceedings in this case. Mr. Albert Peiris, the City Coroner, has given evidence in this case before the Magistrate. His evidence appears at page 374 of the record. (Deposition of Mr. Albert Peiris is read.)

I have in my hand P.53, the Inquest proceedings in this case, at page 451 of the Magistrate's Court record, W. A. Alice Nona has given 10 evidence before the Coroner. (Witness reads the entire evidence of Alice Nona given before the Coroner at page 452 of the record.) The record states that the evidence was read over and admitted to be correct by Alice Nona and it is signed by her in Sinhalese, and under that is the signature of Mr. Albert Peiris. I produce Alice Nona's evidence before the Coroner marked 1D1.

Alice Nona in her evidence under cross-examination by the first accused in the Magistrate's Court, has stated at page 235 of the record :

“ On the first occasion the second accused and I went to first accused's shop it was, as far as I remember, in the evening about 20 3.30 p.m. This was within the first month of my stay with the second accused.”

I produce that passage marked 1D2.

Then at page 236 of the record, in her evidence, there is this passage :

“ About two weeks after this visit the second accused and I went again to second accused's mother's house.”

I produce this passage marked 1D3.

Then at page 237 of the record, she has said this :

“ The first accused was standing about a foot or two away. I was standing by the lady.” 30

I produce this passage marked 1D4.

In the evidence given by Ukku Menika at the inquest proceedings, at page 452 of the record, there is this passage :

“ There he placed the bag on the ground and took something from inside the bag and put it in his waist.”

I produce this marked 1D6.

A few lines before that sentence there is this passage in her evidence :

“ Then Ran Banda attempted to seize him. I advised him not to do so. A mason who was working in the premises also came out at this stage. Then this unknown man put the manne knife into 40 the bag and ran up to the mound close by.”

I produce this passage, marked 1D7.

In the course of Khalid's evidence before the Magistrate, at page 194 of the record appears the following passage :

“ He jumped over the zinc sheet fence and ran. I lost sight of him. I heard a woman cry out. Then my workmen shouted for me.”

I produce this passage, marked 1D8.

Alice Nona in the course of her evidence before the Magistrate has said the following, at page 25 of the record :

10 “ The deceased’s wife used to go to Nugegoda often. I had been with her twice. Yesterday the deceased was found dead at about 10 a.m. The day before yesterday I went with the deceased’s wife to Nugegoda by bus. After visiting a relative there, on our way back we stopped at the house of baas ; that is this accused ; I waited on the verandah of the house of the accused. The accused was in his house which is a boutique. The deceased’s wife spoke to the accused in low tones. I could not hear what they spoke. After a short time, we returned home.”

I produce this passage, marked 1AD1.

In the evidence of Ukku Menika given before the Magistrate, at page 179 of the record, appears the following sentence :

“ He took something from the bag P.5 and put it in his waist.”

I produce that, marked 1AD2.

There is the following sentence appearing at page 333 of the record in the evidence of H. Diyabalanage :

20 “ I only saw the articles which I have mentioned.”

I produce that marked 1AD3.

At page 2 of this record is the report made by Mr. B. W. Perera, A.S.P. to Court. The third paragraph of that report states :

“ Witnesses (1) Ukku Menika, (2) Ran Banda and (3) Sudu Banda stated that they could identify the person who entered the premises of Mr. Jayasekere. Witness Richard Fernando and several others stated that they saw the suspect running along the road from the direction of the deceased’s house. All the witnesses stated they could identify the person if seen.”

30 *Cross-examined by Mr. Gunasekere* : Nil.

*Cross-examined by Crown Counsel* : Nil.

*To Jury* : Nil.

*Mr. Lekamage* closes his case putting in evidence 1D1 to 1D13 and 1AD1 to 1AD4.

*In the  
Supreme  
Court.*

*Appellant’s  
Evidence.*

No. 79.  
Mudaliyar  
J. B. Jayasekere,  
25th  
January  
1949,  
Examina-  
tion,  
*continued.*

## EVIDENCE FOR THE SECOND ACCUSED.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 80.

## EVIDENCE of the Second Accused.

Mr. Nihal Gunasekere calls :

No. 80.  
Mrs. B. M.  
de S.  
Seneviratne  
25th and  
26th  
January  
1949.  
Examina-  
tion.

Mrs. B. M. DE S. SENEVIRATNE—Sworn.

30, Widow of Mr. G. D. S. Seneviratne.

I am the second accused in this case. I am the daughter of the late James Wilfred Peris. I have two brothers, George and Joseph. I was living with my parents at Nugegoda. My father died in June 1946. My brother George married in December 1946. His wife had a child 10 on the 10th November 1947. I married in December 1935. Then I had just closed my 17th year. (*To Court* : I was born in December 1917.) My husband was 42 years at the time of my marriage. Ours was an arranged marriage. My husband was a Buddhist. The marriage took place at St. Thomas' Church, Kotte. That is a Roman Catholic Church. My husband became a Roman Catholic. He was baptised. His parents were not alive at the time of our marriage. He had three brothers, Leopold, Percy and Cyril. Percy is the proctor who gave evidence in this case. Cyril is also a proctor. Leopold is a member of the Ceylon Civil Service. At present he is the Permanent Secretary to the Minister of Education. 20 Of the three brothers, Cyril is not married. These three brothers did not attend our wedding. Later we were on friendly terms with them. During the period we were living at Kotahena they were on visiting terms with us. They used to come to our house and we used to go to their houses. Percy's wife is not living. Leopold's wife used to come to our house. She is the daughter of Mr. Mollamure, the Speaker of the House of Representatives. My husband had only one sister. She is married to Gunatilleke who gave evidence in this case. They did not attend my wedding. Later we became friends, and we were on visiting terms with them. At the time of my marriage I received some property from my father. I received two 30 houses, both on Jambugasmulla Road, in Nugegoda. The name of one house is "Lakshmi Villa." That is the larger house of the two. There is no name to the other house, nor can I remember the number. I did not get any cash at the time of my marriage, but I was given some jewellery. I cannot say what the value of the jewellery was.

After our marriage on the 26th December 1935 we lived in "Lakshmi Villa," which was a recently built house. That house was not rented out before. The small house was bringing in a rent of I think Rs.25/- per month at the time of my marriage. We stayed in "Lakshmi Villa" till 1944. (*To Court* : Both my children were born there.) From 1944 40 we lived in Kotahena. In 1942 I had some disagreement with my husband over some food—food being not enough for the children. As a result of that quarrel I left the house and went to my mother's house. (*To Court* : In 1942 when we had this quarrel we were living at "Lakshmi Villa.") From the beginning of our marriage my husband ran the house. At the time of my marriage my husband was a Revenue Inspector of the Colombo Municipality. I did not know what his pay was. He did not tell me what his pay was. He left in the morning for Colombo and returned to Nugegoda

about 5 p.m. We had six servants at "Lakshmi Villa." One of the servants went marketing with my husband's orders. My husband used to order the food. He had a car which he used to drive. There was no chauffeur. In 1942 after the disagreement with my husband I went to my mother's house and stayed there one night. While I was there I saw my brother-in-law Percy going past my mother's house, and I went up to the gate and spoke to him. He suggested that I should go back to my husband and I agreed to do so.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 80.

Mrs. B. M.  
de S.  
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*continued.*

10 Q. Were there any conditions on which you went back ?

A. No.

I said in 1942 there was a quarrel between us over the insufficiency of food to the children. He was not giving enough food to them.

Q. What food was insufficient ?

A. Bread. There was a general insufficiency of food. My husband retired from the Municipal Service somewhere in 1942. Prior to retirement he was on leave for a long time on account of eye trouble. In 1944 he was operated on at the eye hospital, Colombo, for cataract. After that in the same year he entered the General Hospital for some stomach trouble. At the time of these two illnesses I was on terms with him. Then there was a separation between us in October 1944, and I went to my mother's house, leaving my husband and the two children at "Lakshmi Villa."

20 Q. Why did you go back to your parents ?

A. There was displeasure with my husband that morning and I went there. That displeasure was over the food that was given to the children.

(*Court* : What did you say they should have which he would not give ?

A. I told him the bread was not sufficient for them.

Q. What is it that he did not believe, that bread was not nutritious, or was too expensive ?

A. He thought what he gave was sufficient for them.

30 Q. What did he give them in the morning ?

A. In the morning he gave them two slices of bread.

Q. Only that ?

A. Yes.

Q. How old were the children then ?

A. They were 7 and 5 respectively.)

Q. What was the children's meal in 1944 ?

A. In the morning they got two thin slices of bread with butter. They got no egg, but they had milk. For lunch they had rice and curry.

(*To Court* : They got enough of that.)

40 For lunch they had a rice meal with fish or beef and two vegetables. For evening tea they had again two slices of bread with butter. Rice was scarce at the time. For dinner at times they used to get rice, and at times bread. If they got bread for dinner they got two slices with a curry.

(*To Court* : Those days a pound of bread was, I think, about 24 cents, and there was plenty of bread available. There was no scarcity of bread.)

Q. At this time in 1944 you came to know Mr. D. H. R. Corea, Inspector of Police, who was in charge of the Mirihana police station ?

A. Yes.

50 Q. Did he come to your house to visit your husband ?

A. No.

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*No. 80.  
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tion,  
continued.*

When I left my husband in 1944 I made a complaint to the police.

*Q.* What made you to make that complaint? Was there anything special that had happened?

*A.* Yes.

*Q.* What?

*A.* My husband had struck me.

*Q.* Was that the first time he had struck you after your marriage?

*A.* Yes.

*(To Court :* I left deceased in October 1944. We were separated till February 1945.)

*Q.* During that period of separation did your brother-in-law Percy come to see you or did you go to see him?

*A.* I went to see him.

*Q.* Later he got your jewel box and gave it to you?

*A.* Yes.

*(Shown P.43.)* I gave this receipt on taking charge of my jewellery. All the articles of jewellery mentioned in P.43 belong to me. They were all given to me by my parents. *(To Court :* My father was a storekeeper working in the granaries. He kept house in good style. He did not have a car. I am his only daughter.) Besides the two houses given to me at the time of my marriage, my father had three other houses and he was living in one of them.

*Q.* Between October 1944 and February 1945 there were various negotiations on the question of your separation?

*A.* Yes.

*Q.* And it was eventually agreed that your husband should take a house and live with you in Kotahena?

*A.* Yes.

Then we came together and started living in Kotahena at the end of February 1945. While we were staying in Nugegoda my husband took the rent of my small house. *(To Court :* I got no money at all for my personal expenses.) If I wanted some powder or something like that I would tell my husband and he would bring it for me.

*Q.* When you came together after the separation and went to live in Kotahena, was there any arrangement about money?

*A.* My husband was to get the rent of the big house and I was to get the rent of the small house. The big house was let at Rs.85/- per month and the small house at Rs.25/-. I was going to have Rs.25/- per month as pocket money. My husband was going to spend for the household and he was going to pay the rates for the two houses, about Rs.45/-.

*Q.* Was that Rs.45/- a year?

*A.* No.

*Q.* Do you know the rates payable to the Urban Council?

*A.* I do not know.

My husband was going to pay the rent for the Kotahena house. By this time he was on pension. He was drawing about Rs.144/- a month as pension. He had drawn his commuted pension. *(To Court :* He drew about Rs.4,000/- as commuted pension.) He deposited the whole of that amount in the names of the two children in the Savings Bank. From those two accounts he used to draw monies from time to time. I never came to know how much money he had drawn from those accounts or

how much was left in those accounts. My husband never told me what his financial position was.

Q. In the event of his death did you know whether you would get the money or not ?

A. I did not know that.

Q. Did you know he was a member of the P.S.M.P.A.?

A. No.

Q. How did you know that he had drawn his commuted pension ?

A. He told me that.

10 After his retirement he looked for a job. He was trying to get back to the Municipality, but he failed.

In Kotahena we first stayed at 107, College Street, from February 1945 to February 1946. During that period the Joachims were the tenants of the house and we took one room from them and lived in that. We were paying them Rs.120/- for the room and food for all four of us. During this period both the children were going to school ; the girl was going to the Good Shepherd Convent, Kotahena, and the boy to St. Benedict's College. The girl Sumana is baptised, but not the boy Oranda. My husband did not want him to be baptised. (To Court : There were religious differences  
20 also between me and the deceased.) My husband did not want Oranda to be baptised and I gave in to his wishes.

We left 107, College Street, Kotahena, in February 1946 because the Joachims wanted the room, and then we went to Mayfield Lane, taking a room from the Rupasinghes, and we saw to our own food. The deceased managed the household there. We were living at Mayfield Lane for about four months. Then we went to Wasala Road to the house of one Jayatilleke. We took a room there and found our own food. There too the deceased managed our household. We were there for about five months. Then we came back to 107, College Street, in a different capacity. This time my  
30 husband became the tenant and we gave the Joachims a part of the house to live in. My husband lent them some money and they gave a promissory note. I do not know why my husband lent them the money. (Shown 2D5.) This is the promissory note given by the Joachims. This note was signed by Mr. and Mrs. Joachim. The amount on the note is Rs.225/- and the date is 26th October 1946. (Mr. Gunasekere states he will prove this promissory note in due course.) We began to live in 107, College Street, on the second occasion before my husband lent the money to the Joachims. I think it was in September. I think it was before my husband gave the money that we began to live in 107, College Street, on the second occasion.

40 (2D5 is shown to the jury.)

When we came back to live in 107, College Street, we had one servant, a woman servant. From the very start of our going to 107, College Street, the second time we had that servant. (To Court : I cannot remember her name. We had her for about 6 to 7 months.) Then she left as she was not well. Then we had no servant for about three months. Then we engaged the servant woman Alice Nona. She was engaged somewhere in October 1947. She was paid a month's salary. At the time of my husband's death she was with us for a little over a month. Her pay was Rs.15/- a month. The children were sent to Prince College, Kotahena,  
50 when we were staying at 107, College Street, the first time.

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Court.

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Accused's  
Evidence.

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continued.

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Court.*

Q. You said the girl first went to Good Shepherd Convent and the boy to St. Benedict's College ?

A. Yes.

*Second  
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Q. That was the arrangement as soon as you came to Kotahena?

A. Yes.

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tion,  
*continued.*

I cannot remember how long they were in these two schools before they were sent to Prince College. They were removed from those schools and sent to Prince College because my husband wanted the children to have a Sinhalese education. Prince College, Kotahena, is a Buddhist College. I gave in to my husband's wishes. 10

(*Court* : Q. Which would you have preferred, an English education or a Sinhalese education ?

A. I would have preferred an English education.

My mother's father was an Irishman, one Mr. Kenny.)

Q. Had religion anything to do with the change of schools ?

A. Yes.

My husband was baptised before the marriage. After marriage he went with me to church on one or two occasions. Sometimes he used to go to the temple with the children. Whenever he asked me to go with him to the temple I used to go with him. At the time of his death I was 20 teaching at Prince College, Kotahena, both in the Upper and Lower Kindergarten. I taught music there. I started teaching music at Prince College in May 1947, and I taught music there for about four months. I was paid at Rs.5/- a pupil and I had about 12 pupils. I taught them every day from 8.30 a.m. till 12 noon, not on Saturdays. (*To Court* : I started teaching because I wanted money for my personal expenses. I had only Rs.25/- a month.) I spent my salary as teacher mostly on the children. When the servant left I gave up teaching music at Prince College. Then Alice Nona was engaged as a servant. After she was employed I started teaching again at Prince College, and at the time of my husband's 30 death I had been teaching in the kindergarten for about 15 days. I had never taught in a kindergarten class before. I had never taught in any school before.

Q. What was your salary as kindergarten teacher ?

A. I had not taken my salary.

At the time I went to teach I did not know what salary I would get. It was my husband who arranged for me to teach there. If my husband had got a job I would not have gone to teach.

I have incurred certain debts. (Shown P.21.) I left this ring with Mrs. Audrey Paul and got Rs.600/- for it. This is a ring set with brilliants. 40 This ring belongs to me. My father gave this ring. There was no interest to be charged on this ring when I left it with Mrs. Paul and took the Rs.600/-. I came to know Mrs. Paul only after I went to live in Kotahena. My husband knew of this loan.

(*Court* : Q. For whom was the money ?

A. It was for my father's funeral expenses.

Q. Did you give your husband any part of it ?

A. No.

Q. You kept it ?

A. I gave the Rs.600/- to my mother a few days after. 50

My father died on the 1st June 1946.  
My mother wanted some money.)

1 p.m. Adjourned for 45 minutes, for lunch.

Certified correct by me,

Sgd. M. ANTHONY,

Stenographer, S.C.

25th January 1949.

After interval. 1.45 p.m.

Mrs. B. M. SENEVIRATNE—Re-sworn.

10 *Examined (continued) :*

I expected my mother to repay the loan of Rs.600/- from Mrs. Paul because I had given her that money. My mother required that money for the funeral expenses.

(P.19 shown.) On 17th November, 1946, I borrowed Rs.500/- from Mrs. M. W. Wallace. My brother George Peiris signed as a witness. I borrowed that money for my brother for his wedding. I gave that money to him. I expected him to pay it back. Rs.50/- was repaid by him. I cannot remember when.

20 My husband wanted some money for repairs to the smaller house which was then occupied by Mr. H. K. Mills. He is still the occupant of that house. The kitchen had come down and that had to be rebuilt. Rs.300/- was required. I borrowed that Rs.300/- from an Afghan at my husband's request. I signed a note for Rs.600/-. An Afghan generally gets a note signed for double the amount advanced. As regards repayment an Afghan expects one to repay half the amount mentioned on the note with interest. Interest is calculated on half the amount.

My brother married in December, 1946. I cannot remember whether I borrowed this Rs.500/- before or after his marriage. I think it was about that time.

30 I borrowed Rs.100/- from Mr. Harry Perera. He is my husband's cousin. I got that Rs.100/- to buy clothes for my brother's wedding. I borrowed that money in 1946 about December.

(P.32 shown.) This is a promissory note for Rs.450/- signed by me in favour of Pyes Mohamed Bhai dated 7th March, 1947. I actually borrowed Rs.225/- on that note. I borrowed it at my husband's request. I gave that Rs.225/- to my husband.

The Rs.300/- that I borrowed for the repairs I gave to my husband. The first accused effected the repairs to the smaller house.

40 My husband had given Rs.225/- to the Joachims on a promissory note. My husband told me that he got that money from his sister, Mrs. Goonetilleke, and he wanted this Rs.225/- to repay his sister.

Q. Mr. Sally says that he gave you Rs.25/- in June, 1947, and thereafter two other sums of Rs.50/- and Rs.10/- ?

A. It may be correct but I cannot remember.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 80.  
Mrs. B. M.  
de S.  
Seneviratne  
25th and  
26th  
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tion,  
*continued.*



*In the  
Supreme  
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*Second  
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No. 80.  
Mrs. B. M.  
de S.  
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tion,  
*continued.*

Q. And that you gave him back Rs.50/- ?

A. May be correct.

(P.33 shown.) This is a note signed by me for Rs.700/- dated 16th July, 1947, in favour of Seyed Sediq Khan. I signed that note at my husband's request. That was in the nature of a transfer of the Rs.600/- note. The Afghan who had given me Rs.300/- was leaving the Island and this man took the debt on. The original note was for Rs.600/- and the Rs.100/- difference represented the interest.

(P.34 shown.) This is a note signed by me for Rs.300/- dated 10 19th August, 1947, in favour of M. Yakin Bhai. I actually borrowed Rs.150/- on that note. I borrowed that money at my husband's request and I gave the money to him. He required that money to go on a trip to Tissamaharama. My husband, myself, and the two children did go there and we were there for about two weeks.

I gave some articles of jewellery to a woman called Maihamy to pawn, which she pawned for Rs.50/- on the pawn ticket P.24. The articles pawned were a hair pin and a ring. Those were articles belonging to me. Maihamy gave the Rs.50/- to the first accused. He said that my husband had to pay him some money for the repairs he had done and for shifting some furniture from Nugegoda to Kotahena and he wanted Rs.100-/. 20 As my husband was not at home and as I had no money with me I gave him these articles and asked him to pawn them and take the money. First accused was unable to get the money because the pawn brokers would not give him the money.

Q. Why would not the pawn brokers give him the money ?

A. Because he was not known to him. When he failed I sent for Maihamy and asked her to get the money from the pawn broker.

If Mr. Harry Perera says that he gave me Rs.50/- in October, 1947, that would be correct. I required that money to pay interest to one of the Afghans. It is correct when Pyes Mohamed Bhai said that I paid 30 him interest.

(P.38 shown.) This is a note signed by me for Rs.350/- dated 7th October, 1947, in favour of A. Sathasivam. I actually borrowed Rs.278/-. The difference was deducted for six months' interest. I borrowed that money at my husband's request and I gave that money to him. My husband had seen his advertisement in the papers and he asked me to go and see the man. My husband was in the General Hospital at the time.

Q. What was your husband's illness in early October ?

A. He was swollen.

40  
Out of the moneys I borrowed I gave Rs.1,100/- to my mother and brother. I expected them to repay that amount. I was anxious to get back the articles which I had pawned through Maihamy. There was no urgency for redeeming them. There was no urgency for paying back Mr. Harry Perera or Mr. Sally. Mr. Sathasivam had already charged in advance six months' interest in October, 1947. About October, November, 1947, my pressing debts were the moneys I borrowed from the three Afghans. The total on the three notes from the Afghans was Rs.1,450/-. So that if I repaid Rs.725/- and interest those transactions would have been over.

Q. Had any of those Afghans sent you any letters of demand ?

A. No.

- Q. And whom did you expect to repay these amounts ?  
 A. My husband.  
 Q. Why was it that your husband did not sign these notes?  
 A. Because he was trying to get back a job in the Municipality.  
 Q. Was he present when you borrowed these sums from the Afghans ?  
 A. Yes.  
 Q. Where did you sign Sathasivam's note ?  
 A. In his office.  
 Q. Your husband was not present ; he was in hospital ?  
 A. Yes.
- 10 In October, 1944, when I had a quarrel with my husband and he struck me and I went home to my parents, I complained to Inspector Corea. I told him that I had been struck.  
 Q. While you were in Kotahena I take it you occasionally used to go and see your parents ?  
 A. Yes.  
 Q. Alice Nona has given evidence that on two occasions you went with her to Nugegoda. That is correct ?  
 A. Yes.
- 20 Q. How long before your husband's death was the first visit with Alice Nona to Nugegoda ?  
 A. About two weeks before.  
 Q. You went to your mother's ?  
 A. Yes.  
 Q. How did you go ?  
 A. We went by bus.  
 Q. Mr. Harry Perera has a car ?  
 A. Yes.
- 30 Q. Did you go on one occasion to Nugegoda in his car ?  
 A. Yes.  
 Q. With Alice Nona ?  
 A. Yes.  
 Q. Then what visit was it that you went in his car ?  
 A. This visit.  
 Q. Why did you go in his car ?  
 A. I met him at Windsor Hotel and as it was raining I asked him to take me down to Nugegoda.  
 Q. Where did you get down from his car ?  
 A. At the seventh mile post.
- 40 Q. That is near Jambugasmulle turn off ?  
 A. Yes.  
 Q. And you got down from the car and went to your mother's house ?  
 A. Yes.  
 Q. On your return journey did you step into the first accused's medicine shop ?  
 A. Yes.  
 Q. For what purpose ?  
 A. I went there to tell him that he had to do the whitewashing of the two houses and that I would inform him when it was necessary.
- 50 Q. When you were passing on the road was he visible ?  
 A. Yes.  
 Q. How long were you in the medicine shop talking to him ?  
 A. About three or four minutes.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 80.  
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Seneviratne  
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tion,  
*continued.*

Q. Did you on this visit speak to him in low tones which could not have been heard by Alice Nona ?

A. No.

Q. Thereafter you returned home ?

A. Yes.

Q. The next time you went to Nugegoda with Alice Nona was on the 6th November, 1947 ?

A. Yes.

Q. You went to your mother's house ?

A. Yes.

Q. Why ?

A. I wanted to see my sister-in-law who was not quite well.

Q. She was expecting a child which was born on 10th November ?

A. Yes.

Q. How long did you wait in your mother's house ?

A. I was there for about  $\frac{3}{4}$  hour.

Q. You had any refreshments ?

A. I had afternoon tea there.

Q. On your way back you met a gentleman called Mr. H. F. Collette ?

A. Yes.

Q. And did you meet Mr. George Perera ?

A. Yes.

Q. Whom did you meet first ?

A. Mr. George Perera.

Q. What did he ask you ?

A. He asked me why I was returning so soon.

Q. What did you say ?

A. I told him that I had just come to see my sister-in-law, who was ill.

Q. Usually how long would you stay at your mother's house when you went there ?

A. About one or two hours.

Q. After speaking to Mr. George Perera you met Mr. Collette ?

A. Yes.

Q. He spoke to you ?

A. Yes.

Q. You met him on the road ?

A. On the High Level Road.

He was in his car and he stopped the car and spoke to me. He was going towards Colombo. He has now gone to Australia and I am unable to summon him as a witness. He stopped the car and told me something. I told him that I had come to my mother's and that I had gone to first accused's house, seen him and that I was going home. I told him that I had conveyed a message from my husband to the first accused and that I was going home. I had known Mr. Collette for over a year. He was living at my mother's house. It was when I was walking towards the bus halting place that I saw him.

Q. On 6th November did you go to the first accused's house ?

A. Yes.

Q. Was that before or after you had spoken to Mr. George Perera ?

A. After I had spoken to him.

Q. Why did you go there ?

A. I went to convey a message from my husband to the first accused.

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- Q. Had it something to do with the whitewashing of the house ?  
 A. Yes.  
 Q. And you told the first accused to do what ?  
 A. To come and see my husband about it.  
 Q. Did you on this occasion speak in low tones which could not have been heard by Alice Nona ?  
 A. No.
- (Court : Did you tell the first accused when he should see your husband ?  
 10 A. No.)  
 Q. You heard Alice Nona's evidence of a certain conversation which she says took place between you and the first accused on 6th November ?  
 A. Yes.  
 Q. You deny that ?  
 A. Yes.  
 Q. You deny that you conspired with the first accused to murder your husband, or that you abetted him to murder your husband ?  
 A. Yes.  
 20 Q. About how long were you in first accused's medicine shop on 6th November ?  
 A. About four minutes.  
 Q. Thereafter you returned home ?  
 A. Yes.  
 Q. That night did you tell Alice Nona that the first accused would be coming in the morning and that you should go to the market when he came the next morning ?  
 A. No.  
 Q. You also deny that you told her that the next morning ?  
 A. Yes.  
 30 Q. Did you give her any money to go to the market that night or the next morning ?  
 A. No.  
 Q. Now we come to the morning of 7th November. You were living right opposite Prince College, Kotahena ?  
 A. Yes.  
 Q. The first bell in the school used to be rung at 8.20 a.m. ?  
 A. Yes.  
 Q. And the second bell at 8.30 a.m. ?  
 A. Yes.  
 40 Q. You could hear those bells from your house ?  
 A. Yes.  
 Q. It does not take more than half a minute to get to school from your house ?  
 A. Yes.
- (Court : You left with the children ?  
 A. Yes.)  
 Q. When you left was your husband in the house ?  
 A. He was.  
 Q. And Alice Nona ?  
 50 A. Yes she too was in the house.

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Q. When you entered the school premises what did you do ?

A. I hung round the compound.

Q. And the children ?

A. They went to the assembly.

Q. That was the bigger assembly ?

A. Yes.

Q. Why did you not go to the common room ?

A. I was not in the habit of going there.

Q. Instead of going to your class why did you wait outside ?

A. I do not go inside a class until pansil is over.

10

Q. Why did you not ?

A. Because I am a Catholic.

Q. How long did you wait outside ?

A. I waited outside till the bigger assembly was over and the bigger children went to their classes.

Q. Then the second bell was rung ?

A. Yes.

Q. Then what did you do ?

A. I went to my class.

Q. About how many children were in your class ?

20

A. About 80 children.

Q. For the two weeks that you had been teaching this class had pansil been observed every day ?

A. Yes.

Q. When you went into your class what did you do ?

A. I stood at my table and I waited for a short while to see whether the priest who administers pansil would come.

Q. The class was so arranged that if you stood at your table what would you face ?

A. Face the road.

30

Q. And the children would have their backs to the road ?

A. Yes.

Q. When the gentlemen of the jury went to the school you too went ?

A. No, I did not go. I remained in the car near the police station.

(Sketch shown) 2A depicts my class room. There is a table shown. That would be the position in which my table was, and the children were seated in front of it. I would sit or stand at my table looking into the compound.

Q. While you were waiting for the arrival of the priest what were the children doing ?

40

A. They were talking.

Q. What were the ages of these children ?

A. The youngest was five and the eldest about seven or eight.

Q. When the children were talking did Mrs. Wijesekere say anything ?

A. She was in the other class and she came and silenced the children ; she told them to be quiet.

Q. From where did she come ?

A. From the second standard.

Q. Did a priest come to the other class ?

A. She silenced the children and went away and then a priest came. 50

Q. And he started teaching the other class ?

A. Yes.

- Q. That class also did not have pansil that morning ?  
 A. It did not have.  
 Q. The regular teacher was absent ?  
 A. Yes.  
 Q. In relation to the arrival of the priest, the teacher of the other class, when did you begin to teach your class ?  
 A. When Mrs. Wijesekere silenced the children and went away I started teaching.  
 Q. The priest's evidence is correct that you were teaching when  
 10 he came ?  
 A. Yes.  
 Q. What was your first period ?  
 A. Sinhalese transcription.  
 Q. For how many minutes is a period ?  
 A. About 45 minutes.  
 Q. When you gave transcription what did you do ?  
 A. I set a passage from a book for the Upper Kindergarten and I wrote something on the board to be copied for the Lower Kindergarten.  
 Q. You put something very simple for the Lower Kindergarten ?  
 20 A. Yes.  
 Q. This morning you did set some work ?  
 A. Yes.  
 Q. After that what did you do ?  
 A. I went round to see that they were writing.  
 Q. About this time the tuck-shop keeper came and spoke to you ?  
 A. Yes.  
 Q. How long after you had started teaching was that ?  
 A. About 20 or 25 minutes after.  
 Q. He told you there was somebody on the telephone asking for you ?  
 30 A. Yes.  
 Q. So you went to the room in which the telephone was ?  
 A. Yes.  
 Q. Who spoke ?  
 A. Someone from the Colombo Bakery of Van Rooyan Street.  
 Q. That was the bakery from which you used to get your bread ?  
 A. Yes.  
 Q. You had no phone in your house ?  
 A. Yes.  
 Q. Had there been any trouble with the bakery ?  
 40 A. Yes.  
 Q. When did that start ?  
 A. About two days before.  
 Q. What was the trouble ?  
 A. The bread had come late.  
 Q. And what happened ?  
 A. And my husband refused to take delivery.  
 Q. Usually at what time was bread delivered at your house ?  
 A. About 7.30 or 8 a.m.  
 Q. In time for slices to be cut and the children given their breakfast  
 50 before going to school ?  
 A. Yes.  
 Q. Then the following day did it come ?  
 A. It came.

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- Q. And was it accepted or refused ?  
A. It was refused.  
Q. Did the bread come on the 7th ?  
A. Yes.  
Q. Was it taken or refused ?  
A. It was not taken.  
Q. And it was in respect of this matter that someone from the bakery  
phoned up ?  
A. Yes.  
Q. You do not know who it was ? 10  
A. No, I do not know.  
Q. How long did you speak on the phone with that person ?  
A. About two minutes.  
Q. And then you came back ?  
A. Yes.  
Q. Did you sit at your table or stand ?  
A. I sat at my table.  
Q. When you came back were the children still writing ?  
A. Yes.  
Q. For how long did you sit at your table ? 20  
A. About one or two minutes.  
Q. Doing nothing ?  
A. Yes.  
Q. Then ?  
A. Then I asked the children to bring up their work.  
Q. So they came close up to you and were crowding round you ?  
A. Yes.  
Q. And you began correcting their work ?  
A. Yes.  
Q. You said a period was for about 45 minutes. Can you get children 30  
in a kindergarten class to keep on writing for 45 minutes ?  
A. No.  
Q. Little children will become restive ?  
A. Yes.  
Q. What happened while you were correcting their work ?  
A. I saw Mrs. Christie coming.  
Q. Towards your class ?  
A. Yes.  
Q. Did she come right up to you ?  
A. She stood at a distance and called me. 40  
Q. How ?  
A. She beckoned to me with her hands.  
Q. Then ?  
A. I did not go.  
Q. Then what did she say ?  
A. She came up to my class and called me out. She said :  
" Mrs. Seneviratne, come here."  
Q. Then you went out ?  
A. Yes.  
Q. Then what did she do ? 50  
A. She told me that the dogs were all barking in the house, and would  
not allow anyone to get in, that there was a lot of blood in the verandah,  
and to come and see what the trouble was.

- Q. What was her own condition ?  
 A. She was very excited.  
 Q. What did you do ?  
 A. I told her that I would give my class over to the priest and come.  
 Q. Then you went back to the class ?  
 A. Yes.  
 Q. And you spoke to the priest ?  
 A. Yes. I told him, " there is some trouble at home will you kindly  
 10 look after the class till I come back."  
 Q. Then where did you go ?  
 A. I went to the 5th standard and called out to my two children by  
 their names.  
 Q. They came out of their class ?  
 A. Yes.  
 Q. Then did Mrs. Willegoda come out ?  
 A. She asked me why I was going home.  
 Q. Did you say anything ?  
 A. Before I could Mrs. Christie said something to her.  
 Q. Mrs. Christie says she was pulling you by your hands to take you  
 20 home. When was that ?  
 A. When I was calling to the children and standing in the compound.  
 Q. Then Mrs. Christie, you and the two children left school and went  
 to 107 College Street ?  
 A. Yes.  
 Q. Why did you take the children away ?  
 A. My husband's instructions were whenever I left school to take  
 them away with me.  
 Q. That morning did you see your husband coming to school ?  
 A. No.  
 30 Q. But he used sometimes to come to school and go to the class where  
 the children were ?  
 A. Yes.  
 Q. When you got back home what did you notice ?  
 A. There was blood on the verandah.  
 Q. A large amount ?  
 A. Yes, and my husband's pair of spectacles in the pool of blood.  
 Q. What about the dogs ?  
 A. The dogs were there.  
 Q. Then what did you do ?  
 40 A. I then went with Orandha into the hall and Sumana was coming  
 behind me. I went into the hall and saw my husband killed, lying in a  
 pool of blood. As soon as Orandha saw blood he got frightened and ran.  
 I ran behind him to get hold of him.  
 Q. Your husband was a ghastly sight ?  
 A. Yes.  
 Q. And he appeared to be dead ?  
 A. Yes.  
 Q. So you ran out and got hold of Orandha ?  
 A. Yes.  
 50 Q. What had Sumana done ?  
 A. She had also gone in and come out.  
 I was on the verandah with the two children. They were clinging on  
 to me and crying, and would not allow me to go in. Then I saw

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Mrs. Wijesekere standing near the Prince College gate and I called out to her and she came. I told her my husband had been killed. She told me to go to the police station. I told her I could not on account of the children and that if she took charge of them I could go. She said she would take charge of the children. I went to the police station. I told Inspector Lawrence that my husband was killed, and he told reserve sergeant to record my statement. The reserve sergeant questioned me and I orally made a statement to him. Then he began to record my statement.

Q. How long were you at the police station before he started recording your statement ? 10

A. About ten minutes.

Q. While you made your statement to the sergeant, the sergeant was seated at a table ?

A. Yes.

Q. With a big book in front of him ?

A. Yes.

Q. On a bench or chair or what ?

A. On a bench.

Q. One of those narrow benches ?

A. Yes. 20

Q. While he was recording your statement did you notice anybody passing on the road ?

A. Yes.

Q. Who ?

A. I saw Alice Nona going on the road.

Q. How far was the road from where you were seated ?

A. If I were seated in the witness-box the road would be about the position of the foreman (80 feet).

Q. When you saw Alice Nona what did you do ?

A. I called out to her and she came in up to the sergeant's table. 30

Q. What did you tell her ?

A. I told her that my husband had been murdered.

Q. Did she say anything ?

A. She said that my husband had given her money and asked her to go to the market.

Q. After that Alice Nona waited by you till the sergeant had finished recording your statement ?

A. Yes.

Q. After your statement was completed you left for home ?

A. Yes. 40

Q. Alice Nona accompanied you home ?

A. Yes.

Q. She says some police officers went with you ?

A. Yes.

Q. When you were going along the road did you speak to any person or did anyone speak to you ?

A. Some people spoke to me.

Q. Having heard of what happened ?

A. Yes.

Q. And in the company of the police officers and Alice Nona you arrived at home ? 50

A. Yes.

Q. You found the police officers already there ?

A. Yes.

Q. In fact after you went to the police station and spoke to Sub-Inspector Lawrence you knew that some police officers had left for your house ?

A. Yes.

Adjourned for the day.

26.1.49. (11 a.m.)

Accused present.

10 Same Counsel as before.

Mrs. SENEVIRATNE—Sworn.

*Examination continued :*

Q. Yesterday you reached the stage that in the company of the police officers that you and Alice Nona arrived at home and found the police officers already there ?

A. Yes.

Q. Then what did you do ?

A. I remained in the house.

Q. In the verandah ?

20 A. Yes.

Q. Where was Alice Nona ?

A. She was also in the verandah.

I did not go into the house because the police officers asked me not to go. There were police officers in the verandah, and I had no opportunity of speaking to Alice Nona privately. I did not speak to Alice Nona at all. I did not speak to Alice Nona either at the Police Station or in the house, until she left the house in charge of a police officer. I had visitors that morning. Inspector General of Police, Sir Richard Aluvihare came there. I cannot say when the Inspector General of Police came there.

30 It was in the morning. My husband's brothers also came there. I remember Leopold and Percy coming there, but I cannot say whether Cyril came there. Mr. D. S. Senanayake and Sir Oliver Gunatileke, who was then the Minister of Home Affairs, also came there.

Q. Were you on visiting terms with Mr. D. S. Senanayake ?

A. No.

Q. Were you on visiting terms with Sir Oliver Gunatileke ?

A. No.

Q. That day Mr. B. W. Perera, the Assistant Superintendent of Police, forced open your husband's almirah ?

40 A. Yes.

Q. And gave you a bunch of keys which was in that almirah ?

A. Yes.

Q. That bunch contained a duplicate key to the almirah ?

A. Yes.

Q. And with that key you locked the almirah again ?

A. Yes.

Q. And in the night you opened the almirah again on the orders of Inspector Gordon ?

A. Yes.

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The funeral of my husband took place on the following day in the evening. That was on the 8th from No. 107 College Street, Kotahena. My husband's brothers attended the funeral. Mr. D. S. Senanayake, Sir Oliver Gunatileke and Inspector General of Police, Sir Richard Aluvihare also attended the funeral. The body was cremated. It was a Buddhist funeral. My brothers came back to No. 107 College Street, Kotahena, after the cremation, stayed a little while and went away. After that they did not come to College Street at all. I was left alone to think of what I was going to do.

(*To Court* : I was in the house with my children.)

10

*Q.* Were you worse off or better off without your husband ?

*A.* I was worse off.

*Q.* Why ?

*A.* Because I had to maintain the two children with the income I got out of the two houses only.

I was arrested on the 16th November and thereafter I have been in the female section of Welikade Prison.

*Q.* When Alice Nona was giving evidence here she pointed out to a woman in the Court House and said that she was the matron with whom she came to Court ?

20

*A.* Yes.

I had seen that woman before at the Welikade Prison. She was serving a term of two weeks' imprisonment. That was about two months ago.

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Crown Counsel* :

*Q.* Your husband's people did not approve of your marriage ?

*A.* Yes.

*Q.* In fact none of them attended the wedding ?

*A.* Yes.

*Q.* Did your parents approve of the marriage ?

30

*A.* Yes.

*Q.* Would you call it an arranged marriage ?

*A.* Yes.

*Q.* Why do you say so ?

*A.* Because it was arranged by somebody.

*Q.* By whom ?

*A.* I cannot remember.

*Q.* Certainly not by your parents ?

*A.* No.

*Q.* Before that arrangement had you met your husband ?

40

*A.* I had seen him when I was a small child.

*Q.* Apart from this arrangement was it a love match ?

*A.* No.

*Q.* He was a Sinhalese Buddhist and you were not a Sinhalese Buddhist but a Roman Catholic ?

*A.* Yes.

*Q.* When you were married did Mr. Seneviratne insist that you should marry as a Buddhist ?

*A.* No.

*Q.* Did you insist in marrying in the Catholic Church ?

50

*A.* No.

- Q. Nor did you insist that he should be baptised ?  
 A. No.  
 Q. How is it he came to be baptised ?  
 A. It was arranged between him and my father.  
 Q. Is it then correct to say that your parents insisted that he should be a baptised Catholic before you were married ?  
 A. Yes.  
 Q. And did your parents insist that the marriage ceremony should take place in the Roman Catholic Church ?  
 10 A. Yes.  
 Q. Were those your wishes too ?  
 A. Yes.  
 Q. And your husband was willing to abide by your wish and the wish of your parents ?  
 A. Yes.  
 Q. In point of fact he was baptised and you were married in the Catholic Church ?  
 A. Yes.  
 Q. Did it strike you that he became a Catholic merely for the purpose  
 20 of marrying you ?  
 A. I cannot say.  
 Q. Would you grant it that he never practised as a Roman Catholic ?  
 A. Yes.  
 Q. In fact after your marriage the deceased would go to the temple ?  
 A. Yes.  
 Q. Even soon after the marriage took place ?  
 A. Not soon after.  
 Q. Soon after he was indifferent about his religious practices ?  
 A. Yes.  
 30 Q. Thereafter he began to practise his religion as a Buddhist ?  
 A. Yes.  
 Q. Then arrived your first child Sumana ?  
 A. Yes.  
 Q. When was that ?  
 A. In 1936.  
 Q. That was the year after your marriage ?  
 A. Yes.  
 Q. Did you insist that your daughter Sumana should be baptised a  
 Catholic ?  
 40 A. Yes.  
 Q. During that period before the birth of your daughter Sumana did you practise the Catholic faith ?  
 A. Yes.  
 Q. Was that with or without the consent of your husband ?  
 A. With my husband's consent.  
 Q. Did your husband object to your child being baptised ?  
 A. No.  
 Q. So she was baptised in the Catholic Church ?  
 A. Yes.  
 50 Q. Although she was baptised she was not brought up as a Catholic ?  
 A. No.  
 Q. Is that because your husband did not like it ?

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- A. Yes.  
Q. It was however your desire that the child should be brought up as a Catholic ?  
A. Yes.  
Q. But your husband's will prevailed ?  
A. Yes.  
Q. You remember the time your son Oranda was born ?  
A. Yes. He was born in 1938.  
Q. He was not baptised at all ?  
A. No. 10  
Q. Why ?  
A. Because my husband did not want him to be baptised.  
Q. Over that matter was there any difference between your husband and yourself ?  
A. No.  
Q. Did you not insist that your son also should be baptised ?  
A. No.  
Q. Ultimately Oranda was also brought up as a Buddhist ?  
A. Yes.  
Q. As the children grew up both children would go to the temple ? 20  
A. Yes.  
Q. And they went with their father ?  
A. Yes.  
(To Court : Q. So it must have pained you that the children were being brought up as Buddhists ?  
A. Yes.)  
Q. Occasionally your husband would insist on your going to the Buddhist temple ?  
A. Yes.  
Q. In point of fact you went to the Buddhist temple ? 30  
A. Yes.  
Q. Why did you go to the temple ?  
A. Because he insisted on me to go to the temple I went there.  
Q. So you obeyed orders ?  
A. Yes.  
Q. You were at no stage a convinced Buddhist ?  
A. No.  
Q. Nor was your husband at any stage a convinced Catholic ?  
A. No.  
Q. As the children grew up was there any difference between your husband and you over this question of religion ? 40  
A. No.  
Q. When it came for the children to go to school your husband sent the children to a Buddhist School ?  
A. Yes.  
Q. That was at Nugegoda ?  
A. Yes.  
Q. Thereafter you came to Kotahena ?  
A. Yes.  
Q. There you first sent the children to a Catholic School ? 50  
A. Yes.  
Q. Why did your husband not send them to a Buddhist School ?

- A. I do not know.
- Q. When you came to No. 107 Kotahena your husband removed the children and sent them to a Buddhist School ?
- A. Yes.
- Q. That is, Prince College ?
- A. Yes.
- Q. When you were at Kotahena did you go to a Catholic Church ?
- A. Yes.
- Q. To which church did you go ?
- 10 A. St. Lucia's Cathedral.
- Q. Did you go for Mass every Sunday ?
- A. About two or three Sundays a month.
- Q. That would be without the knowledge of your husband ?
- A. With his knowledge.
- Q. Was there any objection raised by your husband ?
- A. No.
- Q. Why did you not go to church all the Sundays of the month ?
- A. I could not go.
- Q. Was it for any particular reason ? Was it for illness ?
- 20 A. No.
- Q. Your religion does not permit you a divorce ?
- A. No.
- Q. Nor can a divorced Catholic marry again in the eyes of the church ?
- A. No.
- Q. Because the church does not recognise civil divorces ?
- A. Yes.
- My husband was a Revenue Inspector of the Colombo Municipality. He was first a clerk in the Municipality and he rose up to the rank of a Revenue Inspector. At the time of his marriage he was a Revenue
- 30 Inspector. I did not know what salary he drew at the time of our marriage, because he did not tell me what salary he drew then. I did not ask him what his salary was. I was interested to know what his income was.
- Q. Have you asked him several times what his salary was ?
- A. Yes.
- Q. But he would not tell you what his salary was ?
- A. Yes.
- He told me that his pension was Rs.144/- per month and that his commuted pension was round about Rs.4,000/-.
- Q. His commuted pension was Rs.5,716.27 ?
- 40 A. Yes.
- Q. Yet he would not tell you what his salary was ?
- A. No.
- Q. Apart from his salary was he getting any allowance from the Municipality ?
- A. I did not know.
- Q. After your marriage you lived in Lakshmi Villa at Nugegoda, one of the dowried houses ?
- A. Yes.
- Q. That was a decent house ?
- 50 A. Yes.
- Q. You kept a well-furnished house at the time ?
- A. Yes.

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- Q. You lived well with your husband ?  
A. Yes.  
Q. Your husband owned a car at the time you lived at Nugegoda ?  
A. Yes.  
Q. You had a chauffeur to drive the car ?  
A. No.  
Q. His brother, Proctor Percy, told us that he had a chauffeur ?  
A. He used to drive his own car.  
Q. You had a beautiful nursery in your house ?  
A. Yes. 10  
Q. You had six servants in the house ?  
A. Yes.  
Q. All of them were paid and fed by your husband ?  
A. Yes.  
Q. So that you started off your married life in comfort ?  
A. Yes.  
Q. And the servants go out marketing at that time ?  
A. Yes.  
Q. At that time your husband was not miserly at all ?  
A. No. 20  
Q. To put it briefly, you then lived in the lap of luxury ?  
A. Yes.  
Q. Even then he gave you no pocket money ?  
A. No.  
Q. Your parents gave you jewellery ?  
A. Yes.  
Q. They were given to you ?  
A. They were given to him.  
Q. How soon after did he take them over ?  
A. Soon after we settled down. 30  
Q. That is for safety ?  
A. Yes.  
Q. Except that part of jewellery which you wore at home ?  
A. Yes.  
Q. On festive and other important occasions he used to give you the  
jewellery to wear them ?  
A. Yes.  
(To Court : Q. Did you ask him pocket money for personal expenses ?  
A. Yes.  
Q. He would not give ? 40  
A. Yes.  
Q. Although he was well off ?  
A. Yes.  
Q. He had six servants then ?  
A. Yes.)  
Q. How much do you ask ?  
A. I used to ask for five or ten rupees but he would not give me.  
Q. At that time you got the rent of another house dowried to you ?  
A. He took the rent  
Q. Did he not give you anything out of that ? 50  
A. No.  
Q. Your husband had no occasion to borrow at all during that period ?

- A. No.
- Q. So that till about 1942 you were above want ?
- A. Yes.
- Q. Your first estrangement took place in 1942 ?
- A. Yes.
- Q. That was the year your husband retired ?
- A. Yes.
- Q. And then came the reduced income ?
- A. Yes.
- 10 Q. His eyes started giving him trouble ?
- A. Yes.
- Q. He went on long leave ?
- A. Yes.
- Q. For some months he was on half pay ?
- A. Yes.
- Q. And for many months on no pay ?
- A. Yes.
- Q. Ultimately he had to retire ?
- A. Yes.
- 20 Q. That was a compulsory retirement ?
- A. Yes.
- Q. He retired at the age of fifty ?
- A. Yes.
- Q. So that after retirement his pension was Rs.144/- ?
- A. Yes.
- Q. That was about all the income of your husband ?
- A. Yes.
- Q. That was round about your first estrangement ?
- A. Yes.
- 30 Q. I put it to you that this reduction in the income was the cause of your estranged conduct ? Is that so ?
- A. No answer.
- Q. There was a little displeasure when you went to your father's house having left your husband, that was due to your husband's financial position. Your husband's income was much less than it was before ?
- A. No.
- (To Court : Q. Your way of life had been much reduced after his retirement ?
- A. Yes.
- 40 Q. From six servants it had become three ?
- A. Yes.)
- We had a car at that time. Food was the same.
- Q. Then, can you explain why you, who could put up with him for seven years, had your first quarrel with him when he became a much poorer man ?
- A. No answer.
- Q. I put it to you that when poverty came in through the door love flew out of the window ?
- A. No.
- 50 Q. You told the Court that the first quarrel with your husband was due to the feeding of your children ?
- A. Yes.

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Q. That is to say your husband did not give sufficient bread for the children to eat ?

A. Yes.

Q. You told the Court that he gave two slices of bread in the morning ?

A. Yes.

Q. In the evening he gave two slices of bread with butter ?

A. Yes.

Q. That you thought was insufficient for the children ?

A. Yes.

Q. For lunch there was rice and curry, plenty of rice ?

10

A. Yes.

Q. Was that sufficient for you to leave your husband and go to your mother's house ?

A. No answer.

*(To Court : My husband loved his children.)*

He wanted me back. I do not know whether my husband went to brother Percy. Brother Percy said that my husband was in a pitiable condition.

Q. He had no wife, no servants ?

A. He had servants.

20

*(To Court : Q. Why the father who loved his children did not feed the children sufficiently ? Why did you leave the two children and go away ? Can you say ? Was that the reason or was it some other reason ?*

A. That was the reason.

Q. Was that the only reason ?

A. Yes.)

Q. If the deceased did not give sufficient food for the children why did you leave the house ?

A. I asked for more, and left the house.

Q. Do you not think that your two children would have been fed better in your mother's house ?

A. Yes.

Q. But you left your children behind although you left the house because your husband did not feed the children sufficiently ?

A. Yes.

*(To Court : I could not take them because my husband would not allow me to take them.)*

Q. Even under some pretext could you not have taken the children from a hardhearted father ?

A. No answer.

40

My father was living at that time, and I got money from my father.

*(To Court : I left the house and went to my parents' house because I wanted to get some money from my father.)*

Q. You went across to tell your father about it ?

A. I left the house and went to my father's house to tell him about it.

Whole of that day I was in my father's house. I left that morning after the children's morning meal.

Q. After you left did Proctor Seneviratne, brother of the deceased, advise you to get back ?

A. Yes.

50

Q. Did you tell him that you left the house because your husband did not give sufficient bread to the children ?

A. No answer.

(To Court : Q. When you left that morning you did not intend to go back ?

A. I intended to go back.)

Q. Why should the Proctor advise you ?

A. No answer.

Q. Why should he advise you ?

10 A. I went to just tell my father and get back home.

Q. Why should the Proctor advise you ?

A. I told him that I would be going back.

Q. Then why should he advise you to go back ? A Proctor advises a person to do something if that person is not willing to do that thing. Is that not so ?

A. Yes.

I cannot say at what time I met the Proctor, I think I met him in the afternoon.

Q. You had not made up your mind to return till then ?

20 A. Yes.

Q. You told the Court that your second quarrel was in October, 1944 ?

A. Yes.

Q. On that occasion you left to your mother's house and the deceased went and lived with his brother Percy ?

A. Yes.

Q. And you really got back round about February, 1945 ?

A. Yes.

(To Court : On that occasion too he took the children with him.)

Q. Was that the only occasion your husband had struck you ?

30 A. Yes.

Q. He struck you again, over the question of bread for the children ?

A. Yes.

(To Court : My father was living then.)

Q. During the two years intervening, 1942 to 1944, he was giving two slices of bread for each of the children ?

A. Yes.

(To Court : He was always feeding the children like that. They were underfed. I do not know why he underfed the children.)

Q. He did not mind six servants being fed in the house ?

40 A. Yes.

Q. He had never struck you during your married life before that day ?

A. Yes.

Q. It was over this two slices of bread ?

A. Yes.

Q. Would you say that the deceased took much interest over the studies of the children ?

A. Yes.

Q. In point of fact he would sit at home and teach the children ?

A. Yes.

50 Q. In point of fact he loved his children ?

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A. Yes.

Q. He even fed his children at the table ?

A. Yes.

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Q. But he was reluctant to give more bread for them although bread was available ?

A. Yes.

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Q. If that was your view, that two slices of bread was not sufficient for each child, why did you not buy more bread ?

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A. I had nothing to do with that. He used to attend to all those things. A pound of bread was 24 cents. 10

Q. Would he not have bought another pound of bread for the children if that was necessary ?

A. No answer.

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(To Court : Q. I suppose your father would have advanced a few rupees for the sake of the children ?

A. Yes.)

Q. He would have given Rs.7.50 for bread for the children ?

A. Yes.

(To Court : Q. He was a owner of six houses ?

A. Yes.) 20

Q. I put it to you, if he assaulted you at all it was not for this reason ?

A. It was for that.

Q. Apart from the question of feeding the children was there any major quarrel ?

A. No.

Q. On this occasion when you separated from your husband do you remember your husband left with the two children to his brother, Proctor Seneviratne ?

A. Yes.

Q. Did the deceased take the jewellery with him ? 30

A. Yes.

Q. You remember going to Percy Seneviratne's house to recover the jewellery ?

A. Yes.

Q. All the jewellery was given back to you ?

A. Yes.

Q. Did he get a receipt ?

A. Yes.

Q. All the jewellery intact ?

A. Yes. 40

(To Court : Q. You remember Percy drafted a document in the nature of a deed of separation ?

A. Yes.)

Q. The day you got back the jewellery from the Proctor he gave back the keys ?

A. Yes. The keys of the Lakshmi Villa.

Q. For that too you gave a receipt ?

A. Yes.

Q. Was there any talk of divorce proceedings being instituted ?

A. No. 50

- Q. Did your husband contemplate any kind of divorce proceedings ?  
 A. No.  
 Q. Do you remember the evidence given by Proctor Seneviratne ?  
 A. Yes.  
 Q. He said that you wanted the custody of the children and wanted to file divorce proceedings ?  
 A. No.  
 Q. He told the Court that he advised you and your father to sign a deed of separation merely to keep out of Court the domestic troubles ?  
 10 A. Yes.  
 Q. Only trouble that might have been exposed in Court was about the feeding of the children ?  
 A. Yes.  
 Q. Was that so startling as to take precaution ?  
 A. Yes.  
 Q. Then what was the reluctance to go to Court ?  
 A. No answer.  
 (To Court : It was not a religious question that the divorce proceedings was not taken.)  
 20 Then a deed of separation was drafted by the Proctor. A copy of it was given to my father. I saw the copy myself.  
 Q. I will read to you the summary of those conditions. Please tell us whether it is correct. Wife to live apart from the husband. Wife and husband not to molest or annoy each other. The husband to have the custody of the children except during the school vacation, when the children can be with their mother. The wife to manage . . . One of the conditions was the husband to have the custody of the children ?  
 A. Yes.  
 Q. Why did you not ask for the custody of the children ?  
 30 A. That was a deed drafted by his brother.  
 (To Court : Q. It was put up to your father and to you for approval and you saw the copy ?  
 A. No answer.  
 Q. I thought you would have pounced on that and say that the children should be with you ?  
 A. No answer.)  
 I remember making a statement to the police.

*At this stage the Jury retire.*

- (Crown Counsel brings to the notice of the Court the following  
 40 statement made by the witness to the police.

“First time we broke up was in 1944. The reason being that he thought that I was not faithful.”

Crown Counsel states that the statement is relevant and admissible and that he would not desire even the slightest element of prejudice to be present at this trial as against the prisoner. He states that alternatively he would have preferred to ask the witness whether she gave the same reason to the police for the break up in 1944 as she has done here in Court to-day. If the answer is yes, he would contradict the witness by calling the police officer to say that she gave some other reason.

- 50 Mr. Nihal Gunasekere objects to both courses proposed by the Crown. He states (1) that the statement is calculated to prejudice the prisoner

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and (2) that the contents of no document reduced to writing by Law should be availed of unless that document is produced and a certified copy of it is issued.

*Order* : I propose to admit the passage provided the Crown consent to prove the next sentence in the statement. The Crown Counsel states that he is not prepared to do so. The proposed evidence is ruled out.)

*Jury return.*

*Q.* After this deed of separation was drafted it was again decided to ignore it ?

*A.* Yes.

10

*Q.* Then you and your husband again entered into a verbal agreement with certain conditions ?

*A.* Yes.

*Q.* That was in Proctor Seneviratne's office ?

*A.* Yes.

*Q.* One of the conditions was that both of you to leave Nugegoda and live elsewhere ?

*A.* Yes.

*Q.* Not to visit your father or mother without the sanction of your husband or to go there in his company ?

20

*A.* Yes.

*Q.* And also you to receive Rs.25/- as pocket expenses and he was to get Rs.100/- rent that you got from the bigger house and the deceased to have complete control over the management of the household affairs ?

*A.* Yes.

Thereafter we left Nugegoda and went to Kotahena, No. 107, College Street. After that we went to May Field Road.

*Q.* Is it that when you were at May Field Road that there was another quarrel ?

*A.* Yes.

30

*Q.* On that occasion you left your husband and went to your mother's house ?

*A.* Yes.

*Q.* Over what was that ?

*A.* I cannot remember.

*Q.* These were the three occasions when there were major quarrels, two of which you could remember and third of which you cannot remember ?

*A.* Yes.

*Q.* Then while your husband was staying at Proctor Seneviratne's a reconciliation was brought about. Did you tell Proctor Seneviratne that our troubles are chiefly due to the insufficiency of food for the children ?

*A.* Yes.

*Q.* You also realised that the Proctor has not mentioned anything about it in the deed of separation ?

*A.* Yes.

*Q.* Did you give back your jewellery earlier recovered from your husband ?

*A.* After we went to No. 107 College Street, Kotahena.

50

*Q.* Why did you give back ?

*A.* He wanted to keep them with him.

- Q. Did you know where he had kept them ?  
 A. In his sister's house.  
 Q. That is at Mr. Gunatilake's ?  
 A. Yes.  
 Q. And your husband had the key ?  
 A. Yes.  
 Q. You then had just enough jewellery for your normal use ?  
 A. Yes.  
 Q. They were put into an attache case and given to Mr. Gunatilake  
 10 who lived at Mt. Lavinia ?  
 A. Yes.  
 Q. The deceased would not part with this key ?  
 A. No.  
 Q. The deceased wore this key round his neck ?  
 A. Yes.
- (To Court : He had about three keys round his neck, two keys of his wardrobe, and one key of the glass cabinet. The key of the attache case was inside the wardrobe.)
- Q. Can you recollect and tell us whether he had the key of the attache  
 20 case round his neck ?  
 A. No.  
 Q. Then why did you say that he wore it round his neck ?  
 A. I made a mistake.  
 Q. You remember after his death this attache case was brought to the Police Station and you were present that day ?  
 A. Yes.  
 Q. And you produced that key ?  
 A. Yes.  
 Q. It is not true that the key was taken from round his neck, it was  
 30 taken from the wardrobe ?  
 A. Yes.  
 Q. You checked up the jewellery that day ?  
 A. Yes.  
 Q. You found the jewellery intact ?  
 A. Yes.  
 Q. They were put in the Bank of Ceylon ?  
 A. Yes.  
 Q. Mr. Seneviratne says that the jewellery is worth about 8,000 rupees ?  
 A. Yes.  
 Q. There were two receipts, one was a list of jewellery and you found  
 40 that to be correct ?  
 A. Yes.  
 Q. You told the Court yesterday that your husband never told you anything about his financial position ?  
 A. Yes.  
 Q. He told you about his commuted pension ?  
 A. Yes.  
 Q. He had no insurance policy ?  
 A. No.  
 Q. How do you know that ?  
 50 A. He told me that.

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*Q.* Did you know that he was contributing to the Public Service Mutual Provident Association ?

*A.* He told me that he had some other money in some Association and that he had withdrawn it after his retirement.

*Q.* He told you that he had withdrawn it ?

*A.* Yes.

*Q.* Did he tell you that you as his wife would get a donation from the Public Service Mutual Provident Association ?

*A.* No.

*Q.* The man was in feeble health ?

10

*A.* No.

*Q.* Except that he was blind ?

*A.* He was having cataract.

*Q.* He was generally in good health ?

*A.* Yes.

*(To Court :* He had been to hospital twice. Once he went to hospital when he was swollen.)

*Q.* We have seen his picture and he does not appear to have been in robust health ?

*A.* No answer.

20

*Q.* You asked him what provision he had made for you ?

*A.* Yes.

He said that he had withdrawn some money from an association after his retirement.

*Q.* Did you ask him what he had done for you and for your children ?

*A.* I asked him.

*Q.* And you knew that there was no insurance money coming ?

*A.* Yes.

*Q.* And you had no assurance that there was some money due to the widow and the children ?

30

*A.* No.

*Q.* Why did he not make that information available to you ? Is that not natural ? Why did he refrain from telling that ?

*A.* No answer.

*Q.* Insurance is sure money payable at death ?

*A.* Yes.

*Q.* There was no such money coming ?

*A.* No.

*(Court :* *Q.* In fact there was some money payable to the widow from the Public Service Mutual Provident Association and in fact that 40 money was paid ?

*A.* Yes.

*Q.* How is it that was kept as a secret ?

*A.* No answer.)

*Q.* Had you any information at all from the deceased that any money would be payable to the widow at his death ?

*A.* No.

*Q.* You know that he had deposited some money in the Post Office Savings Bank. That was his commuted pension ?

*A.* Yes.

50

*Q.* He had deposited the money in the name of the two children ?

*A.* Yes.

- Q. You knew that he used to withdraw these money ?  
 A. Yes.  
 Q. Had you asked him how much money he had withdrawn from the children's books ?  
 A. No.  
 Q. You were aware that he had deposited about Rs.5,000/- in the Post Office Savings Bank in the name of the two children ?  
 A. Yes.  
 Whenever the children sign the withdrawal form the money can  
 10 easily be withdrawn. I never asked the children how much money they had withdrawn on any particular day. I did not know how much money there was in the Post Office Savings Bank, because he had the books in his almirah. I did not inquire from the son or the daughter how much money they had in their books.  
 Q. You know in fact that Sumana and Oranda had a total balance of Rs.3,808.80, and you knew that that money would be sufficient to pay off your husband's debts ?  
 A. Yes.  
 Q. You knew that the deceased had full control over this money  
 20 lying to the credit of the children ?  
 A. Yes.  
 Q. He could have withdrawn that money to pay off his debts ?  
 A. Yes.  
 Q. You know he did not do it ?  
 A. Yes.  
 Mrs. Paul was introduced to me by my husband. She was teaching at St. Benedict's College when my children were attending that school. I asked her a loan of Rs.600/- against the security of a brilliant ring. That was for my father's funeral expenses.  
 30 Q. Did you get that sometime after your father's funeral ?  
 A. Yes. That was about two or three days after my father's funeral.  
 In connection with my father's funeral my brother had incurred all the expenditure. That is my eldest brother. He was employed at that time. I got that money at the request of my mother as she wanted to pay off those expenses. My brother had borne the funeral expenses, but he had not paid them. When my brother had not paid them my mother wanted to settle them. Then she came and asked me for a loan. My father had two houses at Nugegoda. He was residing in another house. My father was not a Government Pensioner at the time of his death.  
 40 He kept a grand house. He had sufficient money. He left a will when he died. He left my mother money and property in that will. My mother came and asked me Rs.600/- to pay off my father's funeral expenses. Up to date she had not paid that money. I asked my mother to settle that debt as Mrs. Paul was demanding that money. My mother had not given me that money still.  
 (To Court : Q. What was the difficulty she had of paying this. The impression you gave us was that he gifted you two houses, he worked in the granary, and he left sufficient for your mother ?  
 A. At the time he died there was no money available.  
 50 Q. Why should it not have been paid, a petty sum of Rs.600/- came to be unmet, can you say ?  
 A. I cannot.)

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Then I borrowed Rs.500/- from Mrs. Wallace. That was in connection with my brother's wedding. My brother was employed in the Commercial Company. That was after my father's death that he got married. My father left him a house and property at Nugegoda. He was on good terms with my mother. The marriage was approved by my mother and others. I have another brother. He is at the Grand Hotel, Mt. Lavinia. Still this brother, who was employed in the Commercial Company, came to get money from me. He knew very well that I was in difficult circumstances. Having borrowed the money he paid me back a sum of Rs.50/- out of the Rs.500/-.

Q. Did you realise that your mother and brother had let you down very badly ?

A. No.

Q. Did you not think that you should not have anything to do with your mother and brother thereafter ?

A. No.

I then borrowed a sum of Rs.300/- from an Afghan, giving him a note for double the amount. I did not know that he could have sued me for the amount that was put down on the note.

Q. That note speaks for itself, that you can be sued for Rs.600/- ?

A. I could not.

Q. Was there any condition attached to it ?

A. He told me that once we give him Rs.300/- that was all, we need not pay him anything more.

Q. Did you get any writing at all from him that you could pay him only Rs.300/- ?

A. No.

(To Court : Q. Is this evidence of Mrs. Paul correct ? You had asked her for small sums like one rupee, two rupees at a time ?

A. Yes.)

Q. You were very hard up ?

A. Yes.

Q. And yet your mother and brother come to you for sums like Rs.600/- and Rs.500/- ?

A. Yes.

Q. Why did you not get your husband to be a party to the promissory note ?

A. He said he was trying to get back his own job and as Government servant he could not sign a promissory note.

Q. He was on pension at the time ?

A. Yes.

Q. For seven years ?

A. Yes.

Q. At the age of 56 ?

A. Yes.

(To Court : Q. He was ill and he had bad eyesight. What prospect had he of getting back the job ?

A. No answer.)

Q. We get the picture of a husband, a very careful man, would he go to Afghans when he had already money ? Such a careful man living within his means. Do you say that he asked you to borrow that money ?

A. Yes.

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- Q. I can understand a spendthrift or a gambler going to Afghans ?  
 A. No answer.
- Q. Whatever we know of the man he was careful. I want to give you an opportunity to say what you have to say ?  
 A. No answer.  
 My husband was prepared to settle the Afghans and he asked me to sign the note although it was for double the amount.
- Q. Did you not ask your husband to take the money that he wanted from the Post Office Savings Bank.  
 10 A. No.  
 Q. At this time your husband gave you no money at all but he asked you to borrow Rs.300/- for him ?  
 A. Yes.  
 Q. Did he tell you that he would give you any money out of that ?  
 A. No.  
 Q. Regardless of the manner he treated you you were prepared to get a loan from an Afghan ?  
 A. Yes.  
 Q. You again signed a promissory note from another bhai for Rs.600 /- ?  
 20 A. Yes.  
 Q. That too was 18 per cent ?  
 A. Yes.  
 Q. Did you not tell your husband that you were running the risk of being sued ?  
 A. Yes. He said he would pay them off.  
 Q. Then you signed another note for a sum of Rs.300/- in August 1947, three months before your husband's death ?  
 A. Yes.  
 Q. Although you knew that the previous notes had not been paid ?  
 30 A. Yes.  
 Q. I put it to you that you signed those notes and your husband was not interested at all in these debts.  
 A. No answer.
- (To Court : Q. You had been used to a certain way of life with your parents and you came up against a man who would reduce you to such a stage when obviously you had to borrow money in order to keep up to the nature of life you were used to ?  
 A. No answer.)
- Q. On top of this your husband asked you to borrow from another  
 40 Bhai, Mohammed Yakoo Bhai, a sum of Rs.300/- and there too I presume you received only a sum of Rs.150 /- ?  
 A. Yes.  
 Q. This was for the sake of going on pigrimage to Tissamaharama ?  
 A. Yes.  
 Q. Even then did you not ask your husband, why don't you take the money from the Post Office Savings Bank ?  
 A. No.
- (To Court : A saree would cost about Rs.20 or Rs.25/- then. A pair of shoes would cost me about ten or twelve rupees then. I never went to  
 50 the pictures.)  
 I again borrowed a sum of Rs.278/- from Mr. Sathasivam. My husband was in hospital at the time. I went to see my husband daily at

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the hospital. His body was swollen. He was reading the daily papers. I went to Sathasivam and gave him a pronote. My husband told me about the advertisement in the paper and I wrote to Mr. Sathasivam. That was on the 7th October, 1947.

*Q.* Whenever you borrowed money you had an excuse, your father's funeral, your brother's wedding. You borrowed for yourself?

*A.* No answer.

I wrote to Sally for a sum of three hundred rupees.

*(To Court : Q.* Did you tell him : " Please keep it a dead secret. Only between you and me and no one else. I trust you. So I hope you won't let me down. I need this money before the 20th." You wanted Sally to keep this a dead secret ?

*A.* Yes.

*Q.* You did not want your husband to know about it ?

*A.* Yes.)

*Q.* You met Sally for the first time on the Wesak day, 1947 ?

*A.* I had seen him before.

*Q.* You were introduced to him on the Wesak day ?

*A.* I knew him before.

*Q.* Mr. Sally said here that he knew the Joachims well ?

20

*A.* Yes.

*Q.* He said that he passed that way on the Wesak day, and seeing the Joachims family he stepped in and that you were introduced to him by the Joachims. He further said that that was the first day you were introduced to him ?

*A.* No answer.

*Q.* Is he speaking an untruth on that point ?

*A.* Yes.

*Q.* You heard his evidence ?

*A.* Yes.

30

*(To Court : I knew Mr. Sally from the time I went to Joachim's house, No. 107 College Street, Kotahena.)*

I knew he was a Muslim. On the Wesak night he took me out to see the illuminations. In a week I wrote to him. I wrote a letter to him on the 12th May, 1947. (Shown P.39.) That is a letter dated 12th May, 1947. That is a letter written by me. That is a letter I wrote to Sally. That is my handwriting.

*Q.* In that letter you address him, My dear Sally ?

*A.* Yes.

*Q.* What did you write to him about ?

40

*A.* About the trip on the Wesak night.

*Q.* Did you ask him to come and see you ?

*A.* Yes.

*Q.* After that he came to Joachim's house. He met you in the house ?

*A.* Yes.

*Q.* Did you ask him whether he received your letter ?

*A.* I cannot remember.

*Q.* Then you wrote to him another letter ?

*A.* Yes.

*Q.* (Shown P.40) That is another letter you wrote to him ?

50

*A.* Yes.

Q. That is dated 27th July, 1947 ?

A. Yes.

Q. On that occasion you addressed him as " Dearest Sally " ?

A. Yes.

Q. What was that letter about ?

A. That I was expecting a letter from him.

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(To Court : Q. How did this man become your dearest Sally ? You addressed him as " My Dear Sally " in May 1947 and in July same year you addressed him as " Dearest Sally." In between did you come to  
10 know him very well ?

A. Yes.)

Q. Did you at any stage tell your husband about your correspondence with Sally ?

A. No.

Q. On 14th June, 1947, you wrote again to Sally, this letter P.41 ?

A. Yes.

Q. You addressed that letter as " My Dear Sally " ?

A. Yes.

Q. And end it " with love, cheerio for the present " ?

20 A. Yes.

Q. In that letter you said that you were badly in need of Rs.300/- ?

A. Yes.

Q. And you requested him to keep it a dead secret between him and you and no one else ?

A. Yes.

Q. Was that because your husband wanted the money ?

A. No.

(To Court : Q. For your mother or brother ?

A. No.

30 Q. For yourself ?

A. Yes.)

Q. Why did you want that money ?

A. I wanted that money for a small party for my son's birthday.

Q. When was it ?

A. My son's birthday was on the 20th June.

Q. To this letter you received a letter from Sally P.41 ?

A. Yes.

Q. He addressed you as " My Dear Beatrice " and ends it as " Yours " ?

A. Yes.

40 Q. He does not promise to give you the money ?

A. No.

(To Court : Q. On either side of the request to Sally which you made in June, monies were borrowed from Afghans in March and July openly between yourself and your husband. For this birthday party you could have borrowed money from an Afghan. Why did you borrow it from Sally ?

A. No answer.)

Sally once gave me Rs.25/- at the Armour Street Junction having met by appointment. He gave me another sum of Rs.50/- again at  
50 Armour Street Junction. Two weeks later he did not give me another sum of Rs.50/-. He did not give me Rs.10/- at the Borella Junction at

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the bus stand. He gave me in all Rs.75/-. In my evidence earlier I said that he gave me Rs.85/-. That is a mistake. Of that I gave him a certain sum.

Q. You know Maihamy ?

A. Yes.

Q. Did you send a hairpin and a pair of earrings to be pawned ?

A. Yes.

Q. On that occasion did the first accused go along with Maihamy to the pawnshop ?

A. Yes. 10

Q. Did one go before the other or did both go together ?

A. First accused went ahead.

Q. You gave the articles to the first accused for the sake of pawning ?

A. Yes.

Q. The pawnbroker would not give him any money ?

A. Yes.

Q. Because he did not know the man ?

A. Yes.

Q. Was Maihamy known to the man ?

A. I think he knew the woman. 20

Q. You heard the evidence of Girigoris, the pawnbroker, he says the first accused came along with Maihamy ?

A. I do not know whether they met each other on the way.

Q. The point is that the first accused was not refused by the pawnbroker ?

A. I do not know that.

I wanted the money because my husband had to give some money to the first accused on account of some repairs he had done to the house at Nugegoda. At the time the first accused came there my husband was not at home, he had gone out somewhere. It was about 1 p.m. and my husband was expected and I asked the first accused to wait till my husband returned to get the money. He had done these repairs and the carters who brought some furniture to Kotahena had also to be paid. Those repairs had been done about a month ago and the carters came with the furniture about two days ago and the carters were sent away without paying them. I did not know when my husband would be back that day. Sometimes he returns home round about dinner time, and the first accused did not want to wait so long. I asked the first accused to wait. He said that he wanted the money that day and therefore I took out the earrings and send him to the pawnbroker. 30

Q. Maihamy says that in her deposition that you owed the first accused a sum of Rs.700/- ? 40

A. No.

Q. Is there any reason for Maihamy to speak an untruth ?

A. I do not know.

Q. She says in evidence that after pawning the jewellery she gave fifty rupees to the first accused because the first accused had told her that you had owed him Rs.700/- ?

A. No.

Q. I will read the passage to you. Maihamy says in her deposition : 50  
" First accused said that the lady owed him Rs.700/- which she had obtained from him." Do you say that is not correct ?

A. That is not correct.

Q. "First accused wanted the receipt to be shown to that man from whom he had obtained the loan of Rs.700/- for the second accused" ?

A. That is not correct.

Q. She further continues her evidence: "I did not give the receipt. I then went home later. I went to the second accused's house and said, 'Why do you borrow money like this.' " ?

A. No.

Q. She continues, "Baas abused and quarrelled with me" ?

A. No answer.

10 Q. The second accused said, "Let them shout for the debt, you keep the articles till I redeem the articles" ?

A. No.

Q. Maihamy also says in her evidence just before the deceased died you have sent a pair of ear-rings through Alice Nona. She pawned them for Rs.25/- and sent the money through Alice Nona ?

A. Yes.

Q. You were hard up at this time for money ?

A. Yes.

I cannot remember why I wanted this money.

20 Q. In fact Maihamy's says that you pawned a saree ?

A. Yes.

Q. And redeemed it later ?

A. Yes.

(To Court: Q. If Maihamy's deposition is true, sometime in August 1947 this first accused was abusive and quarrelsome over money matters ?

A. Yes.

Q. Is that so ?

A. Yes.

30 Q. If that evidence is true, he was pressing for his money as much as Rs.700/- ?

A. Yes.

Q. Did it occur to you that the only way out of this intolerable situation is to suggest a means to him to get that money ?

A. No.)

Q. How much was paid to you on the death of your husband ?

A. Rs.3,926.91.

(To Court: Q. Out of that a sum of Rs.700/- could easily have been paid to a pressing creditor ?

A. No answer.)

40 Round about this time I had not written to Harry Perera. I met Harry Perera at the Windsor Hotel. I met him at the Hotel for the purpose of getting a loan. I met him there because this was a personal loan.

Q. It was going to be a loan that you wanted to keep away from your husband's knowledge ?

A. Yes.

50 On that occasion I got Rs.100/- cash. I met him again at Windsor Hotel on another occasion. I cannot remember how long after the first occasion I went again to meet him. I went on that occasion with Alice Nona. On that occasion I got money from Harry Perera. He paid the money at the Hotel. Then he gave me a lift to Nugegoda. He gave me a lift because it was raining at the time. He took me and the cook woman

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and dropped us near the 7th milepost. Close to mother's house. He dropped us there because he had to get back to his office, and at that time it was not raining, the rain had ceased. It is not correct to say that he dropped us at the Nugegoda Junction.

*Q.* He dropped you there because you did not want your mother to see you coming along in his company ?

*A.* No.

Early in October, 1947, the deceased was ill. He had to enter the Hospital. He was swollen. Before he was admitted to hospital he was not given any kind of native treatment, no decoctions were prepared at home. No home treatment was given. Doctor Karunaratne treated him.

*Q.* Was this due to some kind of poison ?

*A.* I do not know what it was about.

I went daily to hospital to see my husband. At the time I went there the doctor was away. I asked the nurses what the trouble was and they said that he had taken some bad food. His face was swollen.

*Q.* You all took the same kind of food in the house ?

*A.* Yes.

*Q.* That is the food he normally took in the house ?

20

*A.* Yes.

None of us fell ill after taking that food. During my husband's illness first accused saw me in hospital.

(*To Court :* The first accused has sometimes come home to find my husband not at home. The first accused addresses me as Nona-mahataya, and I address him as Baas.)

Adjourned for luncheon interval—1.30 p.m.

Certified correct.

(Sgd.) D. V. JAYAMAHA,

Stenographer, S.C. 30

26th January 1949. After Luncheon Interval. 2.15 p.m.

Mrs. B. M. DE S. SENEVIRATNE—Re-sworn.

*Cross-examination by Crown Counsel continued :*

*Q.* You remember sending a ring and hair pin to the pawnshop ?

*A.* Yes.

*Q.* You sent them first through the baas, the first accused, and later sent them through Maihamy ?

*A.* Yes.

*Q.* You also gave us the reason why you wanted the money that day ; it was to pay the wages of the first accused for repairs done ?

40

*A.* Yes.

*Q.* You are sure that is the reason ?

*A.* Yes.

I remember making a statement to the police.

*Q.* Is it correct to say that the hair pin and ring you sent to the pawnshop you had originally pawned with a lady friend of yours ?

*A.* No.

- Q. You had not pawned them with Mrs. Perera of Pickerings Road ?  
 A. No.
- Q. Is it correct to say that Mrs. Perera was leaving Kotahena and she wanted the money back ?  
 A. No.
- Q. Is it correct to say that you told her that if she gave you those articles of jewellery, you will pawn them elsewhere and pay the money ?  
 A. No.
- 10 Q. You know that Sub-Inspector Gordon recorded your statement ?  
 A. No.
- Q. Do you remember making a statement to any police officer ?  
 A. Yes, that was to a sergeant.
- Q. That was the first information you gave at the police station ?  
 A. Yes.
- Q. Later in the course of inquiry into this case did you make a statement to Sub-Inspector Gordon ?  
 A. I cannot remember.
- Q. You remember a statement being recorded on the 16th November at 12.30 p.m. immediately after your arrest ?  
 20 A. Yes.
- Q. You remember making that statement to Sub-Inspector Gordon who recorded it in his notebook ?  
 A. Yes.
- Q. In the course of that statement did you say this, "About four months ago I handed a hair pin and a ring to baas requesting him to pawn it for me" ?  
 A. I cannot remember whether I said that.  
 (The statement of this witness to Sub-Inspector Gordon is read out to her sentence by sentence.)
- 30 Q. Then did you continue to say, "I told him to fetch me Rs.50/-" ?  
 A. I may have said so.
- Q. "This same article I had pawned with a lady, namely, Mrs. Perera of Pickerings Road" ?  
 A. I did not say that.
- Q. "She wanted the money urgently as she was leaving Kotahena" ?  
 A. I did not say that.
- Q. "I told her if she returned the articles I would pawn them somewhere else and give her the money" ?  
 A. I did not say that.
- 40 Q. "Baas failed to pawn the articles" ?  
 A. I cannot remember whether I said that.

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(This passage is marked X.6.)

The statement recorded by Sub-Inspector Gordon was read over and explained to me before I signed it.

(*Court* : What is the truth about that hair pin and ring. Did you send them through the first accused to be pawned ?—Yes.)

Q. And the reason for which you pawned these articles was not to pay the first accused, but to pay back the money to Mrs. Perera ?

A. The truth is that the reason for the pawning of those articles was not to pay back Mrs. Perera, but to pay the first accused.



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- Q. In that statement you had told the police that you asked him to fetch Rs.50/- ?
- A. Yes.
- Q. Girigoris the pawnbroker says that the first accused insisted on his paying him Rs.100/- ?
- A. I do not know.
- Q. I put it to you that the first accused was doing his best to recover as much as possible on that pawn because you owed him Rs.700/- ?
- A. No.
- (*To Court* : These repairs which the first accused had done were for 10 my husband.)
- Q. So that on that day you paid back the first accused only Rs.50/- ?
- A. Yes.
- Q. Although his bill for repairs was Rs.100/- ?
- A. My husband told me he owed the first accused Rs.100/-.
- Q. You said you asked the first accused to wait till your husband returned in a few hours but as he insisted on the money you pawned these articles and paid him Rs.50/- ?
- A. Yes.
- Q. He was satisfied with Rs.50/- ?
- A. Yes.
- The first accused was known to me for a number of years, but not from my infancy. He was known to me when I was living at Nugegoda. I came to know him after my marriage, while I was still living at Nugegoda. I married in 1935. I have known the first accused from about 1940/41. I had known him for about seven years before my husband's death. I knew him as a mason, as a carpenter, also as a painter and polisher, also as a seller of medicinal herbs. I first came to know him when he started doing work for my husband—masonry and carpentry work—in connection with houses which belong to me—the two dowried houses. I called the first accused "baas," and my husband also called him "baas." He called my husband "Hamu Mahatmaya," and he called me "Nona Mahatmaya." (*Court* : Your husband seemed to rather like the man ?—Yes.) The first accused did work for my father and mother also. That was not before the time of my marriage.
- Q. Was not the first accused introduced to you and your husband by your father and mother ?
- A. I do not know how my husband came to know him.
- Q. Before your marriage had not the first accused effected repairs to your father's house ?
- A. No.
- Q. After you came to know him he was a sort of retainer to your family ?
- A. I could not follow you.
- Q. For any type of work that had to be done, you and your husband would go to first accused ?
- A. Yes.
- (*To Court* : The first accused was available to us for odd jobs.)
- He was on good terms with me and my husband. He was in and out of our house at Nugegoda.
- Q. He was a good and faithful servant of your husband ?
- A. Yes.

20

30

40

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- (*Court* : Q. Had the dogs got to know him ?  
 A. We had no dog.  
 Q. The Joachim's dog ?  
 A. Yes.  
 Q. You had no dogs at all ?  
 A. We had one, a puppy.  
 Q. Had that puppy got to know him ?  
 A. It was a small puppy.)  
 Q. Even when you got to Kotahena the first accused used to visit  
 10 you and your husband regularly ?  
 A. Yes.  
 Q. And he continued to serve you and your husband ?  
 A. Yes.  
 Q. Your daughter Sumana said that even at Kotahena he used to come  
 and polish your chairs and furniture ?  
 A. No, he used to come and repair the doors, but not to polish.  
 Q. Your husband used to treat him very kindly ?  
 A. Yes.  
 Q. And so did you ?  
 20 A. Yes.  
 Q. When he came into your house you would offer him a chair ?  
 A. When my husband was at home I used to offer him a chair.  
 Q. When your husband was not at home ?  
 A. When he was not at home the first accused would not wait, but  
 would go away.  
 Q. He would sit and chat for long hours with your husband ?  
 A. Yes.  
 Q. They would read the papers together ?  
 A. Yes.  
 30 Q. Discuss the city news ?  
 A. Yes.  
 Q. Your husband would discuss the price of curry stuffs and market  
 prices of household articles ?  
 A. Yes.  
 Q. Sometimes the first accused even makes purchases for your husband  
 at the market ?  
 A. Yes.  
 Q. Your husband used to offer him cigars when he came ?  
 A. Yes.  
 40 Q. In point of fact the first accused was not equal to you in social  
 status ?  
 A. No.  
 Q. He was of very much lower status ?  
 A. Yes.  
 Q. In spite of that you and your husband treated him more or less  
 as if he were an equal ?  
 A. Yes.  
 Q. Have you given him a meal in your house ?  
 A. Yes.  
 50 Q. Frequently ?  
 A. No.  
 Q. He would come to your house five or six times in the month ?  
 A. Yes.

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Q. Or even oftener would you say ?

A. No.

Q. There was no special reason for him to come to your house five or six times a month ?

A. No special reason.

Q. He would also come on holidays like Saturdays and Sundays ?

A. Yes.

Q. And he must have been beholden to you people for the treatment you meted out to him when he came ?

A. Yes. 10

I remember the first accused putting up a shrine room in my mother's house and an altar within. Mr. Mills who is coming to give evidence for me lives in the small house which belongs to me.

Q. Even the repairs to that house were effected by the first accused ?

A. Yes.

Q. Under your personal supervision ?

A. Yes.

Q. You have been present at Nugegoda while the first accused was effecting repairs ?

A. Yes. 20

(Court : Q. That was while you were at 107, College Street ?

A. Yes.

Q. So, that would bring you to Nugegoda ?

A. Yes.)

Even after I came to live in Kotahena I used to pay frequent visits to my mother at Nugegoda—once a week or so.

Q. On those occasions you used to drop in at the first accused's house ?

A. No.

Q. How often would you go to first accused's house ?

A. I go there only if there is any work to be given to him. 30

Q. Has your husband ever sent you to first accused's house ?

A. He has asked me to convey messages to first accused.

Q. He would know therefore that you would have to contact the first accused in his house at Nugegoda at that medicinal shop ?

A. Yes.

Q. Whenever the first accused came to your house to see you and your husband he would wear a pair of slippers ?

A. Sometimes he used to wear a pair of slippers.

(Shown P.28.) He used to wear a pair of slippers like this. I cannot say these are the slippers. 40

(To Court : When I say a pair like this I mean of this shape. I cannot speak to the size.)

The straps to those sandals would be like these.

Q. Whenever he came to see you and your husband he wore a sarong, a shirt and a coat ?

A. Yes.

I have seen him wearing a cap. Sometimes when he comes to see my husband he used to wear a cap. I have not seen him wearing that cap when I was at Nugegoda, but I have seen him wearing it when I was at Kotahena. I have seen him wearing that cap about two or three times. 50  
(Shown 1D5.) He used to wear a cap like this. It was a dark blue cap.

- Q. Whenever he came home was he in the habit of carrying an umbrella ?
- A. No.
- Q. Did he ever come on a bicycle ?
- A. Yes.
- Q. On previous occasions he had not carried that umbrella P.4 ?
- A. No.
- I have been to first accused's house about three or four times.
- 10 Q. Was that just immediately before your husband's death ?
- A. No.
- Q. You will admit that two of those three times were immediately prior to your husband's death ?
- A. Yes.
- (To Court : Those two visits were between the last week of October and the 7th November.)
- Q. Can you tell us when the third occasion was ?
- A. That was when he was doing the repairs to my house.
- Q. On both those two visits immediately before your husband's death you went with your cook woman, Alice Nona ?
- 20 A. Yes.
- Q. She would have us believe that you went for the first time a week before the second visit ?
- A. No, about two weeks before.
- (Court : Q. Can you tell us whether you went there about the 1st November, the second visit being on the 6th November ?
- A. I am definite I did not go there round about 1st November.)
- Q. Take your mind back when you went there on the third occasion when your house was under repairs ?
- A. On that occasion I went there with my husband.
- 30 (To Court : I cannot remember in what month that visit with my husband was. That was about three or four months before.)
- Q. These are the three occasions when you went to first accused's house ?
- A. Yes.
- Q. That is definite ?
- A. Yes.
- Q. Did you go to first accused's house in the company of Maihamy ?
- A. Yes.
- Q. That would be a fourth occasion ?
- 40 A. Yes.
- That was about two months before my husband's death. That was even before I engaged Alice Nona.
- Q. Now take your mind back to see whether you have visited the first accused's house on a fifth occasion ?
- A. I cannot remember.
- (To Court : I cannot remember whether my visit with Maihamy was before or after the pawnbroking incident. The pawn was on the 1st August.
- Q. Why did you go to first accused's house with Maihamy ?
- 50 A. I went there to ask the first accused to come home for some repairs.

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Q. Were these the repairs you mentioned for which Rs.50/- was paid later ?

A. No.

Q. Then what repairs were these ?

A. My husband had to get some furniture done up.

Q. Was the furniture done ?

A. Yes.

Q. Was that done before this other incident of whitewashing and shifting of furniture where carters were paid ?

A. Yes, before that. 10

Q. So you must have gone with Maihamy before this incident of whitewashing and shifting furniture ?

A. Yes.)

Q. You were always chaperoned when you went to Nugegoda ?

A. Not always.

Q. But whenever you went to first accused's house you were chaperoned ?

A. Not always.

I know the meaning of the word chaperoned. I always went with someone to first accused's house. 20

(*Court* : Did you at any time ask him for a loan ?

A. Never.

Q. Why not ? You asked Mrs. Paul, a stranger, for a rupee or two. Why not from this man whom you knew so well. Was it a matter of status to ask a man who was more or less your servant ?

A. No.

Q. Or was it because you were shy ?

A. Not shy.

Q. Why should Maihamy say what you asked the first accused for Rs.700/- ? 30

A. I do not know why she says that.)

Q. Whenever you went to first accused's house, you would meet him in the hall of the house ?

A. Yes.

Q. That is the hall where the medicine chests are placed ?

A. Not there but outside.

As you go in there is the verandah and then the hall, and past the middle of the hall there is a number of almirahs with medicine bottles.

Q. Would you speak to the first accused from there ?

A. No. 40

Q. Where would you speak to him from ?

A. From the verandah.

Q. You have never stepped into the hall ?

A. No.

Q. Even on those two occasions you went with Alice Nona you did not step into the hall ?

A. No.

Q. On the verandah did you see a table ?

A. Yes.

Q. On which was fixed a herb cutter ? 50

A. I cannot remember.

I have not seen a herb cutter in first accused's house.

(Shown 1D11.) I have seen 1D11 there.

Q. Standing on that very table P.10 ?

A. No.

(Court : You have not seen it fixed like that on that table ?—No.)

Q. Where did you see that iron bar 1D11 ?

A. I saw the scales on the table.

(To Court : I have seen these very scales on the table, just put on the table.)

10 These scales were put on this very table P.10 and kept on the verandah.

I have not seen the scales hung on a bar. I have never seen this, 1D11.

I cannot remember whether I saw a herb cutter on that table, nor can I remember whether there was a hole on that table. If there was nothing on the table, but merely the hole, I would have noticed the hole, but I did not notice the hole. I now see a hole on that table.

Q. Is it because there was something on that table that you did not see the hole ?

A. I did not notice.

20 I have not seen the herb cutter 1D9 on the table or anywhere else in that shop. I went to Nugegoda in the company of Alice Nona on two occasions.

Q. Alice Nona herself says you went on three occasions ?

A. No.

Q. You remember you got a lift from Harry Perera from Windsor Hotel ?

A. Yes.

Q. On that day Alice Nona went with you ?

A. Yes.

30 On that day I went to my mother's house, then I came back to Kotahena. On that day I did not see the first accused.

Q. Now do you remember two other occasions when you went to first accused's house with Alice Nona ?

A. Yes.

Q. Therefore you will agree that you went with Alice Nona to Nugegoda on three occasions ?

A. Yes.

Q. Take your mind back to the first occasion when you went with Alice Nona to first accused's house. That is, you say about two weeks before your husband died ?

40 A. Yes.

On that occasion I went to first accused's house to tell him that he had to colour-wash the two houses and that he will be informed in due time when my husband wanted it to be done. The next occasion I went to first accused's house was on the 6th November, and on that occasion I told him that my husband wanted him to come and see him regarding the colour washing. My husband had asked me to convey that message.

Q. Are you aware that just two or three days before you went and saw the first accused, the first accused had met your husband ?

A. I did not know that.

50 Q. Sumana says probably it was the 5th November, the day before you met the first accused ?

A. No.

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*Q.* Did you know that the first accused came to your house on a day that Sumana did not go to school ?

*A.* Yes, I knew it then.

Sumana did not go to school for three days, on the 3rd, 4th and 5th November.

*Q.* She says on the last of those three days, namely, the 5th November, the first accused came to your house ?

*A.* Not on the 5th. I think it was two days before, on the 3rd November ; that is the first day Sumana did not go to school.

*Q.* How are you so sure of the first accused's visit on that day ? 10

*A.* My husband told me.

(*Court :* This child says it was the 5th ; she refers to the last of the three days she did not go to school, whereas you refer to the first day ?

*A.* No answer.)

*Q.* Apart from your husband telling you about the first accused's visit, did Sumana also tell you ?

*A.* Yes.

*Q.* What did she say ?

*A.* She said that baas came and went.

*Q.* Did she mention that as a piece of information ? 20

*A.* No, when my husband was telling me about it, she also told me.

*Q.* When your husband asked you to go and see the first accused on the 6th November, did you not tell him, "The day before yesterday the man was here, why did you not give him the instructions ?"

*A.* I did not tell him that.

(*Court :* *Q.* Even according to you he had met the first accused himself, he could have told that to the man ?

*A.* I cannot say why he did not tell it to first accused.)

---

*Q.* I put it to you on that day you did not go to first accused's house for that purpose ? 30

*A.* I went for that purpose.

*Q.* And it was quite unnecessary for your husband to have sent you when he himself could have given the instructions on the 3rd November ?

*A.* He did not send me specially for that, but as I was going to my mother's house he told me to tell the first accused if I see him. He sent a message through a man to the baas two or three weeks before.

*Q.* I put it to you that you went on the 6th November to the first accused's house to verify why he had not kept to his promise ?

*A.* No.

*Q.* By that time he had promised to come home and do your husband 40 to death ?

*A.* No.

*Q.* As soon as you walked into the first accused's house on the 6th November, did the first accused tell you, "When I came the child was in the house and I could do nothing to the master" ?

*A.* No.

*Q.* You will agree that the first accused came to your house when the child was there ?

*A.* Yes.

- Q. That was Sumana who had a bad foot ?  
 A. Yes.
- Q. On the 6th November did the first accused ask you, " Will this old woman give out a secret to anyone which I will tell you," referring to Alice Nona ?  
 A. No.
- Q. And did you reply, " She will not " ?  
 A. No.
- (To Court : She was with me only one month. So I cannot say  
 10 whether she was a reliable woman.)
- Q. There is a drawer in the almirah in the hall of the first accused's house ?  
 A. I do not know.
- Q. Did the first accused pull out a revolver and cartridges from a drawer and tell you, " I have brought these from a long distance ; if the gentleman were to be shot with this the noise will be heard " ?  
 A. No.
- Q. Did he say, " After the gentleman is dead I will introduce these  
 20 cartridges to indicate they had been left by some thieves " ?  
 A. No.
- I have heard the evidence in this case. I heard the evidence that the first accused was seen with a revolver running away keeping it in his waist soon after my husband died, and that some cartridges were found alongside his coat.
- Q. Did the first accused ask you on that occasion at what time of the day the master will be in the house ?  
 A. No.
- Q. You said he would be in the house between 9 and 10 a.m. ?  
 A. No.
- 30 He would not always be in the house between 9 and 10 a.m. He goes out. He would go marketing in the morning and come back. He gives the stuff to the cook woman before I leave the house.
- Q. That would be before you start teaching ?  
 A. Not always in the morning.
- Q. The first bell at school is at 8.25 a.m. ?  
 A. Yes.
- Q. Do you go to school before that ?  
 A. Yes.
- Q. Your husband could not have finished his marketing before that ?  
 40 A. No.
- Q. He comes back after marketing round about 9 a.m. ?  
 A. Yes.
- Q. Normally he would be in the house between 9 and 10 a.m. ?  
 A. I cannot say what he would do.
- Q. Normally five days in the week he would be at home between  
 9 and 10 a.m. ?  
 A. He may be at home. I cannot definitely say that because he is always out.
- Q. He would be out only after the marketing is over ?  
 50 A. Yes.
- (Court : But he was not out on the 3rd November when first accused came there ; he was at home ?

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A. Yes.

Q. So you cannot say he was always out ?

A. That was because Sumana was at home.

Q. Otherwise you say he is always out ?

A. Yes.

Q. From what time to what time will he be out always ?

A. I cannot exactly say.)

Q. Why does Alice Nona tell us that the first accused told you all these things in her presence and you replied ?

A. I cannot give any reason as to why she says that. 10

Q. She had no occasion to have any grievance against you ?

A. No.

Q. Is it because you told her that night " Baas will come, don't tell anybody " ?

A. No.

Q. Did you say that to her that night when you went home with Alice Nona ?

A. No.

On the 7th morning I got ready to go to school with my two children, Sumana and Oranda. I did not speak to Alice just before I went. I did not tell her, " Baas will come now ; when Baas comes you had better leave the house and go to the market." She is speaking an untruth on that point. I did not give her one rupee that morning. I do not know that she went to the market that morning. 20

Q. Do you remember you were in the police station when you saw this woman going along ?

A. Yes.

Q. She was carrying a bag with her ?

A. Yes.

Q. That is the bag P.2 ? 30

A. Yes.

Q. This is her marketing bag ?

A. Yes.

Q. In that bag she was bringing some stuff ?

A. Yes.

Q. Where do you think she was coming from ?

A. From the market.

Q. You know that she went to the market that day ?

A. Yes.

Q. You told us yesterday that she gave you a reason for going to the market ? 40

A. Yes. She said that the master had sent her to the market. By " master " she meant my husband.

Q. It did not appear to you very strange that he sent her to the market ?

A. Sometimes she is sent to the market.

Q. More often than not your husband did the marketing ?

A. Yes. He did the marketing in the morning. Whenever he went in the morning he would buy beef and vegetables.

Q. Along with fish or meat he would buy vegetables ? 50

A. Yes.

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- Q. You now know that that morning, the seventh morning, your husband did go to the market ?
- A. Yes.
- Q. You now know that that morning he actually bought a pound of beef from the butcher, Valentine ?
- A. Yes.
- Q. When you got back home from the police station did you see this bag P.3 on the table under which your husband lay dead ?
- A. Yes.
- 10 Q. And that bag in point of fact contained some beef according to the police ?
- A. Yes.
- Q. Do you think your husband having gone himself to the market and bought a pound of beef would also have sent Alice Nona for further beef ?
- A. I do not know.
- Q. Is it probable that Alice also would have been sent by him to buy beef when he himself had gone to buy beef and bought beef that morning ?
- A. He may have sent.
- Q. Did you expect any visitors for lunch that day ?
- 20 A. No.
- Q. What is the usual ration of beef your husband bought for a day ?
- A. One pound of beef.
- Q. Is there any special reason why he should have sent the woman as well soon after he returned buying beef ?
- A. She told me he had not bought enough.
- Q. Can you tell us why he could not have bought enough ?
- A. He had bought half a pound ; that is not his normal ration ; he buys one pound.
- Q. The butcher says that morning he sold half a pound of beef to your
- 30 husband which was his normal purchase ?
- A. He used to buy a pound of beef a day. I do not know why the butcher should say he bought half a pound that morning.
- Q. I put it to you in view of its improbability that you sent the woman out to the market to keep the way clear for the first accused that morning ?
- A. No.
- (Court: Q. Alice told you that the deceased came from the market and sent her out again ?
- A. Yes.
- Q. And gave her how much ?
- 40 A. Rs.1.50.
- Q. Then she would have taken your husband's bag and bought the beef ?
- A. Yes.
- Q. But why another bag and some more vegetable ?
- A. I do not know.)
- Q. Your husband had bought some lime that morning ?
- A. I did not see.
- Q. Alice Nona also goes to buy lime after your husband came ?
- A. I do not know.
- 50 Q. When you were living at Nugegodā and also at Kotahena, you had a large circle of friends ?
- A. Yes.

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Q. Friends whom you would visit socially and friends who would visit you ?

A. Yes.

Q. They would come to see your husband as well as you ?

A. Yes.

Q. Some would come to see you and you would go to see them ?

A. Yes.

Q. Among your friends you counted a number of police officers ?

A. No.

Q. I mean nothing by that ; we only want to know whether you had 10 any social relationship with any police officer either at Nugegoda or at Kotahena ?

A. No.

Q. Is it incorrect to say you did not know any of the police officers ?

A. No.

Q. I put it to you that Inspector D. H. R. A. Corea was a particular friend of the family when you were at Nugegoda ?

A. No.

Q. Has he ever visited your house ?

A. He used to come if necessary.

20

Q. He has come to your house at Nugegoda ?

A. Yes.

Q. On how many occasions to Nugegoda ?

A. Only when it is necessary for anything.

Q. You mean to say he never came there on a social call to your husband ?

A. No.

Q. Mr. and Mrs. Corea have not called on you ?

A. No.

Q. Mr. Corea was the officer in charge of the Mirihana police station. 30 He was the person to whom I complained about the assault on me by my husband. He was not a friend of the family. He came to our house after this incident of my husband assaulting me took place. That was the only occasion he came to our house.

Q. Even at Kotahena you knew a number of police officers ?

A. No.

Q. Inspector Lawrence told us he had known you before the day of this incident ?

A. He may have seen me passing up and down.

Q. Had Mr. and Mrs. Lawrence called on you ?

40

A. No.

Q. Had you called on them ?

A. No.

Q. But you had known Mr. Lawrence in Kotahena for some time ?

A. I knew he was at the Kotahena police station.

Q. Sub-Inspector Gordon of Kotahena was on visiting terms with you ?

A. No.

I knew him. He is a relation of mine. His wife is a close relation of mine. He was living close by at Kotahena. Mr. and Mrs. Gordon did not call on us. I never called on them. Mr. Gordon had nothing against 50 me. He got on well with me.

Q. There was another Sub-Inspector at the Kotahena police station, Mr. Thambiah ?

- A. Yes, I knew him.
- Q. You knew him pretty well ?
- A. Yes.
- Q. Did he call on you and your husband ?
- A. No.
- Q. Had you called on Mr. and Mrs. Thambiah ?
- A. No.
- Q. The three senior police officers attached to that police station at that time were Mr. Lawrence, Officer in Charge, Mr. Gordon, the Detective
- 10 Sub-Inspector, and Mr. Thambiah, another Sub-Inspector ?
- A. Yes.
- Q. You knew all these officers ?
- A. Yes.
- I did not know the A.S.P. Mr. B. W. Perera. I had not met him before the day of this incident.
- Q. After this incident did Alice Nona tell you that she was frightened that she might be implicated in this case ?
- A. No.
- Q. She tells this Court that you had said, "Don't be afraid, the
- 20 inquiry will go on for a month and the matter will be dropped." Is that so ?
- A. No.
- Q. I put it to you that you were hoping that the police at Kotahena being well known to you, that this matter against you will not be pursued against you much further ?
- A. No.
- Q. On the other hand, can you assign any reason why any of these police officers whose names I have mentioned should fabricate evidence to implicate you ? Can you allege any reason against them ?
- A. I cannot allege any reason against them.
- 30 On the 7th morning I got ready to go to class along with my two children. I and my two children were at home when the first bell went. It was my practice to remain at home till the bell rings. The second bell goes within five minutes.
- Q. Do you wait at home in order to hear the bell and then set out ?
- A. We go when the bell rings.
- I have to go along a circuitous route to the school, not direct. That gate in the temple wall opposite my house is permanently locked. So I have to go by the main gate. That would not take me two or three minutes. By that time pansil would not be over. Pansil takes about
- 40 five minutes. The second bell goes off at 8.30 a.m. My children will be present at pansil.
- Q. How would that happen if you remained at home till the first bell rang ?
- A. When the first bell rings they run to school for pansil. My husband insisted they should obtain pansil, although I did not.
- On this occasion I went and stood out in the compound while my children went to the bigger assembly. I was standing outside in the garden, near my class room.
- Q. If you were standing near your class room it was possible for
- 50 Mrs. Wijesekere to have seen you there ?
- A. Yes.

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Q. If she had seen you there, there was no necessity for her to have gone into your class and asked for you ?

A. She did not go into my class and ask for me. She went into the second standard.

Q. Were you there when she went to the second standard ?

A. Yes.

Q. You were still in the compound ?

A. No, I was in the class room then.

Q. Mrs. Wijesekere would have us believe that when she came up to the block of buildings where the kindergarten is, neither you nor the 10 other lady teacher who takes the second standard was present, and she went to the second standard class room ?

A. Yes.

Q. And she had to get on to your class and silence the children when you were not there ?

A. I was there when she silenced the children.

Q. That was at a much later stage. Earlier she had been to your class finding you were not there ?

A. I do not know.

Q. I put it to you that was not the place you were standing that 20 morning ?

A. I was standing there.

I remember the second bell.

Q. Why did you not promptly on hearing the second bell walk into your class ?

A. I walked into my class after the second bell. There was no pansil in that class that morning.

Q. If there was no pansil that morning why did you not go into the class and wait ?

A. I waited to see if the priest would come. 30

Q. Though the children were making a noise ?

A. Yes.

Q. But you were not concerned ?

A. Yes. I was hoping a priest would turn up. The second bell went off and I went into the class at once.

Q. You told us yesterday that you went into the class and stood at your table and waited for a while. What was the necessity for you to remain there looking on for a short while ? What was the delay due to, delay to start work after you went into class ?

A. As the priest did not come for pansil, I was just thinking whether 40 I was to start work or not, because that was a thing that had never happened before.

Q. You had no option but to start work on the stroke of 8.30, pansil or no pansil ?

A. Once or twice the priest got late for the pansil in the lower class. After the second bell rings also he comes sometimes.

Q. By the time you were waiting in the compound had you seen your husband pass that way home from the market ?

A. No.

Q. Or were you waiting to see whether the first accused was passing 50 that way towards your house ?

A. No.

Q. In point of fact you can from the garden see the main entrance along which the accused must pass if he came to your house ?

A. Yes.

Q. And also the road along which your husband must pass if he came back from the market ?

A. Yes.

(Court : Q. Could you see them both from your class if they did pass ?

A. Not very clearly.)

10 Q. Mrs. Wijesekere would have us believe that that morning you went on to your table and you were standing there just looking towards the road ?

A. When I stand at my table I can see the road. I have got to face the road.

Q. But did you in some particular way focus your attention on to the road ?

A. No.

Q. Is there any reason why Mrs. Wijesekere should make a statement like that ?

A. I do not know.

20 Q. That for some time you kept on looking towards the road ?

A. No.

Q. And that during that interval of time there was a little pandemonium in the class, children standing up, talking ?

A. When I went to the class room the children were talking.

Q. As soon as you went into the class you should have silenced them ?

A. Yes.

Q. Why did you not do that ?

A. I waited for a little while, then silenced them and started work.

30 Q. Was there an occasion when Mrs. Wijesekere came up to your table more or less and silenced the children in your class ?

A. Yes, when I went in she came from the 2nd standard and silenced the children.

Q. What was the necessity for her to come and silence the children in your class when you yourself were present there ?

A. I do not know.

Q. That was because at that time you were thinking of something happening on the road and not minding what was happening in your class. That is what Mrs. Wijesekere said ?

A. I do not know why she says that.

40 Q. She says it was a source of considerable disturbance to her because she was in the same hall which had not been partitioned, and that is why she came and silenced the children ?

A. I can recollect her coming and silencing the children in my class.

(Court : Q. Why did you not tell her then, " I am waiting for the priest " ?

A. I did not tell her.

Q. It is a reflection on you ; you had just gone there to teach ; you looked as if you could not manage the class or did not like teaching. Why did you not tell her this is the reason ?

50 A. No answer.)

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Q. Mrs. Wijesekere says for about two minutes after the bell went you had not turned up ?

A. I was there when the second bell went off.

Q. You were in the class ?

A. I was standing out just at the class when the second bell went off.

Q. Mrs. Wijesekere says at least two minutes had elapsed before you came into class ?

A. That is not correct.

I was in the class teaching when I got a message from the priest. The tuck-shop keeper came and told me there was a telephone call for me and I went. I said this telephone message was from the Colombo bakery. I cannot say who spoke to me on the phone. It was a man's voice. I was able to clearly distinguish it was a man's voice. Any person taking the receiver would have known it was a man's voice. On that occasion I did not receive any message about my husband's death. I know Aron. He is the Manager of the Colombo Bakery. It must have been he who spoke to me on the telephone that morning. Somebody from the bakery spoke to me. I did not ask who was speaking.

Q. You carried on a conversation without knowing who was at the other end ?

A. They told me it was the bakery speaking.

(*To Court* : I knew Aron. I did not make out his voice.)

Q. Did you tell the police, "The call came from Mr. Aron of the Colombo Bakery" ?

A. I may have said. (X.7.)

(*Court* : You must have made out the voice. You were able to tell the police when making the statement that the call came from Mr. Aron. You must have made out the voice or he must have said it was Aron ?

A. No answer.)

Q. Was that conversation over a monetary transaction or over bread ?

A. Over bread and monetary transaction.

Q. After I reminded you of Mr. Aron you are now reminded of a monetary transaction ?

A. No answer.

Q. Now can you tell us whether you spoke to Mr. Aron ?

A. Yes, it is Aron.

(*Court* : Q. Is he a Sinhalese or a Burgher ?

A. I do not know.

Q. Did you speak to him with regard to a loan ?

A. I may have spoken.)

Q. Was it in respect of a loan of Rs.100/- ?

A. Yes, I think so.

(*Court* : You had asked him for that money ?—Yes.)

After speaking on the telephone that morning I came back to my class room. Thereafter I was not in a contemplative mood. I came and sat at my desk and asked the children to bring up their work. I know Rev. Seelaratana. He has no axe to grind against me.

Q. He says you came back after this telephone message and you sat at the table, doing nothing, for about 7 to 8 minutes, holding a pencil on the table and looking at it ?

A. I did not do that.

Q. And that at that time the children were all on their feet ?

A. No.

Q. And that you made no attempt to control the children ?

A. No.

10 Q. Can you assign any reason why a priest should say a thing like that ?  
A. I cannot.

While I was in my class I saw Mrs. Christie coming up. She came and stood right outside my classroom and made a signal to me, but I did not go.

Q. Why not ?

A. I did not take any notice. I was correcting the children's work.

Mrs. Christie had no children studying at that school. She was not a person who ever came into those premises. This was the first time she had come into our school.

20 Q. She made a bee-line to you and beckoned you out of the class room ?  
A. Yes.

Q. Why did you not come and ask her ?

A. Sometimes she comes and asks for a small help from me. So I thought she had come for a thing like that.

Q. So Mrs. Christie is a person whom you have helped before ?

A. Yes.

Q. With small loans ?

A. Five or ten cents.

Q. In fact she is in very straitened circumstances ?

30 A. Yes.  
Q. She used to buy curry stuffs for various houses ?

A. Yes.

Q. You thought she came for a loan ?

A. Yes.

Q. Then what did she do ?

A. Then she called out to me by name. She said, " Mrs. Seneviratne, come here." Then I got out of the class room. Then she told me the dogs are barking and would not allow anyone to get in, there was lot of blood on the verandah, and wanted me to come and see.

40 Q. At that time what did you think had happened ?

A. I did not think anything at the moment.

Q. It did not worry you at all ?

A. No.

My dogs were in the habit of barking if anyone comes in, friend or foe. Mrs. Christie said there was some blood on the verandah. I did not give any thought to it.

Q. Did it strike you the dog had bitten a cat ? Did you treat it so lightly as that ?

A. I did not think of anything at all.

50 Q. You then went to the fifth standard, took both your children and went home when you had thought nothing had happened in your house ?

A. Yes.

Q. Why take the two children ?

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 80.  
Mrs. B. M.  
de S.  
Seneviratne  
25th and  
26th  
January  
1949,  
Cross-  
examina-  
tion by  
Crown  
Counsel,  
*continued.*



*In the  
Supreme  
Court.*  
*Second  
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No. 80.  
Mrs. B. M.  
de S.  
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25th and  
26th  
January  
1949,  
Cross-  
examina-  
tion by  
Crown  
Counsel,  
*continued.*

A. Because whenever I go home I take my two children along with me.

My house is just across the road. I can see my house from the school.

(*Court: Q.* If you saw your house on fire from your class room, would you go and take your children before you went to your house?

A. Yes.)

*Q.* The 5th standard class room is 15 to 20 yards from your house across the road?

A. Yes.

*Q.* You were going to your house to see what had happened and come back

A. Yes.

*Q.* Why did you want your children to go back with their books?

A. My husband had told me that whenever I left the school I must bring the children with their books along with me.

*Q.* Was there a time when you were in that school when the children were without you?

A. Then my husband used to go and bring them. It was not my intention to delay more than 10 or 15 minutes when I went to the house that morning. This was round about 9.30 or 10 a.m. The school closes at 11 a.m. I had to come back to a number of other classes. 20

*Q.* What necessity was there to take these two children who were doing some work in the class?

A. Because my husband had asked me to do so.

*Q.* Supposing you wanted to go back to your house to pick up a book or pencil or handkerchief which you had missed, would you go to the class room and take your children and go?

A. I would.

*Q.* What did your husband think would happen to your children while you were not in those premises? 30

A. I do not know, but he asked me to do that.

(*Court: Q.* Supposing you heard your husband calling to you for help and you found that Sumana was not in the class and had gone to another class, you would wait till she came to her class?)

A. My husband had told me never to leave the school without the children.)

*Q.* Supposing you heard him calling to you for help and you found Sumana had gone with a message to some other teacher?

A. Then I would have taken her from there and gone.

*Q.* Meanwhile your husband was being murdered? 40

A. No answer.)

*Q.* Or did you know all about the blood in the house at the time Mrs. Christie came?

A. No.

*Q.* Would you tolerate in your class somebody coming and taking a child without your permission?

A. No.

*Q.* You went to the fifth standard class and did not have the courtesy to tell the teacher you wanted the two children?

A. They came along with the teacher. Along with them their teacher Miss Willegoda followed. 50

Q. Did you tell the teacher, "I would bring them in five minutes, I will go to the house; there is a little blood, and I will come back" ?

A. No.

Q. In point of fact she came to the doorstep and asked, why do you want the children ?

A. Before I could give a reason Mrs. Christie gave her the reason which I heard. She said there was some trouble in the house and she is taking me away.

10 That morning I did not see the deceased coming to the school. I know that he used to come occasionally and enquire from the teacher how the children were getting on. That morning I did not see him coming to the school. I went up to the house with Mrs. Christie and the two children. My son and I went in first. That was on to the verandah. There I saw blood. That excited me because there was my husband's broken pair of spectacles there.

Q. With regard to your husband's visit that morning did you tell the police, "At about 9.15 a.m. I saw my husband come to the school and speak to the fifth standard teacher Miss Willegoda. He did not come and speak to me" ?

20 A. I may have said so.

(This passage is marked X.8.)

Q. Having refreshed your memory on this matter, can you tell us whether that morning your husband came and spoke to Miss Willegoda ?

A. Yes, I now remember.

Q. It was on his way to the market ?

A. I do not know.

Q. When you saw him come there, did you not see in what direction he was going ?

A. No.

30 Q. Where were you when you first saw him come to the fifth standard class that morning ?

A. I was in my class.

Q. From your class you saw the deceased come to the fifth standard class ?

A. Yes.

Q. You could have seen the deceased go up to the main gate and get on to the road ?

A. That is if I sit or stand at my desk.

40 Q. And from where you were you could see whether he turned round to the market side or home side ?

A. I could have seen.

Q. On that day did you notice him either going to the market or getting back home ?

A. I did not notice.

Q. I put it to you on that day you were most keen on watching what your husband was doing that morning, at what time he passed, and at what time the first accused passed ?

A. No.

50 Q. You said you entered the house with Oranda ?

A. Yes.

Q. Oranda was frightened and he started running back ?

A. Yes.

*In the  
Supreme  
Court*

*Second  
Accused's  
Evidence.*

No. 80.

Mrs. B. M.  
de S.  
Seneviratne  
25th and  
26th  
January  
1949,  
Cross-  
examina-  
tion by  
Crown  
Counsel,  
*continued.*

*In the  
Supreme  
Court.*  
*Second  
Accused's  
Evidence.*  
No. 80.  
Mrs. B. M.  
de S.  
Seneviratne  
25th and  
26th  
January  
1949,  
Cross-  
examina-  
tion by  
Crown  
Counsel,  
*continued.*

Then I went into the dining room. Mrs. Christie also went in.

*Q.* Sumana says that morning you came up along with her and her little brother and that while you and Oranda stood on the verandah it was she who walked into the dining room ?

*A.* She walked in after us, but not before me.

*Q.* Then she says she walked into the room, saw her father murdered and came back and told you that he is dead ?

*A.* She went in after me and went out.

*Q.* Is it correct to say she who conveyed the first information that your husband was dead ?

10

*A.* No.

*Q.* On seeing your husband dead in the dining hall what did you do ?

*A.* I came back to the verandah.

*Q.* Did you fall at his feet and shout out, wail, raise cries ?

*A.* I did not fall at his feet but I shouted out from there.

*Q.* It must have been a terrible sight that you never saw before ?

*A.* Yes.

*Q.* Husband mangled and cut all over ?

*A.* Yes.

*Q.* Did you try to see whether his key was round his neck ?

20

*A.* No.

It did not strike me at that time to see that.

(*To Court :* My jewellery was in an attaché case and kept in an almirah and the key of that almirah was round his neck. At that time I could not get close to him to examine him. There were no valuables in that almirah. He may have had cash, but he does not keep cash in the almirah.)

After I saw the dead body I came back to the verandah, entrusted the two children to Mrs. Wijesekere and I went to the Police Station.

*Q.* Did you ask the people that turned up to go to the police station and tell the police that your husband had been murdered ?

30

*A.* Yes.

*Q.* At what stage ?

*A.* When I came out after seeing my husband my two children were crying, there were people crowding round and I told one of them to run to the police station. I cannot remember which one I asked to go to the police.

I remember Mrs. Wijesekere asking me to inform the police and I left the children with her and I went to the police station.

(*Court :* *Q.* Even to go to the police you had two teachers from the school ?

40

*A.* No, when I was going I met one Mr. Ludowyke and he accompanied me. The principal, Mr. Dahanayake, did not go with me. I left the children with Mrs. Wijesekere.

*Q.* What about your husband's instructions not to leave them ?

*A.* I could not help it at that time.)

4 p.m. Adjourned for the day.

Certified correct by me,

Sgd. M. ANTHONY,

Stenographer, S.C.

27th January, 1949. 11 a.m.

Accused present.

Same Counsel.

Mrs. B. M. SENEVIRATNE—Sworn.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

*Cross-examined by Crown Counsel (continued) :*

- Q. Would your husband give the children an egg in the morning ?  
A. Yes, sometimes he did.  
Q. In point of fact I put it to you that he gave an egg each to the children more often than not ?  
10 A. Yes.  
Q. Is it correct to say then that your husband gave the children in the morning an egg and bread and butter ?  
A. Yes.  
Q. Do you think that an egg and two slices of bread and butter were not a sufficient meal for your children at that age in the morning ?  
A. Sometimes he did not give an egg each in the morning and sometimes they used to ask for more.  
Q. Did they ask for more egg or more bread ?  
A. More bread.  
20 Q. And what would you do when they asked for more bread ?  
A. If it is available I would give it to them.  
Q. If it is not available would you buy it for them ?  
A. No.  
Q. Do you then say that your troubles with your husband were really as a result of this morning meal of the children ?  
A. Yes.  
Q. And that was the sole cause of your separating from your husband on more than one occasion ?  
A. Yes.  
30 Q. The children had nothing to complain about their lunch or dinner ?  
A. No.  
Q. I put it to you finally, was there really some other reason, grave or otherwise, for the cause of your domestic troubles ?  
A. No.  
Q. Let us get to the scene of this incident, the morning of the 7th November. Yesterday you told us what happened when you reached the house. Having seen your husband murdered you went to the police station ?  
A. Yes.  
40 Q. At the police station who was the first police officer whom you met ?  
A. I cannot remember.  
Q. Is it correct to say that the first gentleman whom you met at the police station was Sub-Inspector Lawrence ?  
A. May or may not be.  
Q. Kindly recollect and tell us whether you met Inspector Lawrence that morning in the police station ?  
A. He was there.  
Q. While you went up to the police station was he in his office room ?  
A. I cannot remember.

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27th  
January  
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tion by  
Crown  
Counsel,  
*continued.*

*In the Supreme Court.*

*Second Accused's Evidence.*

No. 80.  
Mrs. B. M. de S. Seneviratne  
27th January 1949,  
Cross-examination by Crown Counsel,  
*continued.*

Q. Can you remember telling anything to Mr. Lawrence ?  
A. Yes.  
Q. I take it that you told Mr. Lawrence in brief what had happened. That was before your statement was recorded in the Information Book ?  
A. Yes.  
Q. And then as soon as you told Mr. Lawrence that, did you see him starting off to the scene ?  
A. I think he went.  
Q. And in point of fact hot on his heels followed Sub-Inspector Kandiah ? 10  
A. Yes.  
Q. Even before you could relate a detailed narrative of what happened ?  
A. Yes.  
Q. Of course those two were the Inspectors whom you had seen before ?  
A. Yes.  
(Court : About how many other police officers went ?  
A. I do not know.)  
Q. Some constables also followed ?  
A. Yes. 20  
Q. They had known the deceased ?  
A. Yes.  
Q. Then you proceeded to sit at a table in the charge room ?  
A. Yes.  
Q. And you were facing a sergeant who had before him the Information Book ?  
A. Yes.  
Q. And then you made a statement ?  
A. Yes.  
Q. You made a fairly long statement that morning ? 30  
A. Yes.  
Q. And while you were making that statement Sergeant Martin was recording it in that book ?  
A. Yes.  
Q. It was before you had finished making that statement that you saw Alice Nona ?  
A. Yes.  
Q. Can you tell the Court how it was that when you were making a statement to the Sergeant you saw Alice Nona pass on the road ?  
A. When I turned my head I saw her passing. 40  
Q. I take it that that morning you were very excited ?  
A. Yes.  
Q. And you were anxious to tell the police in detail what you had seen that morning in your house ?  
A. Yes.  
Q. And you must have been very intent on telling what you had seen to the police officer ?  
A. Yes.  
Q. What made you turn your head ?  
A. I had told him what had happened and he wrote it down. He 50 was asking questions from me and writing down.

- Q. The statement that was recorded is a statement recorded sentence by sentence as you spoke ?  
 A. Yes.
- Q. While you were doing that what made you turn your head towards the road ?  
 A. I turned my head to see if there was anybody passing whom I could get some help, because I was alone.
- Q. You had come to the police station which at that time had been manned by a number of police officers ?  
 10 A. Yes.
- Q. And were you not feeling very secure in their company that morning ?  
 A. Yes.
- Q. What was the nature of the help that you thought you might have that morning while you were in the police station ?  
 A. I knew my husband's brother would come.
- Q. How could your husband's brother come at that time when you were conveying an information to the police with regard to your husband's death ?  
 20 A. The news must have gone to him because it was all over the place by that time.
- Q. You were one of the first persons to arrive at the house from school ?  
 A. Yes.
- Q. You did not delay for more than three or four minutes, five minutes the most ?  
 A. Yes.
- Q. And you rushed off to the police station which is within 100 yards ?  
 A. Yes.
- 30 Q. Did you expect Mr. Leopold Seneviratne to be informed by that time ?  
 A. Not he but his eldest brother who was living at Kotahena.
- Q. Where was he living ?  
 A. In Skinner's Road.
- Q. And in order to come to your house had he to pass the police station ?  
 A. Yes.
- Q. And he would have come by car I take it ?  
 A. Yes.
- 40 Q. Did you think that you could have spotted it and stopped it even when you were making a statement in the charge room ?  
 A. I could not stop the car but I could see him passing.
- Q. Would it be sufficient consolation to you to see your brother-in-law pass that way ?  
 A. Yes.
- Q. In point of fact it was you who spotted Alice Nona pass that way ?  
 A. Yes.
- Q. Alice Nona did not see you till you beckoned to her ?  
 A. I do not know.
- 50 Q. While she was passing that way she was looking straight ahead, going straight to the house ?  
 A. Yes.

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Court.*

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Mrs. B. M.  
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tion by  
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*continued.*

*In the  
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No. 80.  
Mrs. B. M.  
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tion by  
Crown  
Counsel,  
*continued.*

Q. When you were making your statement you did not look straight ahead but well towards the road ?

A. No.

Q. From the place where you were seated you could not see the road ?

A. Yes.

Q. Unless you definitely turned your head and looked in the direction of the road ?

A. Yes.

Q. Was Alice Nona coming from the direction of the market ?

A. Yes.

Q. As soon as you saw her what happened ?

A. I called her.

Q. And she walked into the police station ?

A. Yes.

Q. And when she walked into the police station what did you tell her ?

A. I asked her where she went.

Q. That was the first thing that you asked her ?

A. Yes.

Q. You did not tell her your husband had been murdered in the most brutal way ?

A. I told her and asked her where she went.

Q. You just told the court that the first thing you asked her was where she went ?

A. I told her that my husband had been murdered and asked her where she went.

Q. Did she reply to your question or did she raise an alarm and say, " Oh God, has such a thing happened ! " ?

A. She said that the master had sent her to the market.

Q. What happened thereafter ? What was the rest of the conversation ?

A. Nothing.

Q. You then continued to make your statement to the police ?

A. Yes.

Q. While Alice Nona was still in the police station premises ?

A. Yes.

Q. Before you came into the police station had you known anything about the movements of Alice Nona that morning ?

A. No.

Q. Did you expect her to go to the market that morning ?

A. No.

Q. When Alice Nona came to the police station did you see her carrying a bag ?

A. Yes.

Q. And you asked her what she had bought ?

A. No.

Q. Did you ask her why master had sent her to the market ?

A. No.

Q. Did you ask her : Were you there when master was killed ?

A. No.

Q. Did you ask her : When you were in the house did any man turn up ?

A. No.

10

20

30

40

50

Q. I put it to you that you did not ask these very pertinent questions because you know where Alice Nona had gone that morning ?

A. No.

Q. She says that you had given her Rs.1/- and said, " Baas will come now, go to the market " ?

A. That is not right.

Q. And I also put it to you that at the police station while making your statement you were there with one eye on the road expecting Alice Nona to pass that way from the market ?

10 A. No.

Q. Earlier you had gone into the house. You saw your husband dead ?

A. Yes.

Q. And you came out ?

A. Yes.

Q. You did not make any effort to see whether Alice Nona was in the house ?

A. I called out to Alice but she was not there.

20 Q. Did you go towards the kitchen and peep in to see whether she was lighting the fire or any such thing ?

A. She was not there.

(Court : Did you go into the kitchen ?

A. When I went to the dining room if she was there I could have seen her.

Court : Did you go into the kitchen was the question ?

A. No.)

Q. Or towards the bathroom of the servants ?

A. No.

30 Q. You were satisfied in your own mind that Alice Nona was not there ?

A. She was not there.

Q. Then you said you came back with Alice Nona from the police station to your house. Did you come in the company of the police ?

A. Yes.

Q. And thereafter you stayed in the verandah of the house in the company of Alice Nona ?

A. Yes.

Q. Did you tell anything to Alice Nona at that time ?

A. No.

40 Q. Did Alice Nona tell anything ?

A. No.

Q. Did you ask her even at that stage : How is it that the master is dead ? You were the last person in the house, you would have known all about this ?

A. She said that master had sent her to the market.

(Court : Answer that question.

A. Yes.

Court : What did you ask her ?

A. I asked her when she went to the market who was in the house.)

50 Q. Where did you ask that question ?

A. In the verandah.

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tion by  
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Counsel,  
*continued.*

Q. You remember telling the court in answer to my learned friend that you spoke nothing to Alice Nona while you were in the verandah with her, not even in whispers ?

A. I did not speak in whispers because there were no police officers.

Q. Why did you worry about police officers ?

A. There was no necessity to speak to her in whispers.

Q. Not in whispers but loud enough for Alice Nona to hear. Did you tell your counsel that you spoke to her at all ?

A. I may have forgotten.

Q. So that the correct position is that you did have a conversation with Alice Nona that morning while you stood on the verandah ?

A. That is all I asked her.

Q. The one question you asked her to which she gave you an answer ?

A. Yes.

Q. And thereafter nothing was spoken ?

A. No.

Q. She was in your company till she went to the inquest proceedings at 3 o'clock ?

A. I think she went before that.

Q. She was taken once to the police station and sent back ?

20

A. Yes.

Q. And on that occasion also you met her ?

A. Yes.

Q. During that period of time did you speak to her ?

A. No.

Q. Not that the police were keeping an eye on you or on her ?

A. No.

Q. In point of fact you were not a suspect at any stage that day ?

A. No.

Q. Why then did you not have a conversation with Alice Nona regarding the circumstances under which your husband came by this tragic death ?

30

A. I cannot follow.

Q. What prevented you from discussing with Alice Nona, the only person in the house of yours, the circumstances under which your husband came by this tragic end ?

(*Court* : These were your exact words on the point : " I remained in the house on the verandah. Alice was also on the verandah. I did not go in because the police stopped me. I had no opportunity of speaking privately to Alice. I did not speak to her at all. I did not speak to her either at the police station or on the way to the house or in the house." It is on this point that you are being questioned.)

40

Q. On the way to the police station you were not treated as a suspect ?

A. No.

Q. Nor was Alice being taken as a suspect ?

A. No.

Q. Why did you not question her on the road on the way to the house ?

A. I did not ask her anything.

Q. Not that you had no opportunity to ask her anything ?

A. No.

Q. You had ample opportunity to speak to her that morning ?

50

A. Yes.

- Q. And when you reached the house you had ample opportunity to talk to her ?  
 A. Yes.
- Q. To discuss the circumstances under which your husband came by his death ?  
 A. Yes.
- Q. But you did not, except the single question : " Were you at home when my husband came in ? " ?  
 A. Yes.
- 10 Q. During that period of time did you tell Alice : Don't tell anybody about this ?  
 A. No.
- Q. In point of fact you are aware that she did not tell anything about it that day while she was in your company ?  
 A. I do not know.
- Q. Police Officers were there that morning ?  
 A. Yes.
- Q. She was casually questioned by Mr. Gordon ?  
 A. Yes.
- 20 Q. You are aware that she did not say anything that day while she was in your company ?  
 A. Yes.
- Q. You also know that after she left your company she made a statement to the police and pointed out the house of the first accused ?  
 A. Yes.
- Q. Was she a loyal servant of yours ?  
 A. She was with me only for one month and so I cannot say.
- I do not know why Mr. D. S. Senanayake and Sir Oliver Gunatilake came to our house. Mr. D. S. Senanayake might have known my husband.
- 30 I do not know whether Sir Oliver Gunatilake knew my husband. I will not deny that he might have known my husband.
- Q. There is nothing surprising if both or either of them came to your house to pay their last respects to the deceased ?  
 A. If they had known him there was nothing surprising.
- Q. Apart from that you know your husband's brother Leo was Director of Agriculture serving under the Minister of Agriculture, Mr. D. S. Senanayake ?  
 A. Yes.
- 40 Q. Nothing strange in the Inspector of Police coming on the scene ?  
 A. I do not know.
- Q. A large number of police officers were there ?  
 A. Yes.
- Q. And he might have come there to see that the investigations were going on in full swing ?  
 A. I do not know.
- Q. Or did he come there to pay his last respects to the deceased ?  
 A. I cannot say why.
- Q. At no stage did any of these gentlemen of high rank say : If there is no evidence you better implicate Mrs. Seneviratne ?  
 50 A. No.
- Q. You told the court that after the death of your husband you are worse off than you were ever before ?  
 A. Yes.

*In the  
 Supreme  
 Court.*

*Second  
 Accused's  
 Evidence.*

*--  
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*No. 80.  
 Mrs. B. M.  
 de S.  
 Seneviratne  
 27th  
 January  
 1949,  
 Cross-  
 examina-  
 tion by  
 Crown  
 Counsel,  
 continued.*

- In the Supreme Court.*
- Second Accused's Evidence.*
- No. 80.  
Mrs. B. M. de S. Seneviratne  
27th January 1949,  
Cross-examination by Crown Counsel,  
*continued.*
- Q. Is that really true ?
- A. Yes.
- Q. What is the reason ?
- A. I have to maintain the two children with only the rent of the two houses I am getting.
- Q. The rent of the two houses would be Rs.125/- ?
- A. Yes.
- Q. In point of fact after the death of your husband you have a greater control over the two houses than you would have had, had he lived ?
- A. Yes. 10
- Q. They are solely your property ?
- A. Yes.
- Q. Both of them are worth round about Rs.30,000/- these days ?
- A. Yes.
- Q. Soon after your husband died the P.S.M.P.A. paid you a lump sum of Rs.3,800/- ?
- A. Yes.
- Q. You also found that your two children have about Rs.2,000/- each in the Post Office Savings Bank ?
- A. Yes. 20
- Q. And were you entitled to a pension from the Municipality ?
- A. No.
- Q. So that all told you are very much better off now than you were ever before ?
- A. No.
- Q. Certainly you would be able to feed your children very much better now. Is that not so ?
- A. I may be able to do that.
- Q. That morning when you went to your house did you see under the body of your husband a slipper ?
- A. No. 30
- Q. Did you see a slipper just outside the verandah of your house ?
- A. No.
- Q. Did you see an umbrella standing there against the wall on the outer verandah ?
- A. No.
- Q. Are you saying this as a result of loyalty to anybody ?
- A. No.
- Q. That morning you made a statement to the police ?
- A. Yes. 40
- Q. You made a statement at 12.35 p.m. on 7.11.47. Did you say this : " The slipper found near the entrance and the one found under the body do not belong to any inmates of the house " ?
- A. Yes.
- Q. And you continued to say this : " The umbrella found in the verandah of the house is also not ours " ?
- A. Yes.
- Q. So that in point of fact you saw a slipper under the body of your husband and a slipper on the outer verandah and an umbrella on the verandah ?
- A. I did not see a slipper under the body nor in the compound, but they showed me these and asked me whether they belonged to us and I said, No. 50

- (Court : You said you made a statement at the police station which was recorded ?  
 A. Yes.  
 Court : Then when you went to the house did you make a second statement ?  
 A. No.)  
 Q. You went to the police station round about 10 ?  
 A. Yes.  
 Q. Then you came back home ?  
 A. Yes.  
 Q. Then there were police officers investigating into this case ?  
 A. Yes.  
 Q. Round about noon did you make a statement to a police officer who recorded it ?  
 A. Yes.  
 Q. Can you tell us to whom you made that statement ?  
 A. I cannot.  
 Q. Can you now remember that you made your statement to the A.S.P., Mr. D. W. Perera ?  
 A. May have been.  
 Q. Did not Mr. Perera take you round to the various places where these articles were found and ask you : Is this yours ? Is that yours ?  
 A. No.  
 Q. Can you tell us what he did ?  
 A. He showed me the slippers and asked me.  
 Q. That is to say he was having in his hands a pair of slippers and an umbrella. Is that the position ?  
 A. Yes.  
 Q. What made you say : " The slipper found near the entrance and the one found under the body do not belong . . ." ? How did you come to describe one slipper as being found under the body and the other at the entrance ?  
 A. Because he told me it was found there.  
 Q. And you agreed to say so ?  
 A. He told me that and asked me if it belonged to us.  
 Q. Do you know that this statement was read to you and explained to you before you signed it ?  
 A. May have been read out.  
 Q. If there was anything wrong you certainly could have corrected it ?  
 A. I did not see it under the body of the deceased.  
 Q. Then why did you say so to the Police Officer ?  
 A. Because he brought it from under the body.  
 Q. So he brought it from under the body ?  
 A. I did not see it. I was on the verandah and he brought it to me and told me it was found under the body.  
 Q. The slipper could have been seen without moving the body or raising the body. The photograph shows it ?  
 A. (No answer.)  
 Q. You know this sarong (P.1 shown) ?  
 A. Yes.  
 Q. To whom does it belong ?  
 A. To Orandha.

*In the  
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Court.*

*Second  
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Evidence.*

No. 80.  
Mrs. B. M.  
de S.  
Seneviratne  
27th  
January  
1949,  
Cross-  
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tion by  
Crown  
Counsel,  
*continued.*

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Supreme  
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*Second  
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Evidence.*

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Mrs. B. M.  
de S.  
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1949,  
Cross-  
examina-  
tion by  
Crown  
Counsel.  
*continued.*

Q. That morning can you tell us where that sarong was ?

A. It was out on the line.

Q. Put out to dry ?

A. Yes.

Q. Put by whom ?

A. Put by me.

Q. Before you put it to dry did you see any blood on this sarong ?

A. No.

Q. Can you recognise this mat (P.5 shown) ?

A. No.

Q. It does not belong to you ?

A. No.

Q. And the knife P.6, have you ever seen it before ?

A. No.

Q. Had you seen one like this in the house of the first accused on a table ?

A. No.

Q. Attached to a herb cutter ?

A. No.

I told the Court the day before yesterday that I had met that woman 20 who came along with Alice Nona from Jayasekera Home in jail. After I was committed for trial I was kept in the Remand Jail. Convicted persons are also kept there, and they are allowed to associate with other women who are on remand and they can talk to us freely. She was serving a term of rigorous imprisonment. I cannot say whether she had a nice time in jail talking to all of us. She was sentenced to a term of two weeks' rigorous. After I had gone there she was brought there. And after two weeks she left. Not that I asked her what her term of imprisonment was. The matron told me that her offence was theft.

Q. The prosecution suggests that on or about the first of November 30 you went to the first accused and suggested that he should do away with your husband ?

A. No.

Q. And that once that plot was hatched you went to see him again on the 6th ?

A. I went to see him on the 6th.

Q. But not for this purpose ?

A. No.

Q. And that you instigated him to murder your husband the next day ?

A. No.

Q. And that you kept Alice Nona out of the way in order that the first accused might accomplish this without detection ?

A. No.

*To Court:* Q. You told us yesterday that the deceased was out practically every morning ?

A. Yes.

Q. I reminded you that he was in when Sumana was in the house ?

A. Yes.

Q. You said that was because the child was ill ?

A. Yes.

Q. What about the day he died ? How did he happen to be in the house that morning ?

A. I do not know.

10

40

50

- Q. You know now that on two days of the week, Monday and Friday, he was in the house in the morning ?
- A. Yes.
- Q. He generally did the marketing, dropped in to see his children at school, fed them at their meals, he was an old man, not in the best of health, careful of his habits. Do you seriously suggest that he would get about outside every day of the week, or practically so ?
- A. Yes.
- 10 Q. Will you agree that if anyone wished to murder this poor man the best opportunity was while you were living at 107 College Street ?
- A. No.
- Q. It was a house with an enclosed verandah ?
- A. Yes.
- Q. And certainly all morning the Joachims were out ?
- A. Yes.
- Q. And the children away at school ?
- A. Yes.
- 20 Q. If the deceased by any chance moved to some other house where there were old ladies or children, for instance, the opportunities would have been less favourable than at 107 ?
- A. No.
- Q. Is it a coincidence that you began to teach at Prince College about two weeks before his death ?
- A. No.
- Q. And that Alice Nona was engaged as a servant some time in October ?
- A. No.
- Q. Before Alice was engaged you did the cooking ?
- A. Yes.
- 30 Q. So that if anyone had killed the deceased then, you would have been in the house in the morning ?
- A. Yes.
- Q. Two weeks before his death you took a teaching job without even knowing what the salary was. Was that because you wanted to get out of the house ?
- A. No.
- Q. You said yesterday that you took up teaching at your husband's request ?
- A. Yes.
- 40 Q. Is it not easy to put everything on a dead man who cannot answer for himself ? You say he ill-treated the children, he borrowed money from Afghans, he insisted on your not leaving the school without the children, he got you this teaching job. He is not here to say no. Is that not so ?
- A. (No answer.)
- Q. If he did get you this teaching job would you not know on what terms, or how much of it he was going to get and how much of it you were going to get ? Is that not so ?
- A. No reply.
- 50 Q. Did you get this teaching job regardless of salary because you had made up a certain plan ?
- A. No.

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Mrs. B. M.  
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tion by  
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Mrs. B. M.  
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tion by  
Crown  
Counsel,  
*continued.*

Q. You got the job, you say, two weeks before your husband died, and two weeks before your husband died, or thereabouts, you went with Alice to see the first accused ?

A. Yes.

Q. If you were to be out of the house in the morning teaching, a servant had to be engaged to do the cooking ?

A. Yes.

Q. If the servant was one whom you could persuade to take into your confidence, all that the servant had to say was that she was out at the time ?

Is that not so ?

10

A. No reply.

Q. Either you or your husband must have given her that marketing money ?

A. I did not give her.

Q. She says your husband did not give ?

A. No reply.

Q. She was a servant under you. If your husband did not give it must have been you ?

A. Yes.

Q. Alice told the jury that you told her that after the death there would be an inquiry which would be over in a month and that the matter would then be dropped. You heard her say that ?

A. Yes.

Q. Do you think she is intelligent enough to invent that ?

A. I do not know.

Q. She is a servant woman, illiterate and ignorant. Do you think she knows about court proceedings : what happens when a person is killed, how long an inquiry like this is to last, and all such matters ?

A. I do not know.

Q. Someone has told her that. Who is that person ?

30

A. I do not know.

Q. Someone has told her that. Who is the person ?

A. I do not know.

Q. Apart from the fact that you knew three police officers stationed at Kotahena at this time, if the sweeper had not heard the groans and Mrs. Christie not seen the blood on the verandah, nothing would have been known of the killing of your husband till about noon that day unless you had found it ?

A. Yes.

Q. Otherwise he would have been lying dead under that table till you and the children went back for the noon interval ?

A. Yes.

Q. At what time was that ?

A. About 11.

Q. So that the assailant would have had a clear one hour at least to make his getaway ?

A. Yes.

Q. And if Alice said, "I do not know ; I was in the market," the inquiry would have to be dropped after about a month quite apart from the police. There would be no evidence at all ?

50

A. Yes.

Q. How is it that Alice herself was reluctant to get back to the house after the marketing ?

- A. I do not know.
- Q. You remember Podi Nona saying that Alice was seated under a tree cross-legged as if waiting for something to happen ?
- A. Yes.
- Q. The woman sets out to do the day's marketing, goes to the market, goes to a tree near the market, sits under it cross-legged. You remember that ?
- A. Yes.
- 10 Q. Can you say why she was reluctant to get back to the house ?
- A. I cannot say.
- Q. Why were you reluctant to get back to the house, Mrs. Seneviratne ?
- A. No reply.
- Q. Mrs. Christie had to pull you by your hand ?
- A. When I was waiting for the children she pulled me by my hand.
- Q. Why had she to pull you by your hand ?
- A. Because Mrs. Willegoda asked me something, I was standing there and Mrs. Christie pulled me by my hand.
- Q. Why had she to pull you by the hand and take you by the hand to a place where there was blood ?
- 20 A. She was so excited that she pulled me.
- Q. You remember the last question I put to you yesterday. I asked you, why did you not take the children to the police station ?
- A. Yes.
- Q. And you said you could not help it ?
- A. Yes.
- Q. That is a common-sense answer. Instructions like that are for normal occasions, not for unusual occasions. Is that not so ?
- A. Yes.
- 30 Q. Is that not a sufficiently uncommon occasion when Mrs. Christie came and told you about blood and the barking dogs and to hurry to the house ?
- A. Yes.
- Q. Why did you tarry at standard five ?
- A. No answer.
- Q. What on earth could the children have done in that crisis ?
- A. No answer.
- Q. Answer these questions. I must put these matters to the jury. I want an answer ?
- 40 A. As I was going home I took them home along with me.
- Q. Then when you got to the house you began by tying up the dog ?
- A. I did not tie it.
- Q. She said so ?
- A. I know she said so but I did not.
- Q. She is a woman whom you helped with an occasional sum of money. Why should she say so ?
- A. No reply.
- Q. Once again is that not an indication of reluctance, to delay the inevitable of having to see your husband murdered ?
- A. No.
- 50 Q. She says you began to weep in the school premises itself that morning. Did you ?
- A. No.

*In the  
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Court.*

*Second  
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Evidence.*

No. 80.  
Mrs. B. M.  
de S.  
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27th  
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tion by  
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Counsel,  
*continued.*



*In the  
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examina-  
tion by  
Crown  
Counsel,  
*continued.*

Q. You did not weep in the school premises ?

A. No.

Q. I will read to you her actual words : " I said there was a lot of blood in the verandah, hurry up and come. I pointed to her house when I said this. Second accused said : What is the matter ? What is the matter ? I said, ' I cannot be speaking to you ; come, hurry up and go.' She came out. She went to the class where the two children were. She was weeping there."

A. I deny that.

Q. She says that a second time. " She called out to the children and 10 the children came out. She said nothing to the children. She was weeping."

A. No reply.

Q. And she speaks of a third time. " She did not enter the class. Standing outside she called out to the children by their names. At that time she was weeping."

A. No reply.

Q. Three times she refers to that, this woman whom you helped with charity. If you were weeping it would have looked very odd indeed ?

A. Yes. 20

Q. Did you love your husband ?

A. Yes.

Q. When you saw his glasses in that pool of blood what did you do ?

A. I went in to see what happened.

Q. Is that all ?

A. Yes. I started crying along with my two children.

Q. Please listen to my question. When you saw his glasses in that pool of blood in the verandah what did you do ?

A. I did not do anything but I went in.

Q. Was that not the time to weep for your husband ? 30

A. Yes.

Q. When you saw the glasses did you shed tears ?

A. Yes.

Q. Then you say now you shed tears when you saw the glasses ?

A. Yes.

Q. You shed no tears in school ?

A. No.

Q. Let me remind you that Mrs. Christie says exactly the opposite. She said that you shed tears in the school premises. Then this question was put to her : When the second accused saw the blood and the glasses 40 did she do or say anything ? and she said no—exactly the opposite. Why should this old lady say so ?

A. No reply.

Q. Yesterday you were asked by learned Crown Counsel whether you remember seeing your husband at school that morning ?

A. Yes.

Q. You said more than once you did not see him ?

A. Yes.

Q. Till he put to you your statement to the police where you said you had seen him, you said no ? 50

A. Yes.

Q. Then you agreed that you did see him ?

A. Yes.

- Q. That was the last time you had seen your husband alive ?  
 A. Yes.
- Q. If you did love him as you say, could you have ever forgotten that ?  
 The thing would have been haunting in your mind till this morning ?  
 A. No reply.
- Q. You saw him then. That was the last occasion ?  
 A. No reply.
- Q. Did you weep when you went to the police station ?  
 A. Yes.
- 10 Q. I must put it to you, was this weeping any part of the pretence  
 you were carrying out ?  
 A. No.
- Q. It was very important, was it not, that Alice should not be got  
 at by the police too soon. Is that not so ?  
 A. No reply.
- Q. Supposing she was in the plot—I do not say you were in the plot—  
 it was important that Alice should not be got at by the police too soon ?  
 A. No.
- 20 Q. She is a timid type of woman. You will agree to that ?  
 A. No.
- Q. Supposing when the police were there she had gone to the house  
 and the police had questioned her, she would have made a clean breast  
 of the whole thing. Is that not why you were turning your head to the  
 road to stop her when she passed that way ?  
 A. No.
- Q. You knew the police had gone to your house ?  
 A. Yes.
- Q. This is what the Sergeant says you were doing : Second accused  
 was looking towards the road while making her statement. Alice was  
 30 passing along the road looking at the police station. Seeing Alice second  
 accused called out, Aiye amme. He says you were looking and she was  
 looking. Is the Sergeant lying on the point ?  
 A. Yes.
- Q. Had someone instructed her to go to the market, buy some  
 provisions, delay under a tree and not go to the house and be sure to be  
 watching the police station ?  
 A. I do not know.
- Q. Did you tell her that ?  
 A. No.
- 40 Q. The children were there in the house. Why did you not send  
 Alice to the children ?  
 A. She was there with me.
- Q. Why did it not strike you to say : My two children are there ;  
 let this woman go and be with them ?  
 A. No reply.
- Q. I do not want to be too unfair to you. Did you think that  
 Mrs. Wijesekere was looking after them ?  
 A. Yes.
- 50 Q. But Mrs. Wijesekere was a teacher and had a job to do. Did you  
 not think that your servant could have looked after them ?  
 A. She told me that she would look after them till I returned.

*In the  
 Supreme  
 Court.*

*Second  
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No. 80.  
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 de S.  
 Seneviratne  
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 Cross-  
 examina-  
 tion by  
 Crown  
 Counsel,  
*continued.*

*To Mr. Lekamage : Nil.*

*In the  
Supreme  
Court.*

*Cross-examined by Crown Counsel (with permission) :*

The police showed me an umbrella like P.4 and the pair of slippers P.28.

*Second  
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*Re-examined :*

No. 80.  
Mrs. B. M.  
de S.  
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Re-examin-  
ation.

My marriage was an arranged one. My parents spoke about it first. I cannot say how they came to know my future husband. My father was a Sinhalese and my mother is a Burgher. I told Crown Counsel that my husband insisted on my going to the temple sometimes. I went to the temple against my wish. I used to go to the temple once or twice a month at night taking the children. He asked me also to come along. He told me very little of his finances. He managed the whole household. 10

*Q.* In what sort of way did you feel he was treating you? Was he treating you as one would treat a wife of about the same age?

*A.* No.

At the time of his death my jewellery was in an attache case with his sister's husband Mr. Goonetilleke. Because we used to go and spend the week-ends with my mother at Nugegoda he said it was not safe to leave the jewels in the house.

In October, 1944, there was a separation and I went to my parents and then went to the police station. Inspector Corea was at the police station and I spoke to him. I told him there was some displeasure in the house in the morning over some food-bread. Two slices were given and the children asked for more. I told my husband about it and he struck me and I went away. 20

*(To Court :* My complaint was taken down at the police station, I think.)

I think my husband also went to the police station that day after I had gone there.

My father had retired at the time of my marriage. He was not drawing any pension. He was not in Government service. He was in a mercantile office. I do not know what his income was. 30

P.45 was shown to me in cross-examination. That was a draft deed of separation drawn up by Mr. Percy Seneviratne, Proctor. A copy of it was given to my father. He did not approve of it. It was never signed. Later deceased and I came together and we went to live in Kotahena. I did not like to go to court for a divorce. My family was not in favour of it. I do not know whether Mr. Percy Seneviratne was in favour of it.

While we were living at Mayfield Road I had a quarrel with the deceased and I went back to Nugegoda. That was when we were staying with the Rupesinghes. I came back to Mayfield Road the following day.

I said there was money in the post office savings bank in favour of the children. I did not know in November, 1947, how much of that money was left. I did not have any opportunity of looking at the pass books. They were kept in my husband's almirah, the key of which he wore round his neck. 40

When first accused went to pawn my ring and ear-rings the pawnbroker would not accept them and so I gave them to Maihamy to pawn. The reason why the pawnbroker refused to the first accused was because sometimes stolen property is taken to pawn.

Deceased's illness in October, 1947, was due to some bad food. I do not know whether he ate that in the house or outside. 50

When first accused had a meal in my house he was given the meal alone at the table and no one else sat with him.

I went to Nugegoda sometimes alone.

There was an aeroplane accident near my house at Nugegoda in 1944. The police came to the house. I cannot remember who came.

Inspector Gordon's wife is a relation of mine on my mother's side. My mother's brother's wife is married to Mr. Gordon's sister.

(*To Court*: Inspector Gordon's wife and my mother's brother's wife are two sisters.)

- 10 We were not on visiting terms with Mr. and Mrs. Gordon either at Kotahena or at Nugegoda. I do not know whether Mr. and Mrs. Gordon came to see my parents. They did not attend my marriage.

*Q.* If you had known that your husband would be murdered that morning would you have taken the children away from school?

*A.* No.

(*Court*: On the other hand if the children were in school while you were in the house and someone questioned Sumana and she said, "Baas came to the house two days ago and did some funny things in the house," what would have been the position, Mrs. Seneviratne?)

- 20 *A.* (No answer.)

*Q.* Do you follow me? It is important, was it not, that the first accused should have the opportunity if possible to make his get-away, whoever the assailant was. Do you follow me?

*A.* No.

*Q.* If Sumana had been questioned that morning at school while you were busy with your husband's body and she told police officer, "I do not know what happened, but I can say this: only two days ago Baas came and was trying to do this," would that have been risky?

*A.* Yes.)

- 30 I did not take Sumana to the police station. I do not know where she was when the police arrived in the house. She was left in charge of Mrs. Wijesekere and she might have taken her to school.

*Q.* The police might have gone in search of her to school?

*A.* I do not know.

(*To Court*: I would not have taken both my children to the house had I known that my husband had been murdered, because they would have got frightened when they saw the dead body. When I took the children they got frightened.)

*Q.* Not because they were your husband's instructions?

- 40 *A.* No.)

I was asked by Crown Counsel why I did not fall at my husband's feet when I saw him lying on the floor. I did not do it because Oranda got frightened and he started running back; I did not know where he would be running and so I ran after him to catch him.

When I made my statement to the sergeant at the police station I was not directly facing him. It was a narrow bench and I was seated at an angle. (At the request of Court witness demonstrates to the jury with the aid of a bench how she was seated when she was making her statement to the sergeant at the police station.)

*In the  
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Court.*

*Second  
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de S.  
Seneviratne  
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*continued.*

*In the  
Supreme  
Court.*

(*To Court* : I was seated like this with my hands on the table.)  
The sergeant was questioning me and recording my statement.

*Second  
Accused's  
Evidence.*

(*To Court* : I was weeping while I was making my statement.)

Since 16th November I have been in the female section of the Remand Jail. Both convicted prisoners and remand prisoners are kept in that section.

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de S.  
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27th  
January  
1949,  
Re-examination,  
*continued.*

My husband suggested that I should teach at Prince College. He was a Buddhist and he knew the priests and the teachers.

When Alice went to the market she used to take the bag P.2 and not the bag P.3 which the deceased took. On days she went to the market 10 whether she rested a while somewhere or not I cannot say.

*To Jury* : Nil.

No. 81.  
S. B.  
Joachim  
(recalled)  
(see also  
No. 33),  
27th  
January  
1949.  
Examination.

No. 81.

**EVIDENCE of S. B. Joachim (recalled).**

S. B. JOACHIM—Sworn. 56, Storekeeper, Colombo Apothecaries.

*Examined* :

I have already given evidence in this case. (2D5 shown.) This is a promissory note for Rs.225/- dated 26th October, 1946, drawn in favour of the deceased by myself and my wife. I signed that note. The signature below mine is that of my wife. When I gave up the house I was in arrears 20 of rent and so the deceased lent me this sum to pay off the arrears. He became the tenant of this house from 1st November.

*Cross-examined by Mr. Lekamage* : Nil.

*Cross-examined by Crown Counsel* : Nil.

*To Jury* : Nil.

No. 82.

## EVIDENCE of D. H. R. A. Corea.

*In the  
Supreme  
Court.**Second  
Accused's  
Evidence.*

D. H. R. A. COREA—Sworn. Inspector of Police, Nuwara Eliya.

*Examined :*

I gave evidence for the prosecution in the lower court. From January, 1944, to October, 1947, I was in charge of Mirihana Police Station. Lakshmi Villa, which was occupied at one time by the deceased and his wife, comes within the area of Mirihana Police Station. I came to know the deceased in September, 1944. An R.A.F. plane crashed on a portion of Lakshmi Villa and the adjoining house and I went to investigate. In that connection I came and saw him several times. On the first occasion I went there I saw a box with provisions and rice under a bed in his house. It was under the deceased's bed. There was a portion of the bed room wall crashed.

The second accused came on the 13th October, 1944, to the police station and made a complaint. I asked the reserve constable to record it. (Witness reads the complaint. It is marked 2D6.) The husband came some hours later and he too made a statement. The quarrel was due to insufficiency of food for the children.

20 I have been a police officer for 17 years. Afghans get a person to sign a note for more than what they actually lent. If the amount is paid back they take the amount actually borrowed plus the interest. The increased amount is put for security.

*Cross-examined by Mr. Lekamage : Nil.**Cross-examined by Crown Counsel :*

When an Afghan gets a promissory note the difference between the face value of the note and the actual money passed is not always the interest he has already deducted. I have not heard of that happening. Nor have I heard of an Afghan putting down on the face of the note an amount double of what has been given.

30 I did not find dearth of food in deceased's house. I found rice and curry stuffs under his bed at a time when they were rationed.

With regard to the complaints, the position is that second accused came in the morning and made a complaint. Soon after there was a counter complaint by the husband. The husband being dead I cannot say what he had told me. Apart from that I was not a friend of the family. I knew this couple only after the plane accident. In connection with that I had been visiting them two or three times. I gathered that they were not getting on harmoniously.

40 *Re-examined : Nil.**To Jury : Nil.*

No. 82.  
D. H. R. A  
Corea,  
27th  
January  
1949.  
Examina-  
tion.

Cross-  
examina-  
tion by  
Crown  
Counsel.

*In the  
Supreme  
Court.*

**No. 83.**

**EVIDENCE of H. F. Mills.**

*Second  
Accused's  
Evidence.*

H. F. MILLS—Sworn. 27, Ledger Keeper, Cold Storage, Colombo.

*Examined :*

No. 83.  
H. F. Mills,  
27th  
January  
1949.  
Examina-  
tion.

I live at 20 Jambugasmulla, Nugegoda. I have been living there for about 6½ years. That house belongs to the second accused. It has no name. At first deceased used to issue the house rent receipts. At some stage those receipts were issued by the second accused. The rent was Rs.27.50 a month. The house is under the Village Committee. The rates have to be paid to this committee. I do not know the rate for this house. 10

During a heavy rain the kitchen of this house came down once.

(*To Court :* This was during the monsoon month in 1947.) I cannot remember whether it was in 1946 or 1947. The first accused attended to the repairs.

*Cross-examined by Mr. Lekamage :* Nil.

Cross-  
examina-  
tion by  
Crown  
Counsel.

*Cross-examined by Crown Counsel :*

When first accused was attending to the repairs second accused came once while I was not at home.

*Re-examined :* Nil.

20

*To Jury :* Nil.

No. 84.  
A. G. Peiris,  
27th  
January  
1949.  
Examina-  
tion.

**No. 84.**

**EVIDENCE of A. G. Peiris.**

A. G. PEIRIS—Sworn. 33, Stenographer, Colombo, Commercial Company, Nugegoda.

*Examined :*

I am a brother of second accused. My father was a storekeeper at Eastern Produce and Estates Supplies Limited. He retired on 31st December, 1935. He got a gratuity with which he built Lakshmi Villa, which was subsequently given to second accused. At the same time he drew money from an Insurance Company and built "Shamrock." After his retirement he owned altogether five houses, two of which he gave to the second accused. 30

After the marriage of the second accused, father's income consisted of house rents from two houses, Rs.35/- from "Shamrock" and Rs.25/- from the other. He lived in one house. I have a younger brother called Joseph Leo. Father died on 1st June, 1946. When he died Leo was 26 years old. We managed with the income of the two houses and with what I gave every month. Joseph was unemployed and he had to be

kept going. Besides these two houses father had no other income. In 1945 he sold the small house which was bringing a rental of Rs.25/- for very nearly Rs.5,000/-. That money was deposited in a bank and he was withdrawing from it from time to time. At the time of his death he had the house in which he lived and one house bringing a rental of Rs.35/- a month. At the time of his death there was no money in the house. I was given to understand that mother got Rs.600/- from my sister the second accused. I was engaged to be married before father died. I got married in December, 1946, and my sister gave me Rs.500/- towards my marriage expenses. I have one child born on 10th November, 1947.

*Cross-examined by Mr. Lekamage :* Nil.

*Cross-examined by Crown Counsel :*

By 1946 second accused had left for Kotahena. At that time they were not living in the lap of luxury. I realised that second accused was very badly off. I did not know what the position was. I was employed at that time. The position in which I was placed at that moment compelled me to ask her for money. That was, I think, in November, 1946. I did not suggest to her that she should borrow from an Afghan. I knew she had no money to give me, still I asked her to help me in that predicament. I think at that stage my position was worse off than hers. I was drawing then Rs.180/- and allowances. I do not know what she was getting. After my father's death my mother asked my sister to get money from somewhere. I believed there was one Mrs. Paul who was prepared to help her. I made no effort to raise any money. I had my salary and I spent the whole of it. My mother did not know Mrs. Paul. She could have been introduced to my mother. It is true that second accused gave mother Rs.600/- and me Rs.500/-.

*Re-examined :* Nil.

*To Jury :* Nil.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 84.  
A. G. Peiris,  
27th  
January  
1949,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion by  
Crown  
Counsel.

30

No. 85.

**PROCEEDINGS AND ORDER on Motion for leave to prove previous convictions of Appellant.**

*Court asks the jury to retire.*

After the jury retired Mr. Nihal Gunasekere moves for leave to prove the previous convictions of the first prisoner. He states that his submissions are already before the court. He further submits that in addition to the evidence led at the trial the proposed evidence would be further evidence in support of the case of the second accused.

He states that he is in a position to prove that the first prisoner has seven previous convictions for theft and one for possession of house-breaking implements.

*Mr. Lekamage objects.*

No. 85.  
Proceedings  
and Order  
on Motion  
for leave  
to prove  
previous  
convictions  
of the  
Appellant,  
27th and  
31st Janu-  
ary 1949.



*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 85.  
Proceedings  
and Order  
on Motion  
for leave  
to prove  
previous  
convictions  
of the  
Appellant,  
27th and  
31st Janu-  
ary 1949,  
*continued.*

*Crown Counsel* objects on two grounds :

(1) that this matter has already been fully argued and the evidence led at this trial confirms the correctness of the decision already made ;

(2) proof of these previous convictions would prejudice not only the first prisoner but the second prisoner as well, as the jury may then well take the view that the first accused would be the type of person the second accused would select for the carrying out of this conspiracy.

*Court* : I disallow the proposed evidence. I would give my reasons 10  
in writing later.

Adjournd for lunch. 1.30 p.m.

Certified correct,

Sgd. H. E. GOMEZ,

Stenographer, S.C.

#### ORDER.

These are my reasons for the order made by me on January 27th.

At the commencement of this trial application was made for the separation of the trial of the two prisoners on the ground (1) that theft might have been the motive for this crime and (2) that proof of the previous 20  
convictions of the first accused was therefore necessary to the defence of the second accused.

I refused the application on the ground (1) that the depositions made it plain that robbery (a wider term of theft) was not the object of this crime and (2) that the proposed proof of the previous convictions would only confuse the true issues of fact.

The evidence led at the trial confirms the correctness of the view that robbery was not the object of this crime. I need only refer to the evidence of Alice Nona when she said (referring to the morning of November 7th) :

“ After deceased left I was cooking in the kitchen. While I 30  
was in the kitchen first accused came. 1st accused asked me ‘ Mahat aya ko.’ I told him he had gone to the market. 1st accused said ‘ Palayan yanda.’ He spoke harshly to me and asked me to go away. I went away. When I left 1st accused was the only person in the house.”

If robbery was the object of this crime, first accused's opportunity was either when there was only a woman in the house or when he was its only occupant. Instead, first accused waited in that house alone till the deceased returned.

Perhaps I should say here what is obvious. It is, of course, open to the 40  
defence, if so advised, to argue to the jury that theft or robbery was the motive for this crime and to support the argument by matters which have come out in evidence at the trial, such as that deceased was a person of a miserly nature, that he wore his key round his neck, that the key was missing when the police examined the body, that deceased and first accused claimed a debt of Rs.700/- that therefore a theftuously minded person entered the

house, killed the deceased, opened his wardrobe and took away the easily movable valuables from it. The verdict of the jury would then be a verdict *on the evidence*. But to prove first accused's previous convictions and to argue therefrom that he is the type of man to commit theft or robbery is to ask for a verdict not on the evidence but on prejudice. "The general rule in criminal (as in civil) cases is, that nothing may be given in evidence which does not directly tend to the proof or disproof of the matter in issue." Archbold: Practice in Criminal cases, 1943 edn., page 331. In *Makin v. Attorney-General for N.S.W.* (1894) A.C. 57, it was held that evidence to show that the accused is a person likely from his conduct or character to have committed an offence for which he is being tried is inadmissible.

There is ample relevant evidence led at this trial upon which the second prisoner can raise the defence proposed to be raised on her behalf. Thus in my view she is in no way prejudiced by the exclusion of the proof of the previous convictions of the first prisoner.

Sgd. R. R. CROSSETTE THAMBIAH,  
Commissioner of Assize.

31.1.49.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 85.  
Proceedings  
and Order  
on Motion  
for leave  
to prove  
previous  
convictions  
of the  
Appellant,  
27th and  
31st Janu-  
ary 1949,  
*continued.*

27.1.49. (2.15 p.m.)

20

No. 86.

EVIDENCE of Mudaliyar J. B. Jayasekere (recalled).

MUDALIYAR J. B. JAYASEKERE—Sworn.

Clerk of Assize, Colombo.

I have in my hand the Magistrate's Court Proceedings of Colombo Case No. 36089.

The first complaint was filed on the 8th November, 1947, against Kannangara Aratchige Dharmasena. The second complaint in this case was filed on 1st December, 1947, against Kannangara Aratchige Dharmasena alias Baas and Beatrice Maude de Silva Seneviratne.

Alice Nona first gave evidence on the 8th November, 1947. She next gave evidence on the 1st December, 1947. She gave further evidence on the 1st December for the second time. She again gave evidence on the 23rd December, 1947. Alice Nona stated on the 23rd December, 1947, to the Magistrate:

"My master used to lock up the keys of that almirah and have the keys of that almirah round the neck."—2D1.

Just above that, on the same day, she stated that "The Deceased was miserly"—2D2.

No. 86.  
Mudaliyar  
J. B.  
Jayasekere  
(recalled),  
27th  
January  
1949.  
Examina-  
tion.

*In the  
Supreme  
Court.*

*Second  
Accused's  
Evidence.*

No. 86.  
Mudaliyar  
J. B.  
Jayasekera  
(recalled),  
27th  
January  
1949,  
Examina-  
tion,  
*continued.*

S. Singarayan said to the Magistrate on 1.12.1947 :

“ She told me my husband was cut by someone ” (She meaning the second accused)—2D3.

Mrs. Beatrice Christie told the Magistrate on the 6th December, 1947 :

“ I told the second accused that the dog was barking and would not allow anyone to enter. There is trouble come soon.”—2D4.

On the same day Mrs. Christie stated :

“ I stood on the compound by the gate. The second accused and her two children went in and came back. The second accused 10 said that her husband had been killed. After that I too went inside the house and looked.”—2AD1.

*Mr. Lekamage* : No questions.

*Crown Counsel* : No questions.

*Mr. Nihal Gunasekera* closes his case.

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**EVIDENCE IN REBUTTAL FOR THE PROSECUTION.**

**No. 87.**

**EVIDENCE of L. D. C. Gordon (recalled).**

*Prosecu-  
tion's  
Evidence  
in rebuttal.*

No. 87.  
L. D. C.  
Gordon  
(recalled),  
27th  
January  
1949.  
Examina-  
tion.

*Crown Counsel* calls in rebuttal.

L. D. C. GORDON—Sworn.

20

On 16th November, 1947, at 12.30 p.m. I recorded the statement of the second accused, and she in the course of that statement said this :

“ About four months ago I handed a hair pin to the Baas requesting him to pawn it for me. I told him to fetch me Rs.50/-. . . . I failed to pawn the article.”—X.6.

In the course of that statement the second accused had said this :

“ The call came from Aron of Colombo Bakery at Vanrooyan Street. The conversation was that I had asked him for a loan of Rs.100/- the previous day.”—X.7.

*Mr. Lekamage* : No questions.

30

*Mr. Gunasekera* : No questions.

## No. 88.

## EVIDENCE of B. W. Perera (recalled).

*In the  
Supreme  
Court.*

B. W. PERERA—Affirmed.

Assistant Superintendent of Police. The second accused made a statement on 7th November, 1947, at 12.35 p.m. at 107, College Street, Kotahena. I recorded the statement. In the course of her statement she said :

*Prosecu-  
tion's  
Evidence  
in rebuttal.*

10           “ I saw my husband come to school and speak to the 5th standard teacher Miss Willegoda. He did not come and speak to me.”—X.8.

No. 88.

B. W.  
Perera  
(recalled),  
27th

In the course of that she further said :

January  
1949.

“ The slipper found near the entrance and one found under the body did not belong to any inmates of the house. The umbrella found in the verandah of the house is also not ours.”—X.A1.

Examina-  
tion.

*Mr. Lekamage :* No questions.

*Mr. Gunasekere :* No questions.

## No. 89.

## EVIDENCE of Mudaliyar J. B. Jayasekere (recalled).

No. 89.  
Mudaliyar  
J. B.  
Jayasekere  
(recalled),  
27th  
January  
1949.  
Examina-  
tion.

*Court calls :*

20 J. B. JAYASEKERE—Sworn.

Alice Nona in her statement has said this :

“ When I came the child was in the house. I could not do anything to the matter.”—X.

The plaint is produced marked X.4.

The list of witnesses from 1 to 21 produced marked X.5.

*Mr. Lekamage :* No questions.

*Mr. Gunasekere :* No questions.

*Crown Counsel :* No questions.

*In the  
Supreme  
Court.*

**No. 90.**

**FURTHER PROCEEDINGS AT TRIAL.**

No. 90.  
Further  
proceedings  
at trial,  
27th  
January  
1949.

*Mr. Lekamage* addresses the Jury.

(Adjourned for the day.)

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28.1.49. (11 a.m.)

*Mr. Lekamage* continues his address.

1.30 p.m. to 2.15 p.m.

Adjournment.

2.15 p.m.

28th  
January  
1949.

*Mr. Lekamage* continues his address to the jury.

10

*Mr. Nihal Gunasekere* addresses the jury.

(Adjourned for the day.)

4 p.m.

---

31st  
January  
1949.

31.1.49. (11 a.m.)

*Mr. Nihal Gunasekere* continues his address to the jury.

1.30 p.m. to 2.15 p.m.

Adjourned.

2.15 p.m.

*Mr. Nihal Gunasekere* continues his address to the jury.

(Adjourned for the day.)

20

4 p.m.

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1st  
February  
1949.

1.2.49. (11 a.m.)

*Mr. Nihal Gunasekere* continues his address to the jury.

*Crown Counsel* replies.

Adjournment from 1.30 to 2.15 p.m.

*Crown Counsel* continues his address to the jury.

(Court adjourns for the day.)

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No. 91.

## JUDGE'S CHARGE TO JURY.

2.2.49. 11 a.m.

Gentlemen of the jury—

Upon one thing I think all of us in this Court are agreed. It is this. I think we are all satisfied in regard to the care and patience with which you, gentlemen of the jury, followed this case. You are persons with avocations and occupations of your own. To us whose business it is to sit in these Courts in the administration of justice a trial of this nature, which has gone on day after day, can be an irksome burden. How much  
 10 more then to you who are not used to such long hours, who have been called away from your own private concerns to this public duty? If I may say so, I think we are all satisfied, all of us who have taken part in this trial, from our observations of you, that you have entered upon these duties in a true spirit of citizenship and responsibility. This case will not take very much longer. I ask you to continue to the end to bestow upon it the same ungrudging sacrifice of time and convenience that you have so far given to it.

Mention has been made of what was described as an atmosphere of hostility. I think you will agree that so far as the sittings in public session  
 20 of this Court are concerned, there has been nothing here but an atmosphere which is found to exist in all our courts of justice in this country—an atmosphere of calm and quiet and the determination to see that duty is done fairly and yet without fear or favour.

It is quite true that you and I while we have been seated here have seen for ourselves these large crowds standing outside there in the courtyard under those trees. They are no doubt part of the cheap rabble which accumulates every time something out of the ordinary takes place. You remember that in the old days when Rome was in its decadence they had then what were known as Roman holidays. The cheap Roman rabble  
 30 had to be kept entertained by spectacles in the Roman arena, such as fights between human beings and fights between human beings and wild animals. What those persons up there have to gain by standing there in the hot sun I for my part do not know. I suppose they hope to be able to catch a glimpse of this unfortunate lady. You and I have nothing to do with that. Yours and mine are solemn functions. We are in no way concerned, I beg of you to remember, with any atmosphere, whether inside of this Court or outside of it.

Learned counsel were at pains to remind you that you are the judges of fact in this case. Indeed that is so, but I should have thought it was  
 40 hardly necessary to do so so far as this trial is concerned. If there is one thing which has been made patent from the very commencement of this trial, it is that. You, and not I, are the final and supreme judges of fact in this case. You would not have forgotten that witness after witness in that witness box was told to speak up so that you the jury may hear; to face you the jury; all demonstrations that were made in this Court were made in such a way that you the jury may see, and see well. The experts who came here were asked to take you out there into the verandah, into the sunlight that they may point out to you every exhibit each of which was passed to you. When you went to view those houses at  
 50 Nugegoda and later the scene of this incident, I did not go with you.

*In the  
Supreme  
Court.*


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 No. 91.  
 Judge's  
 charge to  
 Jury, 2nd  
 and 3rd  
 February  
 1949.

*In the  
Supreme  
Court.*

No. 91.  
Judge's  
charge to  
Jury, 2nd  
and 3rd  
February  
1949,  
*continued.*

It was because I wish you to realise what our Code of Criminal Procedure intends that you should realise, namely, that upon all matters of fact the ultimate decision is indeed yours. This is what the Code says :

“ When the judge thinks that the jury should view the place, he shall make an order to that effect, and the jury shall be conducted to such place which shall be shown to them.”

You may be sure that in the performance of my own arduous and responsible functions I have not omitted myself to view all those places and localities which I thought it was material for me to see, but you went without me because I wished to emphasise what I have always emphasised 10  
in every trial in this Court, that for the purpose of this trial, you, to-day each one of you, are holding the high office of a Judge of the Supreme Court of Ceylon on questions of fact. When I use those words I do no more than repeat what is in our Penal Code. The Penal Code defines who a judge is and then it goes on to say, “ a juror at a trial before the Supreme Court is a judge.” I think that puts it more effectively than anything that has come from the learned Counsel at the Bar. Under our law I am entitled to put to you my own views on questions of fact. If I do so I have no doubt from what I have observed of you that such observations of mine on questions of fact will be listened to with a certain 20  
amount of deference. But I do make it plain and have made it plain from the very outset that any observations of my own on questions of fact, whether now or in the course of the trial, are only in the nature of suggestions for your consideration. Disagree with me without hesitation if you think I am wrong.

Something was said in the course of Counsel's speech that I had asked the witness Alice Nona to compose herself in the witness box. Learned Counsel, no doubt, in the course of a very long and able address it is not easy to remember everything, lost sight of the fact that when the second accused came into the witness box not only did I use words 30  
indicating that she should compose herself but I went much further in her case than I did with Alice. I directed that she should be seated in the witness box there throughout the period of her evidence. My duty here is to hold the scales evenly. Nobody realises more than I do what it must be to an accused person charged with such serious crimes to enter that witness box. Therefore what was done was done both for the prosecution and the defence in order that we here may get on with our duty in a calm and judicial atmosphere.

There are a few other preliminary observations I have to make. I think it would be the best way to assist you in your deliberations if 40  
I make those observations now, at this stage of my summing-up. No doubt, your responsibilities in this case are heavy, but they are no heavier than the responsibilities of countless jurymen who sat before you in that jury seat there. Do not be led away into the feeling that you have been called upon to perform some task which is beyond the capacity of laymen. If that was so, you may be sure that the ancient institution of trial by jury would have disappeared long ago. All of us here do realise that you are laymen. We do know that you are not professional men who devote your lives to the study and practice of the law. You are just plain ordinary citizens. In that seat there you are being asked no more 50  
than to exercise your own normal faculties, your knowledge of the world,

your knowledge of human affairs, of human beings, of human nature, and above all your common sense.

*In the  
Supreme  
Court.*

One of the most interesting and the most important of the definitions to be found in our statute book relates to the definition of the word "proof." When I was at school often I used to ask myself: what on earth is it when they say something has been proved? When is a fact said to be proved? Those difficulties have been cleared for us in an admirable manner by a person who was a master of the English language. I will read it to you. You will see how simple it is and yet how clear.

10 "A fact is said to be proved when, after considering the matters before it, the court (that is to say, you gentlemen of the jury) either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." Let me read it to you again. "A fact is said to be proved when, after considering the matters before it"—all the matter before it—"the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

No. 91.  
Judge's  
charge to  
Jury, 2nd  
and 3rd  
February  
1949,  
*continued.*

You will see at once that the governing words of that definition is the phrase "a prudent man." Each one of you is that prudent man. The law says that after considering everything which has transpired in the course of this long trial if you believe a fact to exist, then that fact is proved.

A prudent man is not a man who runs away from his difficulties. If he has to make a decision he does not refuse to do so because it is a difficulty which he does not wish to face. Duty requires it, or business requires it, or grave and important concerns of his own home require it; he weighs with care and conscience and prudence the whole of the material before him and then he comes to his decision.

30 There are certain rules which you must remember, of which I shall be telling you in a moment, but at this stage let me say this. When you retire to your chamber forget all these trappings of a court of law. Seated there each of you ask yourself this: What would I say about this at home? In an important matter of my own, some grave and momentous concern regarding myself, sitting at home, would my answer be: Yes or no? That is how you have to treat this case, remembering the rules as I have said.

The first rule is that you are required to act solely upon the evidence before you. You have taken your oath, each of you, that you will return your verdict according to the evidence. Twice every day for the last 40 twenty and more days you have undertaken to hold no communication with any person other than a fellow juror upon the subject of this trial. When, therefore, you retire to your chamber, consider the evidence, and only the evidence, and upon that evidence return your verdict. Don't let yourselves be stamped into the feeling that you may be making a mistake. Neither you nor I claim to be superhumans. We are just plain human beings, whom Fate has called upon to perform this terrible duty. You have listened to the evidence. Give your answer in terms of that evidence.

50 This case has received a certain amount of publicity. I suppose it is inevitable in all the circumstances. Put entirely out of your minds



*In the  
Supreme  
Court.*

No. 91.  
Judge's  
charge to  
Jury, 2nd  
and 3rd  
February  
1949,  
*continued.*

anything which may have even indirectly reached your ears outside of this court of law and justice.

When we speak of evidence we mean the substantive evidence led in the trial here from that witness box before you.

You may remember that certain statements made elsewhere by some of the witnesses, either to the police or to the Coroner or to the Magistrate, have been put in and marked. Those other statements made elsewhere to other persons are not the substantive evidence in this case. Those statements have been put in for one limited purpose only ; it is to enable you to check the substantive evidence given here on oath by means of those other statements, if you are so disposed. Use them in that way if you think you require them to test the credit or credibility of the evidence given here on oath, but do not use them as substantive evidence. 10

Now, the other rule which applies in every criminal case—I have no doubt you have heard this before, but it is of the utmost importance that it should be repeated at every criminal trial. The burden of proof in every criminal case is on the prosecution. The prosecution must prove the charge beyond reasonable doubt. An accused person is presumed to be innocent until and unless the prosecution proves the charge against him beyond reasonable doubt. Throughout your deliberations give the benefit of every reasonable doubt to each of these prisoners. This is how a reasonable doubt has been explained to a jury by a distinguished judge of England. He said this : “ The doubt must not be a trivial one such as speculative ingenuity may raise, but a conscientious one which may appeal purely to the mind of a rational man acquainted with the affairs of life. If the conclusion to which you are driven be that there is that degree of certainty in the case which you would act upon in your own grave and important concerns, that is the degree of certainty which the law requires and which will justify you in returning a verdict of guilty.” 20

Some experts have come here to give evidence. The Government Doctor was here, the Government Analyst was here. When a doctor comes into the witness box he does so in two capacities. He is in the first place a witness to facts like any other ordinary witness. He has seen something with his eyes ; he speaks of them to you. In that capacity the doctor is, as I said, to be treated in the same way as you would treat any other witness who has come before you. Then he comes also in the capacity of an expert ; that is to say, he puts before you certain conclusions which he has reached by reason of his special study and knowledge. You remember that I made him come right up to you and demonstrate to you the similarities of the hair found on the blade of that knife P.6 and the hair of the deceased. Similarly, you will remember I asked the Government Analyst to demonstrate to you the marks which he said were made at one end of that blade and that split-head iron bolt which you have seen. Now, the purpose of making these experts do so was to emphasise that where an expert gives an opinion based on his special knowledge and study, the weight due to that opinion is a matter to be determined entirely by you. In other words, even in the matter of expert opinion you are the final judges of fact. I have no doubt that weight will be proportionate to the soundness or otherwise, as you may think, of the reasons adduced in support of the opinion. Do not accept the opinion of an expert, however eminent, unless you think the reasons which guided him to his conclusions are such as appeal to your own intelligence. 30 40 50

Now, a word as regards discrepancies, contradictions, inconsistencies. It is entirely for you whether these discrepancies and contradictions shake your belief of the witness concerned and thus of the case for the prosecution as a whole. The mere fact that there are discrepancies, contradictions, inconsistencies does not necessarily mean that the witness is a false witness. The world is full of different types of people ; some are timid, some are bold, some are of accurate observation, some have no capacity for observation at all ; some can narrate a matter in precise words, some cannot do so. The memory of some is good, of others it is bad, of still others it is different.

10 You as men of the world know that. The test which you would apply here at this trial is known to us lawyers as the test of the eye ; use it then ; you watch the witness ; you watch him being taken through his examination-in-chief ; then his cross-examination, and then once again his re-examination. You look at him, you look at the change of expression in his countenance, you look at everything, everything that is happening before your eye and then you say to yourselves, remembering everything that can be said about him or against him, " Is he still speaking the truth or is he not ? " It is entirely a matter for you.

20 You will recall that I permitted the deposition of a person, Maihamy, to be read to you. That deposition was admitted under a special rule of evidence recognised by our law. If in the course of your deliberations you have to consider anything that was said by this person in that deposition, remember what learned counsel urged you to remember, that you have not seen Maihamy here. You have not heard her under the invaluable test of cross-examination. I will come back to Maihamy later. For the present these observations of mine are in the nature of preliminary observations.

30 The first accused has not given evidence at this trial. Very often the decision whether an accused person should or should not give evidence is the decision of his counsel. Therefore it would be unfair and improper to arrive at any view adverse to the first accused because he has chosen to remain seated there in the dock. In doing so he has done no more than exercised his full legal right. Under our law the presumption of innocence, as I told you, prevails until it is rebutted and rebutted beyond reasonable doubt. Therefore an accused person is entitled to sit there, as he is sitting there now with folded arms, and to say to the Crown : Prove your case if you can.

40 The second accused has given evidence. This is how our Evidence Ordinance puts the matter : " In criminal trials the accused shall be a competent witness in his (or her) own behalf, and may give evidence in the same manner with the like effect and consequences as any other witness." Therefore it becomes your duty to treat her evidence as you would treat the evidence of any other witness who has come before you. Do not say to yourselves : Why, she is an accused person. What evidence can she give but such evidence as is calculated to secure her release ? I have told you how you should test the evidence of every witness who has taken his stand there. Test the evidence given by this lady in the same way.

50 Remember this in her favour. She is indeed under a heavy burden of mind. Make every reasonable allowance that you can reasonably make consonant with your duty in regard to her evidence.

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If then, gentlemen, at the end of it all, upon a review of the case as a whole, the evidence for the prosecution and the evidence for the defence, the submissions of learned counsel on both sides, in fact as that definition of proof has it, "all the matters before you"—if as I say at the end of it all, you can honestly come to the view that you are in a state of doubt as regards the guilt of one or other of these accused persons the law requires you to acquit that person.

It is time I told you something about the law in the case. The law requires me to remind you that in matters of law you will be good enough to accept my directions. There is not very much law in this case. In fact 10 such law as there is can be explained to you in quite simple words.

Let us begin by reading this indictment. By to-morrow I hope each of you will have your own copy.

*Clerk of Assize* : I have got the copies ready.

*Court* : In that case you can give each of them a copy. (Copies of indictment are handed to the jury.) May I read it to you. You will be able to follow it easier I think if I read it aloud. In this indictment these two prisoners Dharmasena alias Baas and Beatrice Maude de Silva Seneviratne are charged in the first count as follows : that between the 1st and 8th day of November, 1947, at Nugegoda and Kotahena in the 20 district of Colombo, they did agree to commit or act together with a common purpose for or in committing an offence, to wit (a legal word for namely) the murder of one Dionysius de Silva Seneviratne of No. 107 College Street, and that they have thereby committed the offence of conspiracy to commit murder in consequence of which conspiracy the said murder was committed. That is the first count. In the second count the first accused alone is charged : That he on or about 7th November, 1947, at Kotahena did commit murder by causing the death of Dionysius de Silva Seneviratne. In the third count the second accused alone is charged : That she did abet the first accused in the commission of the 30 offence of the murder of Dionysius de Silva Seneviratne.

To summarise it then, the indictment has three charges, the charge of conspiracy in count 1 against both the prisoners, the charge of murder in count 2 against the first prisoner, and the charge of abetment of murder in count 3 against the second prisoner.

The offence of criminal conspiracy can be explained in very simple terms. If two or more persons act together with a common purpose for or in committing an offence, whether with or without previous concert or deliberation, each of them is guilty of the offence of conspiracy to commit that offence. There is no more to it than that—two or more persons 40 acting together with a common purpose for or in committing an offence. There is another limb to this same definition which says this, if two or more persons agree to commit an offence each of them is guilty of the offence of conspiracy to commit that offence. So that the offence of conspiracy is committed when two or more persons either agree to commit an offence or act together with a common purpose for or in committing an offence. It is the essence of a conspiracy as known to our law that two or more persons should either agree to commit an offence or that they should act together with a common purpose for or in committing an offence. Had these two accused persons a common desire ? Did they pursue it, 50

each playing his or her necessary part in furtherance of their common purpose? If this is proved beyond reasonable doubt, then the charge of conspiracy is proved.

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The charge of conspiracy is also proved if you hold it proved beyond reasonable doubt, either directly or inferentially, that these two accused persons agreed to cause the death of the deceased, that is to say, to commit the offence of murder. Thus you will see that the prosecution must prove beyond reasonable doubt in respect of this charge of conspiracy in count 1 which I have read to you :

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10 (A) that these two accused persons agreed to commit or that they acted together with a common purpose for or in committing the offence of the murder of the deceased ; and

(B) that in consequence of this conspiracy the deceased was in fact murdered.

As against each of these prisoners then, the prosecution must prove beyond reasonable doubt the guilty mind that he or she agreed with the other or acted with the other in the manner I have explained, that each played his or her part in this plot to murder the deceased, not as an innocent pawn but intentionally and with full knowledge of the purpose of the  
20 conspiracy, which purpose was carried out and completed. It is not often that direct evidence is available to prove a conspiracy. You may infer it from all the matters before you which you accept as satisfactory in this case, provided those matters lead you to the inevitable conclusion that there was in fact a conspiracy as alleged in this indictment.

I will tell you more about the way in which jurors should approach and assess circumstantial evidence. For the present I am on the charge of conspiracy.

You will appreciate from what I have said that the crime of conspiracy involves the agreement or the acting together of at least two persons. It  
30 follows that if in respect of one or other of these prisoners you are in doubt as to whether he or she conspired as alleged in the indictment, then the charge of conspiracy fails in respect of both.

Learned Crown Counsel has argued before you that even if the charge of conspiracy set out in count 1 of the indictment failed, the second prisoner does not go out of the case because under count 3 of the indictment it is open to you to find her guilty of abetment, not by conspiracy but by instigation or intentional aid, which are the other two recognised forms of abetment. I have considered the matter carefully. On the whole I feel  
40 that the fairest direction to you of law is that if upon a review of the case as a whole you are left in a state of honest doubt as regards this charge of conspiracy then both counts 1 and 3 fail. In other words, the second prisoner goes out of the case altogether.

A few words now as to the offence of murder. A person commits murder when he causes the death of another by committing an act with a murderous intention. Intention is murderous when there is either the intention to cause death or the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. I do not propose to delay you long over this part of the case. You have heard the doctor, you have seen the weapon, you have seen those pictures ; surely they were not  
50 brought here to horrify you ; they were brought here that you may get the

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best view of the nature of the injuries on the dead man. I do not suppose there can be any doubt that whoever caused the death of the deceased did so with a murderous intention.

Intention is something which has to be inferred, gentlemen. None of us is able to peer into the mind of a man. We look at all the matters before us, everything in the case which we think is satisfactory and proved, and then we come to an inference as regards intention. Every rational human being is presumed to intend the natural and probable consequences of his act.

I told you I will say something about circumstantial evidence. This 10 seems to be the place for it. Circumstantial evidence has been defined as proof from the irresistible force of a number of circumstances. This is how Lord Justice Darling of England has put it. "One witness proves one thing, another witness proves another thing,"—and remembering the definition of proof which I have given you—"and all these things prove a conviction beyond reasonable doubt and neither of them separately proves the guilt of the persons, but taken together they do lead to the one and inevitable conclusion."

This is how Lord Chief Justice Hewart has put the matter. "When you look at all the surrounding circumstances you find such a series of 20 unexpected coincidences that as a reasonable person you find your judgment compels you to that one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it leaves gaps, then it is of no use at all." The same thing is put sometimes in this way. The circumstances taken together must in cumulative effect be inconsistent with innocence and consistent only with guilt.

Yesterday learned Crown Counsel read to you this judgment I believe of the same Lord Chief Justice. This is what he said in the case that was read to you yesterday: "It has been said that the evidence against the prisoner is circumstantial evidence. So it is. But circumstantial 30 evidence is very often the best. It is evidence of surrounding circumstances which by undesigned coincidences is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

A word now as to the evidence of an accomplice. There has always been a great deal of discussion in legal circles as to who is an accomplice. I think it is enough to tell you that an accomplice is a person who with guilty knowledge is implicated either as a principal or as an accessory in the crime under investigation.

Whether a person is an accomplice is a question of fact for you. If 40 you are of the opinion that that witness Alice played her part in the commission of this crime by her active assistance, whether she was present or not at the time the deed was done, treat her as an accomplice.

Now the law as to how the jury should approach the evidence of an accomplice is also quite simple. I will read to you the two relevant provisions of our law. Section 133 of the Evidence Ordinance says: "An accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice." The other relevant provision of our law is to be found in Section 114 of the same Ordinance: "The 50

court may presume that an accomplice is unworthy of credit unless he (or in this case she) is corroborated in material particulars." The result of combining these two provisions of law is this. An accomplice is a competent witness and her evidence is legally admissible evidence and you are entitled to act upon her evidence even if it is uncorroborated, but it is now a rule of invariable practice amounting to a rule of law that juries should be warned that it is most unsafe to act upon the uncorroborated testimony of an accomplice.

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10 The corroboration required by law is independent evidence, evidence independent of the accomplice which shows or tends to show that the accused person committed the offence alleged. It must be independent evidence which confirm in some material particular not only that the crime was committed, but that the accused committed the crime. One accomplice cannot corroborate another. Whether there is corroboration of the evidence of an accomplice as explained by me is also a question of fact for you. In this case the Crown asks you in the first instance to consider all the circumstances relied upon by the Crown to prove the charge of conspiracy to murder the deceased as set out in the first count of the indictment.

20 As regards this witness Alice, the Crown says that you may treat her in one of four ways: you may disbelieve her altogether, or you may say that she is not an accomplice and decide to act upon her evidence on that footing, or you may say that she is an accomplice but that nevertheless you are prepared to act on her evidence because you think that while she may be suppressing all that she possibly knows she has not here in this Court invented any substantially false evidence, or finally you may say that she is an accomplice and that there is corroboration of her evidence. The Crown says in whichever way you treat this witness Alice it is in the result inconsequential so far as the case for the Crown  
30 is concerned in respect of this charge of conspiracy. The Crown submits that quite apart from Alice, there is in this case ample circumstantial evidence from which the only reasonable inference to be drawn is the inference of the guilt of both these prisoners on the charge of conspiracy to murder the deceased.

The Crown asks you to look at the matter in this way. Suppose Alice had died before the commencement of this trial. You remember that the person Maihamy had in fact died before the commencement of this trial. Upon an application made to me here, upon proof of Maihamy's death, I allowed Maihamy's deposition to be read. I did so in the exercise  
40 of my judicial discretion. I did so because I was satisfied that no prejudice can be caused to either prisoner by that deposition being read. I have warned you that you should in approaching that deposition do so with care because you have not seen and heard the witness. Suppose on the other hand Alice Nona had died before the commencement of this trial. Suppose then an application had been made to me here that Alice Nona's deposition should be allowed to be read to you. She too like Maihamy was examined and cross-examined in the Magistrate's Court. You may be certain that if such an application had been made to me it would have been disallowed. In my opinion, to ask you, in regard to a witness who  
50 plays the part of Alice Nona in this case, to go upon what is read to you from typed paper without your having seen and heard that witness as you did, would be tantamount to a failure of justice.

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Now, the submission of the Crown in regard to Alice Nona may be put in this way. They say that even if Alice Nona had died before the commencement of this trial and the judge had refused permission for the reading of her deposition, they would nevertheless have gone on with the trial because, in their submission, there is ample other evidence, entirely apart from Alice, of an inferential nature leading to the one and one only irresistible conclusion that these two prisoners acted together for or in committing the murder of the deceased. Thus, it would be proper in considering the case for the Crown, to begin by a consideration of the circumstantial evidence in this case, apart from the evidence of Alice. 10

The first item of circumstantial evidence relied upon is the evidence of motive. Under our law motive is a relevant factor, that is to say, a factor which you are entitled to take into account in considering the case for the prosecution. Now gentlemen, it has often been said and it has been said in this Court in this trial, that the Crown is not bound to prove a motive. The illustration usually given is of an incident such as this; here in this very Court, while you are seated there one officer of this Court shoots down another, you see it done before your very eyes, the deed has been done, you may not know why it was done, you may not know the reason for it, the motive behind it, but nevertheless, if 20 called upon to decide the question whether the deed was done, can you have any difficulty? At the same time where in a case of circumstantial evidence a motive is relied upon as a part of the chain of circumstances in the case for the prosecution, it is your duty as prudent men to examine it.

There are two prisoners in this case. We shall, as we proceed, examine the evidence in respect of each of them under the various heads of evidence into which the case for the prosecution on circumstantial evidence seems to fall—motive, intention or opportunity, preparation, previous conduct, subsequent conduct. These seem to be the different heads of 30 evidence in the case for the prosecution.

In regard to the second prisoner in this matter of motive the Crown alleges (A) matrimonial incompatibility between her and her late husband, and (B) a state of indebtedness on her part, the only solution of which, according to the Crown, was the removal by death of her husband.

Gentlemen of the jury, in a court of law we are not judges of morals. It is not for us seated here to play the part of the Pharisee. Let moral indignation, if indeed there be any such indignation, be relegated to places other than our courts of law, and to persons other than judges and juries, who presume to sit in judgment on these matters. We have to 40 go upon the evidence and to see where that evidence leads us. Learned counsel for the second prisoner conceded in the course of his speech that his client may have been a flirt. We are not concerned with that here. I may find it necessary in the course of my observations to return to certain aspects of her conduct in that light. If I do so, it is solely with a view to assisting you to assess the evidence. All that we are concerned with is, has the charge of conspiracy to murder her husband been established on the evidence against both prisoners?

Now you may think—you are the judges of fact as I have said—there is no doubt at all this was the most ill-starred marriage which was 50 bound to reach the rocks some time or other. What is it that makes



marriage a possible permanent association between a man and a woman? You may think—you are men of the world—that there must be at least some of these factors: compatibility of age, compatibility of physique, compatibility of health, compatibility of temperament, of outlook upon life, of ideas, or such matters as spiritual consolation, such matters as the upbringing of children, conduct towards neighbours, social duties and so forth. You may think that in all these matters in whichever way we probe the facts of this marriage there was not compatibility but utter incompatibility. You may think that learned Crown Counsel put the

10 case for the prosecution very well indeed when he said that after the three separations of 1942, 1944 and 1946 there was only left the fourth and final separation of November 7th, 1947.

Now in this matter of motive there is a large body of evidence which was spoken to by the second prisoner herself when she was in the witness-box. I will remind you of it and tell you then that on this question of matrimonial trouble, shall I say, she herself speaks to matters on oath here. She said this in the course of her evidence: “When I left the deceased in 1944 I made a complaint to the police. Deceased had struck me. That was the first time he had struck me. I was separated from

20 deceased from October 1944 to February 1945.” Then she says later in the same evidence: “I got no money at all for my personal expenses. Deceased it was who bought things like powder, etc., for me.” Then she says: “There were religious differences between us. Deceased did not want the boy to be baptised. I gave in to his wishes.” Then she says: “The children were sent to Prince College when we were staying at No. 107 College Street the first time. Deceased removed them to Prince College because he wanted the children to have a Sinhalese education. I would have preferred an English education for them. Religion had also to do with the change of school.” Then she says:

30 “Sumana was born in 1936. I insisted that Sumana should be baptized. I practised the Catholic faith before Sumana was born with the deceased’s consent. Deceased did not object to Sumana being baptized. She was baptized, but she was not brought up as a Catholic. Deceased did not like it. I wanted her so brought up. Deceased’s will prevailed. Oranda was born in 1938. He was not baptized at all. Even Oranda was brought up a Buddhist. It pained me that my children were brought up as Buddhists. Deceased insisted that I should go to the temple. I went because he insisted me to go. At no stage was I a convinced Buddhist or he a convinced Roman Catholic.” Then she says: “My jewels were

40 with him. The ordinary jewels I wore. I wore my jewels for occasions. I asked him for pocket money for my expenses. He would not give. I asked for Rs.5/- or Rs.10/-. He would not give. He took the rent of the smaller house.”

I think I have read enough of her own evidence to show that from that evidence alone motive is established on the ground of ill-feeling, bitterness, between the deceased and herself. You may recall that rather striking evidence on this aspect of the case which came from that witness Mervyn Joachim. He told you, “I did hear quarrels between the deceased and the second accused after they came to live with us a second time.

50 They quarrelled two or three times a month. He used to be hard on the little children. He used to beat them over their lessons. He beat them with his hand. I do not know of any other reason for the quarrels.”

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Then he says this in the same evidence referring to the first time when this family lived at 107, College Street, for the first time: "That time they had one room. All four of them lived in one room. It was the room marked bed room in the sketch. They lived with us thus for about six months."

Think of that, gentlemen of the jury. By now we know a good deal about this woman. She was the only daughter of a man who had done well in life. He had built five houses in the Colombo district. That she is a sociable type of person may occur to you. When they began their married life the husband seemed to have delighted to honour his wife. 10  
You heard of the six servants, the nursery and the motor car; but his age crept upon him and due to illness and reduced income he seems to have become a different type of man altogether. It was said in the locality that he was a miser. One piece of evidence I can think of at the moment which you may think gives you an accurate picture of the type of man the deceased had become towards the end of his life. You remember the evidence of Sumana, that on that day the first accused came to the house—November 5th according to her—the first accused made certain signs in the direction of the kitchen where Alice Nona was. You have seen Alice Nona. What was the deceased's reaction to those signs as between the 20  
first accused and the aged Alice? He got not only one door, but two doors closed. You may think that gave you some indication of the type of man he had become—crochety, suspicious, imagining things, even as between this first prisoner and Alice Nona whom you saw. Then there is evidence here which you may think gave you some indication of the type of woman the second prisoner was. She told you here that she never went to the pictures, but at the same time there is evidence of that ride to see the lights on Wesak night. "My dear Sally" in May becomes "Dearest Sally" by July. You remember she said here that she wanted 30  
Rs.300/- for a birthday party for Oranda. You have seen that stripling Oranda. What do you think of a birthday party for this family costing Rs.300/- for Oranda? Do you think that gave you some idea of the mental outlook of this lady?

Has the evidence given you some idea of the kind of man the deceased had become? The one solitary, secretive, suspicious, miserly; the other sociable, affable, wishing to make friends and move with friends.

You saw Lakshmi Villa for yourselves. You may think it is a decent sort of house. That is where they began their married life. Then you have seen 107 College Street. That is where their married life ended. And what do you think of the plight to which she had been reduced, the 40  
only daughter of the late James Wilbert Peiris, storekeeper of the granaries, owner in her own right of Lakshmi Villa and another house in Jambugasmulle Road, who once drove in her own car and was mistress of six servants? She lived in one room for six months with her whole family in 107 College Street?

The other head under this matter of motive relied upon by the prosecution is that of indebtedness of the second prisoner. Before I pass on to it, on the other aspect of ill-feelings, let me remind you that there is in fact documentary evidence in this case which indicates that the differences between husband and wife were not of a trivial kind, not the 50  
kind of domestic quarrels which are inevitable perhaps in the course of

a long married life. I refer in the first place to the document 2D6, the complaint made by the second prisoner to the Mirihana police. That is dated 13th October, 1944. The evidence is that the husband also on that occasion made a complaint to the police. It is for you to say. Do parties in the relation of husband and wife go to the police station unless the trouble is serious ?

10 Later in 1945 the evidence shows that there was quite a serious talk of divorce which eventually led to the drafting of a deed of separation, the document P.45, material parts of which have been read to you. Do people go to the length of drafting a deed of separation unless the trouble is really serious ? The Crown case is that all these matters prove, whatever the reasons may be, that there was serious matrimonial incompatibility between the deceased and the second prisoner.

For the defence the position on this matter of motive is that there was no motive arising from matrimonial trouble, so that there were really no serious quarrels between husband and wife but that such quarrels as did arise related to the insufficiency of food for the children.

20 Now on that aspect the Crown submits so far as the motive of ill-feelings goes—it does not matter what the reason was, whether it was for insufficiency of food or whether it was for some other reason—there was proof of this ill-feeling. But learned Crown Counsel went on in his speech to examine the submission whether the feeding of the children was the real reason for the differences between the deceased and the second prisoner. He did so for this reason. I told you that in this case you will treat the evidence of the second prisoner like the evidence of any other witness. Therefore on the matter of her credibility you will test her evidence as you would the evidence of any other witness. The Crown says that from that point of view, the point of view of the degree of belief which you are prepared to attach to the evidence of the second prisoner, 30 you will examine it and ask yourselves what reality there is as regards this allegation of the underfeeding of the children. Is it something which has been foisted upon the dead man because he is not here, or is it something true ?

You will remember Sumana's picture of her father. She said here : " Father loved me and brother. He taught us in the house. He fed us too. He came to the school." You remember the other evidence which gives you, you may think, the picture of a man who, in the latter days of his life, lived only for his children. You remember his daily programme so far as we can see it from the evidence. Once the children had gone to 40 school he took the market bag and set off. Either on the way to market or on the way back from the market, often he would drop in to speak to the teacher about the children. And then when they returned for the midday recess he would be there to feed them. He would teach them himself.

When the first accused went that way either on the 3rd or on the 5th November, he was cutting a cloth for Sumana. He seemed to have been anxious about the children. You had the entries in the Post Office Savings Books read to you—the provision he had tried to make for each of them in his own humble way.

50 In the light of these matters the Crown says, " Will you believe this lady as a witness ? " We are no longer on this question of motive. We

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are on the question of the credibility of the second accused as a witness under this head of motive. Eventually I shall read to you the whole of her evidence and when you retire to consider her evidence you will have to ask yourselves as you will ask yourselves about every witness, "Can we believe her?" The learned Crown Counsel says, "if indeed this matter of food were the cause of serious dispute, why no mention of it at all in that deed?" Why should the lawyer say "Let no dirty linen be washed in public, file no divorce proceedings," if this is all that there was. Crown Counsel says it is for you to say whether the word "food" is a convenient cover for everything that had happened right back from 1944 to the time 10 they both went to the police, to the time when she was in the act of a conversation with Mr. Aron of the Colombo Bakery over a matter of Rs.100/—that very hour her man was being done to death.

That brings me to the other limb under the head of motive—indebtedness. The Crown has put before you evidence, both oral and documentary, of loans to the second prisoner, at any rate to the second prisoner by name, totalling a sum of, so far as I can make out, something like Rs.3,000/-. The Crown says that it is not without some significance, that in point of fact it was when the second prisoner's indebtedness reached that mark that something happened which enabled her to draw Rs.3,926/- 20 from that Association. The Crown asks you to say that even if it be the case, as the second prisoner would have it, that a good part of these loans was for her mother, for her brother who entered the witness-box here and said so, and for her dead husband, still on the other evidence under this head you can have no reasonable doubt that she was really very hard up financially at the material time. She admits it herself in the witness-box. You may think the second prisoner seems to have had debts which might be described as "official"; if you believe her when she says that her husband knew of them, and "unofficial" in the sense that they were to be kept secret at all costs. You remember the letter to Sally, P.41, "My 30 dear Sally, I am very badly in need of Rs.300/-. I thought of asking you to give me this amount. I shall pay it back to you at the end of July. Please keep this a dead secret only between you and me and no one else. I trust you, so I hope you will not let me down. I need this money before the 20th. So please don't refuse me."

That letter is dated 14th June, 1947. Then there was that other loan from Mr. Harry Perera, Rs.100/—, which also seems to be in the nature of an unofficial loan. What woman will consent to the pawn of her intimate personal jewels unless she is indeed in a desperate plight financially? What woman of that status would descend to a loan of 40 Re.1/- or Rs.2/-? We are on the aspect of motive, remember; her state of mind. The Crown says in regard to these Afghan loans, can you possibly believe that the late Mr. Seneviratne, from all that you have heard of him in the course of this trial, would be the sort of man to go to the Afghan. It is entirely for you. On the other hand, what do you think of a lady who seems to think Rs.300/- was necessary for a birthday party. Which of the two was the more likely person to have recourse to these dreadful leeches?

It is true the Crown submits that these Afghans have come here and said that the deceased was present although it was in fact a loan to the 50 deceased given to the wife because of the fact that his position either

as a late member of the Municipal Service or as a person seeking re-entry to that service made it risky for them to have lent him money. They have said so here. The question is, do you think these Afghans have such an interest in the administration of justice that they cannot be induced to say something against a man who is no longer alive. It is entirely for you.

Is there anything in this case by which we can test the position taken up by the second prisoner that all these loans one after another from these moneylenders were on behalf of the deceased? You remember that  
 10 she said that a sum of Rs.300/- was borrowed from an Afghan for the purpose of that pilgrimage to Tissamaharama in August, 1947. Is there any means of checking the truth or otherwise of that statement?

You remember that the deceased used to withdraw certain moneys from time to time from these post office books. You remember that learned counsel Mr. Lekamage made a study of these books himself, and in the course of his speech gave you a summary of these withdrawals. The position which learned counsel submitted to you with regard to these withdrawals was this (it is not necessary I think to go beyond 1947):  
 20 January, 1947, Rs.100/-; February, 1947, Rs.25/-; April, 1947, Rs.50/-; May, 1947, Rs.75/-; June, 1947, Rs.60/-; July, 1947, two withdrawals of Rs.75/- and Rs.40/-; again in August, 1947, there are two withdrawals of Rs.75/- and Rs.50/-; then back again to the old order of withdrawals, in October, 1947, Rs.60/-. It is, gentlemen, a minor aspect of the case. It is impossible to check up the matter because the dead man is not here. But there it is, curious enough in July and August, 1947, the withdrawals total Rs.240/-. Do you think any part of that was used for this pilgrimage?

My advice to you is to look at the matter not in this detailed manner. Do not let your minds get lost in a fog of details, but look at it broadly.  
 30 It is entirely for you to say whether you believe this lady when she says that these loans from Afghans were for her husband, the other loan on behalf of her mother, the third loan on behalf of her brother and the other loan for the child. You remember, as I said, the brother has come here and supported her. So much under the head of motive in regard to the second prisoner.

In regard to the first prisoner the case for the prosecution under this head is that in fact there was no reason at all why he should have killed his good friend the deceased. The prosecution says that even if you accept the whole of the deposition of Maihamy, it only proves that the  
 40 first prisoner had reached the state of bitterness, not with the deceased, but with the second prisoner. There is nothing in the case, the prosecution submits, to show that there was anything but the friendliest feelings between the deceased and the first prisoner. They say it is none other than a case where the man was bewitched into this crime by this woman.

In an English case the Lord Chief Justice of England in justifying a joint trial of more than one prisoner said this: "*Prima facie*, it appears to the court that where the essence of the case is that the prisoners were engaged in a common enterprise, it is obviously right and proper that they should be jointly indicted and jointly tried, and in some cases it  
 50 would be as much in the interests of the accused persons as of the prosecution that they should be. Suppose, for instance, that the defence

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of one was that he or she was acting under the positive duress of the other, it would be obviously right that they should be tried by the same jury who might see in one person a harmless or nervous looking little man or woman and in the other a person they might deem capable of forcing his co-prisoner against his will into assisting in a crime."

I told you that under our definition of proof you as the court are entitled to take into account all the matters before you. You have seen the second prisoner for yourselves.

If the second prisoner should make up her mind to exercise her fascination upon the other prisoner, to lay before him a plan which, so far as they could envisage it, was fool-proof, without any possibility of either of them being caught, do you think he was the man who was likely to be able to resist such a request from such a quarter? It is entirely for you. 10

Under this head of motive, the defence of the first prisoner is broadly a total denial of the charge. His Counsel submits on his behalf that the object of this crime was robbery and that some person unknown to them murdered the deceased. Counsel submitted to you from his study of the deceased's withdrawals from the Savings Bank books that the deceased seemed to have led a private life of his own. As I pointed out, a study of these withdrawals during the year 1947 shows an average withdrawal of round about Rs.70/- a month. Is that a very great sum for a man living in Colombo in these times, who has a family to bring up, educate two children, quite apart from the special expenditure involved in that operation. The defence of the second prisoner on this part of the case, namely, indebtedness, is also that robbery was the motive for this crime, but her case is that the deed was done by the first prisoner in complicity with Alice. Counsel summarised his submissions on this head in this way : 20

(1) Alice had been one month in this house—an ex mason's 30 assistant.

(2) Alice had seen the deceased wear a key round his neck.

(3) It is possible that the first prisoner and Alice met outside somewhere.

(4) Deceased was known in the market to be a miser. Do you expect such a man to have a lot of valuables accumulated in the course of the year?

(5) Where is that key?

(6) Was the murder interrupted?

(7) On the way back to Nugegoda, did the first prisoner throw 40 that key out?

(8) The second prisoner did not touch the body.

(9) The A.S.P. forced open the deceased's almirah.

(10) He submitted that one of the most significant features is the absence of the key.

(11) The motive he said was robbery or theft planned by the first prisoner and Alice.

In reply the Crown points out that if robbery were the object of this crime, the evidence being that the deceased went out marketing in

the morning practically daily, a robber would find his opportunity for the deed not when the deceased was in, but as it happened when he was frequently out of the house. The Crown reminds you of the evidence of the butcher Va'entine. He says, "I know the deceased, I knew him for about five or six years before he died; he used to come to the Kotahena market to buy beef; I was a butcher there selling beef; the deceased came almost every day to buy beef in the morning. He would come between 8.30 and 9 a.m. He would buy half a pound of beef a day with bones. He would bring a bag." Then in cross-examination he said, 10 "the deceased was known to be a miser." There is of course the evidence of Alice on this aspect of the case, but you would have appreciated by now that I am summarising the evidence, quite apart from Alice. So I make no reference to Alice at all at this stage.

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If the deceased were in the habit of going out daily as the butcher says he was, the Crown asks, "Would the thief or robber await his return or would he not take his chance to steal when the owner was away?"

The Crown further relies on the evidence of the second prisoner herself that nothing of value was in the wardrobe of the deceased. The matter you may think is borne out by what we know of the deceased 20 and what was eventually found there when the wardrobe was opened by the police.

The Crown further submits that if indeed it be the case that the key was in fact removed from the neck of the deceased it was done to simulate a robber. It is often part of the plan of a crime to attempt to throw the trail on to something else.

The submission for the defence in this respect is that she was in fact worse off by the death of her husband.

Learned Counsel, Mr. Gunasekere, summarised his submissions under this head in this way. He said:

- 30 "We have (1) lost a convenient husband,  
(2) lost a steady income of Rs.140/- a month,  
(3) we are left with only Rs.100/- a month, assuming that the second prisoner went into occupation of one of her two houses, to support us and our children,  
(4) we have lost our job at the Prince College; all we have now is Rs.100/- a month."

In that connection you will remember learned Crown Counsel's submissions in reply. He told you that it certainly is a fact that nearly Rs.4,000/- has fallen into the second prisoner's lap by reason of her 40 husband's death. It has been said that she has to pay the lawyers with that money, but that has nothing to do with the question you have to consider. Had this plot gone according to plan, had the inquiry been dropped after a month for lack of evidence, would she be worse off or better off than she was in those days when she had to beg a rupee or two from time to time from Mrs. Paul? The children being under her control and custody, could she or could she not walk across to the post office and withdraw sums from the books totalling once again Rs.4,000/-? Would she or would she not be able to get back her jewels worth Rs.6,000/-? Would she be able to regain control of the rents of those two houses? 50 Would she be able to go back and live in one of them and thus cease the

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drudgery of living in half a house at No. 107, College Street? Would she go back to Lakshmi Villa?

The prosecution says that the deceased was the sort of man who seemed to think: Let us live meagrely now so that our children may live well after us. His wife was the sort of person who seemed to believe in a good time for herself. The prosecution suggests that by the death of the husband she would certainly have been in a position to throw as many birthday parties as she would wish to.

I have done with the aspect of motive.

*Adjourned for lunch.*

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*After lunch:*

Gentlemen of the jury, before we adjourned I had concluded my summary of the evidence under the head of motive. May I say that I have not forgotten that Maihamy has said in her deposition that the first prisoner claimed a debt of Rs.700/- from the second prisoner. I feel I can deal with that more fully when I come to Alice's evidence.

I now pass to a head of evidence which for want of a better term I propose to call intention or conception of the idea. Before a deed is done it often has its origin, its conception, in the mind of some person. I now propose to deal with the evidence relating to that aspect. The material date in this connection is August 1st, 1947. It is a date on which occurred that incident between the first prisoner and the second prisoner in the matter which resulted in the pawning of the second prisoner's hair pin and ring.

I have already told you that Maihamy is not here and warned you about that, but in regard to this aspect of the case you may think you have no difficulty, because the essential parts of this incident are admitted by the second prisoner herself. This is her evidence: "I gave some articles to Maihamy to pawn on ticket P.24. She did so for Rs.50/-. The articles were a hair pin and a ring. Maihamy gave that Rs.50/- to the first accused. First accused said that the deceased had to give him Rs.100/- for repairs done and for shifting furniture from Nugegoda to Kotahena. As the deceased was not at home I gave him these articles and asked him to pawn them and take the money. First accused was unable to get the money from the pawnbroker because he was not known to the first accused. So I sent Maihamy." So, as I say, although Maihamy is not here this incident in its essential aspects is not in dispute. It seems to be clear that on this day, the 1st of August, 1947, there was an incident the participants of which were the first prisoner, the second prisoner, Maihamy and the pawnbroker. You just heard the second prisoner's version.

Now listen to Maihamy's version: "On 1st August, 1947, second accused sent for me and she was standing at the gate of her house. And she told me 'Baas has two articles, take them to the pawnbroker and get Rs.100/-.' Baas the first accused was not to be seen within sight of the house. Hair pin P.24A and ring P.24B belonged to second accused and were the articles to be pawned. Seeing me first accused came up to me and handed me P.24A and P.24B and said 'Amme, let us pawn these and get money from the pawnbroker.' I went with first accused to the pawn shop. First accused stood on the road. I pawned the pin and the

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ring and obtained Rs.50/-, though the first accused wanted Rs.100/- which the pawnbroker was not prepared to pay. The pawnbroker deducted a month's interest and something was also deducted for the receipt and I was given the balance which I cannot remember. I handed the money I got to the first accused. The receipt was in my name. First accused asked the receipt. I refused to give because it was in my name. First accused and I had an argument over the pawn ticket. First accused said that the lady owed him Rs.700/- which she had obtained from him. First accused wanted the receipt to be shown to that man from whom he had obtained the loan of Rs.700/- for the second accused. I did not give the receipt. I then went home. Later I went to second accused's house and said, 'Why do you borrow money like this? This Baas abused and quarrelled with me.' Second accused said 'Let them shout for the debt. You keep the pawn ticket till I redeem the articles.' "

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The Crown asks you to accept Maihamy's evidence in preference to the second accused's version because the second accused has given a different account of the matter to the police. I told you in what way you may use that other statement if you are so disposed.

This is what she told the police. This was on November 16th, 1947, at 12.30 p.m. : " Mrs. Beatrice Maude de Silva Seneviratne states : About four months ago I handed a hair pin and a ring to the Baas requesting him to pawn it for me. I told him to fetch me Rs.50/-. This same article I had pawned with a lady named Mrs. Perera at Pickering's Road. She wanted the money urgently as she was leaving Kotahena. I told him that if she returned the articles I would pawn it somewhere else and give her the money. Baas failed to pawn the articles." Not a word you remember here about this being really a transaction of the deceased man.

The Crown says : Why these two different versions ? They say it is because she is trying to conceal the truth. What according to the Crown's submission is the truth in this matter ? The truth of the matter, submits the Crown, is that just as the second prisoner had not scrupled to borrow from Sally, a bachelor, from Harry Perera, a widower, she had also borrowed from the first prisoner, a man doing well in life so far as we know within the limits of his status as a carpenter, mason, painter, polisher and owner of a medicine shop, who was himself a bachelor till October 28th, 1946.

That, submits the Crown, is the reason for the suppression of the truth of this matter. So far as the others were concerned, it may be that they did not expect a return of their loans, but the Crown says, so far as the first prisoner was concerned, the money lent by him was definitely a loan. She had influenced him to give her money. It appears to have reached the figure of Rs.700/-. His patience was exhausted. He went to the house in the absence of the deceased ; he would seem to have pressed so hard for the money that the woman was compelled to pawn her own hair pin and ring. Do you believe the second prisoner when she says that this incident arose out of a transaction between the first prisoner and her late husband ? It is entirely a matter for you. Remember that as we go on summarising the evidence under each head we are all the time testing the credibility of the second prisoner as a witness.

Do you remember the learned Crown Counsel's comment on this part of the evidence ? He characterised as fantastic the suggestion that



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for a matter of mere Rs.100/—, in regard to payment of which the first accused had already waited it would seem, he was not prepared to wait a few more hours, but insisted that the lady should go to the extreme length of pawning her intimate and personal jewellery. On the other hand, it is said for the defence that there is nothing unusual in the matter. It is entirely for you.

Now, after this incident of the 1st August, which, to say the least, was embarrassing to a respectable lady, something else happened that month. This Catholic lady was taken on a long pilgrimage to Buddhist places and shrines by her Buddhist husband. This is Sumana's evidence : 10

“ During August, 1947, the deceased, the second accused, Oranda and I went to Tissamaharama on a pilgrimage. There is a temple there. We worshipped there. We were away for about two weeks. Only the four of us went. We went by bus. We returned by bus. From Tissamaharama we did trips to places close by. The second accused too went to these temples. Mother had not gone to a church to my knowledge. Only when there was an occasion in the church she would go—to a church festival. Then she would take me also to church; we went mostly to temples.” 20

Now, the submission for the Crown is not that by being taken to these temples the feelings of the second prisoner were more embittered than even otherwise, it is rather that in those lonely places, in these quiet hours an idea was maturing inside her mind. By now, August of 1947, the debts in her name had reached the figure of Rs.2,625/—. I exclude Sally and Henry Perera from this item. Do you think while there in those parts of Ceylon the image of these burly Afghans, who would one day no doubt come for the money, came occasionally to her mind? If her own baas whom she and her husband treated in such friendly terms—in fact as a personal friend, feeding him at their own table—had on that 1st August turned nasty and made a scene which she could only bring to an end by sending out her own jewels to be pawned, what would become when those Afghans begin to turn nasty? Will Mrs. Paul wait for ever, and Mrs. Wallace? What if the husband eventually came to know? What if he put a notice in the papers that he was no longer responsible for the debts of his wife? What if he said, “ Pay this, and pay this at once by the sale of your jewels ”? The Crown submits that these aspects are not without foundation, are not made without justification, because when you turn to the evidence as to what happened when this family returned from Tissamaharama this is what you find. This is the second 40 prisoner's own evidence :

“ I did go to the first accused's house in Maihamy's company ; that was about two months before the deceased died.”

We then come to September. So that it would seem on her own evidence that on the return from that trip to Tissamaharama she did go to the first accused's house with Maihamy. Now, why? Maihamy gave the reason. We have only her deposition, but as I said, there is a good deal of agreement between her and the second prisoner herself. This is what Maihamy says :

“ On the second occasion when I accompanied the second 50 accused to Nugegoda, the second accused visited the baas the first

accused. We went to the first accused's house. He was seated on a chair in the verandah. Second accused asked the first accused 'Why don't you come there, I have got work for you.' "

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"Second accused then turned back and said, 'Amme, let us go.' First accused was seated and talking. Second accused was standing and talking."—"Why don't you come there. I have got work for you." So the case for the prosecution is that sometime during this period of August and September, 1947, a terrible idea was conceived in the second prisoner's mind and she chose the first prisoner as her tool to carry it out.

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10 This seems to be a convenient place where I can discuss the Crown's submissions as regards the proposed plan of the killing of the deceased. Some of you have probably read books dealing with crime. You will remember that it is always the effort of the author of such books to invent what they are pleased to call the perfect crime, that is to say, a crime so committed that there is no possibility of detection. The Crown says that the second prisoner conceived in her mind in those days what she thought was a plan for a perfect crime. In the first place the man selected by her to do the deed was the good friend of the victim. So there would be no suspicion at all on the part of the victim. The man selected by her

20 was a man who was under her influence, and in addition she would be in a position to rouse his cupidity by suggesting that out of the eventual gain some portion of it may go to him.

The victim himself was a frail old man who would be alone in that empty house every weekday from Monday to Friday from round about 9 a.m. If you believe the butcher, deceased did his own marketing almost daily at about 8.30 a.m. So he is sure to be back home round about 9 a.m. to the house which—you have seen the house with its enclosed verandah and the two trees in front—was ideal (photographs handed). In the enclosed space of that empty house the victim had small chance

30 of making good his escape when attacked. Therefore in every way the plan had all the elements of complete success.

There were at that time two difficulties in the way of this plan. It would seem that at that time the second prisoner herself was doing the cooking of the house. It would certainly not do for her to be in the house while the deed was being done. She could not say, for instance, that the smoke from the kitchen got into her eyes while her husband was being murdered in the room next. The other difficulty in the plan was that her instrument lived as far away as at Nugegoda. If he was to do the deed it was essential to the success of the plan that he should be given

40 time to return home well before the hue and cry was inevitably out.

To meet the first difficulty, namely, her own presence, it was essential to employ a cook servant. To meet the second difficulty it was essential to use a weapon which would do the deed swiftly and completely. There must be no shouts, no screams, no struggle—such shouts as would bring the neighbours to the scene. There would then be no time to make that complete getaway back to far Nugegoda. The victim must fall dead at once. The man would return home and remove all trace of what had been done by him.

Now the defence reply to this is, even so why not on the day selected

50 send the servant woman to the mother's house at Nugegoda? Why take her into your confidence in the matter of such a ghastly design. The

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answer you may think is that if the servant was sent away to Nugegoda the deceased, who cared for his children, may have insisted that the mother should remain at home and cook the children's midday meal. You may think that the deceased was not a man likely to permit an interruption in the children's studies. Their lunch had to be ready when they came back at midday, so that they may go back to school for the afternoon session.

Suppose the second accused told the deceased that she wished to send Alice to her mother. He might have said, "Why not to-morrow which is a Saturday when the children will be at home? If you send Alice to-day on a Friday we upset the day's arrangements." Or he might have said, "If it is urgent I will go myself"; or he might have said, "If it is a private you take a day's leave and cook the midday meal yourself."

These developments may well take place when dealing with a man whom, as I say, seemed to regulate his day round his children. What answer would there be if he had said: "Why Friday? Why not Saturday, to-morrow? What is the urgency?" Saturday would not do—the children would be there. It had to be a weekday.

I come now up to the period when, as I say, a plan was born in the mind of this woman and matured therein. Up to now there is nothing to show that it was conveyed to the other man, to the other prisoner.

Let us now get on to the next head of evidence—*Preparation* :

On or about the 1st October, 1947, Alice is engaged as a servant. You may think that even in the engagement of a woman like Alice there is some indication of a certain amount of forethought. You will remember the learned Counsel's description of Alice. I think there can be no doubt—she is certainly not a young and innocent village damsel—that she has knocked about a good deal in different parts of Ceylon. She knew well the tougher parts of Colombo, the Fort and the Kotahena area. She was herself a woman in some financial embarrassment, without any employment. Do you think a promise of a reward of even Rs.100/- would have aroused her cupidity? You remember in this connection that Alice had quickly herself fallen under the spell of this lady. Whether it is Sally or Harry Perera or Sathasivam, she is able to become friendly as and when she pleases. You remember that when the second prisoner met Harry Perera at the Windsor Hotel she took Alice with her. Does that give you some idea that already these two had become in terms of fairly confidential intimacy? Then Alice having been engaged some ten or fifteen days before this incident, the second accused herself becomes a teacher at Prince College. It is said for the defence that this was an arrangement made by the deceased. It is said that the deceased being a Buddhist and the second prisoner a Roman Catholic it would be necessary for the husband to use his personal influence to secure his wife a place in that Buddhist establishment. On the other hand, it is said for the prosecution that far too many insignificant things are being fathered on this dead man.

The Crown admits that if, as learned Counsel argued, the dead man was a convenient husband whilst he was alive, he will certainly become a convenient hide-out after his death. The Crown asks you, "Do you think if the second accused were obliging her husband by going into this

teaching job in a Buddhist school she would not at least inquire what the pay was ? ” Would a lady who, on the 7th October, took a loan from a moneylender like Sathasivam, whether for her husband’s hospital expenses or otherwise is not material to the present question, and who was on the 7th November in communication with another gentleman, who according to Alice had herself engaged Alice, would she not even ask what the salary was, whether it was worth while for her to take on this job ? These are all matters for you as you will realise. I am stating the sequence of events under the different heads of evidence.

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10 It is under this head of “ Preparation ” that I think the umbrella P.4 can be conveniently discussed. You will recall that there is no evidence that the first prisoner took this umbrella to 107, College Street, on the occasion when Sumana was in the house, that is to say, on November 5th according to Sumana. Then he took a small parcel about the size of Sumana’s hand wrapped in paper. There is no mention of any umbrella on that visit. Why was an umbrella taken on the second visit on November 7th ? This was so clear, that on the second visit while a weapon like a revolver was also possibly taken, the other weapon taken, if you believe the evidence, was that long broad-bladed herb cutter P.6.

20 Is it such a weapon as could be concealed inside the pocket of a coat or under the waist cloth ? Can it even be conveniently kept in that bag ? Now let us try that. (His Lordship puts the knife into that bag.) You see. If kept straight it juts out. When I push it to its extreme length on the table, this bit is out. (His Lordship shows the portion jutting out.) If kept at a slant can it be carried through all the way from Nugegoda without some inquisitive constable suddenly saying : “ What have you inside that bag ? ” Interruption like that in the plan of action would never do. Do you think the umbrella was borrowed on the 7th November as a possible means of carrying this knife inside its folds ?

30 Summarising then the evidence under this head of preparation the prosecution submits that by way of preparation for what was to be done the second prisoner got herself a job which took her out of the house and the first prisoner borrowed a thing inside which he could much more conveniently than in this bag carry the weapon selected for the murderous deed on the seventh November.

I have already told you the defence of the second prisoner under this head of defence. She says it was her husband who got this job. The defence of the first prisoner is that it was borrowed from John to go on a journey on November 7th but that when he got back with the umbrella  
40 a sudden bout of fever which came on then put him in bed.

You will remember the evidence of Premawathie that this umbrella was in the house of the first prisoner all that day and taken away by the police on the night of November 7th from that house. So that even according to the defence this umbrella was in the possession of the police before plaint was filed in the Magistrate’s Court on November 8th. If so you may think that nothing seems to turn on that elaborate argument based on the absence of any mention of the umbrella in the papers filed in court on the 8th November. If, as seems to have been suggested, this umbrella was brought away from the first prisoner’s house for the purpose  
50 of some fabrication of evidence to assist the Crown case, you may think the police would at least have the elementary wit to make prominent mention of it at the earliest opportunity.

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The prosecution has pointed out, on the other hand, by means of that document XA1 that by 12.35 p.m. on 7th November the second prisoner had in fact been shown this umbrella and asked if it belonged to their house. "7.11.47—12.35 p.m. The umbrella found in the verandah of the house is also not ours."

You have listened to the explanation of the Superintendent of Police Mr. Perera as to the circumstances in which he filed that plaint on November 8th, and you have also heard the Magistrate's own admission that that happened to be a particularly busy day in the Magistrate's Court. On that day one magistrate was functioning for two. 10

Now I pass to the next and final head of evidence I proposed to consider for to-day, previous conduct of these prisoners. You will recall that it was put to the second prisoner while she was in the witness-box whether it was a coincidence that at or about the time she took up this teaching job at Prince College she and Alice paid the first visit to the first prisoner at his medicine shop at Nugegoda. Now that you have listened to the earlier matters of evidence you may ask yourselves whether it is a coincidence that after return from Tissamaharama sometime in September a visit was paid by the second prisoner to the first prisoner's house in the company of Maihamy. 20

Now on the evidence as a whole you may think that there is some doubt whether this first visit to the first prisoner's house on the part of these two women, Alice and the second prisoner, was a week before the second visit on November 6th or a fortnight before. Alice, I think, put it a week before; the second prisoner herself, I think, put it about a fortnight before; but whether it was a week before November 6th or a fortnight before November 6th, you may think there is no doubt of this, that it was sometime before that visit of the first prisoner to 107 College Street when Sumana was in the house.

Sumana herself says that visit was on November 5th. You remember 30 that the school register was proved before you, and we know from that register that the child was away from school that week on November 3rd, November 4th and November 5th. This is Sumana's evidence on the point: "I kept away from school three or four days before my father died. I had a bad foot. I kept away for three or four days. I got a boil on my thigh. I did not go to school when I had it. I did not go to school on November 3rd or 4th or 5th. First accused came to our house about the third day I was absent. I had not gone to school for about three or four days when the first accused came."

The second prisoner in her evidence says that Sumana told her that 40 Baas had come on November 3rd.

Whether he went there on November 3rd or whether he went there on November 5th, there seems to be no doubt on the second prisoner's own evidence that it was after the second prisoner had seen him in his house at Nugegoda. If on this point you prefer to believe Sumana's evidence, then it is absolutely beyond doubt, because he made that visit wearing that black peak cap on the 5th November, the day before this lady went to see the first prisoner a second time.

Can we in this case fix with reasonable certainty the period the deceased was in hospital in October, 1947? There is a document which 50

may assist you on this point. It is the promissory note given by the second accused to Sathasivam. It is the document P.38. It is dated 7th October, 1947. Now, you will recall Sathasivam's evidence that before he paid the money out he verified from the General Hospital whether the deceased was in fact in hospital. So it would seem to be very near certain that the deceased was in hospital on or about the 7th October, 1947. Sumana herself said in evidence that her father was in hospital on this occasion for about a week. You recall the circumstances which sent the man to hospital. It would appear that he was eating something which disagreed. Now if the deceased was in hospital on or about 10 October 7th, and if Sumana remembers right when she says he came back after about a week there, it would appear as if the deceased returned home about the middle of October. Is it or is it not significant, is it only a coincidence that it was also at or about that time that the second prisoner called on the first prisoner with Alice. If you accept Alice's evidence—now this is no question of what she said or overheard, but merely of a date of a visit—it is absolutely clear then that after the deceased returned from hospital home that that visit was made. The prosecution submits that the stage was rapidly being set for the final stages of this terrible 20 drama. The victim had returned to the scene of the slaughter. Now it only remains to put the plan carefully conceived among the two of them into swift execution.

I think by now you would have appreciated the scheme of my summing-up. In this part I am still summarising the circumstantial evidence relied upon by the Crown to prove this charge of conspiracy. I have so far not said one word of Alice's evidence as regards what she heard or what was said to her in the matter of this conspiracy, nothing yet as to what happened or what she heard on November 6th, and nothing yet as to what she says was told her by the second prisoner in the house 30 either on the night of November 6th or the next morning. All those matters are conspicuous by the absence of any reference to them in this part of my summing-up. I am doing my best to assist you to test the claim of the Crown that without Alice the charge of conspiracy still stands true.

Let us go back to the head of *Previous Conduct* which we were considering before I digressed. Quite apart from the evidence of Alice, are you in a position in this case to make a reasonable inference as to what transpired on the occasion of that visit when the two prisoners met in the shop of the first prisoner? We have considered what were the 40 essentials to the success of this plan, if there was a plan, which is entirely a matter for you, where the assailant was a man living a great distance from the scene of this event. We have considered whether the fact that the two co-conspirators, as alleged by the prosecution, were living so far apart was also a drawback to their plan, one at Kotahena and the other at Nugegoda.

It is obvious that living so far apart, communication between them was not always easy. Some sudden hitch in a plan that might have been concocted could not be as easily adjusted as it might be if the other co-conspirator, shall we say, was living in the house next.

50 On the evidence that has now been summarised to you, you may think that there was in fact an unexpected hitch in respect of the plan made on

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that first visit, a hitch which could not be put right because one lived at Kotahena and the other at Nugegoda. The unexpected hitch was that the child Sumana developed a boil on her foot which kept her away on the Monday, the Tuesday and the Wednesday.

If it were the plan, for instance, that on some convenient day to be left to the first prisoner he should go to the house taking with him on that occasion a revolver, and that on his appearance in the house Alice should leave the house, would that plan have gone through without a hitch if Sumana had not been in the house? Shall we say on some day like the Sunday before or the Saturday before, some such plan was made. Suppose 10 after the plan was made and the second prisoner had come home to Kotahena this unexpected thing had happened—the child, who ordinarily would have gone to school on the Monday, becomes ill and she stays back at home. Now if these two persons lived near each other it would be easy, would it not, to send word to say, “Whatever we have decided has to be postponed.” It is not easy to go all the way to Nugegoda that afternoon.

You remember the type of man the deceased was. So much as a signal to an old woman was enough to make him close two doors. Anything that might rouse his suspicion at that particular time would be fatal. “Why all these frequent visits to your mother? You have got back to 20 your old ways again.”

Now so far as the women were concerned, the second prisoner the mother of the child and Alice the servant woman, you who know human nature may well think that the presence of Sumana in the house was a sufficient guarantee that nothing would be done while she was there. Do you think they would for a moment have imagined, either of these two women, that whatever the plan was that was made, it would even be supposed as possible to put it into execution while the child was in the house? You may therefore think that the mother and the servant woman thought: So long as Sumana was in the house nothing can be done, 30 nothing will be done.

Therefore it, suggests the prosecution that no information was conveyed to the first prisoner about the hitch. It was assumed, as all normal persons are I think entitled to assume, that the very nature of the hitch put off all possibility of the plan being carried out.

Now what happens? All unknown to him that there was this hitch the first prisoner goes to the house. When he goes to the house he sees the child there. The sight of the child which he never expected therefore excited him, disturbs him. Those noises he made with his mouth, those two drinks of water, submits the prosecution, are signs of the agitation 40 that went on in his mind at the decision, and the sudden decision he had now to make. He had come to kill; he did not expect the child to be there. Should he kill the child too?

Don't let us be carried away with the utter horror of the possibility of such an idea being made ascribable to a fellow human being. We are here to deal with the facts as we find, with the inference as we think can be reasonably made. A man who agrees to kill is after all a killer.

If he has said he would carry out his part of the plan it is because he has that type of mind, he can shoot at another human being or wield his knife at another human being. Is it then something too remote, too 50 fantastic, too inhuman for you to ask yourselves, “Why this agitation

on the part of a man who had agreed to kill, who had come armed with a murderous weapon, who had come in such a way as to disguise his face as far as possible without arousing suspicion, who had the mentality of the murderer, the murderous intention; why all this agitation on the part of such a man?" You know and I know that in many crimes we find in this country and elsewhere the killer often kills wholesale; "as well be hanged for a sheep as for a lamb" is the old saying. If you are doing a deed where the alternatives are my life or yours, you cannot scruple to kill a possible eye-witness. He had come all the way from

10 Nugegoda, he finds the child too there. Was it that that sent him off his balance? Was he making up his mind? Do you think Sumana had a narrow escape that day? Sumana tells you that the first accused after behaving in the house in that manner went to the back of the house and made some signs to Alice. Does that indicate do you think he had made up his mind to carry out the plan after all? Were those signs, as learned Counsel, Mr. Gunasekera, himself suggests, signs to Alice to tell her to leave the house? Remember what I told you earlier—even if Alice were in this plot, even if the second prisoner were in this plot at that time, so far as these women were concerned the presence of Sumana was enough

20 to decide that nothing can be done while the child was there. You may think that was the reason why Alice, although she had agreed to leave the house when the first prisoner came, did not leave the house on that day. Do you think she said to herself, "He certainly cannot mean anything to-day, why should I leave the house to-day." So she continues to remain in the kitchen. He has a swift cogitation within his own mind, and then he makes up his mind, he cannot bother to come again, it is all far too risky, so he goes to the back of the house and makes those signals. It is clear from the evidence I think that Sumana was behind the first prisoner when he made those signals. You may think her

30 demonstration here of what the man did with his hands represented what the signals looked like to her from behind his back. She was in the room with her father, this man had gone to the back of the house or towards the back of the house. Can it be that the signals which Alice thought were like these (His Lordship shows) were really something like that (His Lordship shows)? Remember the man had to make signals without arousing the suspicion of his victim. He turns his back to him and then he does something—"Get out" Was it not understood that she would get out? But because (the development was far different from what the first prisoner anticipated) the old man saw something, his mind ran on

40 different lines, he decided it was high time his guest was to be brought to the front of the house; he tells the child to tell the woman to close the door; he folds up whatever work he was doing, he takes the first prisoner to the front verandah, goes inside, brings a cigar and the two of them sit and smoke. Well then, so far as the first prisoner is concerned, there is nothing more to be done that day. But Alice, whose first reactions I thought might have been those of a normal woman, not a killer, does eventually leave the house. Do you think that was because the first prisoner not only made these signals, but actually went inside the kitchen? Did he then whisper something to her? Was the second drink of water

50 a necessity or was it a device to get inside the kitchen to tell the woman to leave, leave at once? So, reacting belatedly to this most unexpected situation this woman actually leaves the house leaving behind that little child.

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Let me at this stage read to you Sumana's evidence. I have so far given you a summary of it. I think it is important you should have her actual words.

"First accused," she says, "came at about 9 a.m. Second accused and Oranda had gone to school. The Joachims were away. Deceased was in the house when first accused came. Alice was also in the house. When first accused came the deceased was cutting a saree for me in the dining hall."—She meant by that you remember the middle room.—"I was near my father when the first accused came. (Shown the sketch.) Father and I were in the middle room leading to the bed room. He was at the table J. First accused came by the front door. First accused was wearing a white cloth and a white coat like a peon's coat closed up to the neck. He had buttons on his coat. He wore a cap, a black cap with a peak. He wore a pair of sandals on his feet like P.28. He brought a small parcel with him. It was a small round parcel wrapped in newspaper."—You remember she showed that it was the size of her palm.—"I cannot remember if it was tied with a string. First accused did not wear this cap when he came on previous visits. It was the first day I saw first accused wear a cap. 10

"First accused spoke to the deceased. He said 'Hallo Mahataya' and he said 'Komathu mahatmaya'—('How are you, sir'). Father smiled. Then first accused stood there watching deceased and deceased continued to cut this saree. First accused saw me. I was in the room. After a little while I went to drink a glass of water. I went to the hall. There is a filter there. I drank water there. Then first accused also came to the dining hall and asked me for a glass of water. I gave him the water. I washed my tumbler, filled it with water and gave it to the first accused. He drank it. Having drunk it first accused came back to where we were. He remained there for some time. Then first accused went to the front verandah. He went near the front door and made some noises with his mouth. He did this for some time. Then he came back to where the deceased was. Then he went back to the dining room back door. I cannot remember seeing him seated in the front verandah. Then I saw him making some signs. I do not know to whom. He moved his hands up and down in front of his face. He did this looking towards the back. He made these signs for a little while. 20

"Alice was in the kitchen at this time. Then first accused went to the kitchen door and asked Alice for a glass of water. She gave him a glass of water. She took the water from the kitchen. There is a water tap there. She offered first accused water in a tumbler. He drank it. 30

"Then first accused went back to the place where deceased was cutting the saree. Deceased folded up the saree and began to speak to the first accused. Both went to the front verandah. Both sat in chairs in the front verandah. They had a chat. First accused offered my father a cigar. My father went in and brought his cigar. Father offered first accused his cigar. Both smoked. Before they went to the verandah, father when he saw first accused making those signs with his hands, asked me to ask Alice to close the kitchen door. I told Alice 'Master wants you to keep the kitchen door closed and do the work.' Alice closed the kitchen door. I closed the dining hall backdoor. 40

"When first accused and father went to the verandah I went into the bedroom. Alice came and spoke to me. She wanted money to buy some 50

things. I went to father and told him about it. He gave me about ten cents. I gave it to Alice. She went to the market. At that time the first accused was in the verandah. Alice came back soon from the market and went back to the kitchen.

“Deceased and first accused then chatted for some time. After a little while first accused left. He took with him the parcel he had brought. It was not opened in the house.”

Do you think the submissions for the prosecution are fantastic? Learned Counsel Mr. Gunasekere submitted to you on this part of the case that the prosecution version is all a jumble. Why, he asks, if Alice was already in this conspiracy should it have been necessary to make signs to her to leave the house? If she was not in this conspiracy by November 5th, was it likely that she would have been taken into this conspiracy on November 6th? These were the questions that were asked on behalf of the defence. I have outlined to you the version of the prosecution as to what probably happened. It is entirely for you.

The prosecution submission is that Sumana's unexpected presence in the house caused a jumble not in the prosecution evidence but in the mind of the first prisoner who had to make up his mind whether he should kill one or two. Is it a coincidence, the prosecution asks, that on the previous visit, on this visit which we have just discussed previous to his visit of the 7th November, when he went to this house he went once again at about 9 a.m.? Have you any reasonable doubt that any man who wished to find the deceased alone in that house would have to be there round about 9 a.m. on a weekday?

There is then this undoubted fact. First prisoner went to this house, if you believe Sumana, at 9 a.m. on 5th November. He went again at 9 a.m. or thereabouts on the 7th November. In between those two dates is the visit of the second prisoner to him on 6th November.

Sumana went back to school on 6th November, which was a Thursday. It was not at all likely that she should be ill again by the next day. That the second prisoner went to the house of the first prisoner on 6th November is not in dispute. It can hardly be disputed remembering the clear evidence of witness George Perera on the point.

What happened inside that shop on the evening of the 6th November? I am reminding you once again we are dealing with the case without one word yet from Alice. Is it a coincidence once again that the second prisoner and Alice went to Nugegoda on the very day the child recovered and went to school? The second prisoner had only a week or fortnight before gone to her mother's house and met her sister-in-law there who was to have a baby shortly. Was it necessary that she should go again and see that lady? The evidence shows a child was born in fact on November 10th. Is it usual for visits to be made before a child is born or after a child is born? This is the second prisoner's evidence as regards these two visits:

“It is correct I went twice to Nugegoda with Alice; the first visit with Alice was about two weeks before the 7th November. I went to mother's. We went by bus. On our return I stepped into the first accused's medicinal shop. I went there to tell him he would have to do the whitewashing of the two houses. I told him I would inform him when it was necessary. I saw him as I was passing along the road. I was in the medicine shop talking to him

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for three or four minutes. I did not on this visit speak to him in low tones which could not have been heard by Alice. Thereafter I returned home. The next time I went with Alice to Nugegoda was on the 6th November. I went to mother's. I went as my sister-in-law was not quite well. She was expecting a child which was born on November 10th. I stayed about three-quarters of an hour there at mother's house; I had afternoon tea there; on the way back I met H. H. Collette and George Perera. I first met George Perera. He asked me why I was returning so soon. I said I had come to see my sister-in-law who is ill. Usually I stay at mother's one or two hours. Then I met Collette on the High Level road. He spoke to me. He stopped his car and spoke to me. He was going towards Colombo. Collette has now gone to Australia. He said something. I told him I had come to mother's house and had gone to first accused's house and seen him and was going home. I told him I had conveyed a message from the deceased to the first accused. I have known Collette for over a year. He was living at my mother's house. I met Collette as I was walking to the bus halting place. I met the first accused on the 6th November after I had spoken to Collette. I conveyed the deceased's message. It had something to do with the whitewashing of the house. I told him to come and see the deceased about it. I did not speak in low tones on this occasion. I was with the first accused in the shop about four minutes. Then I returned home."

That is her evidence. It is for you to say how far it is true. For the prosecution once again they say, "Is it a coincidence once again that after that request for whitewashing the house, the very next morning about 10 a.m. the deceased was a dead man" ?

For the defence it is submitted that these domestic decisions as regards the whitewashing of houses and so forth are often made suddenly, that the deceased had in fact met the first accused on the 5th November, it did not mean he should have then made up his mind to have the house whitewashed, the deceased saw his wife going towards Nugegoda on the 6th, the defence says, is it so unusual for him to tell his wife, "If you meet the baas, tell him to come round, I want some whitewashing done" ? What was it that was actually said ? The prosecution asks you to remember in this connection the large volume of evidence which they rely on to show that the person who actually killed the deceased was none other than the first prisoner, that the second prisoner was a co-conspirator. That is the submission. If so, what was it that was actually said on this visit of the 6th November ? Leave out Alice. Leave out what she said she heard. What could possibly have been said ? He comes on the 5th November, he changes his mind, she goes on the 6th November, he comes back on the 7th November, and the house is not whitewashed, but washed red with blood. What else do you think might have happened when the two met on the evening of the 6th November ? Leave Alice out of this. We know that on the first occasion something of the size of a hand wrapped in paper was taken. That parcel was not opened in the house. We know that on the second occasion what was used was something very different. Can it be that on the first occasion among other reasons the decision of the first prisoner to do nothing was that a gunshot might attract a crowd ? Can it be that that aspect of the matter was

discussed on the second visit? Can it be that the decision was taken to use a weapon which was both silent and effective. That it was a different weapon we do know. Why the change of weapon? In between the change of weapon is that visit of the 6th November.

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Accused present.

Same counsel.

(Charge to the jury continued.)

CROSSETTE-THAMBIAH, Commissioner :

10 Gentlemen of the jury :

Yesterday before we adjourned we were considering the significance of those two visits of the first prisoner to 107 College Street with the admitted fact that in between those two visits the second prisoner saw him for a second time. If you believe Sumana, the first prisoner went to 107 College Street on November 5th or so about 9 a.m. He certainly went there at a time when the second prisoner had a good and valid reason for being out of the house. She was teaching at Prince College.

If you believe Ukku Menika and the rest of that group of evidence, whose evidence I shall be summing-up to-day to you, the first prisoner  
20 went there again on November 7th again round about 9 a.m. and again at a time when the second prisoner was in her class room at Prince College.

On the first visit he made to that house, although he took a small parcel wrapped in paper, and although he behaved in that unusual manner when inside the house, he in fact did nothing. The deceased lived to see another day. But when he went the next time the deceased was killed. The Crown submits that in between November 5th and November 7th, or November 3rd and November 7th—it hardly matters on this aspect—the visit of the second prisoner on November 6th stands out like a peak.

For some reason or other we cannot look into the mind of a human  
30 being as we can into a glass showcase. What was meant to be done was not done on November 3rd or November 5th, but on the very morning after that visit of November 6th it was done. Who was it who urged him to do so? Who was it who impressed the importance of this being done on a Friday and not on a Saturday? Who was it who gave the assurance that this time the servant woman will not fumble or delay or mistake? We know that on November 7th the servant woman was definitely out of the house. If you believe the tuck-shop keeper that is so. Who was it who saw to it that the servant woman did leave the house the next morning? The Crown submits it was the mistress. It is for  
40 you. The defence submission is that this visit was, as I said, in respect of some whitewashing.

I now pass to the head of opportunity. I propose to do no more than ask you to look at the photographs, the second photograph in the book of photographs. Looking at it in the way you see it there, remembering your own impression when you went to the scene, does it or does it not seem to you here, if anywhere, was a house where there was the opportunity. We heard of the various places to which this family

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moved from time to time. Do you think that it was important that if the deed was to be done it must be done before the deceased thought of moving out once again? You remember the evidence of Mervyn Joachim. He said that by 8 in the morning the whole of the Joachim family was out of their part of the house.

I now pass to the final head under which I propose to consider the chain of circumstantial evidence relied upon by the prosecution apart from the evidence of Alice. This head I will call subsequent conduct of the two persons charged with conspiracy.

Have we in this case reliable evidence from which we can infer the probable time of the death of the deceased? We know from the evidence of Mrs. Wijesekere, who you may think is an experienced teacher at Prince College, that the first bell was rung in this school at 8.20. Then there were two assemblies. The bigger assembly assembled in the hall where standards three and four were taught. The smaller assembly assembled in the kindergarten class. A priest administered pansil at each of these assemblies. The second bell goes about 8.30 whereupon work begins. 10

I remember that Mrs. Wijesekere did say that a period lasted for 35 minutes in this school. But on that point both the second prisoner and Miss Willegoda are agreed and it seems to be the position that a period 20 lasted in that school for 45 minutes. At any rate, the first period with which we are concerned lasted for 45 minutes. The kindergarten was taught transcription during that first period. In standard five, the lesson was arithmetic. This is Miss Willegoda's evidence:

"I went into the class at the second bell. Sumana and Oranda were in the class. I began with arithmetic. The deceased came while I was teaching arithmetic. He spoke to me. He came just as the period started, about 8.30 a.m. He went away in a minute or two. I cannot remember if he spoke to his children too. Later the second accused came to my class. I was still 30 teaching arithmetic—a 45-minute period."

She says some of the periods are 35 minutes. When the second accused came the period was coming to a close. She stood outside with Mrs. Christie, near the palm bush.

So it would seem from the evidence of Miss Willegoda that the deceased was alive at or about the time that period of arithmetic commenced and he was dead at or about the time that period was due to close. Well, then the period started at 8.30 a.m. and was over by 9.15 a.m. We get to the point that the deceased died somewhere near 9.15 a.m. on 7th November 1947. 40

Under this head of "*Subsequent conduct*" learned Counsel for the second prisoner, Mr. Nihal Gunasekere, told you, and told you with much force, that it would appear from the Crown point of view that his client could do nothing right on the morning of November 7th. He said if she stood in the classroom she was asked why she did not sit; if she sat why she did not teach; when she saw Mrs. Christie, if she ran up that would have been a point against her. If she did not run up, that again would have been a point against her. If she wept, it was against her. If she did not weep, it was also against her. You as men of the world must realise that whatever view you may take of the case, that at any rate must have 50 been a morning full of trouble to the second prisoner. It must be conceded

that the actions and conduct of persons when faced with situations which are unexpected, vary. Upon details like these, it is of course not safe to build up a fabric of guilt. But when all is done and over, when we are at the stage of looking at the case as a whole, it may be that the Crown point of view can be fairly put in this way. I mentioned to you certain observations (what I say, as you know, are for your consideration) yesterday which seemed to indicate, if you accept them, that an essential part of this plan of conspiracy was to give time to the fellow conspirator to enable him to make his get-away not to the next house or to the next street, but to

10 Nugegoda. Whether that man went there by car or by bus he would be going through the crowded areas of Colombo. It was essential for that man's safety that he should be able to get away unimpeded in his journey back and once more have the time not only to get into bed if necessary, but to wash his clothes as had to be washed, burn such things as had to be burnt, wipe away such things as had to be wiped away. The Crown says if you examine the conduct of this lady on the morning of the 7th November, it seems to fall into two clear and main heads. Before Mrs. Christie came on the scene, the Crown says, looking at her conduct as a whole, without going into minor trivialities, it was the conduct of a woman who at any rate

20 knew that one of the most fateful days in her life had come. It was the conduct of a wife in relation to the man who had married her as a young girl so far back as 1935, who had lived with her for better and for worse for ten years and more, who had given her children and who had, while young and in good health, given her as good a time as he was able to. Whatever the frailties of human nature may be, the Crown submits that if their view of the cause is right, then certainly this second prisoner must have been in a frame of mind which is consistent with her behaviour before Mrs. Christie came. She knew that it was a day where much was to be met, not only for the man who was her husband but eventually for

30 herself too. Then after Mrs. Christie comes, it was the conduct of a person who was carrying out her part of the pre-arranged plan, who was acting together with the common purpose, with the other man, for or in committing a crime. It was the conduct of a person who took every possible step without arousing too much suspicion to delay the information getting to the police who were only 100 yards or so away.

It is in the light of these observations that the Crown asks you to consider in the first place the evidence of Mrs. Wijesekere. "The second bell went at 8.30. I was in the class keeping order till then. The second accused had not arrived by 8.30. She came two minutes after the second

40 bell. I was in the same class when she came—in the section taught by the second accused. When the second accused came in I went to Miss Wimalawathie's section. I could see what was happening in the second accused's section. I could see from where my table was.

"Second accused brought in her hand a thermos flask. She placed it on her table. Having placed it the second accused stood near the table and looked on towards Kotahena Street, towards the main entrance. She stood and looked towards Kotahena Street for about a minute. I did not see her speak to the children, tell them to be quiet. The children were behaving as before—talking to each other. As soon as the second

50 accused came she did not start to teach. I went up to the second accused. Second accused did not speak to me. She did nothing. She was in the same position in which she was." Then she showed you from there how

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second accused was standing. My note is : Second accused was standing and looking at the road rather intently.

Then the witness goes on : " I went up to her to ask her why she did not start work. I went into her class up to about a fathom of her table. I was on a side of her. She could see me. She took no notice of me. I asked the children to be quiet. I did not speak to her. I thought of speaking to her but I did not speak to her as she did not delay for more than a minute. I told the children : children be quiet. I said it to be heard by the children. When I saw the children one or two of them were standing. Some of them were talking. I went to silence them. Even 10 when I spoke to the children second accused did not take any notice."

Then you have the evidence of that young priest Rev. Seelaratne who speaks of the conduct of this lady after she went off to the call box in the priests' quarters. He says : " Five or six minutes after (she went across) I saw the second accused return to her class. She came and sat on her chair at the table and was keeping herself quiet without teaching. She remained like that for seven or eight minutes." Then my note says : demonstrates. Second accused was seated hands over the table, one hand holding the pencil gazing at the pencil. " During those seven or eight 20 minutes the children were making a noise. Some were out of their seats. Some were surrounding her. Second accused made no attempt to control them. Then I went to the other end of my class. Then the second accused came up to me and asked me to look after her class. She said : ' There is some trouble at home. Kindly look after my class. I am going home.' I agreed."

It is now clear I think that this telephone conversation had nothing to do with this incident. There seems to be no reason why you should not accept the evidence of the second prisoner on the point. It would be unusual, you may think, that the first prisoner would in the situation of sudden panic and bewilderment in which he found himself after the 30 event have had the time or the inclination to call at a public telephone booth. The Crown submits that it is not the fact of the telephone call which matters but that from all these matters spoken to in evidence you have confirmation of the deduction you can reasonably make on all the chain of evidence already before you that on that morning the woman knew that the life of her man was being taken away.

For the defence you remember the points elicited in cross-examination and the submissions made by learned Counsel for the prisoner. It is a fact that the priest who was to administer pansil that morning in the kindergarten assembly did not turn up ; it is a fact that the position 40 of the class room in which she taught is such that standing at her table she would have to face the street in front ; and that it is a fact that children in a kindergarten class are unruly and that is part of the method of tuition for them to let them have a sense of play while at school. These are matters I have no doubt, you will give your attention to.

The defence says that it is nothing but common decency on the part of a Catholic lady to wait till the religious ceremony of the Buddhist school is over to start work, that it was nothing but politeness to wait and see whether the priest would come after all. Teachers are not, it is the submission of the defence, machines, who have to act under a sense 50 of discipline or drill. They may sit ; they may stand ; they may teach ; and sometimes they may stare. The two points of view are before you.

Now we come to the other head on this part of the case of subsequent conduct. Is there evidence from which you can reasonably deduce that there was the desire to put off as long as decency would permit the inevitable point when the police would have to be informed ?

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On this point the Crown asks you to consider the evidence of that child Sumana. The learned Crown Counsel described her as his best witness. It is entirely for you to say whether this child, not only because of her age and innocence, but in view of her special relationship to the prisoners in the dock, is likely to invent things or speak an untruth. Sumana says this  
10 in speaking of the time when she went to the house with her mother and Oranda after Mrs. Christie had gone to the college. She says this in fact. I will read the whole passage :

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“ We came to the entrance, that is to say, Mrs. Christie, the second accused, Oranda and I. Till we came to our doorstep the second accused had told us nothing, not even that there was trouble or news there was trouble ; we opened the entrance door ; we all went in ; we saw the deceased killed ; second accused too went in ; in the front verandah we saw a pool of blood and deceased's spectacles ; these are my father's—when she was shown the glasses  
20 —I found them in this state in the verandah. Father used to use these to read and see. This is his only pair of glasses ; deceased could not see well without his glasses ; in the next room I saw blood. Then we went to the room behind ; there father lay on the ground ; he was dead. I went right up to his body ; mother did not ; she stood near the verandah ; I cannot remember ”—she says now—“ if she came into the room.” Then she was shown those photographs—“ This is how he lay ; then I came back to the verandah.”

This is the part I want your attention in this part of the case :

“ There were lot of people in the verandah. When I came to  
30 the verandah the second accused was in the verandah. I told her what I had seen. I told her that father was killed. Then all the people were worrying her to go to the police station. So she went to the police station.”

This is the evidence of the very child of this lady. She has heard the news—I am not dealing with such details as to how Mrs. Christie had to pull her along home, I am not worrying about the fact that she stood near the palm bush and delayed there again till the children came, I am not worrying about the evidence that when she got into the house she delayed again to tie up the dog—that may or may not happen—Mrs. Christie was, as you will  
40 concede, a rather excitable old lady ; these are not the trivialities to which I draw your attention, but I draw your attention, in the submission of the Crown, to the fact that the impression left in the mind of that innocent child was that mother would not go until she was worried in going to the police—“ Then all the people were worrying her to go to the police station ; so she went to the police station ”—and it is in that light that the Crown asks you to consider the behaviour of Alice. You remember the demonstration that the tuckshop seller made here—a figure at peace under a tree, seated cross-legged on the pavement. Who gave Alice these instructions ?  
50 Was it, as was suggested on behalf of the defence, the case of a woman who had gone to the market having an odd chew of betel, or was it part



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of the plan or part of an assurance given on the 6th November that Alice will go out of the house and not get back till the other man got back to Nugegoda ?

In reference to this matter of information to the police, this is Mrs. Wijesekere's evidence. She told you how she too went across. She says :

" I asked the second accused where the cook woman was. She said she did not know. Then I asked the children where the cook woman was. They said, ' We do not know ; she may be there.' I asked the second accused where the two dogs that were in this house. She said she did not know. When I went up I did not see the dogs." 10

Does that support Mrs. Christie that one was a dog, and the other was a puppy, apparently the dog had been tied up ? Then the witness goes on :

" I said it looks as if the cook woman and the dogs have also been killed ; hurry up and inform the police. When I asked the second accused to inform the police she asked me to inform the police. I said it is not good for somebody else to go ; you should go. She said she could not go leaving the children. I told her I will look after the children ; you better go ; then she went." 20

In all these matters, gentlemen, where you have a document it is good to concentrate on the document. You know the old saying, " The written word remains." Well, on this point you may remember that the first information to the police, P.54, is timed 10 a.m. So that if on the evidence you think this man was killed somewhere after 9 a.m. and that the second prisoner knew about it before the arithmetic period was over, which was 9.15 a.m., the point of taking down her complaint was not reached for 45 minutes after, though we know the house is and where the police station is. Of course, don't forget that the police did not immediately settle down to taking down a statement. It is true that in this case the moment Mr. Lawrence I believe was informed by the second prisoner, the police rushed off ; they don't seem to have delayed very much ; they do seem to have appreciated the importance of early action, and don't forget that Inspector Lawrence's own recollection of the time this lady went there is that she went there round about 9.30 a.m.—may be something like that. The point is, making every allowance for matters like that, do you think that this wife, when informed of serious trouble in the house, blood in the verandah, when eventually she did find the man dead, acted in a way in which an innocent wife would act ? That is the question. Was there knowledge inside her brain, or was it an innocent brain moving in an excited manner in an unusual situation ? That is what it comes to. 30 40

Do not forget in this connection that if there was a plan—it is a matter for you—it was part of that plan that nothing should be known about this till at least eleven in the morning or so when the school broke up after the morning session. If the weapon had done what it was intended to do, and if the old man lay there soundless and speechless and breathless, then nothing would have been known until either the wife or the children went to the house or Alice took her own time on the way back home. What Alice's instructions were in that event one does not know, but what I do want to remind you is that on that morning, if the evidence is true, if you accept it, once again these plans which are 50

drawn up with care go wrong at the crucial time and then a situation arises which is unexpected. One conspirator, if the case of the Crown is true, reacts in one way and the other in another way.

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On this matter of delay in going home, you remember the defence. The defence is that it was not more than faithful compliance with the instructions of the dead husband. She had said so. It is said on oath here that the mother should never leave that school except with her children. How that tallies with your picture of the father who sat by his children, who taught them and beat them if they were not studious, it is for you to say. But the evidence is, and it is supported by submissions of counsel, that in stopping at the school she was doing no more than carrying out the wishes of her husband. It is asked whether if she knew that there was a dead man in the house she would have taken the children to the house. It is a matter for you. The evidence is that she did take them, she did let them run in and see the body. It is entirely for you.

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Now we come to another aspect of second prisoner's subsequent conduct which may be described as once again loyalty to her fellow-conspirator, if there was a fellow-conspirator. You remember she demonstrated here for your benefit how she sat on that narrow bench at the police station. I do not want to delay you too long over this part of the case. You have been to the police station. You have seen the place. It is entirely for you to say whether the position she then took up in the situation in which she then was just accidental or incidental, or whether as the Crown submits, she was on the look-out for the third party, if not in the conspiracy, at any rate in the business, so that knowing that the police were in the house she should not get there till she herself was there. That is for you.

It was submitted on her behalf that she is a lady of a bulky build, and that there was no other convenient way of sitting on a narrow bench. It is for you.

This is the evidence of Constable Singarayar on the point: "On 7th November I was attached to the Kotahena Police Station. I was on reserve duty. About 10 a.m. the second accused came to the police station."—He puts the time at 10 a.m.—"Police Sergeant 336 Martin recorded her statement. While second accused was making her statement Alice passed the police station carrying the bag P.2. Second accused called her and said, 'Aia amma, master is cut' ? (aya amma mahataya kapala). Second accused interrupted her statement and called Alice. Having told Alice that she continued her statement. Having made her statement she left the police station in the direction of her house. Alice followed. The police had already gone to the scene."

Then in cross-examination he said: "Alice passed ten or fifteen minutes after the second accused came to the police station." Do not forget by that time all that locality would have been a busy scene and Alice might have heard the bazaar talk by that time. This man says: "Alice passed ten or fifteen minutes after the second accused came to the police station. There was a crowd of ten to fifteen persons in front of the police station. The people who collected were chased out. Second accused was looking towards the road while making her statement. Alice was passing the road looking towards the police station"—One was looking at the road and the other was looking at the police station according

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to this witness.—“ Seeing Alice second accused called out ‘ Aya amma.’ All that Alice said in reply to second accused was ‘ Aiyo nona ’ and nothing else.”

Do not forget different human beings react in different ways in unusual situations. Do not go too much upon your knowledge of psychology and psycho-analysis and other modern fads. Look at the facts broadly, sensibly and with common sense.

The Crown submit that on the evidence they have put before you from various angles and quarters that, however disturbing the situation might have been, the second prisoner kept her head well screwed in respect of two matters : (1) that she should see to it that her fellow-conspirator should have the time to get away, and (2) that she should see to it that her influence over the servant woman was exercised till as long as possible. 10

The defence says that she was seated there in the only way that suited her convenience. She was alone in a police station in a situation which was unusual. She was trying to see whether she could call out to someone who might help her. She was alone. Some brother or brother-in-law might go that way during that time, and seeing her own servant woman she called her in. It is for you.

You will remember in this connection that although you may think that Alice knew a good deal about this matter for some time, not till 7.30 that night were the police able to get to the house of the first prisoner—a matter of nearly 12 hours. Did the second prisoner then achieve her intention to that extent ? She gave the fellow-conspirator a clear lead of nearly 12 hours during which time, as we know, if you believe the evidence, he did his best to get a new herb cutter and so forth. She herself, as you know, was not arrested till the 16th November. This concludes my summing-up of the chain of circumstantial evidence in this case in relation to the first count of the indictment which is one of conspiracy, and I have endeavoured to place both points of view as fairly as I can. 30

Now it remains under this part of the case I think only to read to you the material parts of the second prisoner's own evidence which she gave from the witness box. That is evidence in the case like any other evidence. I won't trouble you with all the details of her life, it has been repeated to you from different sides of the Bar table. I am sure you remember all that part of it. Then she comes on to this :

“ I deny the truth of Alice's evidence regarding this conversation.”

She speaks to the visit to the first prisoner's house. “ I deny I conspired with the first accused to murder the deceased or that I abetted him. I was with the first accused in the shop about 4 minutes ; thereafter I returned home. That night I did not tell Alice that the first accused would come the next morning and to go to the market when he comes. I deny I told her that next morning. I gave her no money to go to the market that night or the next morning. I could hear the school bells from our house. On the 7th November I left for school after the first bell. I left with the children. The deceased was in the house when I left. So was Alice. When I entered the school premises I stood outside in the compound. The children went to the big assembly. I did not go into the teachers' common room ; I never do. I do not go inside the class till pansil is over. I am a Catholic. I waited outside till the big assembly was over and the bigger children went 40 50

- to their class. About 80 children were in my class. Pansil had been observed every day for the two weeks I taught. When I went to the class I stood at my table and I waited for a short while to see if the priest who administers pansil would come. The class was so arranged that if I took the class I would face the road." Then she said the sketch correctly gave the position of her table. "The children were talking while I awaited the arrival of the priest. The youngest was 5, the eldest 7 or 8. When the children were talking Mrs. Wijesekere came and silenced the children; she came from standard two. She silenced the children and went away.
- 10 Then a priest came and started teaching standard two. The regular teacher was absent. I started teaching when Mrs. Wijesekere silenced the pupils and went away. I was teaching when the priest came. The first period we had transcription—period of 45 minutes; for the upper kindergarten I set a passage from a book to be copied. For the lower kindergarten I wrote on the board to be copied. After setting the work I went round the class; the tuckshop-keeper came and spoke to me; that was 20 or 25 minutes after I had started teaching; he told me someone was on the 'phone asking for me. I went; someone from the Colombo Bakery, Van Rooyen Street, spoke; that was the bakery from where we got our
- 20 bread; we have no telephone in the house; there had been trouble with the bakery; it started about two days before; bread had come late; deceased refused to take it; usually bread is delivered at 7.30 or 8 a.m. It came the next day; it was refused; it came on the 7th November; it was not taken that day; I do not know who telephoned from the bakery. I talked about two minutes. I came back. I sat at my table; the children were still writing; I sat at my table for nearly two minutes doing nothing; then I asked the children to bring up their work; they came close up to me; I began to correct their work; children in a kindergarten become restive; while correcting the work I saw Mrs. Christie come towards my class. She
- 30 stood at a distance and beckoned to me with her hands. I did not go; then she came up to my class and called me out, 'Mrs. Seneviratne, come here.' Then I went out. She told me the dogs were barking in the house and not allowing anyone to get in, that there was blood in the verandah. She said, come and see what the trouble is. Mrs. Christie was very excited. I told her 'I will give my class over to the priest and come.' I spoke to the priest. I said, 'There is some trouble at home; kindly take the class till I come back.' Then I went towards standard five and called out to the children by name. They came out. Miss Willegoda came out. She asked me why I was going home. Before I could reply Mrs. Christie said some-
- 40 thing to her. Mrs. Christie pulled me when I was in the compound calling to the children. Then she, the children and I left for 107, College Street. The deceased had told me that whenever I leave school to take them with me. His instructions were if I left the school, to bring the children with me. That morning I did not see the deceased come to school. He used to sometimes do so. The dogs were there. I went inside with Oranda, holding him, into the hall. Sumana was coming behind. I saw the deceased. Oranda got frightened and ran out. I ran behind him." So you see she admits taking the child in. "Deceased was a ghastly sight. He seemed dead. Sumana had gone in and come out. The children were
- 50 clinging to me and crying. I saw Mrs. Wijesekere standing near the gate. I called out to her; then she came; I told her my husband had been killed; she told me to go to the police station; I said I could not go on

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account of the children; she said she would take charge of the two children. I went to the police station."

This is the evidence the second prisoner gave in examination-in-chief.

I have already read to you the other material parts of her evidence, you will remember, when dealing with the first part of the case. Is there any other part of her evidence you would like to hear?

*Foreman* : No, my Lord.

Now I come to Alice. Before I forget let me deal with that matter of Rs.700/- which is mentioned, you remember, by Maihamy as having been claimed by the first prisoner as a debt due to him from the second prisoner. The submission of learned Counsel for the second prisoner is that robbery was the motive for this crime. 10

In this part of my summing-up I propose to read to you the material parts of Alice's evidence. I will now refer to a portion of the evidence of Alice, which, if you accept, you may think is conclusive on this question of whether robbery was the motive or not for this crime. This is what she said: "While I was working in the kitchen Baas came. He came up to the dining table."—This is November 7th.—"I saw him when he came to the dining table. He had a bundle of gotukola with him. He asked me 'Mahatiya ko.' I told him he had gone to the market. He asked me also to go to the market. He said 'Palang ande.' I said 'I cannot leave the house in the absence of the master.' He spoke to me harshly and asked me to go away. I went away." Then in answer to me she said: "When I left he (that is to say, Baas) was the only person in the house. I went to the market." 20

You now know that the Joachims were out. Then according to her evidence when the first accused came the deceased was already out, the mistress was at school, the children were at school, and when she left for the market the only person in that whole house was the first prisoner. Do you think that if robbery was the object of this crime that was not the time for this robbery? Would a man who had gone to steal or rob actually wait and dally till the owner of the house should return? We know from the evidence that he had with him that weapon. Could he or could he not have forced open the almirah with that knife? Would a robber who gets the opportunity he was waiting for wait for long? So you may say to yourselves: Then if Alice is speaking the truth on this occasion—it is for you to say—well then robbery is out of the question. It is entirely for you. 30

Now in regard to Alice the submission for the Crown is that her evidence is direct evidence of the conspiracy alleged in count 1 of the indictment. In other words, here is that unusual case where a person, who was present and heard the conspirators plan their conspiracy, now speaks to it on oath from the witness-box. 40

Under our law, as I have already told you, the offence of conspiracy is committed either when two persons agree to commit an offence or act together with a common purpose for or in committing an offence. The Crown relies on the direct evidence of this witness Alice to establish the agreement to commit an offence. That, as I told you, is open to you to infer from all the matters before you—either the agreement or the acting together or both. 50

The submission for the Crown is that Alice is not an accomplice. The Crown say that she must have been taken into the confidence of the two conspirators because it was essential to the success of the plan to do so. They say that she is no more than a menial, a servant who had to carry out the orders of her mistress, which were in essence (1) to leave the house when the first prisoner came there, and (2) to say when questioned that the deceased had sent her out to the market.

Learned Crown Counsel read to you a passage from an Indian judgment in support of his argument that Alice is not an accomplice. 10 That judgment, as I understand it, is an authority for the proposition that "witnesses who are cognisant of a crime or who made no attempt to prevent such a crime or who did not disclose its commission are not accomplices." I am reading from a note I found in an Indian text-book dealing with this case.

On the other hand I am bound to say that in Ceylon there is a case referred to in 42 *New Law Reports*, page 500, where it is said: "The fact that they were acting one as master (or in this case as mistress) and the other as servant or employee can make no difference." The mere relationship does not make the essential difference. In other words, once 20 again, as in all these matters, it is for you as judges of fact to make up your minds whether this woman is or is not an accomplice.

The Crown submission is that if you think she was an accomplice, why then you have the best possible evidence of the nature of the conspiracy. Who is there who can tell you better and more accurately, provided she is speaking the truth, which is another matter, what exactly the conspirator said, where they said it and how they said it?

Then the Crown submits as regards her evidence here on oath, in this Court, you as men of the world who know these things will immediately understand the reason for her vagaries, her changes from position to 30 position under examination, under cross-examination and so forth, if you remember two things, (1) that she is a woman still under a sense of loyalty to her mistress, and (2) still under a very real fear of implicating herself.

The position of the Counsel for the first prisoner is that Alice is a wholly false witness who has been taught a wholly false story by the police. The position of the learned Counsel for the second prisoner is that Alice is a co-conspirator with the first prisoner in the commission of this crime, the object of which was robbery

You will appreciate at once then that so far as the submission on behalf of the second prisoner goes, the question for you is whether this was a 40 conspiracy of two or a conspiracy of three, and whether it was a conspiracy to rob or a conspiracy to murder. Was it necessary to the success of this conspiracy to take Alice into the confidence of the conspirators? You may think that whatever may have been the position before that first visit of the first prisoner when Sumana was in the house, it certainly was essential to do so after that first visit and before the commission of the crime. You may think that in view of the incidents which took place in that house on the occasion of the first visit, the conspirators, even if they felt that Alice should not be told all then, realised she should be told all now because she was a woman mentally not quick enough on the up-take, 50 if I may put it that way, slow to understand everything, slow to react to a sudden situation. You remember on that first visit the first prisoner—

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if the evidence is true—actually got up to her in the kitchen on the pretext of needing a second glass of water ; then only she left the house. That may be the explanation of the remark—if you think that remark was made—on the occasion of the second prisoner's visit when the first prisoner said to the second prisoner : “ Can this woman keep a secret—the thing fell through the first time, I must be sure that she will play her part ; can she be told all.” We are now testing Alice's evidence. I hope you appreciate that.

Then you may think there were other reasons why it was essential to take Alice into the confidence of the conspirators. If you think time was the essence of the success of this plan, time to allow the other conspirator to go safely home, then it was essential that Alice should not bungle the plan by coming back to the house too soon. Again you may think, unless Alice was taken to their confidence for some promised reward it may be she may not understand why she was being asked to leave the house when the baas comes. She may wonder why and in some mood of complaint she may for instance tell the little child Sumana, “ This is a funny sort of house. I am told to cook, and cook the meal in readiness for you children when you come home, and then I am also told to leave as soon as this baas comes ; why should I leave when the baas comes,” whereupon do you think the child might tell the father ? If so, certainly the plan will go astray. I am making these observations as they occur to me. It is entirely for you. I have no doubt you have given your earnest consideration to all these matters throughout these long days by night as well as by day as I have done. 10

Yesterday you will recall, gentlemen, that I discussed with you an impressive argument by learned counsel for the second prisoner as to why Alice could not have been sent to Nugegoda on this Friday to the second prisoner's mother's house. I discussed the matter under some difficulty at the time because I had undertaken to confer on the evidence with you in the absence of Alice's evidence at that part of my summing-up. Now when I come to the part of my summing-up dealing with Alice's evidence you may think the answer to Counsel's argument is complete. Alice could not be sent away on the Friday because it was essential to the success of the conspiracy, firstly that she should be in their confidence for the reasons given, and secondly, this was something which could not be done on a Saturday because then the mother and children would be in the house, nor on a Sunday because then the Joachims would be in the house. It had to be done between Monday and Friday. When it was attempted on Wednesday it had failed, there was the urgency, the desire to see the thing through now that the decision had been made, and the only day left was the Friday ; hence the visit on the Thursday evening. 30 40

On this point there is another aspect of the matter. I have already told you that the deceased was of a suspicious nature ; so it would seem ; any variation of the routine must have put him on his guard ; this would seem to be supported by what Alice says in another part of her evidence. She was asked here in this court, “ During the period of your employment the second accused used to go out alone by herself,” she answered “ No ; she used to go with the woman called Maihamy. Maihamy lives far away from the second accused's house, but in Kotahena. I cannot say where the second accused went with Maihamy.” Then the question was asked, 50



“ There were occasions when the second accused went out alone,” answer  
 “ I cannot remember.”

“ Q. So far as you can say, there is no reason why she should have taken you when she went out ?

“ A. She did not tell my why. She used to call me and I used to go.”  
 Can it be then another reason why the woman had to be taken into her confidence when it was part of the family habit, in view of the deceased’s nature, that the mistress should not go out alone ?

With these remarks I now propose to read to you the material parts  
 10 of Alice’s evidence. In examination-in-chief she said : “ I had been to first accused’s house. I remember going to first accused’s house on two occasions. I can now remember the day on which I went to first accused’s house on the first occasion. That was not soon after I had taken employment under the second accused. It was about two weeks after I had been with them. On that day I left the house with the second accused. We left in the morning. We went by bus to Nugegoda. At Nugegoda we went first to the house of the second accused’s mother. The mother was there and we remained there for some time. We had our noon meal there. We left that house after the noon meal and tea. We next went  
 20 to the Baas’ house. (*To Court* : I knew the first accused as Baas.) On that occasion the Baas was at home. Second accused spoke to him. From there we returned to Kotahena.”

Then she says also in examination-in-chief : “ First accused’s house is a medicine shop where medicinal herbs are stocked. We reached first accused’s house not very late in the evening.”—She is speaking now to the second occasion.—“ The sun was up. (*To Court* : It was not even 4.30 p.m.) While we approached the house I did not see first accused. As we got up to the house I did not see first accused sweeping the compound. Seeing us Baas came up to us. He spoke to second accused. Both of us  
 30 entered the hall of his house. Second accused took a seat. First accused was standing. I was standing on a side near them. After the lady sat down I saw first and second accused talking to each other.

“ Q. What did the first accused tell the second accused ?

“ A. He pulled out a drawer and showed a gun.”—You remember the child herself had seen something small in the man’s hand before too.—“ He also showed some pieces like pieces of pencil about two inches long. I saw about three or four of them. He said they were brought from a long distance. He showed the gun also and said it was brought from a long distance.”—You seem to get here the picture of a man who was  
 40 apologising to someone who was displeased with him, someone who was expostulating with him why it was not done, what the delay was, a man who says, “ Don’t blame me, I have got these things down from a long distance.”—“ He showed the gun also and said it was brought from a long distance. He said ‘ If you want to shoot with this the noise would be heard.’ ”—Is he trying to explain why he did not shoot ?—“ He said that when he came to the house he would introduce those pieces of pencil like things and drop them in the house so that it might be understood that a thief had done it.”

“ Q. What exactly did the first accused say ?

50 “ A. After pulling out the drawer and showing the gun first accused said, ‘ If the gentleman were to be shot with this the noise will be heard.

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After the gentleman is dead I will introduce these pieces of pencil to indicate that they had been left by a thief.' That is all I can remember."

The Crown says that out of loyalty to her mistress she does not want to say more ; she seems to think : this is enough.

" *Court* : Did the second accused say anything ?

" *A.* I do not know what she said."—The Crown says loyalty to her mistress.

" *Court* : She (that is the second accused) heard all this ?—*A.* Yes.

" *Court* : He said this to her ?—*A.* Yes."

Then this question was put to her :

10

" *Court* : How did it happen to be in your hearing ?"—in other words, how is it that they spoke all this so that you could hear ?

" *A.* First accused asked second accused whether the old woman would be reliable or whether she would give out their secrets to any other person.

" *Court* : What did the second accused say to that ?

" *A.* Second accused said, ' She will not give out.' " . . .

Then, " *Court* : Anything else besides what you have already told ? "

Once again, " *A.* I cannot remember." . . .

" After this conversation we returned home." Then she goes on : 20  
" That night after dinner we went to bed. Before I went to bed I cannot remember what second accused told me. She did not tell me anything. Just before her dinner she did not tell me anything. That night after dinner all of us went to bed."

Then the point was again taken up. " I got up the next morning. The Joachim family were getting ready to go out. So did the second accused and the children. Before second accused left the house she asked me to cook the meals.

" *Q.* What else did she ask you to do ?

" *A.* She said ' Baas will be coming now. When Baas comes you 30  
better leave the house.'

" She asked me to go to market. She gave me Rs.1/—.

" *Q.* Apart from that did you know that Baas was expected that day ?

" *A.* She told me that,"—The Crown submits, pure self-interest on her part. She wants to come into this as late as possible.

Later she was asked : " How much earlier was the first visit than the second visit ?

" *A.* About a week before.

" *Q.* On the occasion of that first visit did you hear the conversation between the first and second accused ?

40

" *A.* I did not hear.

" *Q.* Why not ? Was it because you were far away or was it because they were talking in a low tone ?

" *A.* I was a short distance away.

" *Q.* Did they speak in normal tone ?

" *A.* In a somewhat low tone."—A witness who wishes to keep herself away from this as far as possible is the submission of the Crown.

Then she goes on :

“ Q. On the second visit did any conversation take place about the visit of the first accused to the second accused’s house when Sumana was ill at home ?

“ A. No.

“ Q. I am going to remind you.”—This was done by me as I am entitled to by law—“ I am going to remind you what you told the Magistrate in this connection. After your memory has been refreshed in this way tell me whether this happened or not.”—My only concern was, as I hope you will appreciate, to elicit the truth.—“ Did you tell the Magistrate that on 10 the second visit of the second accused to the first accused’s house the first accused told the second accused : ‘ When I came the child was in the house and I could not do anything to the master.’ ?

“ A. I have said so.”

I have told you what she said elsewhere is not evidence in the case. We are not concerned with that except as a means of checking up, and therefore it was that I put the second question : “ Is that true ? ”—did he say so on that occasion ?

“ A. Yes, first accused did say so.”

Now comes the cross-examination by Mr. Lekamage.

20 “ Q. From the time you left that house till you came back you did not speak about a possible attack on your master ?

“ A. The second accused asked me not to tell anybody about it.

“ (Court : When did she tell you this ?

“ A. On the 6th.

“ Q. Where ?

“ A. At her house.

“ Q. At what time ?

“ A. In the evening.

“ Q. After the conversation with the first accused or before ?

30 “ A. After she had the conversation with the first accused on the 6th.

“ Q. She told you this when she came back from the first accused’s house ?

“ A. Yes.) ”

Then it goes on :

“ Q. Can you say why after you were repeatedly questioned by the learned Crown Counsel you said the lady made no request to you ?

“ A. I have forgotten about it.”

What they say is not that she forgot, but that she is doing her best still to help her mistress.

40 “ Q. You remember the question was repeated over and over again, yet you did not remember it then, but you remember it now ?

“ No answer.”

It is far too much, beyond her mental capacity.

Then the question was put, “ Did anything happen during this week-end to remember it now ? ” (I think a week-end had intervened. They are always thinking of those week-ends. I wonder what happens except to take a sea bath.) Then I asked her, “ Had anybody seen you about this case between Friday and this morning ? ” and the answer was “ No.” Then learned Counsel reminded her of what she had told the

50 Coroner.

“ Q. Did you say this to the Coroner at 4 p.m. the same evening ? ”

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Then I intervened and said : " Listen carefully and tell the gentlemen of the jury whether you said that or not." Now the learned Counsel was reading to her the statement to the Coroner made at about 4 p.m. on the 7th November, sentence by sentence. In the first instance this is what she told the Coroner :

" Q. ' I was employed as a cook woman under the deceased.' " Did you say so ?

" A. Yes.

" Q. ' To-day at about 9 a.m. when I was in the kitchen deceased returned home having bought some beef and vegetables for the day meal.' 10 Did you say so to the Coroner ?

" A. I did not say so.

" Q. ' I had then finished boiling rice ' (still reading from that statement). Did you say so ?

" A. Yes."

In one sentence she said " I said so." In the next sentence, " No, I did not say so," in the next sentence, " Yes, I said so." Then the next question, " At that time the only persons present in the house were myself and the deceased," answer " Yes "—I presume the answer is " Yes, I said so." 20

" Q. ' The deceased spoke to me and said there is no rice for the dinner to-night and that we would have to eat string hoppers ' ?

" A. Yes, I did say so.

" Q. ' And so saying he gave me Rs.1/50 and asked me to go and bring beef and vegetables.' Did you say so ?

" A. It was the lady who gave me the money."

Then " (Court : Did you say so ?

" A. I cannot remember if I said so.) "

Then it goes on :

" Q. ' I left the place at once ' ? 30

" A. I cannot remember if I said so.

" Q. ' When I left my master the deceased was the only person in the house ' ?

" A. Yes.

" Q. ' Deceased's wife had gone to school.' Did you say so ?

" A. What I said was, ' Mrs. Seneviratne and the two children went to school.'

" Q. ' After a time I returned . . . and the police were making inquiries ' ?

" A. Yes." 40

Then I intervened again, " The Jury are not concerned with what you said elsewhere, but they are concerned with what you say here. Is it true your master gave you Rs.1/50 to go to the market ? " Answer, " It is not true."

The submission for the Crown is that that statement to the Coroner was made as a result of her instructions received before the event. They say that was part of the plan and that at that time, not anticipating any serious trouble, having been given the assurance that the whole matter would blow off in about a month's time she kept to her instructions. The gist of those instructions was that she left the house as having been 50 paid by the master. The Crown says, now in Court here, under oath, she says the truth is it was the mistress who gave the money. The defence,

of course, says, what she said first was the truth and what she says now is a lie. I hope this is not wearying you. It is necessary I should sum up the evidence. The law requires me to do so.

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Then this was elicited, this is important for the defence, so I will read it to you :

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“(Court : We want the truth. On those two visits was the conversation between the second accused and the first accused in a low tone that you could not hear ?

10 “A. In a low tone.  
“Q. Could you hear ?

“A. No.

“Q. This was the second visit, the day before the murder ?

“A. I could not hear.

“Q. You could not hear a word ?

“A. No.”

She went back again. Then she was asked :

“Q. You told the jury on Friday that you heard the first accused ask the second accused whether you could keep a secret ? ”

20 Then she said, “First they talked together in a low tone, then they began to talk in a tone I could hear.” Then she was cross-examined by Mr. Nihal Gunasekere. This is important from the point of view of motive. She said here in cross-examination, “For the morning meal we had either bread or hoppers prepared at home. Very often than not bread in the morning ; bread is taken with some curry left overnight or with butter for the children. Master takes bread with butter or jam ; mistress also takes bread with butter or jam. Children also get either butter or jam to eat bread. For the evening they took bread with butter or jam ; children got about two or three times a week, an egg each child ; master took eggs, but not the mistress ; if eggs are left over after children taken  
30 them, that is taken and given to the master.”

Under cross-examination again she said, “On the first visit I definitely got on to the verandah ; we walked from the second accused’s mother’s house to the first accused’s shop ; on that occasion between second accused’s mother’s house and the first accused’s shop the second accused did not say anything ; at the turn-off from the road to first accused’s shop, second accused did not say anything. She merely turned off from the road and got on to the verandah of first accused’s shop and I also followed her and got on to the verandah. Second accused calls me ‘Amme.’ ”

40 Then the question, “Turning into the first accused’s shop, second accused did not say, ‘Amme, wait here, I will go and talk to baas and come,’ ” answer, “I cannot remember.”

“Q. Did she or did she not tell you that ?

“A. I cannot remember.

“If she had told me to remain on the road I would have remained on the road ; it was because she had said nothing to me I followed her and stopped on the verandah.”

50 Then she said : “I heard nothing of the conversation,” that is the first conversation. Then you remember the passage that was already read to you as to chaperoning being necessary for this lady.

Then in regard to the second visit this is what she said in cross-examination. “It was towards evening that we went to first accused’s

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shop. Till I went that evening to first accused's shop I did not know that we were going there. Between second accused's mother's house and the first accused's medicine shop second accused did not say anything. She did exactly what she did on the previous occasion ; when she came in front of first accused's shop she turned and walked in and I automatically turned and walked in with her. I cannot remember whether she told me ' Amma wait here, I will come in a moment.' If she had told me to wait outside I would have followed her orders. I walked in because she did not tell me to stop outside. Second accused walked into the hall, that is, into the front portion of the hall, in front of the medicine chest. I also walked 10 into the hall. (*To Court* : I did not stop at the railing ; I also walked into the hall.) As second accused did not ask me to stop at the railing I went in . . .

" Q. What was the first thing you heard the first accused say ?

" A. They talked in a low tone.

" Q. And you did not hear what they said in a low tone ?

" A. Yes. I think she said, ' No.'

" Q. Then they raised their voices a little and you heard something ?

" A. Not even that.

" *Court* : Did they raise their voices a little ?

20

" A. I did not listen.

" *Counsel* : But after a time you pricked up your ears and heard something. What was it that you heard first ?

" A. They did not speak anything to be heard by me.

" Q. And you now say then that you did not hear the first accused say anything to the second accused ?

" A. I did not hear.

" Q. So you did not hear any of the conversation between first and second accused in the first accused's shop on 6th November ?

" A. I did not hear."

30

In connection with my remark about chaperoning being necessary for this lady you remember learned Counsel appearing for her, Mr. Nihal Gunasekere, conceded that on the evidence it may be that she was of a flirtatious nature.

Then we come to this part of the cross-examination :

" Q. Did the second accused say anything about the Baas that night ?

" A. Yes.

" Q. What ?

" A. ' To-morrow morning Baas would come, You had better go out.'

" Q. Did you ask her why ?

40

" A. I did not ask.

" Q. That was the first occasion second accused had ever asked you to leave the house if Baas came ?

" A. Yes.

" Q. She had never previously asked you to leave the house if Baas came ?

" A. No . . .

" Q. Then your evidence in examination-in-chief that she told you this in the morning before leaving for school is incorrect ?

" A. It was in the morning ; I forgot about it.

50

" Q. So before or after dinner she told you nothing "

" A. Not in the night."

Then it was put to her that this story of conspiracy between her and the first accused was an entire fabrication. She denied that it was false and she said that nobody taught her that. Then she was re-examined.

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Gentlemen of the jury, if you think this is the evidence of an accomplice then you may think that Sumana corroborates Alice in regard to one member of the conspiracy, the first accused, when she says the first prisoner went to the house on November 3rd or on November 5th. The Crown says that the first prisoner went to the house on that day in pursuance of the conspiracy but for one reason or another it was not done.

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10 Then in regard to the second prisoner herself you may think that Alice is corroborated in the manner required by law by the independent evidence of Mrs. Christie, Mrs. Wijesekere and Rev. Seelaratne, whose evidence tends to show, if you believe them, that the second prisoner had knowledge of the conspiracy on the morning of November 7th and that she behaved in that unusual manner because she knew her husband would be done to death that morning and that she deliberately played her part for time in order to give her fellow-conspirator a chance to get away. It is all a matter for you. As I have already told you, even if you think she is not corroborated, it is open to you to act on her evidence, but I have warned  
20 you of the serious danger of doing so.

I now come to count two of the indictment, which relates to the charge of murder against the first prisoner alone. You will again remember that the proof relied upon by the Crown is by means of circumstantial evidence. As Lord Chief Justice of England said, "It is no derogation of evidence to say that it is circumstantial evidence."

The first question here you may think is whether it has been proved beyond reasonable doubt that P.6 was the weapon used to kill the deceased. Just show that P.6 to the jury. (P.6 handed to the jury.) If so, among other things, you can have little doubt as to the intention of the murderer.  
30 You remember Dr. de Saram's evidence about the hair found on the blade of P.6 and the comparison he made with that hair to the hair of the deceased. Then you will remember the Government Analyst's evidence of the blood on the blade and the fact that it was found under that rampe bush in the adjoining compound.

By the way, the knife was in the cloth bag. Don't forget in that connection that Ukku Menika says that the first accused took out a revolver from inside it, and it seems to have been used to convey gotukola leaves. So that the bag was full enough, otherwise an object like the knife would give out its outlines inside the cloth bag. It is for you to say.

40 To get back, if you have no reasonable doubt as to the weapon used, then you come to the proof of the assailant. The Crown on this head relies on (1) proof that this weapon P.6 is the weapon taken from first accused's medicine shop and (2) proof that first accused was identified with that weapon in his hand very shortly after the event in the adjoining compound by a number of persons.

I will deal with the second head first. You will remember the evidence of Ukku Menika, Ran Banda and Sudu Banda. I am not going into details. They say they had never seen the first prisoner before that morning. They say they saw his face that morning despite his attempts  
50 to avoid identification, first by wearing that sarong over his head and

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then covering one part of his face with his hand. That sarong you may think is proved to be Orandha's sarong. The witnesses say and the Magistrate says that these three witnesses picked out the first prisoner at an identification parade held in court.

For the defence the submission under this head is that these three witnesses did not identify the first prisoner that morning because his behaviour that morning there was that of a mad man and that when they saw a man run out on to the road they merely said "pissek" and left it at that till the police arrived there and induced them to give this false evidence. 10

As regards the first prisoner's behaviour immediately after the deed the Crown submits that once again this plan though carefully made miscarried in an essential particular. The handle of the knife slipped in the assailant's hand and so the Crown submits it was not one clean sweep as anticipated. The deceased struggled, ran in, had to be chased and hacked at again and again till he fell in the back room uttering those long sighs or groans that the drain sweeper speaks to. The case was up. The plan to pick up the bag and umbrella and quietly walk out of the front door had failed. It was necessary to jump over the back wall into the compound behind. A most bewildering locality you may think for 20 a man getting in there for the first time—nothing but blank walls all round and no exit. Thinking the exit was on the other side of the house the first prisoner rushes into the house—only to find himself inside a room with no exit at all outside. Then he rushes back, climbs that mount and looks about. He sees that the porch is on the other side. Then he leaves the bag and the knife under the bush and rushes out on to the road covering his eye.

Then there is the evidence of Khalid. You remember he too swears he saw the first prisoner while he was seated on the roof of that porch and he too says he picked out the first prisoner at an identification parade 30 held in court.

The defence submits that this witness too is a police witness. The defence points out that this witness did not take part in the identification parade held on November 8th but was asked to attend a parade held on November 10th. They say that Khalid was nowhere there and that the police had brought him into the case.

Then as regards the assailant, the Crown submits proof of that injury on the first prisoner's ankle which they say was caused while he broke through the zinc fence. The defence says it was the bite of a dog.

Next we come to the head of "*Proof*," relating to the ownership of 40 that weapon, because the owner of it is likely to be the person who used it, though in this connection do not forget that Ukku Menika and others say they saw this weapon in the hand of the first prisoner. You remember I troubled the Government Analyst over and over again over the reconstruction of that herb cutter with that knife and that table. I did so solely for one reason. There is no greater anxiety which assails a judge in charge of a criminal case than to check and probe into the prosecution case and every part of it so far as possible. Solemn issues indeed are tried and decided at this moment. If there is any matter upon which light can be thrown, it is our duty not to leave it untested. Now what seemed to me most 50 unusual in regard to this part of the prosecution case was that not a block

of wood as one might have supposed was part of that herb cutter was produced, but a bit of wood which had been thrown into the fireplace. That was, in my opinion, something that had to be looked into. Why was something thrown into the fire? Was it thrown into the fire? Therefore it was, especially as the defence suggests that this part of the case too was a piece of police fabrication, that this knife was no part of any herb cutter found on that table or fixed to that table, that it belonged to some other herb cutter in some other part of Colombo, and that the police for reasons of their own, having decided to implicate the first prisoner, put this knife

10 into [*sic*] the truth was that that bit of original wood was thrown into the fire for the reason given by the Crown witnesses, namely, it had by use put on it a drain which the man who was making a new herb cutter thought was hardly worth re-using it; he said: "If I am to make a new herb cutter I might as well put in a new block of wood"; therefore it was that I asked the Analyst to use the same outlines as are left on that table even to-day and see if it is possible with a piece of wood on the same outlines to see whether that knife could have been used in such a way that that piece of wood would have a drain on it—don't forget the piece of wood in court here is not the piece of wood the Crown says was there—it is only similar as

20 regards length and breadth; we do not know the height or shape of that piece of wood—just to satisfy you that the carpenter and blacksmith said, looking at that wood, they did not think it was of any use; whether it is true or whether it is belated or fabricated evidence it is for you to say. It only remains now to read to you the material parts of the evidence of the first prisoner's wife.

She too is a witness in this case. She has given her evidence on oath. Test her evidence as you would the evidence of any other witness. I will read the material parts of it. She says, "On the 7th November the first accused opened the boutique in the morning, had his tea, borrowed John's

30 umbrella saying he had to go to Malabe. John lives in the adjoining boutique on the Colombo side; first accused has borrowed the umbrella before this also; after borrowing the umbrella the first accused remained for a short while in the shop; then went to sleep saying he was feeling feverish; he used to get fever before that too; after he got to bed he swallowed two tablets of medicine, drank some water and slept. He slept till meal time; at meal time got up and went to the boutique portion of the house and asked me to look after the boutique saying he is going out somewhere; he went out at about 12 noon; he was in bed in the house from morning till 12 noon on the 7th November; first accused came back

40 in about half an hour's time; having come back the first accused had his noon meal; he ate bread on that day; after his noon meal first accused was in the house till about 5 p.m. lying on the bed; at 5 p.m. first accused borrowed John's bicycle and went to the Gansabawa Junction; he came back in 15 minutes' time; he then worked in the boutique; he returned the bicycle to John; he was in the boutique till 7.30 p.m. Then he went out saying he was going to Nugegoda. He went out after dinner; when he went out after dinner the table P.10 was outside; herb cutter and the balances were inside the house; first accused had removed them and placed them inside the house."

50 You will remember the defence is that the hole there and the table were used for the purpose of planting the balances with that iron bar.

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*continued.*

You will remember the reconstruction made by learned Counsel here in court for your benefit. You will remember the earnest manner in which he addressed you in front of your face on that part of the case. I will go on with the evidence of the first prisoner's wife :

“ After the first accused went to Nugegoda we had our dinner, closed the doors and went to bed ; first accused was getting late to return ; after we went to bed somebody came and tapped at the door ; we asked who, a voice said, ‘ Mirihana police.’ We opened the door ; some police officers were there ; there were two cars and a van ; police asked where the first accused was. I told 10 them he had gone to Nugegoda ; police began to search the house ; police took a coat, a sarong, a sash, an umbrella, a pair of sandals from the house ; P.7 is not the coat which was removed ; the coat which was removed is not on this table ; P.8 is the sarong which was removed ; the sash is not here ; as regards the umbrella I cannot say whether this was the umbrella removed. It is one like this ; it was hanging on the peg ; (shown P.28) pair of slippers like this was removed. I showed the herb cutter 1D9 to the police that night ; they looked at it and went away ; they did not take it away ; then first accused came from the direction of Colombo ; 20 it was then 9 or 9.30 p.m. I saw him come. The police called out to him ; he went up to them ; they searched him and examined him ; then they took him away in the van ; they also took away the coat, the sarong, umbrella and slippers. I was not asked to sign anything.”

Gentlemen of the jury, that is the whole of the case. You are the judges of fact.

One of these two prisoners is a woman. You and I have no concern with that. The state exists within the framework of the law. The law lays down certain pains and penalties. With that you and I have nothing 30 to do.

Your duty now is to consider your verdict on the evidence.

Certified correct.

True copy vide Certificate in  
Form VIII forwarded to C.C.A.

Chief Stenographer, S.C.

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No. 92.  
VERDICT.

*In the  
Supreme  
Court.*

*Clerk of Assize :* Are you unanimously agreed upon your verdict with regard to the first accused ?

No. 92.  
Verdict,  
3rd  
February  
1949.

*Foreman :* We are unanimous.

*Clerk of Assize :* Are you unanimously agreed upon your verdict with regard to the second accused ?

*Foreman :* Unanimous.

*Clerk of Assize :* Do you find the first accused guilty or not of  
10 conspiracy to commit murder, on the 1st count of the indictment ?

*Foreman :* Guilty.

*Clerk of Assize :* Do you find the second accused guilty or not guilty of conspiracy to commit murder, on the 1st count of the indictment ?

*Foreman :* Guilty.

*Clerk of Assize :* Do you find the first accused guilty or not guilty of committing murder on the second count of the indictment ?

*Foreman :* Guilty.

*Clerk of Assize :* Do you find the second accused guilty or not of abetting to commit murder on the 3rd count of the indictment ?

20 *Foreman :* We did not consider that count.

*Court :* It does not arise.

*Verdict*—1st accused guilty on 1st count.

          "          "          " 2nd " "  
2nd accused "          " 1st " "



*In the  
Supreme  
Court.*

No. 93.

STATEMENTS OF ACCUSED.

No. 93.  
Statements  
of Accused,  
3rd  
February  
1949.

The first accused on being asked whether he has any cause to show why sentence of death should not be passed on him states :

I know nothing about this matter. From the time the proceedings were instituted in the Magistrate's Court propaganda work was done by the aid of pamphlets, and these things appeared in the issues of the Dinnamina and Lankadepaya. Mr. D. R. Wijeyewardene, the proprietor of the Dinnamina Press, is my uncle. Mr. D. R. Wijeyewardene is my aunt's son. Mr. D. R. Wijeyewardene's mother is Mrs. Helena Dep. 10  
My grandmother is Lucia Dep. My aunt was married to Dr. Seneviratne

*Court :* Have you any cause to show why sentence of death should not be passed ?

*Prisoner :* I beg your Lordship will give me an opportunity to make this statement. The deceased was a relation of mine. With the permission of the Superintendent of Prisons, I have written several letters for and on behalf of (to ?) Mr. D. R. Wijeyewardene, I have written letters for and on behalf of (to ?) Dr. Wijeyewardene, I have written letters for and on behalf of (to ?) Nanda Seneviratne and I have written letters to . . .

*Court :* I don't find any reason why I should hear more about 20  
Mr. Wijeyewardene and others, have you any cause to show why sentence of death should not be passed ?

*Prisoner :* I beg to make a statement on behalf (in the name of ?) His Majesty the King against the incorrect unanimous verdict, finding me guilty of murder. The jury is composed of two European gentlemen, two Burgher gentlemen.

*Court :* I will hear nothing more.

The second prisoner on being asked whether she has any cause to show why sentence of death should not be passed on her, she states :  
I am innocent. 30

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Sentence of death is passed on the first prisoner.

Sentence of death is passed on the second prisoner.

No. 94A.  
Second  
Accused's  
application  
and  
Grounds of  
Appeal.  
(Not  
printed.)

SECOND ACCUSED'S APPLICATION AND GROUNDS OF APPEAL.

(Not printed.)

No. 94.

APPLICATION by Appellant to Court of Criminal Appeal of Ceylon for leave to Appeal with Grounds of Appeal.

FORM XXXIII.

IN THE COURT OF CRIMINAL APPEAL.

*Criminal Application No. 18 of 1949.*REX *v.* KANNANGARA ARATCHIGE DHARMASENA alias BAAS.

(Supreme Court, 4th Western Circuit, 1949.)

Case No. S.C.1/M.C. Colombo 36089 of 1949.)

10 NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE.

To the Registrar of the Court of Criminal Appeal.

Name of Appellant : *K. A. Dharmasena alias Baas.*Offence of which convicted : *Murder.*Sentence : *Death.*Date when convicted : *3rd February, 1949.*Date when sentence passed : *3rd February, 1949.*Name of Prison : *Welikada Prison.*

20 I the above-named Appellant hereby give you notice that I desire to appeal to the Court of Criminal Appeal against my conviction on the grounds hereinafter set forth on page 2 of this notice.

(Signed) or (Mark) *K. A. DHARMASENA (In Eng.)**(Appellant).*

Signature and address of witness attesting mark

Dated this 11th day of *February, 1949.*

The Appellant must answer the following questions :—

Question.	Answer.
1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal ? .. .. .	<i>No.</i>
2. Do you desire the Court of Criminal Appeal to assign you legal aid ?	<i>Yes.</i>
If your answer to this question is "Yes" then answer the following questions :—	
(a) What was your occupation and what wages, salary or income were you receiving before your conviction ?	<i>I was a petty trader earning about Rs.50/- a month.</i>
(b) Have you any means to enable you to obtain legal aid for yourself ? ..	<i>No.</i>

*In the Court of Criminal Appeal of Ceylon.*

No. 94.  
Application by Appellant to Court of Criminal Appeal of Ceylon for leave to appeal with grounds of appeal,  
11th February 1949.

- In the Court of Criminal Appeal of Ceylon.*
- No. 94.  
Application by Appellant to Court of Criminal Appeal of Ceylon for leave to appeal with grounds of appeal, 11th February 1949, *continued.*
- (c) Is any Proctor now acting for you?  
If so, give his name and address .. .. . *No.*
3. Do you desire to be present when the Court considers your case? .. .. . *Yes.*
4. Do you desire to apply for leave to call any witnesses on your appeal? .. .. . *No.*  
If your answer to this question is "Yes" you must obtain Form XXVI, fill it up, and forward it with this notice.

GROUNDS OF APPEAL OR APPLICATION.

10

1. The conviction and sentence are contrary to law and against the weight of evidence.

2. The verdict of the jury is unreasonable.

3. I am absolutely innocent of the offence of which I was convicted.

4. There was not a single eye-witness to prove that I committed this offence.

5. There was not a single eye-witness to state that I left Nugegoda to Kotahena on the day of this alleged incident, neither from Kotahena to Nudegoda.

6. On the day of this alleged incident, I was in bed with an attack of malaria. 20

7. The deceased is a close relative of mine and I have no previous grudge against him to murder.

8. On the day of my arrest I was taken before the J.M.O. and my finger nails were cut and were sent to the Analyst for report. And at the trial the J.M.O. stated that there were no blood stains on the finger nails.

9. The Finger Print Expert examined the finger prints noticed but he is still not in a position to say whose finger prints they were. The finger prints noticed differ from those of mine in many ways. 30

10. It is true that I had an injury on my right leg at the time the J.M.O. examined me. This was a dog bite and when the J.M.O. questioned me I told him that it was a dog bite. The J.M.O. had informed the police inspector that the injury may have been caused by coming in contact with a hard metal like zinc. I wish to submit that knowing that there were dogs at the deceased's house, I would not of dared to say that it was a dog bite, if I had any guilty conscience.

11. The three witnesses for the prosecution are servants of a house behind the deceased's house. They have seen me frequently visiting the deceased's house and they gave false evidence against me on the instigation of the police. 40

12. I was falsely implicated in this case by the police.

No. 95.

**FURTHER GROUNDS OF APPEAL.**

1. The conviction is contrary to law and the weight of evidence led in the case.

2. During the trial a number of objections raised by the defence were over-ruled by the learned Commissioner. It is respectfully submitted that these objections should have been upheld.

3. It is respectfully submitted that the questions put to witnesses by the learned Commissioner may have created an impression unfavourable to the defence.

4. It is respectfully submitted that non-direction by the learned Commissioner in his charge to the jury of the details of the evidence regarding the first accused was prejudicial to the defence inasmuch as these facts may have created a reasonable doubt regarding his guilt.

5. Whether Alice Nona was an accomplice was a fact which should have been left to the decision of the jury.

6. The evidence of Alice Nona was entirely unreliable and uncorroborated in material particulars.

7. It is respectfully submitted that the learned Commissioner failed to direct the jury sufficiently regarding circumstantial evidence.

8. As a matter of law, it is respectfully submitted that the evidence regarding the pair of sandals was inadmissible at the trial as no evidence was led regarding them at the non-summary proceedings.

9. An application made by the defence for inspection of a document used to refresh the memory of a witness was not allowed by the learned Commissioner to the prejudice of the defence.

*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*

No. 95.  
Further  
grounds of  
appeal,  
11th  
February  
1949.

No. 96.

**JUDGMENT of Court of Criminal Appeal.**

Appeals 10-11 of 1949 with Applications 18 & 21 of 1949.

S.C. 1/M.C. Colombo No. 36089.

Present—

CANEKERATNE J. (President), DIAS J. and WINDHAM J.

*Counsel* : S. B. Lekamage for first accused Appellant.

A. B. Perera for second accused Appellant.

H. A. Wijemanne C.C. with J. A. P. Cherubim C.C. for the Crown.

*Argued on* 14, 15 and 16th March, 1949.

*Delivered on* 26th March, 1949.

*Canekeratne J. :*

The two appellants were convicted of the murder of Govipolagodage Dionysius de Silva Seneviratne, and were sentenced to death, the first Appellant being convicted on Count 1 of the indictment, an offence

No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949.

*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*

No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949,  
*continued.*

punishable under Section 113B read with Section 296 and 102 of the Penal Code, and on Count 2, an offence punishable under Section 296 of the Penal Code. The second Appellant was also convicted on Count 1. She was also charged with having abetted the first accused in the commission of the offence set out in Count 2 but the Jury did not consider that Count, as the learned Judge told the Jury that if they were left in a state of honest doubt as regards the charge of conspiracy then both Counts 1 and 3 fail. On March 16, 1949, this Court dismissed the appeal of the first Appellant and quashed the conviction of the second Appellant and ordered a new trial, and we now proceed to give our reasons for so doing. 10

According to the evidence, the first Appellant who lives at Nugegoda came to the house of the deceased, 107, College Street, Kotahena, about 8.45 in the morning at a time when the servant woman, Alice Nona, was the only inmate in the deceased's premises and having sent the servant woman away or just after she left the place awaited the arrival of the deceased and proceeded to kill him. Apparently just after this he ran to the adjoining house, threatened the servant woman there, dropped the knife he had and also his sarong with which he had covered his head and ran outside. He had left his umbrella at 107, College Street; one Khalid saw this accused drop his coat which was found to be stained with human 20 blood, and a purse a little further away and then depart.

The first and main contention of Counsel for the first accused was that the method adopted by the learned Judge of refreshing the memory of the witness Alice Nona by reading the passage marked X (in page 96 of the record) was contrary to law. In this connection he referred to what he said was the rule laid down by the majority view in the case of *The King v. Namasivayam*, (A) and to the passage from the case of *Noor Bux Kazi v. The Empress*, quoted in the former case. It is unnecessary to discuss the views expressed in the former case. Even without the evidence of Alice Nona there was ample evidence in the case to establish the guilt of the first 30 accused. It is not necessary to discuss the question of his conviction on the other Count. The other matter on which Mr. Lekamage relied as misdirection was his contention that the learned Judge allowed some photographs to be produced in evidence. In considering the admissibility of these there are always two questions to be met—competency, and materiality and relevancy. If the photograph is an accurate and honest representation of the facts, one then comes to consider whether it is material and relevant, whether the matter pictured will genuinely and properly aid the jury in determining the true facts. If it passes both tests it becomes 40 good evidence. A photograph comes in as a part of the testimony; it is used to explain or make oneself intelligible to a Judge; it is referred to in Section 3 of the Evidence Ordinance. A photograph may be demonstrative evidence or documentary evidence. It may be that cameras do lie (e.g., one not held at eye level, one with a long focus lens, etc.), but one does not dispense with all witnesses because there are perjurers. If real evidence (e.g., a knife) can be brought, why not a photograph? If a jury may view a scene, why not a photograph of the scene? There was no misdirection and the contention fails.

The second Appellant began her evidence on January 25, her cross-examination by leading Counsel for the Crown occupied a little over one 50 day. A series of questions was, then, put to her by the learned Judge, these and the answers occupy pages 520 to 529.

After this examination the witness was re-examined by her Counsel ; in the course of the re-examination too, as of the cross-examination, the trial Judge put certain questions to her. A few of the questions were loaded with all the observations that arose upon all the preceding parts of the case and they would tend to detract the attention of everybody, including that of the witness. Some of the questions to which objection were taken together with the explanatory ones are the following :

*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*

No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949,  
*continued.*

10 “ Q. He generally did the marketing, dropped in to see his children at school, fed them at their meals, he was an old man, not in the best of health, careful of his habits. Do you seriously suggest that he would get about outside every day of the week, or practically so ?

“ A. Yes. (1)

“ Q. Will you agree that if anyone wished to murder this poor man the best opportunity was while you were living at 107 College Street ?

“ A. No.

“ Q. So that if anyone had killed the deceased then, you would have been in the house in the morning ?

“ A. Yes.

20 “ Q. Two weeks before his death you took a teaching job without even knowing what the salary was. Was that because you wanted to get out of the house ?

“ A. No.

“ Q. You said yesterday that you took up teaching at your husband's request ?

“ A. Yes.

30 “ Q. Is it not easy to put everything on a dead man who cannot answer for himself ? You say he ill-treated the children, he borrowed money from (2) Afghans, he insisted on your not leaving the school without the children, he got you this teaching job. He is not here to say no. Is that not so ?

“ A. (No answer.)

“ Q. If he did get you this teaching job would you not know on what terms, or how much of it he was going to get and how much of it you were to get ? Is that not so ?

“ A. (No reply.)

“ Q. Did you get this teaching job regardless of salary because you had made up a certain plan ?

“ A. No.

40 “ Q. If the servant was one whom you could persuade to take into your confidence, all that the servant had to say was that she was out at the time ? Is that not so ?

“ A. (No reply.) (3)

“ Q. Alice told the jury that you told her that after the death there would be an inquiry which would be over in a month and that the matter would then be dropped. You heard her say that ?

“ A. Yes.

“ Q. Do you think she is intelligent enough to invent that ?

“ A. I do not know.

50 “ Q. She is a servant woman, illiterate and ignorant. Do you think she knows about court proceedings ? What happens when a person is killed, how long an inquiry like this is to last, and all such matters ?

“ A. I do not know.



*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*

No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949,  
*continued.*

- “ Q. Some one has told her that. Who is that person ?
- “ A. I do not know.
- “ Q. So that the assailant would have had a clear one hour at least to make his get-away ?
- “ A. Yes.
- “ Q. And if Alice said, ‘ I do not know ; I was in the market,’ the inquiry would have to be dropped after about a month quite apart from the police. There would be no evidence at all ?
- “ A. Yes. (4)
- “ Q. How is it that Alice herself was reluctant to get back to the house after the marketing ? 10
- “ A. I do not know.
- “ Q. And you said you could not help it ?
- “ A. Yes. (5)
- “ Q. That is a common-sense answer. Instructions like that are for normal occasions, not for unusual occasions. Is that not so ?
- “ A. Yes.
- “ Q. Why did you tarry at standard five ?
- “ A. (No answer.)
- “ Q. What on earth could the children have done in that crisis ? 20
- “ A. (No answer.)
- “ Q. Answer these questions. I must put these matters to the jury. I want an answer ?
- “ A. As I was going home I took them along with me.
- “ Q. Once again is that not an indication of reluctance, to delay the inevitable of having to see your husband murdered ?
- “ A. No. (6)
- “ Q. When you saw his glasses in that pool of blood what did you do ?
- “ A. I went in to see what happened ?
- “ Q. Is that all ? 30
- “ A. Yes. I started crying along with my two children.
- “ Q. Please listen to my question. When you saw his glasses in that pool of blood in the verandah what did you do ?
- “ A. I did not do anything but I went in.
- “ Q. Was that not the time to weep for your husband ?
- “ A. Yes. (7)
- “ Q. That was the last time you had seen your husband alive ?
- “ A. Yes.
- “ Q. If you did love him as you say, could you have ever forgotten that ? The thing would have been haunting in your mind till this morning ? 40
- “ A. (No reply.)
- “ Q. You saw him then. That was the last occasion ?
- “ A. (No reply.)
- “ Q. Did you weep when you went to the police station ?
- “ A. Yes. (8)
- “ Q. I must put it to you, was this weeping any part of the pretence you were carrying out ?
- “ A. No. (9)
- “ Q. The children were there in the house. Why did you not send Alice to the children ? 50
- “ A. She was there with me.
- “ Q. Why did it not strike you to say, My two children are there ; let this woman go and be with them ?

“ A. (No reply.)

“ Q. I do not want to be too unfair to you. Did you think that Mrs. Wijesekere was looking after them ?

“ A. Yes.

“ Q. Mrs. Wijesekere was a teacher and had a job to do. Did you not think that your servant could have looked after them ?

“ A. She told me that she would look after them till I returned.” (10)

10 It is, of course, always proper for a Judge—he has the power and it is his duty at times—to put such additional questions to the witnesses as seem to him desirable to elicit the truth. The part which a Judge ought to take while witnesses are giving their evidence must, of course, rest with his discretion. But with the utmost respect to the Judge, it was, I think, unfortunate that he took so large a part in examining the Appellant. Though he was endeavouring to ascertain the truth, in the manner which at the moment seemed to him most convenient, there was a tendency to press the Appellant on more than one occasion. The importance and power of his office, and the theory and rule requiring impartial conduct on his part, make his slightest action of great weight with the jury. If he takes upon himself the burden of the cross-examination of the accused, when the government is represented by competent counsel, and conducts the examination in a manner hostile to the accused and suggesting that he is satisfied of the guilt of the accused, as some of the questions do, the impression would probably be produced on the minds of the jury that the Judge was of the fixed opinion that the accused was guilty and should be convicted. This would not be fair to the accused, for she is entitled to the benefit of the presumption of innocence by both Judge and jury till her guilt is proved. If the jury is inadvertently led to believe that the Judge does not regard that presumption, they may also disregard it.

30 Mr. Wijemanne contends that the Judge was at the moment referred to (p. 529) endeavouring to get an explanation from the accused and thus to help her—he points to the question which followed these words. On the other hand, there is the next question. The effect of a few isolated questions to which objection can well be taken may not be such as to disturb a verdict where there is evidence to support it, and a fair and proper charge, but the number and nature of the questions may far outweigh the good that is capable of being done by the use of the phrase, “ it is a matter for you.” An act of this kind of the Judge comes within the very wide words “ any other ground ” (Section 5 (1) (11)) so that 40 the appeal should be allowed accordingly as there is or is not a miscarriage of justice. There is such a miscarriage of justice when the Court is of opinion that the examination of the accused by the Judge may reasonably be considered to have brought about that verdict, and when, on the whole facts and without this attitude of the Judge, the jury might fairly and reasonably have found the Appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one because the Appellant has lost the chance which was fairly open to her of being acquitted (12), and as the Court has power to grant a new trial, an order to that effect should be made (13).

50

(Sgd.) A. R. H. CANEKERATNE,  
President of the Court of Criminal Appeal.

*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*

—  
No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949,  
*continued.*

*In the  
Court of  
Criminal  
Appeal of  
Ceylon.*  
—  
No. 96.  
Judgment  
of Court of  
Criminal  
Appeal,  
26th March  
1949,  
*continued.*

- (A) 49, N.L.R. 289.  
(1) 520.  
(2) 521.  
(3) 522.  
(4) 523.  
(5) 524.  
(6) 525.  
(7) 526.  
(8) 527.  
(9) 528.  
(10) 529.  
(11) Section 5 (1) of Ord. No. 23 of 1938.  
(12) *R. v. Haddy.*  
(13) Section 5 (2) Proviso.

10

*In the  
Privy  
Council.*  
—

No. 97.

**ORDER IN COUNCIL granting Special Leave to Appeal to His Majesty in Council.**

**AT THE COURT AT BUCKINGHAM PALACE**

The 28th day of July, 1949

Present

**THE KING'S MOST EXCELLENT MAJESTY**

20

LORD PRESIDENT  
LORD PAKENHAM  
MR. ALEXANDER

SIR ALAN LASCELLES  
LORD PATRICK  
SIR OLIVER FRANKS  
MR. DUGDALE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of July 1949 in the words following, viz. :—

L.S.

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of K. A. Dharmasena in the matter of an Appeal from the Court of Criminal Appeal of Ceylon between the Petitioner Appellant and Your Majesty Respondent setting forth: that the Petitioner on the 4th January 1949 was arraigned with one Beatrice Maud de Silva Seneviratne at the Sessions of the Supreme Court of Ceylon sitting at Colombo on the Western Circuit on an Indictment charging them jointly with the murder on 7th November 1947 of one Govipolagodage Dionysius de Silva Seneviratne the husband of the said Beatrice Maud de Silva Seneviratne: that the Indictment set out three counts namely :—(i) That between the 1st and 8th day of November 1947, at Nugegoda and Kotahena in the district of Colombo, you did agree to commit or act together with a common purpose for or

30

40

in committing an offence to wit the murder of one Govipolagodage Dionysius de Silva Seneviratne of No. 107 College Street, Kotahena, and that you have thereby committed the offence of conspiracy to commit murder in consequence of which conspiracy the said offence of murder was committed; and that you have thereby committed an offence punishable under Section 113B read with Section 296 and 102 of the Penal Code: (ii) That on or about 7th November 1947, at Kotahena in the district of Colombo, and in the course of the same transaction as set out in count (i) above, you Kannangara Aratchige Dharmasena alias Baas did commit murder by causing the death of the said Govipolagodage Dionysius de Silva Seneviratne; and that you have thereby committed an offence punishable under Section 296 of the Penal Code; (iii) That between the dates mentioned in count (i) above, you Beatrice Maud de Silva Seneviratne did abet the said Kannangara Aratchige Dharmasena alias Baas, the first accused, in the commission of the offence set out in count (ii) above which said offence was committed in consequence of such abetment and that you have thereby committed an offence punishable under Section 296 read with Section 102 of the Penal Code; that on the 3rd February 1949 the Petitioner was found guilty on counts (i) and (ii) of the Indictment and the co-accused was found guilty on count (i) of the Indictment and both were condemned to death: that the jury did not consider count (iii) of the Indictment as the trial Judge told the jury that if they were left in a state of honest doubt as regards the charge of conspiracy then both counts (i) and (iii) fail: that on the 16th March 1949 the Court of Criminal Appeal of Ceylon dismissed the Petitioner's Appeal but the conviction of the co-accused was quashed and a new trial was ordered for her: that on the 20th April 1949 the co-accused was arraigned at the Sessions of the Supreme Court of Ceylon sitting at Colombo on the Western Circuit on an Indictment charging her with the murder of the said Govipolagodage Dionysius de Silva Seneviratne: that this Indictment set out two counts namely:— (i) That between the 1st and 8th day of November 1947 at Nugegoda and Kotahena in the district of Colombo, Kannangara Aratchige Dharmasena alias Baas and you did agree to commit or act together with a common purpose for or in committing an offence to wit the murder of one Govipolagodage Dionysius de Silva Seneviratne of No. 107, College Street, Kotahena, and that you have thereby committed the offence of conspiracy to commit murder in consequence of which conspiracy the said offence of murder was committed; and that you have thereby committed an offence punishable under Section 113B read with Sections 296 and 102 of the Penal Code. (ii) That between the dates mentioned in count (i) above, you did abet the said Kannangara Aratchige Dharmasena alias Baas in the commission of the said murder which said offence was committed in consequence of such abetment; and that you have thereby committed an offence punishable under Section 296 read with Section 102 of the Penal Code: that on the 20th April 1949 the Jury by an unanimous verdict found the co-accused not guilty of any offence and she was discharged: that the Petitioner submits that as count (i) in the Indictment of 20th April 1949 has

*In the  
Privy  
Council.*

No. 97.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
28th July  
1949,  
*continued.*

*In the  
Privy  
Council.*

No. 97.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
28th July  
1949,  
*continued.*

failed count (i) in the Indictment of 4th January 1949 cannot be sustained : that he further submits that as count (i) in the Indictment of 20th April 1949 has failed and as count (i) in the Indictment of 4th January 1949 cannot be sustained count (ii) in the Indictment of 4th January 1949 in which it is alleged the Petitioner did commit murder ' in the course of the same transaction set out in count (i) above ' must of necessity fail : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal *in formá pauperis* to Your Majesty in Council against his conviction on the 3rd February 1949 and against the Judgment of the Court of Criminal Appeal dated 16th March 1949 or to make such other Order as Your Majesty in Council may think fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal *in formá pauperis* against the Judgment of the Court of Criminal Appeal of Ceylon dated the 16th day of March 1949 :

20

“ AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Criminal Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

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**EXHIBITS.****P. 19.****Promissory Note.**

P.19.  
(Intd.) V.T.P.G.  
Mag.

17th November 1946.

On demand I the undersigned Mrs. G. B. M. Seneviratne promise to pay to Mrs. M. W. Walles or order the sum of rupees Five Hundred only  
10 currency for value received with interest thereon at the rate of 18% per annum, from the date hereof.

Sgd. G. B. M. SENEVIRATNE.

Witness : 1 A. GEORGE PEIRIS.

*Exhibits.*

P.19.  
Promissory  
Note, 17th  
November  
1946.

**P. 20.****Letter, M. W. Walles to Peris.**

P.20  
(Intd.) V.T.P.G.  
Mag.

23 Edward Lane,  
Colpetty South,

4th September 1947.

20

Dear Mr. Peris,

Last November you and your sister called over and took Rs.500/- from me, but sad to say, you all never turned up nor have you sent me one cent interest. I have waited long enough. Not hearing from you, I will be forced to hand this matter to my lawyers.

I have been to see your sister several times, as I am not keeping in good health, I was unable to call over at Nugegoda to see you. Your sister tells hundreds of lies. Why did she take this money if she is unable to pay.  
30 You are aware that this is my only means of upkeep and do you think God will prosper people who try to trick a poor lady.

Yours sincerely,

Mrs. M. W. WALLEES.

**P. 24.****PAWN TICKET.***[Not reproduced.]*

P.24  
(Intd.) V.T.P.G.

Date : 1.8.47.

40 K. T. M. Appuhamy,  
No. 128 Kotahena Street,  
Kotahena.

Pawn Ticket.

P.20.  
Letter,  
M. W.  
Walles to  
Peris, 4th  
September  
1947.

P.24.  
Pawn  
Ticket [*not  
reproduced*],  
1st August  
1947.

*Exhibits.*

P.25.  
 Govern-  
 ment  
 Analyst's  
 Report, 2nd  
 December  
 1947.

P. 25.

**Government Analyst's Report.**

P.25  
 (Intd.) V.T.P.G.  
 Mag.

Report No. 3174 (C/1011)  
 Office of the Government Analyst,  
 Colombo 7, 2nd December, 1947.

M.C. Colombo Case No. 36089.

Report on the results of the examination of the contents of two sealed 10  
 parcels—seals intact—market “ X ” and “ X(a) ”, sent to me by the  
 Magistrate, Colombo, with his letter No. 36089 of 10.11.47.

The parcels contained the following productions :—

P.1 A small blue orange and brown check sarong labelled  
 “ M.C. Colombo No. 36089 one sarong with stains like blood P.1.”

Human blood was identified in the small fairly heavy smear stains in the  
 areas marked in red by me.

P.5 A coloured mat bag labelled “ M.C. Colombo 36089. One  
 canvas bag with stains like blood P.5.”

Human blood was identified in the extensive heavy stains. 20

The areas have not been marked by me.

P.6 The blade and handle of a chopper labelled “ M.C Colombo  
 36089. One large knife with stains like blood P.6.”

Human blood was identified in the extensive light stains on both sides of  
 the blade and on the handle in the areas marked in red by me.

P.7 A light blue and yellow check coat labelled “ M.C. Colombo  
 36089, one coat with stains like blood P.7.”

Human blood was identified in the heavy smear stains in the areas marked  
 in red by me.

A torn green sarong with purple and green stripes labelled 30  
 “ M.C. Colombo 36089, one sarong with stains like blood P.8.”

Human blood was identified in the minute heavy stains in the areas marked  
 in red by me.

Sgd. W. R. CHANMUGAM,  
 Government Analyst.

The Magistrate,  
 Colombo.

## P. 26.

## Government Analyst's Report.

(Intd.) V.T.P.G.  
Mag.Report No. 3321 (C/1027)  
Office of the Government Analyst,  
Colombo, 17th December, 1947.*Exhibits.*P.26.  
Government  
Analyst's  
Report,  
17th  
December  
1947.

## M.C. Colombo Case No. 36089.

10 Report on the result of the examination of the contents of four sealed parcels—seals intact—marked “ X(b) ”, “ X(c) ”, “ X(d) ” and “ X(e) ”, sent to me by the Magistrate, Colombo, with his letter No. 36089 of 14.11.47.

The parcels contained the following productions :—

P.9 A block of wood with knife attached by means of bolts and washers labelled “ P.9, 14.11.47 One medicinal herb cutter with blade, block connecting rod, washers and fixing nuts.”

P.10 A table labelled, “ P.10—14.11.47, one small table.”

P.11 A hammer labelled, “ P.11—14.11.47, one hammer.”

20 P.12 Two small flat pieces of iron labelled, “ P.12, 14.11.47, two pieces of small iron.”

P.13 A screw driver labelled “ P.13—14.11.47, One screw driver.”

P.14 A wooden handled chisel and the blade of a chisel labelled, “ P.14, 14.11.47. Two chisels.”

P.15 A metal washer labelled “ P.15, 14.11.47 one washer.”

P.16 The blade of a knife labelled, “ P.16, 14.11.47, one blade of knife.”

P.17 A piece of wood partly charred labelled “ P.17, 14.11.47. One charred piece of wood.”

30 P.18 A drawer labelled, “ P.18, 14.11.47, one drawer.”

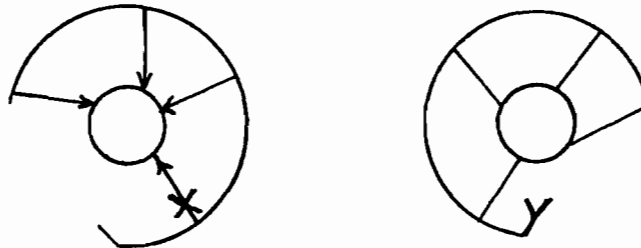
P.9 consisted of a piece of wooden block marked P9A by me, 13 × 4 × 3 inches, with a hole bored at one end to which was fixed an iron bolt, marked P9b by me, with a screw at one end and a curved split head to which was attached a chopper marked P9c by me. The bolt was secured to the block of wood by two circular washers (P9d), one square washer (P9e), and one split hexagonal nut P9f. The chopper was attached to the large iron bolt by a large screw (P9g) and the wing nut (P9h). The curved split head of the bolt P9b leaves two roughly circular marks on either side of any piece of metal attached to it.



*Exhibits.*

The Shapes are as follows :—

P.26.  
Government  
Analyst's  
Report,  
17th  
December  
1947,  
*continued.*



and the dimensions are :—

X.—1.12 × 0.75 × 1.05 × 0.9 cms.

Y.—1.1 × 0.8 × 0.9 × 1.05 cms.

Both P.6 and P9c have marks which correspond in shape and area to the two marks depicted above. The marks on P.6 indicate that P.6 had been attached to P9b for a longer period than P9c.

(Sgd.) W. R. CHANMUGAM

Government Analyst.

The Magistrate,  
Colombo.

10

P.29.  
Post  
Mortem  
Report, 7th  
November  
1947.

**P. 29.**  
**Post Mortem Report.**

Inquest No.

Date : 7th November, 1947.

Place : Maradana Police Mortuary.

Name of deceased Person : Govipolagodage Dionysius de Silva Seneviratne.

Date and time of Death

if known : About 9 a.m. on 7.11.47.

Report of a Post Mortem Examination made by Dr. G. S. W. de Saram, J.M.O. Colombo on the body of Govipolagodage Dionysius de Silva Seneviratne at the request of the City Coroner. 20

Examination commenced at 1.30 o'clock p.m. about five hours after death and terminated at 5.15 o'clock p.m. on the seventh day of November, 1947.

1. Name of District : Colombo.

2. Place of Examination : Residence No. 107 College Street, Kotahena, and thereafter at the Maradana Police Mortuary.

3. Person or Persons : (1) Paul Melius de Silva Seneviratne said to be a brother of the deceased. 30

(2) R. P. Goonetilleke said to be a brother-in-law of the deceased.

Examination at No. 107, College Street, Kotahena.

Time 1.50 p.m. 7th November, 1947.

Mr. Govipolagodage Dionysius de Silva Seneviratne Deceased.

Rectal Temperature—95°F.

Room Temperature—86°F.

*Exhibits.*

P.29.

Post  
Mortem  
Report, 7th  
November  
1947,  
*continued.*

10 The body was lying on its right side in the back room of the house. Right arm was under the body and the right forearm was lying with its back on the floor with the palm facing upwards and the fingers partially flexed. The forearm was almost at right angles to the arm. The left arm lay over the left side of the body which was uppermost. The forearm was bent at right angles to the arm and its front facing the body. The hand was tucked in at right angles to the forearm with the fingers and palm upwards between the ground and the lower part of the right waist. The left leg was almost completely outstretched and turned on its left side, overlying the right leg which was flexed at the knee to about 45° the right foot lying below the lower third of the left leg. The head and shoulders lay under one side of a wooden table. There was a pool of blood flowing out towards the back door step—(about 1 pint of blood in which the serum had separated). There was another pool of blood near the doorway between the middle room and the back room where the body was lying—(about  $\frac{3}{4}$  to 1 pint of blood). There was the lens of a pair of spectacles in the pool of blood. Another pool of blood about 20 10 ounces was found in the front verandah at the entrance to the middle room in which the remainder of the pair of spectacles was found broken.

The deceased was wearing :—

(1) A pair of black shoes with no evidence of blood marks on it ; lying under the left shoe was a leather sandal with rubber sole with blood marks on the sole as well as the leather bands on the top of the sandal.

30 Rs.1/26 found in the left trouser pocket and handed over to Inspector Gordon of shoes and the left leg sandal.

(2) A white drill trouser fastened with studs in front and secured with a flap on top. Blood stains on upper part of right side. White belt with metal part secured in front and stained on right side. There were drops of blood on the front over the right leg of the trouser—most parts pointing towards the ground. Bloodstains in the outer side.

(3) Pair of white drill shorts worn under the trousers. Blood stains on the right side.

40 (4) Aertex sports shirt. Blood stains on back and mostly on right side and right sleeve.

Under this was

(5) A cream coloured silk shirt stained on the right side, back and front on right sleeve.

(6) A white cord about 1/8" in diameter was tied round his waist.

*Exhibits.* External Inspection :

P.29.  
Post  
Mortem  
Report, 7th  
November  
1947,  
*continued.*

1. General condition of The right side of back of head outer and back of right forearm and right hand were blood stained. There was a dried stream of blood passing from the lower part of the neck to 2" below the inner and on the right collar bone.

Well or ill-nourished : Poorly nourished.

General colour : Brown.

Marks, scars and deformities : A few old scars over both shins.

Products of disease ulcers, hernia, &c. : Nil.

10

Injuries (inflicted before or after death) :—

(1) Abrasion of  $\frac{1}{4}$ " in diameter over the first joint of the right thumb.

(2) Incised wound  $\frac{1}{4}$ " long by  $\frac{1}{16}$ " deep over the outer side of second joint of right middle finger.

(3) Three abrasions 1" long by  $\frac{1}{4}$ " broad,  $\frac{1}{4}$ " in diameter respectively over back of left elbow.

(4) Abrasion  $\frac{1}{2}$ " long by  $\frac{1}{4}$ " broad over outer side of right elbow.

(5) Abrasion  $1\frac{1}{4}$ " long by  $\frac{3}{8}$ " broad over inner side of right elbow.

(6) Incised wound on right side of front of neck  $1\frac{1}{2}$ " long by 2" deep and tailing off for another 1" in front of a superficial linear cut  $\frac{1}{16}$ " deep. 20  
The back end of the wound was sharp cut for  $\frac{1}{4}$ ". The wound was  $2\frac{1}{4}$ " above the inner end of the right collar bone and its direction was obliquely downwards and forwards. The front end of the wound was deeper than the rear end.

(7) An irregular incised wound on the left side in front of the neck extending obliquely for  $1\frac{3}{4}$ " backwards and upwards from a point 3" above the inner end of the left collar bone. The wound was  $\frac{1}{4}$ " deep; lying immediately above this wound and separated from its upper margin by  $\frac{1}{8}$ " was an irregular incised wound 2" long and  $\frac{1}{8}$ " deep. Direction of both wounds downwards and forwards.

30

(8) Incised wound over left half of back of neck placed horizontal 2" above the level of the shoulder  $2\frac{3}{4}$ " long and extending for 1" to the right and  $1\frac{3}{4}$ " to left of the middle line, depth  $1\frac{1}{2}$ "—direction downwards and forwards.

(9) 1" above the left extremity of wound No. 8 was an incised wound 3" long and  $1\frac{1}{4}$ " deep passing upwards and to the right—direction downwards and forwards.

(10) The skin between wounds Nos. 8 and 9 was undercut for  $1\frac{1}{2}$ ".

(11) Incised wound  $2\frac{1}{4}$ " long and 1" deep with lower edge undercut  $1\frac{1}{4}$ " above the outer  $\frac{2}{3}$  of wound No. 9 direction downwards and forwards. 40

(12) The superficial skin was partially removed and partially undercut over an area of  $1\frac{1}{2}$ " by  $\frac{3}{4}$ " between the left extremities of wounds Nos. 9 and 11 and the left ear.

(13) The rear  $\frac{2}{3}$  of the left ear had an incised wound in it  $1\frac{1}{2}$ " long which almost completely separated it from the rest of the ear except for a small bridge of tissue  $\frac{1}{4}$ " wide at its lower margin.

(14) Below this bridge of tissue was an incised wound  $\frac{3}{4}$ " long and extending downwards and forwards from the rear of the left ear.

Height (as determined by – 5 feet 1½ inches measurement).		<i>Exhibits.</i>
3.	Age	About 55 years.
4.	Sex	Male.
5.	Colour of the eyes	Dark brown. Cornea clear—cataract in both eyes.
6.	Length, colour and condition of hair	2" partially grey, bald over temples. Pubic hair early grey.
7.	Position and condition of tongue	Natural.
10	8. Condition and number of teeth	Present : Upper jaw 14. Lower jaw 14.  Missing : Upper jaw : Right 1st pre-molar and left 1st molar. Lower jaw : Right 1st molar and left 1st pre-molar.
9.	Signs of death—	
	(a) Primary flaccidity :	
20	(b) Rigor Mortis	Not complete— Knees, toes and fingers still flexible.
	(c) Putrefaction	Nil.
10.	Condition and contents of hands and nails	Left hand blood stained. Right hand natural.
11.	Condition of natural openings :	
	Nose	Natural.
	Mouth	Natural.
	Ears	As described above.
30	Urinary and sexual	Natural.
	Anus	Natural.
12.	Condition of the neck	Externally :—Incised wounds Nos. 6, 7, 8, 9, 10, 11 and 12 as described above. Internally :—Wound No. 6 had cut the sternomastoid muscle and the muscles of the right side of the neck, and the right internal jugular vein and further back had cut the right sides of the 5th and 6th cervical vertebræ and the vertebral artery at the same level.  Direction downwards and from right to left. Wound No. 8 had cut through the muscles of the back of neck on the left side and the back of lower left articular process of the 4th cervical vertebræ and into the adjoining part of the left superior articular process
40		

*Exhibits.*

P.29.

Post  
Mortem  
Report, 7th  
November  
1947,  
*continued.*

*Exhibits.*

P.29.

Post  
Mortem  
Report, 7th  
November  
1947,  
*continued.*

and body the 5th cervical vertebræ to a depth of  $\frac{1}{4}$ ".

Direction downwards and forwards.

Wound No. 9 had cut the muscles of the neck above wound No. 8.

Wound No. 11 had cut the scalp and the muscles attached to the lower part of the back of the head.

Condition of the soft parts covering it.	As described above.	10
Condition of the bones of the skull	Natural.	
Condition of the membranes and sinuses of the brain	Natural.	
Condition and appearance of the brain substance	Pale.	
Contents of the lateral ventricles	Empty.	
Condition of the vessels of the brain	Atheromatous.	20
Condition of the soft parts covering it	Natural.	
Condition of the bones (ribs, vertebræ, &c.)	Natural.	
Position of organs on opening the chest	Natural.	
Condition of pericardium	Natural.	
Condition of heart	Pale.	
Right side :		30
(A) Valves	Natural.	
(B) Contents	Pink froth.	
Coronary vessels	Atheromatous.	
Condition of the large blood vessels	Atheromatous.	
Condition of the lungs	Pale.	
Larynx	Pale.	
Trachea	Pale.	
Gullet	Natural.	
Abdominal cavity :		40
Position of the abdominal organs on first opening cavity		
Condition of diaphragm	Natural.	

Condition of vertebræ	Natural.
Condition of liver	Pale and atrophic.
Gall bladder	Natural—contained about 1 drachm of well-contracted bile.
Spleen	Atrophic and pale—capsule shrivelled.
Condition of the stomach	Natural.
Contents	About 3 ozs. of partially digested thread hopper.
Duodenum contents	The first $4\frac{1}{2}$ feet of intestines contained white mucoid material. Further down it changed to yellowish discolouration.
10 Jejunum contents	
Ileum contents	
Large intestines	Natural.
Contents	Semi-solid fæces.
Kidneys	Pale.
Suprarenal capsules	Natural.
Bladder	Natural.
(A) Contents	31/26 ozs. of clear urine.
Condition of blood vessels	Natural.
Generative organs	Natural.
20 V. The opinion and the reason on which it is grounded	I am of the opinion that death was due to hæmorrhage and shock from multiple incised wounds on the neck. Photographs A, B and C attached show the injuries.

*Exhibits.*

P.29.

Post  
Mortem  
Report, 7th  
November  
1947,  
*continued.*

Sgd. Illegibly.

J.M.O. Colombo.

List of articles secured for further examination or for  
Analysis.

30 Hair found by me on the blade of the knife lying in the garden together with the coloured jute hessian bag were compared with hair taken by me from the head of the deceased and were found to be similar in structure and pigmentation.

Sgd. Illegibly.

J.M.O. Colombo.

*Exhibits.*

P.32.

Promissory  
Note, 7th  
March 1947.

P. 32.

**Promissory Note.**

On demand I the undersigned B. M. Seneviratne promise to pay to Pyes Mohamed Bhai or order the sum of Rupees Four hundred and fifty rupees only currency for value received with interest thereon at the rate of 18 per cent. per annum from the date hereof.

7th March, 1947.

(Sgd.) B. M. SENEVIRATNE,

No. 107, College Street,  
Kohatena. 10

P.33.

Promissory  
Note, 16th  
July 1947.

P. 33.

**Promissory Note.**

16th July, 1947.

On demand I the undersigned B. Seneviratne of No. 107, College Street, Kotahena, promise to pay to S. S. Khan or order the sum of Rupees Seven Hundred only currency for value received with interest thereon at the rate of 18 per centum per annum, from the date hereof.

(Sgd.) B. M. SENEVIRATNE.

P.34.

Promissory  
Note, 9th  
August  
1947.

P. 34.

**Promissory Note.**

20

9th August, 1947.

On demand I the undersigned Mrs. G. B. M. Seneviratne, promise to pay to Mohamed Yakko Bhai or order the sum of rupees Three hundred only currency for value received with interest thereon at the rate of 18% per centum per annum from the date hereof.

(Sgd.) G. B. M. SENEVIRATNE,

No. 107, College Street,  
Kotahena.

P. 37.

Letter, A. Sathasivam to Second Accused.

No. 14, Ferry Street,  
Colombo, 4.10.47.

Mrs. B. Seneviratne.

Dear Madam,

Reference your letter of the 1st instant in response to my advertisement in the Daily News I shall be glad to meet you personally regarding the loan you require. You may meet me at the above address which is  
10 at Hultsdorf near the Court. My telephone No. 3529 and you may ring me up and fix an appointment.

Yours faithfully,

(Sgd.) Illegibly,

for A. Sathasivam.

*Exhibits.*

P.37.  
Letter, A.  
Sathasivam  
to Second  
Accused,  
4th October  
1947.

P. 38.

Promissory Note.

Colombo, 7th October, 1947.

Rs.350/-.

On demand I the undersigned Beatrice Seneviratne of No. 107 College  
20 Street, Kotahena, promise to pay to Sana Vana Avanna Sana or order the sum of Rupees Three Hundred and Fifty only currency for value received with interest thereon at the rate of 18% per centum per annum, from the date hereof.

(Sgd.) G. B. SENEVIRATNE.

P.38.  
Promissory  
Note,  
7th October  
1947.



*Exhibits.*

P.41.

Letter,  
Second  
Accused to  
M. K. Sally,  
14th June  
1947.

P. 41.

Letter, Second Accused to M. K. Sally.

(Intd.) V. T. P. G.  
Mag.

No. 107, College Street, Kotahena,  
14th June 1947.

My dear Sally,

I am so sorry I could not write to you earlier though I promised you to do so, the reason is this I am very worried about a certain matter and I have tried so many ways of pushing it through but failed and I was too shy to ask you to help me, but at last I made up my mind to ask you, I rang you up to the number you gave me but they told me it is difficult to get you, so I did not want to trouble them again. Sally, I am very badly in need of Rs.300/- and I thought of asking you to give me this amount. I shall pay it back to you at the end of July. Please keep this a dead secret only between you and me and no one else. I trust you, so I hope you won't let me down. I need this money before the 20th. So please do not refuse me. I shall sign and give you a note for it if you are frightened about losing the money. I shall give you a ring to the number you gave me on Monday at about 2.30 p.m. So please tell them to send the message to you ; then you can tell me about it. I have no way of meeting you as you are out of my reach unless I write to you. Why don't you write to me ? Only remember not to post from Maligawatte as the seal will be there. Hope to hear from you and hope you will oblige me and not refuse.

Thanking you,

With love cheerio for the present,

Yours affectionately,

(Sgd.) BEATRICE SENEVIRATNE.

P. 42.

Letter, M. K. Sally to Second Accused.

(Intd.) V. T. P. G.

Mag.

18.6.47.

*Exhibits.*

P.42.

Letter,  
M. K. Sally  
to Second  
Accused,  
18th June  
1947.

My dear B,

I am in receipt of your letter and the subsequent telephone messages. Its very unfortunate that I had not been present for any of your calls and I find that I have missed only by a few minutes.

10 Your letter conveying your worries was no surprise to me as I found you pulled down in health and not in your usual smiles. Of course its a bounden duty to help a friend in need, but I am only sorry you have approached me at an inauspicious time. Dear B, believe it or not and am ashamed to tell you that I have exceeded the minimum bank balance and if you wish you can verify from the bank. Our business has not brought us any income as yet. Even our official opening has been put off for this occasion and we are trying to get an overdraft. If this goes well I shall be able to help you during the week.

20 I invested some money on a business along with a friend residing down your area and I have recalled my money, even if I get this I can help you.

I desire to see you one of these days early but at the same time I feel rather shy when I think of facing you. If possible please ring me up again on Saturday between 9.30 and 10 a.m. or appoint a day of meeting.

Yours,

(Intd.) M. S.

---

*Exhibits.*

P.43.  
Receipt,  
5th  
November  
1944.

P. 43.  
**RECEIPT.**

P.43  
(Intd.) V.T.P.G.  
Mag.

5th November, 1944.

Received from Mr. G. D. de S. Seneviratne my jewellery consisting of the following :

1. One gold brilliant ring with three brilliants.
2. One gold ring marq. pattern set with several brilliants. 10
3. One pair of ear drops set with brilliants.
4. One pearl pendant (gold).
5. One pearl hair pin (gold).
6. One pearl bracelet (gold).
7. One pair pearl ear drops (gold).
8. One pearl saree pin (gold).
9. One jade bracelet (gold).
10. One jade pendant (gold).
11. One jade hair pin (gold).
12. One pair jades ear drops (gold). 20
13. One jade ring (gold).
14. One pair coral ear drops (gold).

(Sgd.) G. B. W. de S. SENEVIRATNE.

5.11.44.

P.44.  
Receipt,  
5th  
November  
1944.

P. 44.  
**RECEIPT.**

P.44  
(Intd.) V.T.P.G.  
Mag.

Received from Mr. G. D. de S. Seneviratne the bunch of keys of all 30 the doors of "Lakshimi Villa," Jambugasmulla, Nugegoda, and I undertake to pay half the rent of premises to him after deducting for annual whitewashing and minor repairs.

(Sgd.) G. B. W. de S. SENEVIRATNE.

5.11.44.

**DRAFT DEED.**

THIS INDENTURE is made and entered into at Colombo on this day of one Thousand nine Hundred and forty between DIONYSIUS DE SILVA SENEVIRATNE presently of Kotahena Colombo (hereinafter called and referred to as the husband) of the one part and BEATRICE MAUDE DE SILVA SENEVIRATNE nee PEIRIS of Tambugasmulla Nugegoda (hereinafter called the wife) of the other part.

Whereas the said husband and wife were lawfully married in December, 10 1935 and have two children, a daughter, Sumana, eight years old and a son, Oranda, seven years old, born unto them in lawful wedlock.

And whereas the said husband and wife are the joint owners of the premises in the schedules hereto fully described.

And whereas some unhappy differences have lately arisen between the said husband and wife and they have consequently agreed to live apart from each other and entering into an arrangement hereinafter expressed regarding the custody and maintenance of their said children the management of the said premises and maintenance of the husband and wife.

20 Now this indenture witnesseth that in pursuance of the said agreement and for the considerations herein appearing the said husband so far as the stipulations and provisions hereinafter contained ought to be performed or observed by him hereby covenants with the said wife and the said wife as far as the stipulations and provisions hereinafter contained ought to be performed or observed by her hereby covenants with the said husband as follows :—

1. The said wife may at all times hereafter live separate and apart from the said husband as if she were unmarried and in all respect free from the control and authority of the said husband and may be engaged in any 30 business or businesses as she may think fit.

2. The said husband and wife shall not molest or annoy her shall either of them at any time hereafter require or by any means endeavour to compel the other to cohabit with him or her or seek to enforce any restitution of conjugal rights.

3. The said wife shall in all respects support and maintain herself and pay for all such board, lodging, clothes, medical attendance, necessaries of life and things whatsoever as she may hereafter require or obtain with the income of her share of the premises in the schedule hereto fully described her earnings from any business income from the premises in the 40 second schedule hereto fully described and shall and will not claim any other or further sum on account of maintenance from the said husband apart from his aforesaid share of income from the premises in the second schedule fully described.

4. The said husband shall be entitled to the sole custody and control of their said children during their minority and shall maintain and provide them with all necessaries of life for their education and upbringing. He shall allow the said children to remain with his brother Paul Melius de Silva Seneviratne so long as he wishes to keep them. The said wife shall have the right to take the children with her from their place of residence during the

*Exhibits.*  
 P.45.  
 Draft Deed,  
*continued.*

school vacations and send them back to their place of residence when the school reopens provided however if the said husband is not living with the said children at their place of residence he and the wife shall be entitled to take the children alternatively to his or her place of residence so that the children may spend one vacation with their father and one with the mother. This arrangement shall continue unless otherwise agreed upon even after the children cease to attend school the periods within which the children are to remain with their parents as aforesaid to be the months of April, August, and December of each year from the first to the last day of each such month. Provided further that each parent shall maintain the children at his or her expense during the period that the children live with him or her as aforesaid and also that the wife shall not be entitled to send the children there without the written consent of the husband if she does so the husband shall be entitled to refuse the children to be taken by her thereafter. 10

5. That the said wife shall manage the said premises in the first and second schedule hereto fully described let them out on rent in terms of a monthly tenancy recover rents attend to repairs and whitewashing and other incidental matters and shall remit monthly to the said husband his half share of the net income from the premises in the first schedule hereto fully described to be utilised by him towards the maintenance education and upbringing of their children provided however that the said wife shall not effect any improvements to the existing buildings or erect new buildings on the premises in the first and second schedules hereto fully described without the written consent of the husband and should the said wife act contrary to this provision she shall bear the expenses so incurred solely and the said husband shall not be liable to pay her any share of the expenses so incurred. 20

6. Except as herein provided all property now belonging to the said husband or wife or which may hereafter belong to him or her and all earnings from any business or works done by him or her shall belong to him or her for his or her sole and separate use and he or she shall not be liable to pay the other any sum by way of maintenance out of the income from such property or such earnings. 30

7. The said wife shall and will at all times hereafter keep the said husband indemnified against all debts or liabilities which the said wife may hereafter contract and against all actions claims and demands in respect thereof and against all costs and expenses which the said husband may incur in relation thereto.

8. It is hereby agreed that in case the said husband and wife shall at any time hereafter with the mutual consent of each other live together as husband and wife or if their marriage shall be dissolved or they shall be judicially separated then and in such case all the covenants and provisions herein contained shall become void without prejudice to any act previously done hereunto or any proceedings on the part of the parties hereto in respect of any breach then previously committed of all or any of the said covenants or provisions. 40

In witnesses whereof the said husband and wife do set their respective hands hereunto and to two others of the same tenor and date as these presents at Colombo on the day month and year in the beginning written. 50

---

**P. 50.**

**Government Analyst's Receipt.**

*Exhibits.*

P.50.  
Government  
Analyst's  
Receipt,  
10th  
November  
1947.

Receipt handed at 4.25 p.m.

Memorandum.

No. C/1011.

Office of the Government Analyst,

Colombo, 10th November, 1947.

From the Government Analyst, Colombo.

To the Magistrate, Colombo.

10

M.C. Colombo Case No. 36089.

Received at the hand of P.C. 1250 Gunasekera, two parcels marked ' X ' and ' X(a),' said to contain productions in the above case.

The parcels were sealed with the seal of the Magistrate's Court, Colombo, seals similar to that attached to letter No. 36089 of 10.11.47, from the Magistrate to me ; seals intact.

(Sgd.) Illegibly,

for Government Analyst.

**P. 51.**

**Government Analyst's Receipt.**

P.51.  
Govern-  
ment  
Analyst's  
Receipt,  
14th  
November  
1947.

20 Receipt handed at 12.55 p.m.

Memorandum.

No. C/1027.

Office of the Government Analyst,

Colombo, 14th November, 1947.

M.C. Colombo Case No. 36089.

Received at the hand of P.C. 1250 Gunasekera, four parcels marked X(b), X(c), X(d) and X(e) said to contain productions in the above case.

30 The parcels were sealed with the seal of the Magistrate's Court, Colombo, seals similar to that attached to letter No. 36089 of 14.11.47, from the Magistrate to me ; seals intact.

(Sgd.) Illegibly,

for Government Analyst.

*Exhibits.*

P. 54.

**First Complaint.**

P.54.  
First  
Complaint,  
7th  
November  
1947.

EXTRACT FROM THE COMPLAINT INFORMATION BOOK OF KOTAHENA POLICE.

Date : 7.11.47. Time : 10 a.m. Page : 9. Para. : 67.

## INFORMATION RE A MURDER.

Mrs. G. D. D. Seneviratne of No. 107 College Street, comes in with one Mr. Ludowyke, a school master, and complains thus : At 8.30 a.m. I went to Prince College for teaching. About 9.50 a.m. one Mrs. Christie came and informed that there is some trouble in the house and asked me to go and see it immediately. When I asked what the trouble was, she told me that she does not know what the trouble was but insisted me to go home. I went back immediately. I found my husband lying on the kitchen verandah covered with blood. He appeared to be dead. So I came to the Police Station. On the way I met Mr. Ludowyke who accompanied me to the Station. When I left the house my cook woman Alice Nona was at home with my husband. When I went back the cook woman was not in the house. I cannot say how my husband came with injuries. Read over signed. G. D. Silva Seneviratne. S.I. Thambiah, S.I. Lawrence left to the spot immediately on receipt of the information. A.S.P. North who was at the station also left to the spot. A.S.P., C.I.D., North informed through phone. Message given to D.S.I. who is in Court to turn up immediately to take up the inquiry. Sgd. P.S. 336 Martin. Vide above P.C. 286, 4074, 3393 also sent to the spot. Sgd. P.C. 1073.

True copy.

Correct.

(Sgd.) . . .

**DEPOSITION OF W. A. MAIHAMY**

Deposition  
of W. A.  
Maihamy,  
8th  
December  
1947.

DEPOSITION OF W. A. MAIHAMY WHICH WAS READ TO THE JURY.

W. A. MAIHAMY—Affirmed.

45, wife of P. Juwanis Appu, 87/10 College Street, Kotahena. 30

I know these accused. I call the first accused Baas. Second accused lives at College Street. I visit the house often. At the time of the death of Mr. Seneviratne one Alice was employed in the house of second accused as cook woman. I know her well. She got employment in that house about two months prior to the death of Mr. Seneviratne. I know second accused. I used to go to her house and do work for her. I used to accompany her to Nugegoda. I had gone with the second accused to Nugegoda on three occasions. The first occasion I accompanied second accused to Nugegoda was about 4 months prior to this day of incident. The three visits to Nugegoda was to second accused's mother's house and the last visit was on the mother's birthday and that was about two months after the first visit. On the second occasion when I accompanied the second accused to Nugegoda, second accused visited the Baas, the first accused. We went to first accused's house ; he was seated on a chair in the verandah. Second accused asked the first accused " Why don't you come there. I have got

work for you.” Second accused then turned back and said “ Amma, let us go.” First accused was seated and talking, second accused was standing and talking. (Shown pawn ticket P.24 dated 1.8.47.) I pawned articles on this ticket P.24 on 1.8.47. On 1.8.47 second accused sent for me and she was standing at the gate of her house. And she told me “ Baas has two articles. Take them to the pawnbroker and get Rs.100/-.” Baas the first accused was not to be seen within sight of the house. Hair pin P.24a and ring P.24b belonged to second accused and were the articles to be pawned. Seeing me first accused came up to me and handed me 10 P24a and P24b and said “ Amma, let us pawn these and get money from the pawnbroker.” I went with first accused to the pawnshop. First accused stood on the road. I pawned the pin P24a and the ring and obtained Rs.50/- though the first accused wanted Rs.100/- which the pawnbroker was not prepared to pay. The pawnbroker deducted a month’s interest and something was also deducted for the receipt and I was given the balance which I cannot remember. I handed the money. I got to the first accused. The receipt was in my name. First accused asked the receipt. I refused to give because it was in my name. First accused and I had an argument over the pawn ticket. First accused said that the lady owed 20 him Rs.700/- which she had obtained from him. First accused wanted the receipt to be shown to that man from whom he had obtained loan of Rs.700/- for second accused. I did not get the receipt. I then went home. Later I went to second accused’s house and said “ Why do you borrow money like this. The baas abused and quarrelled with me.” Second accused said “ Let them shout the debt. You keep the pawn ticket till I redeem the articles.” I gave this pawn ticket P.24 to Hinnihamy for her to keep it. This was about two months prior to this day of incident. The month the gentleman was murdered second accused sent a pair of ear-rings through Alice Nona. “ I pawned them for Rs.25/- and sent 30 the money Rs.25/-, through Alice Nona to the lady. The same week the pair of ear-rings were redeemed. This was also pawned in my name. I surrendered the receipt. A saree of the second accused was pawned at a house Bilingahawatte for Rs.15/- and later redeemed. This was about 5 or 6 months ago. On 19.11.47 I made my statement to the Police.”

*Xxd. by Mr. Samarajeeva :* Reserved.

*Xxd. by Mr. Pereira :* Reserved.

Mark of W. A. Maihamy.

(Sgd.) V. T. PANDITA-GUNAWARDENA,

Mag.



**PLAN.**

*(Not reproduced.)*

**X**  
**Plaint.**

*Exhibits.*

X.  
Plaint, 1st  
December  
1947.

IN THE MAGISTRATE'S COURT OF COLOMBO.

This 1st day of December, 1947.

I, B. W. Perera A.S.P., C.I.D. (Colombo North) in terms of section 148 (b) of the Criminal Procedure Code (chapter 16), hereby report to the Court that

1. KANNANGARA ARATCHIGE DHARMASENA alias BAAS of Gangodawila Nugegoda
- 10 2. BEATRICE MAUDE SENEVIRATNE of No. 107 College Street, Kotahena

within the jurisdiction of this court, they did agree to commit or act together with a common purpose for or in committing the offence of murder by causing the death of one G. D. de Silva Seneviratne, and that they have thereby committed the offence of conspiracy to commit murder, in pursuance of which conspiracy the murder of the said G. D. de Silva Seneviratne was committed, and that they have thereby committed an offence punishable under section 113B read with sections 296 and 102 of the Ceylon Penal Code.

- 20 That in the course of the same transactions the 1st accused above-named did on or about the 7th November 1947 at Kotahena within the jurisdiction of this Court commit murder by causing the death of the said G. D. de Silva Seneviratne and that he has thereby committed an offence punishable under section 296 of the Ceylon Penal Code.

- 30 That in the course of the same transaction the second accused above-named did between the said 1st and 7th day of November 1947 abet the commission of the offence set out in charge No. 2 above, in consequence of which abetment the said offence of murder was committed, and that she has thereby committed an offence punishable under sections 296 and 102 of the Ceylon Penal Code.

(Sgd.) B. W. PERERA,

A.S.P. C.I.D. (North) Colombo.

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*Exhibits.*

X4.  
 Plaint, 8th  
 November  
 1947.

**X4**  
**Plaint.**

CEYLON POLICE.

IN THE MAGISTRATE'S COURT OF COLOMBO.

This 8th day of November, 1947.

I, B. W. Perera, Asst. Suptd. of Police, C.I.D. Colombo City North in terms of section 148 (1) (b) of the Criminal Procedure Code (Chapter 16) hereby report to Court that Kannangara Aratchige Dharmasena of Nugegoda on or about the 7th day of November, 1947 at College Street Kotahena within the jurisdiction of this Court, commit murder by causing the death of G. D. de Silva Seneviratne of 107 College Street Kotahena by cutting him with a sharp cutting instrument to wit a knife and thereby committed an offence punishable under section 296 Chapter 15 of the Legislative Enactments of Ceylon. 10

Witnesses :

1. M. E. Ukku Menika of No. 9 Alwis Place, Kotahena.
2. W. M. Ram Banda, of No. 9, Alwis Place, Kotahena.
3. R. M. Sudu Banda of No. 9, Alwis Place, Kotahena.
4. W. Alice Nona of No. 107, Kotahena.
5. T. Richard Fernando of Mayfield Lane, Kotahena. 20
6. Sub-Inspector Laurence of Kotahena.
7. Inspector Goonetilike of Grandpass.
8. P.C. 4075 Peiris of Maradana.
9. P. D. Rogus Court Aratchy of M.C. Colombo.
10. P.C. 869 Diyabalanage of Kotahena.
11. Dr. Saram, J.M.O., Colombo.

X5.  
 List of  
 Witnesses.

**X5.**  
**List of Witnesses.**

1. J. M. Wijegunawardene of Pickering's Road, Kotahena.
2. H. G. Noris Appu of Pickering's Road, Kotahena. 30
3. M. D. Solomon Appu of Dias Place, Pettah.
4. W. Sirisena of Muhandiram's Road, Pettah.
5. K. Podi Appuhamy of Dias Place, Pettah.
6. A. H. E. Sammy of Siripina Lane, Pettah.
7. A. K. Krishnan of Small Place, Pettah.
8. H. Albert Singho of Alutmawata Road, Modera.
9. R. S. Simon of Pickering's Road, Kotahena.
10. A. Razak of Silversmith Street, Kotahena.

**X6.****Notes of Inquiry.**

Date : 17.11.47. Time 9.40 a.m. P. 137. P. 489.

**Notes of inquiry of the murder.**

16.11.47 at 12.30 p.m. Mrs. Beatrice de Silva Seneviratne states :  
 . . . About four months ago I handed a hair pin and a ring to the Baas  
 requesting him to pawn it for me. I told him to fetch me Rs.50/-. This  
 same article I had pawned with a lady named Mrs. Perera at Pickering's  
 Road. She wanted the money urgently as she was leaving Kotahena.  
 10 I told her that if she returned the articles I would pawn it somewhere  
 else and give her the money. Baas failed to pawn the articles.

*Exhibits.*

X6.  
 Notes of  
 Inquiry,  
 17th  
 November  
 1947.

**X7.****Notes of Inquiry.**

Date : 17.11.47. Time 9.40 a.m. P. 137. Para. 489.

**Notes of inquiry re the murder case.**

16.11.47 at 12.30 p.m. Mrs. Beatrice Maude de Silva Seneviratne  
 states : . . . The call came from Mr. Aaron of Colombo bakery at  
 Vanrooyan Street. The conversation was that I had asked him for a  
 loan of Rs.100/- the previous day.

20

(Sgd.) Mrs. SENEVIRATNE.

X7.  
 Notes of  
 Inquiry,  
 17th  
 November  
 1947.

**X8.****Notes of Inquiry.**

Date : 10.11.47. Time 6.10 p.m. P. 382. Para. 301.

7.11.47 at 12.35 p.m. at No. 107 College Street, Kotahena,  
 Mrs. Seneviratne who states : . . . I saw my husband come to school  
 and speak to the 5th standard teacher Miss Willegoda. He did not come  
 and speak to me.

X8.

X8.  
 Notes of  
 Inquiry,  
 10th  
 November  
 1947.

**XA1.****Notes of Inquiry.**

30

Date : 10.11.47. Time 6.10 p.m. P. 382. Para. 300.

**NOTES OF INQUIRY.**

7.11.47 at 12.35 p.m. at No. 107 College Street, Kotahena.

Mrs. SENEVIRATNE who states : . . . The slipper found near the  
 entrance and the one found under the body do not belong to any inmates  
 of the house. The umbrella found in the verandah of the house is also  
 not ours.

(Sgd.) Mrs. SENEVIRATNE.

XA1.

XA1.  
 Notes of  
 Inquiry,  
 10th  
 November  
 1947.

*Exhibits.*

1D1

Deposition  
of W. A.  
Alice Nona.

1D1

**Deposition of W. A. Alice Nona.**DEPOSITION OF WEERAKODY ARATCHIGE ALICE NONA TO THE CITY  
CORONER.

WEERAKODY ARATCHIGE ALICE NONA :

42 years, 107, College Street, Kotahena, affirmed.

I was employed as a cook woman under the deceased. To-day at about 9 a.m. when I was in the kitchen the deceased returned home having bought some beef and vegetables for the day meal. I had then finished boiling rice. At that time the only persons present in the house was myself and deceased. The deceased spoke to me and said that there is no rice for dinner tonight and that we will have to eat string-hoppers and so saying he gave me Rs.1/50 and requested me to go to the market and bring meat and vegetables. I left the place at once. When I left my master the deceased was the only person in the house. The deceased's wife had gone to school. She was a teacher.

After a short time I returned and found deceased dead and the police were making inquiries.

Read over and admitted to be correct.

Sgd. in Sinhalese.

(Sgd.) ALBERT PEIRIS,  
J.P. & U.M.

20

1D10

Report of  
the  
Registrar  
of Finger  
Prints, 12th  
February  
1948.

1D10.

**Report of the Registrar of Finger Prints.**

(Intd.) V.T.P.G.  
Mag.

A.R.1171/48/F.P.B.  
Technical Branches, C.I.D.  
Torrington Square, Colombo 7.  
12th February, 1948.

The Magistrate,  
Colombo.

M.C. Colombo Case No. 36089.

Reference your letter No. M.C. 36089 dated 3.2.48, the finger and palm prints found at the scene of murder at No. 107 College Street, Kotahena, in connection with the above case do not tally with the finger and palm prints of accused Kannangara Aratchige Dharmasena.

Finger and palm print slips of accused K. A. Dharmasena marked Z1 to Z3 are returned herewith.

Signed Illegibly.  
Registrar of Finger Prints.

(L.B.A.)

40

1AD4

Report of the Assistant Superintendent of Police, B. W. Perera.

Ceylon Police,  
Kotahena.

8th November, 1947.

To the Magistrate,  
Colombo.

I, B. W. PERERA, A.S.P., C.I.D. (N) of Colombo hereby report that I am inquiring into the murder of one G. D. de Silva Seneviratne of No. 107, College Street, Kotahena, reported on the 7th day of November, 1947. At my inquiry it transpired that the alleged assailant having committed the murder got on to the premises of Mr. Jayasekera covering his head with a sarong taken from deceased premises armed with a knife.

Witnesses (1) Ukkumenika (2) Ranbanda and (3) Sudubanda stated that they could identify the person who entered the premises of Mr. Jayasekera.

Witnesses (1) Richard Fernando and several others stated that they saw the suspect running along the road from the direction of deceased's house.

All Witnesses stated that they could identify the person if seen.

The suspect Kannangara Aratchige Dharmasena is herewith produced and I move that an identification parade be held in Court today.

(Sgd.) B. W. PERERA,  
A.S.P., C.I.D. (N).  
8.11.47.

*Exhibits.*

1AD4.  
Report  
of the  
Assistant  
Super-  
intendent  
of Police—  
B. W.  
Perera, 8th  
November  
1947.

2D5

Promissory Note.

26th October, 1946.

2D5.  
Promissory  
Note, 26th  
October  
1946.

1. Capital sum borrowed  
30 Rs.225/- (Rupees Two  
hundred and twenty five  
only)

Rs.225/-.

2. Interest premium or  
charged deducted or paid  
in advance  
Nil.

3. Rate of interest per  
40 centum per annum  
Six per cent.

On demand we the undersigned Stanley Berchman Joachim and May Joachim, husband and wife, presently of No. 107, College Street, Kotahena, jointly and severally promise to pay to Mr. Govipolagodage Dionysius de Silva Seneviratne, presently of No. 107 College Street, Kotahena, or order the sum of Rupees Two Hundred and twenty five only currency for value received, with interest thereon at the rate of 6 (six) per centum, per annum from the date thereof.

(Sgd.) S. B. JOACHIM.  
M. JOACHIM.

Witnesses.  
(Signature illegible.)

Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
20th April  
1949.

**PROCEEDINGS HAD AT THE RE-TRIAL OF THE SECOND ACCUSED.**  
S.C. No. 46.

M.C. Colombo 36089.

**REX**

*Vs.*

**BEATRICE MAUDE DE SILVA SENEVIRATNE.**

Indictment.

**INDICTMENT.**

You are indicted at the instance of Alan Edward Percival Rose, Esquire, K.C., His Majesty's Attorney-General, and the charges against you are :—

1. That between the 1st and 8th day of November, 1947, at Nugegoda and Kotahena in the district of Colombo, Kannangara Aratchige Dharmasena alias Baas and you did agree to commit or act together with a common purpose for or in committing an offence to wit the murder of one Govipolagodage Dionysius de Silva Seneviratne of No. 107, College Street, Kotahena, and that you have thereby committed the offence of conspiracy to commit murder in consequence of which conspiracy the said offence of murder was committed ; and that you have thereby committed an offence punishable under Section 113B read with Sections 296 and 102 of the Penal Code. 10

2. That between the dates mentioned in count (1) above, you did abet the said Kannangara Aratchige Dharmasena alias Baas, in the commission of the said murder which said offence was committed in consequence of such abetment ; and that you have thereby committed an offence punishable under section 296 read with section 102 of the Penal Code.

This 18th day of June, 1948.

(Sgd.) H. A. WIJEMANNE,  
Crown Counsel.

To this Indictment the accused pleads not guilty.

Date of Trial : 20th April 1949.

*H. A. Wijemanne*, C.C. with *J. G. T. Weeraratne*, C.C., for the Crown. 30

*G. E. Chitty* instructed by *Merryl Perera* and *Gunasekera* with *Charles Jayawicrema* (assigned) for the Defence.

*Charge* : As per indictment attached.

Before the indictment is read out to the accused,

*Mr. Wijemanne*, C.C., moves to amend it as follows :—

In regard to the first page of the indictment, he moves to delete the name of the first accused, Kannangara Aratchige Dharmasena alias Baas, and the figure one standing against that name ; and also the figure two standing against the name of Beatrice Maude de Silva Seneviratne.

In regard to count one of the indictment, he moves that the words 40  
“ Kannangara Aratchige Dharmasena alias Baas and ” be inserted immediately before “ You ” of the second line.

In regard to the second count, he moves that it be deleted.

In regard to the 3rd count, he moves that it be amended so as to read as count two, the figure 3 to be deleted and 2 inserted instead; in the second line, the figure 2 and the words "Beatrice Maude de Silva Seneviratne" be deleted; in the third line, the word "first accused" be deleted; in the fourth line, the words "an offence set out in count two above" be deleted and instead the words "said murder" be inserted.

Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
20th April  
1949,  
*continued.*

*Mr. Wijemanne, C.C., submits a copy of the amended indictment.*

*Mr. Chitty* points out that with regard to the third count there was  
10 no verdict brought at the first trial and as such there is no necessity for  
the accused to stand a retrial on that charge now.

*His Lordship overrules the objection.*

*Mr. Chitty* is now prepared to go on with the trial.

The amended indictment is read out to the accused who pleads  
"Not Guilty."

*English-speaking jury is empanelled.*

4 sworn and 3 affirmed.

(Mr. A. S. Turner is chosen foreman.)

*Mr. Wijemanne, C.C.,* moves that the sketches be handed over to the  
20 jury without the key.

*Defence Counsel* has no objection.

*His Lordship* allows the application.

Sketches without the key are handed over to the jury.

*Mr. Wijemanne, C.C.,* next opens case for the Prosecution and calls :—

WEERAKODDY ARATCHIGE ALICE NONA—Affirmed, 50 years.

At the time of the murder I was employed in the deceased's house  
as a cook-woman. I was employed at that house about a month before  
the murder on a salary of Rs.15/-. The lady (accused) engaged my  
services. At the time of the murder I was paid my first month's salary;  
30 I believe that it was paid on the 2nd of November. There were two  
families living in the house. One consists of the deceased, his wife (accused)  
and their two children Sumana and Oranda; and the other family  
consisted of the Joachims (5 people)—father, mother, two sons and a  
daughter. They were all employed. Usually they leave the house at  
about 8.30 and return at about 5.30 or 6 p.m. They had a servant who  
comes there in the evening; she was a woman; she prepares the dinner  
and goes away. They had no other servants.

I had not known the accused prior to my being employed. I remember  
after I took employment under her she obtained a job at Prince College.  
40 That was after I took employment under her.

*Q.* That was about how long before the murder?

*A.* I cannot say. I have no idea.

The two children of this accused used to attend Prince College.  
Usually they leave the house, the two children and this accused, to school  
after their morning tea—that would be roughly about 8 or 8.30. I do not  
know at what time the school opens.

After they leave for school I am the only person in the house with  
the deceased. The accused and her two children return for their lunch



Proceedings  
had at the  
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*continued.*

about 11.30. They go back after their lunch to school and they finally return about 3. After the accused and the two children leave for school the deceased himself used to go out; he does not remain in the house; he goes out marketing; he buys beef and vegetables for the house.

Q. And the marketing was invariably done by him?

A. Sometimes he would send me.

During the month I was employed I cannot say how many times I went out marketing—roughly, about five or six times. I go to the Kotahena Market marketing. Going to that Market from our house I had to pass the Police Station. 10

When going marketing the deceased used to carry a basket with him—P.3 shown—this is the one. When I went marketing I also used to carry a bag; P.2 shown—this is my bag.

The deceased when going out marketing used to be dressed in trousers and a shirt. At home he would be dressed in a cloth.

I know Dharmasena alias Baas.

Q. When did you come to know him first, how long before the murder?

A. I had known him for some time.

I did not know him before I came to be employed under the accused. It was after that time. 20

Q. About how many weeks before this murder did you come to know Baas?

A. That I cannot exactly say.

Q. Was it immediately after you came to be employed?

A. Not immediately after.

Q. Then about two weeks after?

A. Yes.

Q. Where did you first see him?

A. He came to the accused's house one day and I saw him. That was the first occasion that I saw him. 30

Q. How many times prior to the murder had you seen Baas at the accused's house?

A. Twice.

Q. Now, you remember the first occasion in which you saw him in the house?

A. Yes.

Q. That was how many days before the murder, roughly?

A. I cannot say.

Q. Who were in the house at the time?

A. The accused was there. 40

Q. Who else?

A. The deceased was not there at the time; only the accused was there.

I cannot remember if the children were there.

Q. Can you remember whether it is morning, evening or noon?

A. I cannot exactly say.

Q. Was it before or after the accused took employment in the school?

A. I cannot remember.

I remember the day on which Sumana did not go to school. She was in the house that day. The deceased was also in the house. I remember Baas coming there that morning. That is not on the first occasion. On 50

one occasion when Baas came the deceased was not there. Then on a second occasion the Baas came. Then the deceased and Sumana were there.

Q. That is clear ?

A. Yes.

Q. At what time did he come when Sumana was there, that was how many days before the murder ?

A. I cannot remember.

10 Q. What time was it when he came, the time when Sumana and the deceased were there ?

A. I cannot remember the time at which he came.

Q. Was it in the morning or afternoon ?

A. The day had advanced when he came.

It was not at noon ; not even early morning ; he came at about 8 or 9. At the time he came I was in the kitchen. I had not gone marketing in the morning.

Q. Did the deceased go marketing that morning ?

A. That I cannot remember.

20 I was cooking in the kitchen when Baas came and asked for water. He did not come right up to the kitchen. He stood in the drawing room and asked me for a glass of water. Sumana and the deceased were by the side of a table in the hall. The deceased was cutting some cloth. I gave the glass of water to Baas. He did not speak to me. He asked me for a glass of water and I gave him one.

Q. Did you notice Baas doing anything after drinking the glass of water ?

A. No.

I did not go out marketing that day. I did not go out to the boutique.

Q. How long did Baas remain in the house ?

30 A. I saw him talking to the deceased.

He (baas) went away before the lady (accused) returned from Prince College for lunch.

Baas was chatting with the deceased. Whether it was in the verandah or in the hall, I cannot exactly remember.

I have never seen Baas sitting on a chair.

Q. Does he stand and chat ?

A. That I have not observed.

Q. Have you ever seen him sitting on a chair and chatting ?

A. No.

40 I remember the day before the murder, the 6th of November. That day I remember going to Nugegoda with the accused by bus. We went to Galpotta and boarded the bus.

Q. At what time did you board the bus ?

A. The accused returned from school and then we started to go to Nugegoda.

We left for Nugegoda at about 3 o'clock and reached there at about 5. After getting down from the bus at Nugegoda we went to the accused's mother's house in Jambugasmulla. We had tea there. I also had tea.

Q. Then you remember coming back ?

50 A. Yes.

Q. On the way did you meet a gentleman called George Perera ?

A. We met a gentleman.

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had at the  
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Proceedings  
had at the  
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1949,  
*continued.*

That gentleman spoke to the accused. He is here as a witness. After speaking to that witness we went to Baas' house which is on the High Level Road. That is a medical hall. Baas was in the medical hall. I cannot quite remember whether he was in the medical hall.

The accused and I went into the hall. This building abuts on the road. There is a small compound. I think there is a compound. From the road you get on to the compound and from the compound you get on to the verandah. There are no steps to the verandah. From the verandah you come on to what is called the hall.

Q. Now, that day where did you and the accused get in ?

10

A. I was on the verandah.

The accused went into the hall. She did not go and sit down. I was about 15 ft. (shows) away from the accused. Baas was in the hall. Baas was close to the accused. There was nobody else in the medical hall. Then the accused kept on talking to the Baas. I did not hear what Baas said.

Q. Did you ever hear any talk of the conversation ?

A. No.

Q. Did the Baas do anything in the course of the conversation ?

A. Baas opened a drawer and took out a gun, a gun of that size 20 (points up to her wrist)—a pistol.

Q. Taking out the gun did he say anything ?

A. He said, " If I shot with this the noise will be heard " and he showed some pieces of pencils.

I have not seen " pathurangs " (cartridges) before.

P.27 shown. The pieces of pencils were similar to these. He kept them in his palm and showed them to the lady. I saw it. One piece was held up.

Q. And what did he say ?

A. He said, " I will throw it somewhere there in order to say that 30 the gentleman has been killed by a robber."

Q. That the gentleman had been shot in other words ?

A. Yes.

Q. What else did he say ?

A. That was all what he said.

Q. Did he refer to a sword ?

A. No.

Q. Did he enquire from the accused regarding the time the deceased would be at home ?

(Defence Counsel objects to this question and the question is not put 40 to the witness.)

Q. Did he say when he should come ?

A. No.

Q. Did you hear anything what the accused said ?

A. No.

Q. Did he enquire from the accused at what time the deceased would be at home the following morning ?

A. Yes.

Q. What did the accused say ?

A. She said, " He would be at home between 9 and 10."

50

Baas did not say what he would do on that morning. I do not remember anything else of the conversation.

I do not remember Baas saying that he would cut with a sword. He did not make any enquiries about me (then the witness says "Yes").

Q. What ?

A. "Me amme rahsak keyamin kaekkah kiyanawatha."

Q. To that question what did the accused reply ?

A. She said, "Eh amme kiyanna ne."

Q. At what stage of the conversation was it, before Baas lifted the cartridge and showed or after ?

A. That I cannot remember.

10 We were not there for a long time. All the while the accused was standing there ; and Baas was also standing. We were not there so long as I have been in the witness box. I have no idea of the time. They were talking together. I did not hear some of the conversation—that is the conversation at the beginning. I did not hear everything after he opened the drawer and pulled out the revolver.

Then the two of us returned by bus.

Before I was taken to Baas' house, this accused did not tell me that she was going to see the Baas and that I should keep it a secret. Before that she had never taken me into her confidence.

20 Q. Was that the first occasion that you went to Baas' house ?

A. That I cannot quite remember.

Then we got out of Baas' house.

Q. While you were leaving the house the accused did not tell you to keep anything secret ?

A. She did.

Q. What was that ?

A. After we had come on to the road she said, "Don't tell anyone" (kiyanda eppa).

Q. Then did you ask her what she wanted you to be silent of ?

30 A. No.

Q. Did you understand what she wanted you to be silent of ?

A. No, not quite.

Q. Did you understand at all ?

A. I did not understand.

I did not ask her "Lady, about what am I to be silent." I just followed. After that she did not speak to me about Baas again ; not even that night after we returned. We returned from Nugegoda. I prepared the dinner and gave and then I slept. That night I had not the least knowledge as to the matter on which the accused wanted me to be silent of.

40 I had no notion that Baas was going to kill the deceased ; not even when I got up the next morning. I did not realise that Baas was coming the following morning. I cannot remember the accused making any reference to the Baas coming the following morning.

I remember the day of the murder itself. That morning the Joachims left about 8 ; and the accused and the two children got ready to go to school. Before going to school the accused gave me one rupee. In giving the money she said, "When Baas comes you better go to the market." Then she left with the two children.

50 Q. When the lady spoke to you was the deceased at home or had he gone ?

A. I have no recollection.

Proceedings had at the re-trial of the Second Accused, 20th April 1949, continued.

Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
20th April  
1949,  
*continued.*

When the accused had left to the college with the two children, I was there in the house with the deceased. Shortly after the lady went to the school with the two children the master (deceased) went out of the house taking the bag with him. Then I was alone in the house. Both of us do not get out of the house without giving the house in charge of somebody. Either I go out or the master goes out. On this day if I left before Baas came there would have been nobody in the house. I could not have gone out before the master returned or until Baas came. I was instructed to go when Baas came. But when Baas came I told him I could not leave the house. I could not leave the house without somebody to look after it. 10  
When the accused told me, " You can go marketing when Baas comes " I said in my own mind " Let her say anything but I will not go " because there was nobody else in the house.

I did not think that I will act according to my mistress' orders. I wanted to act contrarily to the orders of my mistress.

Court adjourns for lunch—1.30 p.m.

Certified correct.

Stenographer, S.C.

S.C. No. 46.

M.C. Colombo No. 36089.

20th April, 1949.

2.30 to 3.30 p.m. 20

W. A. ALICE NONA—on the same affirmation.

*Examination-in-chief continued :*

(To Court : My mistress told me that when the Baas comes I should go to the Market.

Q. Did you intend to carry out her orders ?

A. Yes.

Q. Then the Baas came ?

A. Yes.

Q. Did you then go ?

A. Yes.)

30

The Baas came shortly after the deceased left. The deceased had not returned at that time. I was in the kitchen when the Baas came. At this time I was inside the kitchen, cooking. The front door had been left open when the deceased left. The Baas could have walked through the house and come. The Baas came in and asked me, " Where is the master ? " I said he had gone to the Market. He said, " You better go away."

(To Court : Go where ?

A. He said, " You better go to the Market ").

I said I could not go.

(To Court : Why ?

A. Because there was nobody to look after the house.

Q. But your mistress had told you that as soon as the Baas comes you can go ?

A. Yes.

Q. Then why did you tell the Baas that you could not go ?

A. No answer.)

40

Q. Were you reluctant to leave a stranger in the house and go ?

A. No answer.

Q. What did you tell the Baas when he told you to go to the Market ?

A. I told him that the master was not at home and that I could not go. But he told me, " You better go " in a harsh voice. I got frightened and went.

(To Court : What was the reason for all this ? As soon as the Baas came you were asked to go ?

A. No answer.)

10 I took the mat-bag and went to the market and bought one pound of beef and some vegetables and put it in the bag and came back.

Q. Did you come directly home or did you delay ?

A. I delayed on the way in the neighbourhood of the market.

(To Court : Just close to the market ?

A. A little away from the Market.

Q. How far from the market ?

A. About that distance away. (Indicates about 43 feet.) I sat under a tree there.)

Q. Why were you delaying ?

20 A. Because the Baas had asked me not to come back to the house.

(To Court : So you were just seated at the foot of a tree, thinking ?

A. I just sat there.)

Q. Then where were you going to take the beef and vegetables ? Did you think of taking it anywhere else ?

A. No.

Q. Then what were you going to do ?

A. The Baas had told me not to come back to the house.

Q. Then did you think of not going home at all ?

A. No.

30 Q. Then what were you thinking of doing ?

A. I was thinking of going home.

Q. Then why did you not go home ; what was the idea of your sitting under that tree ? Either you were going to carry out Baas' orders or you were not going to carry them out. If you intended carrying out his orders you ought to have gone somewhere else. If you thought of not carrying out his orders you should have taken the beef and vegetables and gone home and started to prepare the meals for the children ?

A. No answer.)

Q. Did the Baas tell you to delay ?

40 A. He told me not to come to the house at all.

Q. And you were going to obey the Baas ?

A. Yes.

Q. Were you in any way under obligation to the Baas ? In spite of the orders of your mistress you would not leave the house when the Baas comes and yet when the Baas asks you not to come home you decide to obey him ?

A. No answer.

Q. Did you anticipate any harm to the deceased ?

A. No answer.

50 Q. Did anybody give you any instructions as to what you should buy at the market ?

Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
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1949,  
*continued.*

Proceedings  
had at the  
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Accused,  
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*continued.*

A. No.

When the Rs.1/- was given to me by the mistress she told me what I should buy with it. I was told to go and buy these things from the market and I went to do so.

Q. You were going to cook them ?

A. Yes.

Q. You knew the master had gone to the market ?

A. Yes.

Q. Did you know what he had gone to buy ?

A. No.

Q. What does your master usually buy ?

A. Fish and vegetables.

I delayed under that tree for a short time and got up and came along to go home. I was under that tree for a short time.

Q. You know the time that has elapsed since you got into the witness-box in the afternoon ?

A. Yes.

Q. Was it about that period of time ?

A. A little more than that.

Q. What made you decide to go home after that ?

A. No answer.

I had to go past the Police Station on my way home. When I was passing the Police Station I saw the accused in the Police Station and she called out to me and said, "Amme, Amme, somebody has killed the master." That was the first time I heard of the death of the master.

Q. Before that you had not the remotest idea that anyone was going to kill your master ?

A. No.

Q. You did not think that the Baas was going to kill the master ?

A. No.

When my mistress told me that I did not think anything, I went to the Police Station and the accused and I went back to the house. I took my bag with me. I saw my master lying dead. He had been killed. The Police were there at the time. I made a statement to the Police. That was that same night.

(To Court: And you told the Inspector that when you went with the accused to the Medical Hall of the Baas you did not hear a word of what passed between the accused and the Baas ?

A. Yes.

Q. And you did not mention to the Inspector that you saw those small things which appeared to you like pencils ?

A. I cannot remember whether I told him that or not.

Q. I have got the statement with me and you have not stated there about those pieces which appeared to be like pencils. Do you wish to contradict that ?

A. I cannot remember.)

Q. Did you hear anything that passed between the accused and the Baas at the Medical Hall or did you hear only a part of it ?

A. I did not hear anything.

Q. Why did you say in the morning that you heard the conversation between Baas and the accused at the Medical Hall ?

A. I did not hear a portion of the conversation between the accused and Baas.

Q. You said that you heard the Baas saying that if he shoots, the neighbours would hear the noise ?

A. Yes.

Q. You heard that ?

A. Yes.

Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
20th April  
1949,  
*continued.*

(*To Court :* Then why did you say just now that you did not hear a word of the conversation between the accused and Baas ?

10 A. No answer.

Q. I will tell you your difficulty. In your first statement to the Police you said you did not hear a word of that conversation. A day or two after that the Police again questioned you. Then you made a long statement to the Police mentioning about the cartridges, the conversation and so on. You felt when you came before me here that you would get into trouble and therefore you wanted to steer a middle course and say that you heard a little ?

A. No answer.)

*Cross-examined :*

20 Q. You can read and write Singhalese ?

A. Not well. I can read and write Singhalese to some extent.

Q. You can read very well but you cannot write well ?

A. I cannot even read very well.

I can read the newspapers and a "Kavikolayak." I have been to school. I was in Jaffna for some time. My home is in Averiwatte, Wattala. I went to Jaffna and was hawking things about there. That was after the death of my husband. From Jaffna I came to the Town of Colombo and I was employed as a Mason's labourer. I am quite used to looking after myself. For some time I was staying in the house of a man called John.

30 That was near the 16th milepost. John's house is in Kotahena. I went to Jaffna with my husband who was employed as a carpenter. I was also employed in several houses in Colombo as a servant over a period of years. The last house where I was employed was in Kotahena, that is the house of John. I was not a servant there but I was just staying there and John fed me. Just before coming to the deceased's house I also stayed in another house in Kotahena as a servant. I had a quarrel with the mistress there and left without telling them. I had an injury on one of my fingers and said I could not work and so she told me to go away and I left. I left of my own accord.

40 Q. In fact you left even without taking your salary ?

A. My salary was paid.

Q. Did you leave any house after a quarrel without even taking your salary ?

A. No.

Q. It was quite by accident that you came to take service in the deceased's house ?

A. Yes.

I was taken there by a Tamil woman. She is a woman who goes about finding employment for servants.

50 Q. Did you go about with that Tamil woman in search of employment ?



Proceedings  
had at the  
re-trial of  
the Second  
Accused,  
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*continued.*

A. No. But she took me straight to the house of the deceased and I took employment there as a cook.

That was the first occasion on which I had set eyes on the accused. Even while I was working in that house I had nothing to do with the accused because the master of the house used to do the marketing. Really in that house it was the master who attended to most of the household duties. Even the giving out of the rice and curry stuffs for the cooking was done by the master and he did not go to work. The lady used to go to work. The master would bring the provisions and go away and come back for lunch and then remain at home. I had gone to Nugegoda with the accused only twice. 10

(To Court : The accused is a woman who could go alone to Nugegoda, if she wanted to.

Q. You know that your evidence is put forward to show that the accused entered into a conspiracy with the Baas to kill the deceased, so much so that when she got out of the house she told you to keep silent ?

A. Yes.

Q. Now why on earth did she take you with her unless she wanted you to be with her and come and give evidence of this conspiracy against her ; to place you on the verandah from where you could see the cartridges, from where you could hear the conversation if your second statement to the Police is true. So that unless the accused is a lunatic she would not have taken you ? 20

A. No answer.)

Q. You cannot think of any reason why she should have taken you to the Baas' house ?

A. No.

Q. The Baas' house is about 60 or 70 fathoms from her mother's house, is it not ?

A. I do not know. 30

Q. About that distance from where you are ? (Indicates distance.)

A. Yes.

I do not know whether that Baas was a Mason Baas.

Q. Had you ever seen that Baas before ?

A. No.

It was only after I took employment under the deceased that I came to know the Baas. Since I took employment there the Baas had come to the house twice and I saw him talking to the deceased one day in the front portion of the house. That was the day that Sumana was ill.

Q. Was that the only day you saw the Baas talking to the deceased ? 40

A. Yes.

I cannot say for how long he was talking to the deceased on that occasion because I was in the kitchen.

Q. Now would it be true to say that on that day the Baas made some signs to you while you were working in the kitchen ?

A. No.

(To Court : The Baas comes in through the front door ?

A. Yes.

Q. Did the deceased tell you that you must be careful of the Baas, that he is a difficult customer ? 50

A. No.

Q. The Baas tried to make advances to you ?

A. Yes.

Q. You got angry with the Baas ?

A. No. The Baas did not make any advances to me.

Q. You said just now that he did ?

A. No.

Q. The Baas made some signs to you ?

A. I did not notice that.)

I know Sumana the daughter of the accused and deceased.

10 Q. Try and recall the day on which the Baas came to the house when Sumana had a bad foot ?

A. Yes.

Q. You remember that day very clearly ?

A. Yes.

That was not the first occasion on which I had seen the Baas. I had seen him before that at the deceased's house. It was on the day Sumana had a bad foot that I saw Baas coming to the house for the second time.

Q. So that you had seen the Baas only on one occasion before, and on that occasion he did not speak to you ?

20 A. That is so.

Q. Nor did he speak to the deceased ?

A. At that time the deceased was in hospital.

Q. So that on that occasion he only spoke to the accused and went away ?

A. Yes.

Q. On that occasion he did not have any communication with you ?

A. No.

On the day Sumana had a bad foot the Baas came and spoke to the master of the house in the hall. From the hall one cannot see the kitchen.

30 The Baas came up to the table and asked me for a glass of water. That was the first time I saw Baas that day. I did not know that he had already got a glass of water from Sumana. I cannot say how long he was there on that occasion.

Q. Now did the Baas make any signs or signal to you ?

A. No.

Q. Did Sumana come and tell you that the master wanted you to close the kitchen door and do your work ?

A. Yes.

Q. Why ?

40 A. I do not know.

I closed the door. When that door was closed the Baas could not see me. That was after I had given the Baas the glass of water.

Q. Had the master of the house warned you previously about this Baas ?

A. No.

(To Court : Did the master tell you at any time that you should be careful about the Baas ?

A. No.

50 Q. In your statement to the Police you had said this : " This person called Baas came two or three days before this day (that is the day of murder) when my master was at home. My master told me that Baas was a dangerous man and asked me to have the door closed." Did you make that statement to the Police ?

Proceedings  
had at the  
re-trial of  
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*continued.*

A. Yes.)

Q. Was that true ?

A. Yes.

I cannot say how long I remained with the door shut. But when I came out I found the master and the girl Sumana in the front of the house. The lady came some considerable time afterwards.

Q. How long before the death of the master was this visit of the Baas on which occasion you closed the door and remained inside ?

A. I cannot remember.

Q. Was it soon after you took service or a week after ?

10

A. I cannot remember.

I gave evidence on a number of occasions in connection with this matter. Each time I was affirmed and I undertook to tell the truth.

Q. The first time was on the very day of this incident at the Inquest ?

A. Yes.

On that occasion I gave evidence of what happened on this day. To-day some of the details are not quite clear in my mind.

Q. But on that day things were quite fresh in your mind ?

A. Yes.

Q. Did you tell the truth on that occasion ?

20

A. Yes.

Q. It was all recorded by the Coroner ?

A. No answer.

Q. After you gave that evidence it was read over to you and you signed it admitting it to be correct ?

A. I cannot remember if I signed it.

Q. Did you say this that day : " The deceased spoke to me, said that there was no rice for dinner to-night and that you will have to eat string-hoppers " ? Is that true ?

A. Yes.

30

Q. " So saying he gave me Rs.1/50 and requested me to go to the market and bring meat and vegetables " ?

A. The master did not give me the money.

(To Court : Is it that you cannot remember or do you deny that your master gave you the money ?

A. I cannot remember.

Q. So if it is recorded there that you said that day that the master gave you the money, it must be true. Is that not so ?

A. Yes.)

Q. " I left the place at once. When I left my master the deceased was the only person in the house. The deceased's wife had gone to school. She was a teacher " ?

A. No answer.

(To Court : Now that version is different from the version you have given us. Can you account for the difference ?

A. No.

Q. In fact the first version must be the true version because at that time you remembered things better ?

A. Yes.)

Q. In fact after that you were kept in the Police Station ?

50

Court to Jury : Can you accept the evidence of this witness ?

*Foreman* : We are unable to accept her evidence. We reject her evidence. Proceedings had at the re-trial of the Second Accused, 20th April 1949, continued.

*Court* : If that is your view, the rest of the evidence on which the Crown relies, for example motive, subsequent conduct of the accused, etc., even if accepted is not sufficient to support a conviction. Do you wish to proceed with the case any further ?

*Foreman* : No, my Lord.

The Jury bring in an unanimous verdict finding the prisoner not guilty.

10 *The prisoner is acquitted and discharged.*

*Court orders Alice Nona's batta to be forfeited.*

Certified correct.

*Stenographer S.C.*

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**VERDICT.**

Colombo the 20th day of April One thousand Nine hundred and forty-nine. Verdict 20th April 1949.

The unanimous Verdict of the Jurors sworn to try the matter of accusation in this case is that the prisoner is not guilty of any offence.

20 (Sgd.) P. J. SWAMPILLAI, (Sgd.) (Illegible),  
Clerk of Assize. Foreman.

Colombo the 20th day of April One thousand Nine hundred and forty-nine.

On this Indictment the sentence of the Court, pronounced and published this day, is that the prisoner be and she is hereby discharged.

(Sgd.) P. J. SWAMPILLAI,  
Clerk of Assize.

True Copy.

(Illegible),  
Registrar, Supreme Court, Ceylon.

30 6th May, 1949.

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**In the Privy Council.**

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**ON APPEAL**  
*FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.*

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**BETWEEN**

**KANNANGARA ARATCHIGE DHARMASENA alias BAAS**  
(Accused) - - - - - *Appellant*

**AND**

**THE KING (Complainant)** - - - - - *Respondent.*

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**RECORD OF PROCEEDINGS**

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DARLEY, CUMBERLAND & CO.,  
36 JOHN STREET, W.C.1,  
*Solicitors for the Appellant.*

BURCHELLS,  
9 BISHOPSGATE, E.C.2,  
*Solicitors for the Respondent.*