

C.K.T. E.M.

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No.

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Supreme Court of Ceylon
No. 13 of 1948

Magistrate's Court of Balapitiya
No. 57809
UNIVERSITY OF LONDON
W.C.1.
20 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

**IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE COURT OF
CRIMINAL APPEAL OF CEYLON**

THE KING

VERSUS

LATHUWA HANDI EBERT SILVA.....*Accused-Appellant*

**RECORD
OF PROCEEDINGS**

No.

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RECORD OF PROCEEDINGS

PART I.

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PART I.

No. 1

MAGISTRATE'S COURT PROCEEDINGS

(1) Charge laid against Accused

M. C. Balapitiya, Case No. 57809.

CEYLON POLICE

In the Magistrate's Court of Balapitiya.

This 24th day of February, 1947.

10 I, M. C. Mahamoor, Sub-Inspector of Police, Elpitiya, in terms of section 148 (b) of the Criminal Procedure Code (Chapter 16), hereby report to the Court, that Lathuwa Handi Ebert Silva of Porawagama, did on or about the 17th day of October, 1946, at Porawagama in Ambalangoda District, within the jurisdiction of this court commit murder by causing the death of Perumal Muttusamy of Porawagama, and thereby committed an offence punishable under section 296 of the C. P. C., Chapter 15, L. E. C.

20 2. At the same time and place aforesaid the above named accused did commit murder by causing the death of Gardia Welligamage Baby Nona, *alias* Baby Nona of Porawagama, and thereby committed an offence punishable under section 296 of the C. P. C., Chapter 15 of L. E. C.

3. At the same time and place aforesaid the above named accused did commit murder by causing the death of Gardia Welligamage Hemalatha *alias* Hema of Porawagama, and thereby committed an offence punishable under section 296 of the C. P. C., Chapter 15 of L. E. C.

Witnesses:

1. Wijekoon Mudiyaeselage Wilfred of Porawagama.
2. Wijekoon Mudiyaeselage Banda of Porawagama.
- 30 3. Ruwanpura Jayaratne Mendis of Porawagama.
4. Wijekoon Mudiyaeselage Aranolis *alias* Edwin of Porawagama.
5. Konamperuma Arachi Samathapala of Porawagama.
6. Wijekoon Mudiyaeselage Jane Nona of Porawagama.
7. Batuwatta Gamage Margeret Nona of Porawagama.
8. Gardia Welligamage Lucy Nona of Unawatuna, Galle.
9. David Nanayakkara of Porawagama.
10. Mr. R. P. de Silva, Proctor S.C., Ambalangoda.

No. 1
Magistrate's
Court
Proceedings.
Charge laid
against accused
24.2.47

No. 1
Magistrate's
Court
Proceedings.
Charge laid
against accused
24.2.47

11. Kodituwakku Handy Singho of Porawagama.
12. M. G. Sirisena, V. H. Porawagama.
13. Kukulay Vithanage Erolis of Porawagama.
14. P.C. 2202 Ranasinghe of Elpitiya.
15. P.C. 1747 Hannan of Elpitiya.
16. P.C. 3549 Karunaratne, Photographer, C.I.D., Colombo.
17. P.C. 3708 Banda of Ambalangoda.
18. Government Analyst, Colombo.
19. Professor of Anatomy, Ceylon University, Colombo.
20. W. E. Poulier, A.S.P., Colombo. 10

List of Productions.

1. Pieces of bone found at spot shown by Wilfred.
2. Pieces of bone found in hollow of tree and pointed out by witness Jayaratne.
3. Pieces of bone found on Western side of Muttusamy's house pointed out by Jayaratne.
4. Pieces of bone found near spout.
5. Mamoty found near Handy's Wadiya and pointed out by Wilfred.
6. Wooden box pointed out by Wilfred. 20
7. Pieces of bones found in sifting earth at rear of Muttusamy's house.
8. Pieces of wadding.
9. A piece of card-board wadding.
10. Two pellets found embedded in earth at root of tree behind Muttusamy's house.
11. Two pellets found on surface soil behind Muttusamy's house.
12. A piece of outer wadding "Smokeless S. G."
13. Burned pieces of metal found where box of clothes was burned. 30
14. Pellets and slugs found in house occupied by accused Ebert Silva.
15. Bones found amongst soil and ashes at spot earlier pointed out by Wilfred and Jayaratne.
16. A tooth found at the same spot.
17. Pieces of burned Khaki material.
18. Pieces of bones found below sloping rock pointed out by Jayaratne.
19. One 3 cell Eveready torch.
20. One saucer. 40
21. One basket containing broken pieces of bottles &c.
22. One D. B. B. L. gun No. 225/13703.
23. One box containing 17 S. G. cartridges.
24. Two cartridges found in gun.
25. One pink piece of cloth.
26. One gold coloured bead.
27. Some burnt pieces of cloth.

28. One burnt piece of bangle and 50 cts. coin &c.
 29. Some pieces of blue cloth, button &c.
 30. Some foul smelling substance.
 31. Agreement signed by Jayaratne, Mendis and Janenona.
 32. Rice Ration Book and Cloth Coupon Book of Ebert Silva.
 33. Extra Cloth Coupon Book without cover.
 34. Pocket checkroll found in house.
 35. New checkroll found in house.
 10 36. One house-holder's list No. BK 35,92.
 37. Piece of cloth with greenlines.
 38. Some burnt scrap rubber.
 39. Some pieces of burnt material.
 40. Two bill books.
 41. One checkroll—old.
 42. Pieces of burnt cloth, safety pin and cent coin.

No. 1.
 Magistrate's
 Court Proceed-
 ings. Charge
 laid against
 accused
 21.2.47

Sgd. M. C. MAHAMOOR,
 S. I.

No. 1

MAGISTRATE'S COURT PROCEEDINGS

20

(2) Deposition of Witnesses

*Haddugoda Kanda Estate,
 Porawagama,
 February 4, 1947,
 2.30 p.m.*

No. 1.
 Magistrate's
 Court Proceed-
 ings. (2) De-
 position of
 witnesses
 W. M.
 Wilfred,
 Examination

On receipt of information that Mutusamy, his wife Baby Nona and a child Hema had disappeared from Porawagama and being suspected to have been murdered and the bodies burnt and bones scattered about, I proceeded to the spot. It is a lonely Estate of about 50 acres in extent and about 3 huts on them far apart from each other.
 30 I was shown two drains where the charred remains were alleged to have been buried and near the hut of the alleged scene of offence, there are two pits. Some offensive smelling earth, pieces of bone and burnt cloth were found by the S. I. in the earth piled outer side along the walls of the house. Pieces of bone were found by a stream and by the side of the drain referred to above.

Several pieces of bone, piece of blue cloth, piece of pink cloth, and a trouser button were found by S. I., near a timber shed on the estate where there was a pile of charcoal. A bead of a string of beads identified as having been worn by the deceased child was found behind

No. 1
Magistrate's
Court
Proceedings. (2)
Deposition of
witnesses
W. M.
Wilfred,
examination

the house. The suspect Lathuwa Handi Ebert Silva is present in custody. Mr. Poulier, A. S. P., Ambalangoda, and S. I. Mahamoor are present. Mr. Poulier calls :

WIJEKOON MUDIYANSELAGE WILFRED, affirmed, 12, years, son of W. M. Banda, Porawagama. My father resides on the edge of the estate. My sister is Jane Nona. She was a daily paid labourer in the estate about 5 months ago. I too was employed. I left the estate on January 1, 1947. I was removed by my father. About 2 or 3 months before I left the estate a man called Muttusamy, his wife Baby Nona, and a child Hema came to this estate. They occupied a hut near the timber shed, and it is broken down now. One Handy was occupying this house. He was asked to leave and the house was given to Muttusamy. That happened soon after they came to the Estate. I was employed as cook for the suspect. I was staying with him in the house now occupied by Handy. Handy left to his village after he left this house. I saw Baby Nona wearing a pair of gold earrings with some white stones and a pair of silver bangles. During their stay on the Estate I saw them wearing them very often. Muttusamy had a rose coloured waistcoat and a pair of blue shorts with black buttons. Baby Nona became pregnant. The suspect sent fowl curry to Baby Nona through me whenever a fowl was killed. On a day Muttusamy went to assault his wife over a talk about some rice. The suspect threatened Muttusamy. Muttusamy went towards his house, but Baby Nona continued to work, signed the register and went away. I did not see Baby Nona after that date. 10 20

On the night of that date, the suspect left the house after his meals with his gun, cartridges and torch. I remained in the house. During the night I heard the report of a gun from this direction. Early morning the suspect returned home. I was up preparing tea. The suspect had his tea and came this side saying that he was going to Muttusamy's. I prepared the mid-day meals and waited for the suspect. I waited till about 2.30 p.m., and as he did not turn up I went towards Muttusamy's. The doors were closed then. I cried out to him. He did not answer. Stench of flesh burning came from the house. The door was locked from outside with a padlock. When Muttusamy was alive he used to close the door with a piece of coir rope. I cried out for the suspect. I did not receive any reply. I went towards the slope of the hill on the eastern side. I saw the suspect digging a hole in the drain. I got close. I saw pieces of hand, legs, body cut into pieces and charred. There were two heads blackened, one was large and the other small. I questioned the suspect. He drove me away. The slope was in shrub jungle then and not cleared as now. I was about 6 fathoms from the suspect. 30 40

I went home and told my father that the suspect was digging a hole and there were pieces of human bodies near him. My father came here with me. Both of us went near. There were pieces of the bodies. My father questioned the suspect who asked my father to return home.

I returned to the Wadiya. My father too went towards his house. In the evening the suspect returned home after a bath. He brought a mamotty with him. I spoke to the suspect and questioned him. He said that he did a small bit of work. At that time the suspect was in terms of intimacy with my sister Jane Nona. He used to visit her but she did not live with him, at the Wadiya. When she comes to work she used to meet him secretly. The next day my sister came to work at the Wadiya. I questioned the suspect and he told me that Muttusamy had killed and burnt his wife and child in the house and had gone away.

No. 1
Magistrate's
Court
Proceedings. (2)
Deposition of
witnesses
W. M.
Wilfred,
examination

10 I came towards this house with my sister a day or two later when she came to apply mud on the floor. The suspect opened the door. As we entered I saw a heap of ashes, blood all over the floor, and a hole in the wall abreast of the door. I looked at the hole and I took out a piece of wadding. The suspect snatched it out of my hands and threw it away. The suspect brought water. The suspect scraped the blood from the floor, and the walls and put the mud in the pit containing the plaintain bush. My sister and I washed the floor. I was asked to bring water and I did so. My sister applied the fresh mud. The suspect closed the hole. At the time the Messa over the hearth had
20 been broken and burnt. There was a heap of ash near the hearth about a foot in height. After the work we returned to the Wadiya.

There was a cane box belonging to Baby Nona, and it contained clothes. The suspect threw the box with the contents to the jungle. I saw my sister wearing the earings, bangles and the clothes of the deceased. She was wearing them after she was being kept by Jayaratne. My sister stayed for two nights in the Wadiya with the suspect. My father became angry over that. Jayaratne was working on the Estate and lived at the Wadiya. Jayaratne and the suspect were very friendly. Jayaratne and the suspect took out some bones
30 from the drain and took them to the drain higher up. The bones were burnt and buried. On the following day the bones were dug up and were carried in a gunny-bag towards the Ela. I saw some bags being sewn by the suspect and Jayaratne near the timber shed. I was sent with Rs. 10 by the suspect, to the boutique. I went towards the Ela. I saw a fire had been kindled, and the ashes swept away. I questioned Jayaratne who did not reply. Sometime after I saw the bodies being buried in the drain. Baby Nona's sister came. She was given meals, money and sent away. She asked the suspect for Muttusamy. The suspect said that they had run away.

40 I was present when the piece of blue cloth was found by S. I. It had black buttons. Muttusamy was wearing a pair of shorts of that colour. The pinkish colour piece of cloth was also of the colour of the waistcoat worn by Muttusamy. I too helped to find the pieces of bone and I handed them to the S. I. The suspect threatened to shoot me if I disclosed what I saw. People are frightened of the suspect.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) W. M.
Banda,
Examination

WIJEKOON MUDIYANSELAGE BANDA, affirmed, 45, Cultivator, Porawagama. The last witness is my son. He was employed on this Estate for about a year. He left in January. Latterly he cooked for about 5 months as cook to the suspect. My house could be seen from this place but it is at a distance. A Tamil man called Muttusamy was employed on this Estate. He came with his wife Baby Nona and a child. They came about 4 months before I removed my son. The suspect is the conductor. Muttusamy lived in this house and the suspect at the Wadiya. Muttusamy wanted to leave the Estate. He told me so.

10

My son came one afternoon and told me that this suspect was digging a hole on the side of the hill and there were some pieces of flesh. The suspect had driven my son to the Wadiya but he came to inform me. I too came here. I was then not well. My son showed me the place. The suspect came up. Then my son went away. The suspect asked me why I came. Then I questioned the suspect who told me that Muttusamy had killed his wife and daughter and left the Estate. Then I told the suspect either to inform the Police or the master. I came to this place. The house was reeking with the smell of burnt flesh. I hid myself in the jungle and watched. I saw the suspect putting some pieces of blackened flesh. I returned home. We did not inform any officer. My son was working on the estate and the suspect was friendly with my daughter who was also a labourer. The suspect had handed over my daughter to Jayaratne as a mistress against my wish in December. I made an entry in the Elpitiya Police Station. The same day I saw Mr. Piyadasa de Silva at Ambalangoda and told him about my daughter and inquired whether he knew what was happening on the Estate. Then I added that Muttusamy and his wife and child were killed on the Estate, and the offence was being suppressed by the suspect. He thought for some time and asked me to wait for him. I said that I cannot and went away.

20

30

Yesterday my son Wilfred and I went to the A. S. P. and made a statement. I saw Muttusamy before I saw the pits being dug but never after. Muttusamy was wearing a pair of blue shorts and a rose coloured waistcoat.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) R. J.
Mendis,
Examination

RUWANPURA JAYARATNE MENDIS, affirmed, 23, labourer, Porawagama. The suspect is my uncle. The owner of the land is also an uncle of mine. I am now here for about 4 months. The suspect, Wilfred and I lived at the Wadiya. Wilfred was at the Wadiya when I joined the Estate. One day the suspect came this side in the night. A little later I heard the report of a gun from this

40

direction. I called Wilfred and informed him so. When I got up in the morning I saw the suspect and inquired what the report was. The suspect told me that it may be a report of a gun from a neighbouring estate. The suspect told me on the same morning that Muttusamy had bolted away with his family. There was no trouble. The suspect used to walk about and asked me to join him. I could not go with him. Muttusamy was wearing a pair of blue shorts and rose coloured waistcoat. I saw the suspect lighting a fire near the wood-shed. I showed the spot to the S. I. Both the suspect and I cut logs and kindled a fire. 10 There was a gunny bag hidden in a low jungle. It was wet. I was asked to go down. The gunny bag was opened. There were some bones. They were blackened bones. I saw the pair of shorts similar to the one worn by Muttusamy placed over it. It had black buttons. There was the rose coloured waistcoat. They were burnt there. I helped in the burning. The bones were brought to the spot and the ashes were scattered about. The bones were grounded between two stones and thrown to the Ela. I was asked to help the suspect. I did not help to grind the bones or to throw them away. I showed the bones left to the S. I. I picked up some pieces and handed them to the S. I. 20 I questioned the suspect. The suspect told me that Muttusamy had gone away after killing his wife and child. I inquired whether Muttusamy too was dead. The suspect said that he could not say whether he was alive or not. He said that Muttusamy had other clothes. The suspect asked me to take Jane Nona as my mistress and said that I would be allowed to cultivate the land. About a week before the burning of the bones near the timber shed, the suspect asked me to cut the firewood and to take them towards the drain. I was planting cas-sawa. Some bones were on the ground. There were pieces of bones and flesh blackened and giving out an offensive smell. The bones 30 appear to have been cut into pieces. I put two small pieces into a hole by the root of a tree. I handed these pieces to the S. I., and took them out in the presence of the S. I. I showed the hole from which the suspect took out the bones, to the S. I. A week later some bones were burnt near the timber shed.

On the 1st of this month I saw a cane box containing clothes near the shrub jungle where I was weeding with Jane Nona. The suspect and Handy who was working in the estate burnt the box and the clothes. The suspect told me while the box was being burnt that Muttusamy had a lot of jewellery. After the box was burnt the 40 suspect and I stirred the ashes to find whether there were any jewellery. Then the suspect said that Muttusamy must have removed the jewellery.

I informed Handy some time that Muttusamy and his wife and child had been killed. I did not see Muttusamy after that. I saw Muttusamy prior to the day when the suspect took the gun and went out in the night. I saw his wife and child that day. They returned later after threshing paddy. Since that day I did not see Muttusamy, his wife and child. Baby Nona's sister came before the mudding of

No. 1
 (2) R. J.
 Mendis,
 examination
 —continued

the houses. She came to see Baby Nona. She inquired for Baby Nona and Muttusamy. The suspect said that they bolted away. Jane Nona said that the suspect was trying to harass her and I wanted to leave the estate.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
 (2) W. M. Jane
 Nona,
 examination

WIJEKOON MUDIYANSELAGE JANE NONA, affirmed, 10
 16 years. Mistress of Jayaratne Mendis, Porawagma. I worked on this Estate for sometime. I used to weed the Estate. My brother Wilfred worked as a cook under the suspect. I remember Muttusamy and his family living in this house. One day the suspect asked me to apply mud in this house. The suspect was on the verandah. The mud was ready. There were no blood stains but the mud had been scraped inside the house in a heap. It is not customary to scrape the mud off the floor, before applying mud. The floor had been covered with mud and cowdung. We do not apply pure mud over cowdung. I questioned the suspect and he told me that as the house was vacant he wanted mud to be applied. I did not question why the mud and cowdung was scraped.

When I entered the house there was the smell of burnt flesh. I 20
 questioned the suspect where Muttusamy and his family were before I applied mud. He said that they had bolted away.

(The suspect leaves with two constables to answer a call of nature. The suspect returns.) Intd. P. A. S.

The suspect and I were friends. He used to fool me. One day Muttusamy tried to assault Baby Nona. Baby Nona went up to the suspect. Then he advised Muttusamy not to assault her. After Baby Nona came the suspect did not take notice of me as he used to. After the disappearance of Muttusamy and family the suspect treated me as before. I was driven away by my brother and I stayed at the request 30
 of the suspect at his house. Now Jayaratne is keeping me. I told Jayaratne that the suspect asked me to go to the well. Then Jayaratne and I decided to leave the Estate. I saw the suspect burning a cane box on 1. 2. 47. There were some clothes. The box and the clothes appeared to be rotten. That is Muttusamy's box. I had been inside the house of Muttusamy when he was on the Estate. No one else had a similar box on the estate.

Sgd. PERCY A. SENARATNE,
Magistrate.

This is all the evidence now. There was no one else present here. 40
 Remand suspect till 13.2.47.

Intd. P. A. S.,
Mag.

Later I think that it is better to charge the accd. Tender the witnesses for cross-examination. I inform the charges to the accd.

WIJEKOON MUDIYANSELAGE WILFRED, recalled, affirmed, p.e.r.o. No. 1
(2) W. M. Jane
Nona, examin-
ation
—continued

XXD: Reserved.

Sgd. PERCY A. SENARATNE,
Magistrate.

MUDIYANSELAGE BANDA, recalled, affirmed, p.e.r.o.
XXD.

Sgd. PERCY A. SENARATNE,
Magistrate.

10 The acd. at this stage wishes to ask questions from the witnesses.
I recall.

WIJEKOON MUDIYANSELAGE WILFRED, affirmed,
p.e.r.o.

XXD: Reserved.

Sgd. PERCY A. SENARATNE,
Magistrate.

WIJEKOON MUDIYANSELAGE BANDA, recalled, affirmed,
p.e.r.o.

XXD: Reserved.

Sgd. PERCY A. SENARATNE,
Magistrate.

RUWANPURA JAYARATNE MENDIS, recalled, affirmed,
p.e.r.o.

XXD: Reserved.

20 Sgd. PERCY A. SENARATNE,
Magistrate.

WIJEKOON MUDIYANSELAGE JANE NONA, recalled,
affirmed, p.e.r.o.

XXD: Reserved.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 13.2.47.

Remand acd.

Intd. P. A. S.,
Mag.

30 6.2.47.

Acad. L. EBERT SILVA absent.

Mr. Poulter moves that I should record the evidence of Batuwatte Gamage Margeret Nona. I allow the application and record her evidence. Her evidence will be re-recorded in the presence of the acd.

No. 1
Magistrate's
Court Pro-
ceedings (2)
Deposition of
witnesses
B. Margeret,
examination

No. 1
Magistrate's
Court
Proceedings
(2) Deposition
of witnesses
B. Margeret,
examination
--Continued

BATUWATTAGAMAGE MARGERET, affirmed, 45 years. Wife of P. S. Simon Silva, Porawagama. About 4 months ago on the 17th of a month the date I remember well as I worked only up to 17th of that month. I worked on the Estate of which Ebert Silva was the conductor. I worked till after sunset. I became cross as I had no time to have a wash. I questioned Ebert Silva for the late hour. Then he stopped work. On that day Jane Nona, Baby Nona and Muttusamy and another woman worked. Later Muttusamy, Baby Nona and the child went to Arnolis' house to get some paddy husked for the night meal. Ebert Silva tried to dissuade Muttusamy from going as it was late but Muttusamy insisted and went. They went to have the paddy husked and I went home. 10

On the following day I did not go for work in the morning but went to the estate at about 2.30 p.m. to the Wadiya to get my wages. Ebert Silva was not there but Wilfred a Ratta was there. I inquired from him where Ebert Silva was. He said that he did not know, where he was. I waited for him. Ebert Silva came after a bath with some wet clothes. He appeared to be very cross when he saw me. He gave the wet clothes to Wilfred to air them. I requested Ebert Silva to give my wages. He asked me to come when Cooray brought the money. I abused him. 20

Ebert Silva said that he was going to search for a ring which had dropped. He went on the foot-path leading to Muttusamy's house. I went in the same direction to meet Baby Nona to get back the 50 cts. which I had lent to her at the fair. I saw Ebert Silva and Jane Nona looking for something near the Wadiya. When Ebert Silva saw he questioned me roughly where I was going. I told him that I was going to Baby Nona's. Ebert Silva spread out his hands and said that Muttusamy and his family had bolted away the previous night and that it was not necessary to go there. I returned home. 30

Two days later I got information that the wages were being paid. I went to the Estate and I got my money from Cooray.

On 8.1.47. Ebert Silva came to my house and asked me to come for work. In the afternoon I went to find out whether he would ill-treat me again. Then he kept me for the afternoon work. I worked for about three weeks from that date, and stopped as harvesting started. I had not been paid for the work I did in January. I did not ask for the wages due to me.

Sgd. PERCY A. SENARATNE,
Magistrate. 40

Mr. Poulier moves to have the accd. produced in Ct. on 10.2.47. to lead evidence re. productions.

Wire Fiscal, S.P., to produce accd. on that day.

8.2.47.

Intd. P. A. S.,
Mag.

Mr. Poulier moves to have the evidence of Konnamperuma, recorded. I allow the application.

KONNAMPERUMA ARACHI SAMATHAPALA, affirmed, No. 1
labourer, Katendola Estate. About 4 months ago I was working on the (2) K. A.
Porawagama Estate as a rubber tapper. I worked continually for about Samathapala,
4 months. There was rain during the last month. One morning I went examination
to the Estate at about 9.30 a.m. being delayed on account of the rain.
There was heavy rain the previous night. I saw Wilfred a Ratta at the
Wadiya. The conductor was not there. The tapping knives were in
the custody of the conductor. I inquired from Wilfred where the
conductor. He informed me that the conductor went towards Muttu-
10 samy's in the morning. He added that Muttusamy and his family had
bolted away the previous night. I called Wilfred and went towards
Muttusamy's house. The door was closed but was not locked. Wilfred
pushed the door and entered. He called me to show a thing. I went
in. I saw a heap of ash. Pots were broken. There was rice in a pot.
They had been strewn about. There was a mark indicating that
something heavy had been dragged on to the verandah from inside the
house. There were two charcoal marks indicating that something burnt
was dragged. I thought that it was a log. The ash was not in the
hearth but more towards the hall. The ash was a fairly large one. It
20 appeared that the whole place was in disorder.

Both of us stepped out, and went towards the East. As we got
out the conductor came from the direction of the slope. There were
soot marks on his hands and chest. His cloth was soiled. He was
sweating. I inquired where he had been. He said that he went
trekking a wild boar. I inquired for the tapping knife. He said
that there was no tapping that day and asked us to go away. We then
went towards the Wadiya. I saw a dog just before the conductor
came; a dog eating something black. The dog was the conductor's dog.
That something looked like burnt flesh. It was black in colour. Wilfred
30 and I went away. I gave up the Estate at the end of the month. I
went to Ketendola as my grand-parents lived near the Estate. When
we entered Muttusamy's house I did not get any smell. Last evening
the S.I. questioned me in the presence of the Assistant Superintendent.

I did not see Muttusamy and his family after I saw the ash.
Muttusamy normally wore a pair of blue shorts.

Sgd. PERCY A. SENARATNE,
Magistrate.

10.2.47.

L. EBERT SILVA, pt.

40 MR. EDIRISINGHE, instructed by MESSRS. W. GUNA-
SEKERA and C. C. L. DE SILVA.

MR. POULIER calls: M. C. MAHAMOOR, affirmed,
S. I. Police, Elpitiya.

I produce an envelope marked P1 containing pieces of bone,
found by me on 4.2.47 on a statement by Wilfred. I produce an

No. 1
(2) L. Ebert
Silva, examin-
ation

No. 1
 (2) L. Ebert
 Silva, examination
 —continued

envelope P2 containing pieces of bone found in hole under the stump of a tree, shown to me by Jayaratne. I produce envelope marked P3 containing pieces of bone found on the western side of the hut shown by Jayaratne on the same day. I produce P4 containing pieces of bone found near the spout shewn by Jayaratne. I produce P5 a mommaty found by me near the Wadiya. I produce an empty wooden box marked P6 shewn by Wilfred. I produce envelope P7 containing bones found by me after sifting the earth behind the house. I produce envelope P8 containing a piece of wadding found by me behind the house of Muttusamy. 10

I produce envelope P9 containing a piece of wadding found by me on 5.2.47 behind the house. On the scene I found two pellets embedded in the earth under a stump of a tree, behind the house marked P10.

I produce two pellets marked P11 found in the surface soil between the stump referred to above and the rear wall of the house.

I produce a piece of wadding marked P12 having the letters smokeless S. G., when sifting the soil near the bark of a tree behind the house of Muttusamy.

I produce several burnt pieces of like metal marked P13 found 20 after sifting the ashes where something had been burnt close to the house of Muttusamy.

On 4.2.47 I found some slugs and pellets in the house occupied by the accused now in a saucer. They were taken on the 6.2.47 at the request of the Government Analyst. I produce them marked P14.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
 (2) W. E.
 Poulter,
 examination

W. E. POULIER, sworn. A.S.P., Ambalangoda.

On 9.2.47 I searched the spot indicated by Wilfred and found some pieces of bones which I produce marked P15. I also found at 30 the same time amongst some ashes mixed with the soil a tooth which I produce marked P15A.

On the western side of the Estate at the spot indicated by Jayaratne I found some burnt khaki material. I produce it marked P16. I found pieces of bones at the bottom of a large sloping rock shewn by Jayaratne marked P17.

Sgd. PERCY A. SENARATNE,
Magistrate.

Mr. Poulter moves to transmit productions P1, P2-P4, P7, P15, 15A, P17, to the Professor of Anatomy at the Ceylon University to 40 report whether the productions are human bone, and if so to report on the sex, age and from what parts of the body they come.

P15A to be sent to the same Professor to report whether it is a human tooth and if so the probable age of the person and whether the tooth has undergone any process of burning.

No. 1
(2) W. E.
Poulier,
Cross-examina-
tion

P5, P6, and P16 to the Government Analyst to report whether there are human blood on the productions or any blood. —continued

P8, P9, P10, P11, P12, P14 to the Government Analyst to report the type of shot, size and make of cartridge of which productions P9 to P12 form a part.

10 Further P10 and P11 to be compared with P14 and report whether these pellets are of the same size and composition as any of the pellets contained in P14.

P13 to find whether it is the result of burnt metal. If so what kind of metal it is.

I allow the application. Forward productions ret 24.2.47.

Intd. P. A. S.,
Magistrate.

12.2.47. : P. C. Banda tenders receipt C 136 of 11.2.47 from the Government Analyst and receipt dated 11.2.47 from the Professor of Anatomy, Col.

20

File.

Intd. P. A. S.,
Magistrate.

21.2.47. :

Report from the Professor of Anatomy received.

File.

Intd. P. A. S.,
Magistrate.

24.2.47. :

Accd.. L. EBERT SILVA, pt.

30

F. E. on 4.3.47.

Cite witnesses 1-13 for that date.

Intd. P. A. S.,
Magistrate.

4.3.47. :

Accd. L. EBERT SILVA, pt.

MR. COLVIN R. DE SILVA, instructed by MR. W. GOONASEKERA and MR. C. L. DE SILVA for accused.

A.S.P. MR. POULIER calls :

No. 1
Magistrate's
Court Pro-
ceedings (2)
Deposition of
witnesses W.
M. Wilfred.
examination

WIJEKOON MUDIYANSELAGE WILFRED, recalled,
affirmed, p.e.r.o.

I do not know the age of Muttusamy. I know the door of the house where Muttusamy lived. The door was fixed to the right hand door post. When Muttusamy lived there the door was fixed to the left side. The day after the day when Muttusamy quarrelled with his wife, Samathapala came in search of accused. He is a tapper. The tapping were with the accused. The accused gives the knives to the tappers. Samathapala came at about 9 a.m. He asked me to accompany him to go in search of accused. I told him that accused went in the direction of Muttusamy. I went with Samathapala. We went to Muttusamy's house we saw blood and ashes. The floor had been dug. There was a breach in the wall. Some pots and pans were broken. Things appeared to be smashed. There were black drag marks visible on the floor up to the compound. We got out and looked around. We saw a dog eating something in black. It was accused's dog. While we were there the accused came from the jungle side from the east. There was some soot on his body. He was bare-bodied Samathapala spoke to accused. He asked us to go to the Wadiya. The accused asked Samathapala not to tap as the trees were wet. We went away. Samathapala went home. Accused did not give any for about a week. Margaret Nona came for work in the afternoon. The accused was not there. She came to the Wadiya and waited for accused. The accused came wearing a red sarong and he had a white sarong. It was wet. Accused asked me to put it out to dry. Margaret spoke to accused. Accused asked her to go away and her wages would be paid later. 10

I saw Margaret going towards the postmaster's estate. It is not in the direction of Muttusamy's hut. There is a gun in the estate. Only accused used it. It is kept in his room locked. Jayaratne and I lived with accused at the Wadiya. Muttusamy wore a pair of blue shorts and a pink shirt. He had a khaki raincoat. He used to wear it for rain. I did not see that khaki coat after he disappeared. I cannot tell how old Hemia was. She was about five years old. I did not see her milk teeth fallen. When accused asked me to put the sarong to dry, the accused went to the spout in search of a ring which had been dropped. There were two rice ration books attached to the estate. Rations were drawn from the Co-operative Store. I had brought rations on those. One book was Muttusamy's and the other accused's. The accused used to give the books and the money. Jayaratne too sometimes goes to the store for rations. (Mr. Colvin R. de Silva objects to the evidence of rationing going in as it relates to character. I overrule the objection). The ration books were kept in accused's drawer. My ration book was with my father. 30

XXD. I cannot remember the date when I made my first statement. The A. S. P. sent me a message. My father took me to the A. S. P. Two days prior to the Magistrate recording my statement, my father brought me to the A. S. P. at Ambalangoda. Police asked me to show the places where the bodies were buried. It was before the 40

No. 1
(2) W. M.
Wilfred, cross-
examination

Magistrate's arrival. I showed the spots on the next day, to the Police. I showed the spots on the day the Magistrate came to the place. I made another statement to the Police, later. This statement was made two days after the Magistrate came to the place. Police questioned about Samathapala. Later Police questioned about Margaret Nona. My father asked me to go to the A. S. P. He said that he was sent for. My father had not been to the Police before about this. I had never been to school. I am 12 years old. The A. S. P. questioned where Muttusamy was. I told him that one day my master did not come, and I went in search of him. Then I saw this accused digging a pit.

No. 1
(2) W. M.
Wilfred.
cross-examination
-continued

Jane Nona is my sister. She is a girl of about 18. She is yet living with Jayaratne in a house opposite ours. I used to tether cattle and cook. I did not cook for Jayaratne. I cooked for both Jayaratne and accused. At the time of the incident there were two houses. One was the Wadiya where accused lived and the other was occupied by Muttusamy. Jayaratne was in the estate when Muttusamy was on the estate. Jayaratne came about a week prior to the disappearance of Muttusamy. He stayed at the Wadiya. Handy was on the estate before Muttusamy came to the estate. Handy was sent home to his village. He came to Ambalangoda. After I left Handy came to the estate. He lives at the Wadiya. Before I left Handy came to the estate. Handy re-occupied his original house. He has a wife and two children. They work on the estate. The house is on a hill.

A new house is built for Jayaratne. Jayaratne took my sister about a month prior to the time I left. I do not know a period other than a week. Jayaratne lived with Handy. He lived in an enclosure made on the verandah. In the meantime a house was built for Jayaratne. I did not visit the estate after I left. No notice of marriage between Jayaratne and my sister were given. I am not aware of it. I knew Muttusamy and Baby Nona well. A portion of the land is jungle. Coraya had killed a wild boar which was shot in the jungle. There are monkeys on the land. Muttusamy did not shoot monkeys. My father used to shoot wild boar on the adjoining land. There are guns in the area. There is a path through the jungle to my father's. There is no place where people are buried.

Re-examined: Handy's family was brought later. He brought them to the same house. Handy was alone for one or two weeks before he brought his family. Handy and his family lived in the house. Handy came about a month after the disappearance of Muttusamy. Wild boar was killed with a trap gun. After his disappearance the wild boar was killed. Handy had not come into occupation then. There was jungle up to a height of about 4 feet. Now the jungle is cleared.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
 (2) W. M.
 Banda,
 examination

WIJESINGHE MUDIYANSELAGE BANDA, recalled, affirmed, p.e.r.o. I returned from the Elpitiya Hospital on 17.10.46. I was ill then also. I was suffering from asthma. My son conveyed the information a day later from that date. I met Muttusamy frequently. He visited me when I was ill. I saw Muttusamy having a pink waistcoat, a pair of blue shorts and later an overcoat. He used to wear that after work. He had visited me in that. It is khaki coloured. Muttusamy must be about 40 to 45 years, old. Baby Nona was about 35 years. Hemā could not have completed five years.

XXD. Muttusamy visited. I am a fairly good shot. I had a licensed gun. Now I haven't got it. I left the estate about three years ago from the postmaster's estate. It adjoins this Porawagama Estate. Muttusamy has been on this estate before. He had been once before on this estate. He told us and went away on the previous occasion. I went to the estate when my son gave me the information. About a month ago I took Wilfred to the A. S. P. I went to the A. S. P. to inform him that murder had taken place. The first occasion was when I went with my son to the A. S. P. I was sent for by the A. S. P. The A. S. P. asked me to come. A salesman of the Porawagama Co-operative Store asked me to come. He is called Appuhamy. The other workmen are Mahatun and a little boy. He is 35 years old. I have known him since I came to the village. I was here for about 5 years in this village. I have been in this area for about 20 years. I am married to a sister of the V. H. of Porawagama. If I give out his name I have no one to tell my secrets. I had been implicated in a number of cases. I was involved in an arson case, I was charged by the Postmaster with arson. I was acquitted in it. Appuhamy merely told me that the A. S. P. wanted me. Appuhamy is not from Ronna-duwa. He is from Matara. Appuhamy knew nothing about this. I did not tell Appuhamy earlier. He lives $\frac{1}{2}$ a mile away. I go to the Co-operative Stores once a week.

I did not make a second statement to the Police. I wanted to bring to light about this. In December, I made a complaint to the Police. I did not make a statement about this through fear. I waited till my children were out of the estate. When I made my statement Jane was on the state. In December Jane transferred her affection to another. I do not like Jane going with Jayaratne.

Jane and Jayaratne continued to remain on the estate. I had troubles like sicknesses from 1.1.47 to 3.2.47. I informed Mr. Piya-dasa de Silva about the marriage of my daughter. I met him at his bungalow in the morning about 12 noon. The accused was on terms of intimacy with Jayaratne. The conductor gave my daughter to a labourer. Mr. Silva promised to inquire into it. I told him that this accused is saying that Muttusamy had left the estate after killing his wife and child. Mr. de Silva asked me to wait and I went straight to Police. He questioned me where Muttusamy was. I told him that I did not know where he was. This was all the talk I had. He spoke to me and left for the Cts. again.

I did not tell Mr. Piyadasa de Silva what I knew. My wife (2) W. M. Banda, Examination --continued
is from Ronnaduwa. I have 6 children in all. Another son Arnolis was also working on the estate. He is also called Edin. He worked up to 1.1.47. I know Margaret Nona. I knew her for two years. She is said to have a man at Matara or so. I know Samathapala for the last three months. I do not know him well. There is a footpath near my house. (to Court : When Muttusamy was on the estate first, he was not married.)

10 Re-examined : Muttusamy said that he was going to Galle to get a wife. I did not tell Appuhamy what I knew. I told others. I was not a party to an agreement between the accused and Jayaratne over Jane Nona. I place my thumb impression. I did not sign a document with a cross mark. (by Mr. de Silva with permission I cannot read. No. 1 (2) W. M. Banda, Cross-examination

Sgd. PERCY A. SENARATNE,
Magistrate.

WEERAKOON MUDIYANSELAGE WILFRED, recalled, affirmed, p.e.r.o. No. 1 (2) W. M. Wilfred, Cross-examination

20 XXD. With permission. I informed my father what I saw. I did not disclose to anyone what I saw.

Re-examined : No one questioned me about this. Appuhamy came to my house. I saw him speaking to my father. About 4 or 5 days later I was sent for by the A.S.P. No. 1 (4) W. M. Wilfred, Re-examination

Sgd. PERCY A. SENARATNE,
Magistrate.

30 RUWANPURA JAYARATNE MENDIS, recalled, affirmed, p.e.r.o. I know the timber shed to the west. I used scrap rubber to burn the bodies in addition to the logs. There were portions of these at the place. On 9.2.47 I pointed out a stone above the spout. I told the A.S.P. that the bones were grounded on that stone by the accused. I was present when the A. S. P. picked some bones. I knew Muttusamy well. He had a khaki overcoat. It was a thick one. I brought rations once. I brought only for accused. It was about 1½ months ago. I joined the estate about a week before the disappearance of Muttusamy. The gun is kept by accused in a room. The room is always kept locked. I remember I signed an agreement. The accused wanted me to sign it. Notice of marriage was given by me. I placed the age of the girl at 21 years. This agreement was written by accused. Shewn P18. This was signed by me. The accused wrote it in my presence. Handy was there. There was no one else present. I can read. It was read out and kept by accused. This was discussed on the same day. About 40 two days prior to this Jane remained in the Wadiya. Banda was against this. No. 1 (2) R. J. Mendis, Examination

No. 1
(2) R. J. Men-
dis, Cross-
examination

XXD. If I abandoned the girl I agreed to forfeit Rs. 5,000. I took this on with pleasure. Sometime after this the accused directed me to get married. Hence I gave notice. It was sometime after I gave this document. The accused was the superior officer on the estate than I or Jane Nona. The accused kept it with him. The notice of marriage was given on 13th of January. The girl and I are living as husband and wife. I intend to register my marriage. I live near Banda's now for the last 3 weeks. I tap some rubber in the village. I am 23 years old.

No. 1
(2) R. J. Men-
dis, Re-
examination

Re-examined: Jane made a complaint to me after the signing of the agreement. Jane said that accused was harassing her. She said "Adantettam". I understood that accused was making improper suggestions. I wanted to leave the estate with Jane. 10

I had to leave the estate suddenly. I told the Inspector that I had no place to go, I left the house the following day. I am living now between Banda's house and the estate. (to Court: I lived at the Wadiya. Handy lived in the Wadiya and I was asked to go to Muttusamy's hut. Handy and I both went to live there. After marriage I got a house. I lived with Jane at Muttusamy's for about 2 weeks. Handy was living with his family). 20

Sgd. PERCY A. SENARATNE,
Magistrate.

It is now 4 p.m. and Mr. de Silva states that he has to be at Colombo at 5.30 p.m.

F. E. on 8.3.47.

Intd. P. A. S.,
Magistrate.

Cite Analyst and the Professor of Anatomy for 10.3.47.

Intd. P. A. S.,
Magistrate.

5.3.47.

5.3.47.

Government Analyst sends letter by P. C. Banda to say that Examination of productions is not completed: and that productions may be sent for after that.

File.

Intd. P. A. S.,
Magistrate.

8.3.47

Accd. L. H. EBERT SILVA, pt.
Same appearance as before.
MR. POULIER, A. S. P., call.

40

WIJEKOON MUDIYANSELAGE JANE NONA, recalled, No. 1
 affirmed, p.e.r.o. Shewn P18. I placed my thumb impression. At (2) W. M.
 that time the accused Handy, Jayaratne and I were there. My father Jane Nona,
 was not there. The accused kept it with him. And I was kept by examination
 Jayaratne. I remember the day since when Muttusamy was not to be
 seen. On that day Margaret Nona came in the afternoon. She said
 that she came for work but did not work. The accused drove her away.
 I was beyond the nursery then. The accused was looking for a ring
 and he asked us also to search for it. Then Margaret Nona came.
 10 The accused drove her away. That spot is between the Wadiya and
 the house occupied by Muttusamy. I cannot say whether accused spoke
 to Margaret or she to him, before she was driven away. After that
 Margaret Nona did not come to work.

XXD. I do not know my age. I am living with Jayaratne. No. 1
 He is my husband. I came here for the case on the last day. After the (2) W. M. Jane
 case Jayaratne, my father and Wilfred spoke to each other but not Nona, Cross-
 about the case. We walked together. Jayaratne and I live opposite examination
 my father's house. I live on the adjoining land to my father's land.
 I live by the boundary. There is a woman called Baby on the land. It
 20 is a temporary peasant allotment. I do not work on it, nor my husband.
 My mother is alive. My father is angry with me. There was jungle
 near Muttusamy's house, and near my house on the estate. After the
 disappearance of Muttusamy a portion of the jungle was burnt.

The cane box was burnt in the portion where the jungle was burnt.
 First the undergrowth was burnt and later cleared the shrub jungle.
 The undergrowth was burnt first. Two or three days before the magis-
 trate arrived the shrub jungle was cleared. The burning was long before
 that date. I did some of the weeding.

Re-examined : Only the compound round Muttusamy's house was No. 1
 30 cleared. Beyond was the Bata jungle. There is high rubber on the (2) W. M.
 eastern side of Muttusamy's hut. There are cassawa plantain trees Jane Nona,
 behind Muttusamy's hut. The cane box was burnt in the cleared Re-examination
 portion. When we were weeding Leelawathie found a box. She drew
 the attention of Jayaratne. Handy dragged it out of the jungle. The
 accused came and burnt it. He drove us out. We barely noticed
 clothes as it was open from a side. There was a green cloth.

I saw the accused taking the box. He lit two or three fires. He
 placed it on the fire and asked us to go away before it was burnt. We
 were ordered to work on the other side of the road. We looked back
 40 and saw this. I next went to that place when the Magistrate came
 to the scene. (To Mr. de Silva. Up to the date the Magistrate came I
 was on the estate. Leelawathie and Gunawathie were weeding with
 me, when the cane box was found. They came from the village of Pora-
 wagama. They are not related to me. Their house is very far away.
 They went home after work).

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) B. Margaret
Nona,
Examination

BATUWATTAGAMAGE MARGARET NONA, affirmed,
45 years. Wife of P. S. Simon Silva, Porawagama.

About 5 months ago on the 17th of a month; the date I remember well as I worked only up to the 17th of that month, I worked on the estate of which this accused was the conductor. I worked till after sunset. I became cross as I had no time to have a wash. I questioned the accused because of the late hour. Then he stopped work for the day. On that day Jane Nona, Muttusamy, Baby Nona and another woman worked. Later Muttusamy, Baby Nona, and the child went to Arnolis' house, to get some paddy husked for the night meal. This accused tried to dissuade Muttusamy from going as it was late, but Muttusamy insisted and went. They went to have the paddy husked and I went home. On the following day I did not go for work, in the morning, but went to the estate at about 2.30 p.m. to the Wadiya to get my wages. This accused was not there, but Wilfred a Ratta was there. I inquired from him where accused was. He said that he did not know where he was. I waited for him. The accused came after a bath, with some wet clothes. He appeared to be very cross when he saw me. He gave the wet clothes to Wilfred to be dried. I asked accused for my wages. He asked me to come when Coraya brought the money. I abused him. 10

The accused said that he was going to search for a ring, which he had dropped. He went along the path leading to Muttusamy's house. I went in the same direction to meet Baby to get back the 50 cents which I had lent to her, at the fair. I saw this accused and Jane Nona looking for something near the Wadiya. When he saw me he questioned me roughly where I was going. I told him that I was going to Baby Nona's. The accused spread out his hands and said that Muttusamy and his family had bolted away the previous night, and that it was not necessary to go there. I returned home. 30

Two days later I got information that the wages were being paid. I went to the estate and got the money from Coraya.

On 8.1.47 the accused came to my house and asked me to come for work. In the afternoon I went to find out whether he would ill-treat me again. Then he kept me for work in the afternoon. I worked for about three weeks, from that date and stopped as harvesting started. I do not know whether he had marked my name in the check-roll. I had not been paid for the work, I did in January. I did not ask for the wages due to me.

XXD. I was at Colombo for about 35 years. I married at the age of 13, by my parents to an old man. On the day of marriage I ran away to Colombo. Two other women came with me. I was employed for 7 months. I became friendly with the driver of the employer. I returned to the village about 4 or 5 years ago. Police questioned me first on 5.2.47 at night. The S. I. searched the house for some articles. I learnt that Banda had said that the accused had pawned some jewellery with me. The house was searched. I told the 40

No. 1
(2) B. Margaret
Nona,
Cross-examina-
tion

Police that if there were any jewellery it must be with Banda's daughter. I was instructed to go to the Police Station. I was questioned about the death of Muttusamy and others. I said that I knew nothing except that they had gone away. I said that I have told them the truth. When I went for work on 8.1.47. I learnt two days later that this accused murdered Muttusamy and others. That information was given by Handy's wife. I questioned accused. He said what nonsense, it was a story of Banda. If there was any truth he would prove it and asked me to work without any fear. I did not tell this to the S. I. I told the Police this on the following morning. I was produced before the Magistrate. I did not tell him this.

When I went to the Police the S. I. was there. The S. I. went to the estate. The S. I. returned and questioned me. The S. I. came at about 4 or 5 o'clock in the afternoon. The S. I. questioned me. It was recorded. My thumb impression was taken down. The S. I. asked me what I knew. I said that I know what everybody said that Muttusamy had left and that I knew nothing. I mentioned the 18th inst. I was taken before the Magistrate and made my statement in the same way. I told the Police before I was taken to the Magistrate the conversation I had with accused. Before the Magistrate I did not say this. The Magistrate asked me whether I knew anything more. I forgot to tell him this.

Re-examined.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 10.3.47.

Intd. P. A. S.,
Mag.

10.3.47.

30 Accd. L. EBERT SILVA, pt.

MR. EDIRISINGHE, instr. by MR. W. GUNASEKERA and Mr. C. L. DE SILVA for accused.

MR. POULIER calls.

DR. P. K. CHANMUGAM, sworn, Professor of Anatomy, Ceylon University.

No. 1
(2) Dr. P. K.
Chanmugam,
Examination

On 11.2.47 I received from P. C. Banda a packet sealed with the seals of the Magistrate's Court of Balapitiya. The seals were intact. The packet contained productions marked P1, P2, P3, P4, P7, P15, P15A, and P17.

I examined these productions and found that :

1. P1 contained a piece of human adult bone from the head, sex indeterminable, other bones too small to be identified.
2. P7 contained the rt. knee cap bone of an adult; sex indeterminable.

3. P15 contained a portion of a rt. human rib, a small portion of a face bone of a human and an upper thoracic vertebra from the spinal column of an adult human.

4. P15A contained a milk premolar tooth of a child under 8 years of age. It is part of the tooth. Only the crown is here. If it dropped naturally I would expect to find the root as well.

P1 is from occipital region. It showed signs of having been burnt. The other bones in P1 showed signs of charring. The bones are clean. From the shape, markings, and thickness I can distinguish these as human bones from those of animals.

Some pieces in P2 show signs of charring. In most of the packets some bones showed signs of charring. I cannot say whether the bones were deliberately broken up.

P15A, showed signs of charring. In P15 there are a number of bones. I do not find signs of charring in the milk bone. There are no obvious signs of charring of the piece vertebra. The piece of the face bone too did not show signs of charring.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

10

20

No. 1
(2) K. A. Samatapala,
Examination

KONNAMPERUMA ARACHIGE SAMATAPALA, affirmed,
21, labourer, Katandola Estate.

About 5 months ago I was working on the Porawagama Estate as a rubber tapper. I worked continually for about 4 months. There was rain during the last month. One morning I went to the Estate at about 9.30 a.m. being delayed on account of the rain. There was heavy rain the previous night. I saw Wilfred a Ratta at the Wadiya. This accused was not there. The tapping knives were with accused. I inquired from Wilfred for the accused. He told me that accused went to Muttusamy's that morning. He added that Muttusamy and his family had bolted away the previous night. I called Wilfred and went towards Muttusamy's house. The door was closed but not locked. Wilfred pushed the door and entered. He called me to show a thing. I went in. I saw a heap of ash. Pots were broken. There was rice in the pots. They had been strewn about. There was a mark indicating something heavy had been dragged on to the verandah from inside the house. There were two charcoal marks indicating that something burnt was dragged. I thought it was a log. The ash was not on the hearth, but more towards the hall. The heap of ash was a fairly large one. It appeared that the whole place was in disorder.

30

Both of us stepped out and went towards the east. As we got out the accused came from the direction of the slope. There were soot marks on his chest. His cloth was soiled. He was sweating. I inquired where he had been. He said that he had been tracking a wild boar. I asked for the tapping knife. He said that no tapping was to be done that day and asked us to go away.

40

We then went towards the wadiya. I saw a dog just before the accused came. It was eating something black. It was the accused's dog. That something looked like burnt flesh. It was black in colour. Wilfred and I went away. I left the estate at the end of the month. I went to Ketendola as my grandfather was on the estate. When I went in to Muttusamy's house I did not get any smell. On 7.2.47 the S. I. questioned me in the presence of the A. S. P. I did not see Muttusamy and his family after I saw the ash. Muttusamy normally wore a pair of blue shorts. Muttusamy wore a blue waist coat as well. Muttusamy had a khaki raincoat. I did not question Wilfred what that disturbance was about. I left in a hurry. Later even I did not question Wilfred.

Muttusamy was at the estate prior to that day. After that I did not see them. I inquired from Banda where Muttusamy was. He said that they had bolted away.

XXD. : Later.

Sgd. PERCY A. SENARATNE,
Magistrate.

WIJEKON MUDIYANSELAGE ARNOLIS, affirmed, 19 No. 1
20 years, Labourer, Porawagama. I am a son of W. M. Banda. My (2) W. M. Ar
whole family worked on the estate. We used to weed. At the time nolis,
Muttusamy disappeared a good portion had been cleared. There were Examination
tapable trees. I know the house occupied by Muttusamy. Towards the east there were rubber trees. Towards the ravine there were bata jungle. The compound was clear. Before Muttusamy disappeared I was on the estate. I was questioned by the S. I. on the day after the inquiry by the Magistrate. About 3 months prior to that, Jayaratne and I were asked to cut, come firewood. Then Muttusamy was not on the estate. We cut logs and gathered them on Muttusamy's compound.
30 I was asked to dig a pit behind Muttusamy's house. I was asked to remove the earth. The earth, I put up, the accused and Jayaratne placed round the bottom of the walls of the house. The accused and Jayaratne removed the logs towards the east of the house. It was taken down the slope. I saw some smoke. In the pit I found rice, paddy, chillies, red onions. There was a plate which the accused broke. There was barley, 68 coconuts, tea. The accused said that the plaintain trees might be killed. I inquired why these were there. Accused, said that he did not want to have things used by the Tamil who bolted. These were there when I left. The accused said that
40 Muttusamy had bolted away. I learnt that Muttusamy had bolted away a week prior to the unearthing of things in the pit. Jane Nona told me this. Jane Nona was working on the estate.

XXD. : Later.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) K. V.
Erolis,
Examination

KUKULU VITHANAGE EROLIS, affirmed, 60, Cultivator, Porawagama. I live by the V. C. road near the turn off to the estate. I know Muttusamy, Baby Nona and child. I have seen them and spoke to them. About 5 months back they came with about 2 measures of paddy to be husked. They came at about 5.30 p.m. They husked the paddy and left after the lamps were lit. They went back to estate. They did not tell me that they intend to leave the estate. After that I did not see them.

Muttusamy used to come to my house and chew betel. Muttusamy owed some money to me. I did not make any inquiries for Muttusamy. Since that day I did not see him. Muttusamy goes to the Co-operative Store. Muttusamy had a pair of brown shorts. It is khaki in colour. I had not seen shorts of any other colour. I did not see a rain coat. 10

XXD. : Later.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) G. Lucy
Nona,
Examination

GARDIAWELIGAMAGE LUCY NONA, affirmed, 35 years. Mistress of Premchandra, Unawatuna. My father is alive. I have another sister. She is at Ahangama. G. W. Babu Nona is my younger sister. She was about 28 years of age. A railway guard kept her and she had a little girl. She stayed with me. About the last Hindu New Year she went to Weliwatta. One day I went to Weliwatta. I found that she had left for Mr. Piyadasa de Silva's estate. She sent me a letter stating that she was on the estate bungalow of Mr. Piyadasa de Silva's estate. My sister and child came to Unawatuna and stayed for two days and called me to go to Porawagama Estate. I accompanied her. We visited Mr. R. P. de Silva's bungalow. There my sister showed Muttusamy and said that he was her husband. All four of us went to the estate and lived in a small hut. 20

There was a wadiya on the estate. I saw this accused and another reddish boy there. I remained on the estate for about two days and returned to the village. I gave a rain coat to Muttusamy. It is a khaki coat. I got a present of it. My sister asked it for Muttusamy. This was given to me by Mr. Seneviratne of Galle. 30

Muttusamy had a pair of blue shorts and a red waist-coat. He wore it when he went to draw water. Hema was suffering from Asthma. After I returned home I received a letter from my sister. Shewn P 19, P 20. These are two letters written to me by my sister. She could write and I know her handwriting. She wanted the horoscope and birth certificate to admit Hema to school. She wrote to me that the child was ill. I made arrangements to see them. I brought some medicine. I set out to Porawagama. I went to the Railway Station and found that the Railway strike was on. I returned home. About a week or so I set out again. I went to the estate and to the wadiya. The accused was there. The accused said that they had left without informing him. Accused said that he was sorry that they left without 40

informing him, and that Muttusamy had left like that before and added that Muttusamy would return in about 3 months time. I inquired whether they owed any money. Accused said that they owed some money but that he was sorry that they left without informing him. I wanted to go to Muttusamy's hut. Accused said that the road was covered with undergrowth.

I took some chillies and onions. I left them and took the medicine and the pillow case. Accused offered meals. Wilfred cooked the rice. I cooked the food. The accused gave me Rs. 2 as well. I went away.

- 10 Thereafter I did not receive any letter from my sister. She was very friendly with me. She used to write to me. My sister did not tell me that they intended to leave the estate. My sister had a wooden box, and I gave a cane basket round in shape. This is a porcupine quill box made in the shape of a cane box. She had her own clothes. She had a fair quantity of clothes. The child had a pair of gypsy earrings and a pair of bangles. The child was about 5 or 6 years old. The milk teeth had not dropped.

Sgd. PERCY A. SENARATNE,
Magistrate.

- 20 DAVID NANAYAKKARA, affirmed, 40 years, Manager, Co-operative Stores, Porawagama. Porawagama Estate has its books registered at my store. I had registered the estate under 156, L. H. Ebert Silva, Perumal Muttusamy. Their ration books are G 306559, and G 306558, respectively. I know Muttusamy well. He used to come sometimes for rations. He produces the two books and draw the rations. Sometimes a labourer of the estate comes with the books.

No. 1
(2) D. Nanayak
kara, Examina-
tion

- 30 On 23-10-46, 31-10, 7-11, 15-11, 26-11, 2-12, 10-12, rations had been drawn on both books. On 20-12-46 rations were drawn only on Ebert Silva's book. I do not know what happened to that book thereafter. I am also known as Appuhamy. On 1-2-47 I went to Galle to see the Superintendent of Police to give him some information I had. I met the A. S. P. and gave him the information. I did not want to make a statement but gave him an oral statement. The A. S. P. wrote it down. I got this information from W. M. Banda about 4 or 5 days prior to that day on my land. I gave this information. I did not question Wilfred. His name transpired. Wilfred used to come for the rations sometimes. The A. S. P. asked me to return and requested me to send Banda and Wilfred to him. I asked Banda to go with his son to the A. S. P. In fact I went with Banda and Wilfred to the A. S. P's Office. I was not keen on giving evidence as it is difficult to get leave.

XXD. : Later.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 11-3-47.
Initialled P. A. S.,
Magistrate.

11-3-47 : Accused Ebert Silva, pt.

MR. COLVIN R. DE SILVA with MR. EDIRISINGHE instructed by MR. W. GUNASEKERA and MR. C. L. DE SILVA for accused.

MR. POULIER calls.

GARDIA WELIGAMAGE LUCY NONA, recalled, affirmed, P. E. R. O.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) K. A.
Samatapala
cross-examin-
ation

KONAMPERUMA ARATCHIGE SAMATAPALA, recalled, 10 affirmed, P. E. R. O.

XXD. I was questioned by the Police on 7-2-47.

I first went to wadiya. I went to Muttusamy's on my way to the accused. The rubber on the estate was budded. There were about 10 acres that were being tapped.

Re-examined : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) W. M.
Arnolis, cross-
examination

WIJEKOON MUDIYANSELAGE ARNOLIS, recalled, 20 affirmed, P. E. R. O.

XXD. My father and I sent a petition that the postmaster on the next day was harassing us. No one told me at any time that there was a murder. What I was told was that, that Muttusamy and his family bolted. I cannot handle a gun. My farther has a licence for a gun. He had obtained five licences.

Re-examined : Nil.

Signed. PERCY A. SENARATNE,
Magistrate.

KUKULUVITHANAGE EROLIS, recalled, affirmed, 30 P. E. R. O.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
Magistrate's
Court Proceed-
ings (2) Deposi-
tion of witnesses
D. Nanayak-
kara, Examina-
tion

DAVID NANAYAKKARA, recalled, affirmed, P. E. R. O.
(Shewn bill books P21.) The bill No. 1871 is in my hand-writing. I do not know to whom the rations were delivered. The bill No. 1068 is also in my hand-writing. The others had been written by my assistant Edirisinghe.

XXD. I am married to the V. H.'s sister, that is the daughter of the previous V. H. For the last two years I live in my own house. I live about $\frac{1}{2}$ to $\frac{1}{4}$ of a mile from the V. H. His rations are also attached to the Co-operative Store.

No. 1
(2) D. Nanayakara, Cross-examination

I went to Galle to meet the S. P. I met the A. S. P. there. Banda works for each and every one. Banda works on a land of mine. Whenever I find time I go to the land. It is one acre and some roods in extent. It is a bare land. It is a chena. I go to it once in two or three days. It was opened about two months ago, from today. We started to clear the land round about Christmas. I was employed for 15 or 16 years at Ambalangoda. Banda gave me this information, 3 or 4 days prior to my going to the A. S. P. Banda told me that this accused had killed Muttusamy, his wife and child and burnt them. I asked him whether he was mad. The day after that also he told me the same thing. This is all the information I got from Banda. I did not inquire how he came to know about this. I told the A. S. P. that the murder was done 6 weeks prior to my giving information to the A. S. P. Banda told me that his son who was at the bungalow knew about this.

20 Re-examined: Nil.

Signed. PERCY A. SENARATNE,
Magistrate.

Cite witnesses 16, 18, 17, for 19-3-47.

F. E. on that day.

Intd. P. A. S.,
Mag.

19-3-47. Accused L. Ebert Silva, pt. Same appearance as before.

MR. POULIER calls.

30 MR. W. R. CHANMUGAM, sworn, Government Analyst, Colombo.

No. 1
Magistrate
Court Proceedings (2) Deposition of witnesses
W. R. Chanmugam, Examination

40 On 6-2-47, at about 9.30 a.m., I went with the A. S. P. to Porowagama Estate. I was shown a hut where one Muttusamy was alleged to have lived with his family. The hut was under a Police guard then. I made certain observations and looked for stains. The house consisted of a verandah, a sleeping room, and a kitchen. There is a door on the southern side of sleeping room facing verandah. There is a window on the Western wall. There is a half wall partitioning the kitchen and sleeping room. The complete floor of a room and kitchen were freshly mudded. A small area on the wall opposite the door 1' by 1' 4" and 7" from the ground level was freshly mudded. The rear wall on the north was freshly mudded along the entire length up to 7" from the ground. The kitchen walls, east

and south were uniformly freshly mudded up to height 4' 8". The partition wall facing the sleeping room was mudded up to the 1st wattle, i.e., 3" from the floor level and carried on to the floor.

There was a small spurt stain on the right side of door frame, 3' from floor level and facing inwards. There was a small smear stain on the left side of door frame 3' 6" from the ground. There were groups of five spurt stains on the partition wall separating the kitchen from the sleeping room and on the side facing the sleeping room. The highest stain was 1' 1" from the ground, and 1' 5" from the verandah wall. The lowest group was 8" from the ground and 1' 5" from the verandah wall. The direction of the stains were from above towards the ground. 10

I also picked up strands of hair adhering to the wattle, and just below the lower stain. The distance from the door to the rear wall is 10' 8". Behind the area which was freshly mudded on the Northern wall and at a distance of 12' 10" from the wall there is stump of a tree, where pellets were found by the Police.

The two pieces of the wooden door frame where the stains were found and four pieces of the mud wall were brought for examination by A. S. P., Mr. Poulier, on 8-2-47. The door bore signs that the door had been fixed to the left side of it. The door opens inside. As it now opens it would cover the view of the stains. 20

I gave instructions to have the stains photographed and carefully removed for examination. Shewn P 22—the piece of wood from right side of door frame, and P 23 from the left side. I found blood on them. The quantity was insufficient to distinguish between human from any other blood.

I examined also piece of mud and a piece of wattle produced in P 24. I examined for blood and I identified human blood. Shewn P 25. This is the hair which I removed with me. The hair was found adhering to a projecting piece of fibre from the wattle. It was about 8" from the ground and about $\frac{1}{2}$ " below the lowest stain on the wall. I sent report No. 498 (C/169) of 3-3-47 to A. S. P., Ambalangoda. I produce it marked P 26. 30

On 11-2-47, I received 3 sealed parcels at the hands of P. C. 3708 Banda. I issued him receipt No. C/136 of 11-2-47. I made an examination of productions, and sent report No. 561 (C/136) of 8-3-47, which I produced marked P 28. No blood was identified on any of the productions, P 5, P6 and P16.

Two pieces of cardboard wadding in P 8, P 9 and P 12, are 12 bore in size, and of the type found in Ely Kynosh cartridges. The two slugs in P 10 do not correspond in weight to any standard size of shot. One of the slugs in P 11 corresponds in weight to an S. G. slug but does not appear to be of a factory type. The other slug does not correspond in weight to any standard size shot. 40

P 14 contains a mixture of shot of various sizes and types consisting of three large size hand made slugs, 24 S. G. standard size slugs, four 16 bore S. G. slugs, 2 S. S. G. slugs, about 200 pellets corresponding in weight to No. 4 shots and about 150 pellets of moulded shot. P 14 contained in addition a 3½" bar of metal, three fired cartridge percussion caps and an anvil and one unfired percussion cap.

Carbonaceous matter and iron residue were identified in P 13. No wadding will pass through the wall if a shot is fired anywhere in front of it from the verandah. The overcharge wadding bears which
10 the size and the make will normally be found embedded in the target, up to six feet and will drop to the ground beyond the six feet. The felt wadding and the other cardboard wadding might have been embeded in the mud wall.

It is possible for anyone to remove the overcharge wadding, and substitute, insert or add any other pellets and cover it up again with the same wadding.

XXD. My instructions were to examine the house for blood
20 stains and to find out if shots were fired from a gun inside the house or in a vicinity in front of the house. I was told that a shot had probably been fired from the front verandah. I was told that there were dead bodies inside the house whether as a result of people killed inside or brought from outside.

I found a shot mark on the rear wall on removing the plaster which had been newly applied. There was a mark which could be interpreted as a shot mark but not necessarily so. No shot was found. I did not look at the outside of the wall where the new mud had been applied. Freshly mudded mean within the month from the date of my examination. The month is the utmost I can give from my judgement. I was not given any bones to be examined, or earth given to
30 search for signs of bones.

Re-examined. The freshly mudded portion was dry. My idea
of freshly mudded is based on the rate of oxidation of the earth on exposure to air. The portion shown to me is different in colour to the rest of the wall. The sunshine and dust change colour. The presence of these would accelerate the change in colour.

Sgd. PERCY A. SENARATNE,
Magistrate.

ALUTDUWAHEWAGE LEELAWATHIE, affirmed, 20 years,
40 daughter of Lewis, Porawagama. I was employed to weed the Porawagama Estate. I left that estate before Christmas. I went for work again on January 29th. I remember the Police coming for inquiry. I was weeding behind Muttusamy's house about 3 or 4 days prior to the Police coming. Gunawathie, Jane, Jayaratne and Handy were with

No. 1
(2) W. R. Cham-
mugam, Cross-
examination

No. 1
(2) W. R.
Chammugam,
Re-examination

No. 1
(2) A. Leelawa-
thie, Examina-
tion

me. In the course of the weeding Gunawathie found a box. It appeared to be a cane box. She showed it to me. It was on the kekula bushes. Jayaratne asked us not to look at it, and we left. I did not look inside it. Jayaratne went and brought accused. The accused lived at Muttusamy's house. We were sent away. I do not know what happened. I saw a smoke.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) A. H.
Gunawathie,
Examination

ALUTDUWA HEWAGE GUNAWATHIE, affirmed, 13 years, 10
daughter of Lewis, Porawagama. I remember Police coming to the estate. About 3 or 4 days prior to that we were weeding. Leelawathie, Jane, Jayaratne and Handy were with me. We were weeding behind Muttusamy's hut. It was occupied by accused. I found a cane box. It was slightly opened. I saw some coloured cloth inside. I showed it. Jayaratne went to accused and brought him. Accused asked us to weed at the bottom of the hill. Handy put some twigs over it. We went down the slope. We saw some smoke coming up from that place. I did not see anyone burning it.

XXD. : Nil.

Sgd. PERCY A. SENARATNE, 20
Magistrate.

No. 1
(2) A. Edirisinghe,
Examination

ANDIRIAS EDIRISINGHE, affirmed, 26 years, Salesman,
Porawagama Co-operative Stores. The manager is Nanayakkara. People round about are members of the Store. Porawagama estate books were also attached to it. Formerly Muttusamy's and accused's books were attached. The registered No. 156. I have issued rations on these books. Muttusamy also removed rations. Sometimes Ratta also used to take the rations.

I cannot say when Muttusamy came last. I last saw Muttusamy 30
about 4 or 5 months ago. I have issued the bills. Shewn bill 1,562 of 23-10-46. It is written in my handwriting. Shewn 173 of 7-11-46. It is in my handwriting. Shewn bill No. 459 of 15-11-46. It is in my handwriting. Shewn bill No. 1,275 of 2-12-46. It is in my handwriting. Shewn bill No. 1,570 of 10-12-46. It is my handwriting. Shewn bill No. 1,939 of 20-12-46. This is my handwriting. I have issued only one book. It is the accused's.

XXD. : Nil.

Sgd. PERCY A. SENARATNE, 40
Magistrate.

No. 1
(2) R. P. de
Silva,
Examination

R. PIYADASA DE SILVA, affirmed, Proctor, Ambalangoda.
I am a J.P., U.M., Porawagama Estate is about 50 acres. It belongs to me. I got it from Government under the middle class scheme, in

1937 or 1938. It was high jungle then. I cleared the land in portions and planted with rubber. There is a ten acre block of tapping rubber, and about 20 acres coming into tapping. There was wadiya at the entrance to the estate. It was occupied by accused who was my conductor. There was another hut towards the centre of the estate. It was built less than a year ago. There was a man called Muttusamy. He was my rikshaw-puller 20 years ago. He was a good worker. He married about 15 or more years ago. Then both of them left. At that time they were living at Kandegoda. After I bought my car I
 10 dispensed with his services. He used to see me once in two or 3 years.

After I got Porawagama Estate he saw me. That was 2 or 3 years ago. He had no wife then. I employed him on my estate. He was there for some months. He ran away. He returned after some time. He worked for some months and again ran away. In May, 1946, he came again with a woman and child to the estate. I sent them to the estate. The two check rolls were kept by the accused. Shewn P 29. It shows that Muttusamy started work on 31.5.46, according to the check roll. A Baby Nona has worked from 18.5.46. In April
 20 also there is a Baby Nona. There is a Baby Nona in June. Muttusamy and Baby Nona had worked in July, August, September and up to 17th of October. After that their names do not occur in the check roll. Margaret too had stopped work from 17.10.46. She had not worked in November or December. On 18.10.46, Ratta, Jane and Amaliashamy had worked. Amalias had not worked on the 17th. Ratta had worked right through October. Jane had worked off and on for 19 days in October.

In October I had 3 tappers. They were Amaliashamy, Samatapala, and Jayaratne, Amaliashamy and Samatapala have tapped up to the 16th. From that date to 25.10.46, no tapping had
 30 been done. Shewn P 30. This is the current check roll. Margaret had again commenced work on 8.1.47. Shewn P 31. This is the pocket check roll. It was kept by the accused. In October Muttusamy had worked for 14 days, at Rs. 1.50 per day. Baby Nona too had worked for 14 days at 85 cents per day.

Advances are given to the labourers by accused. I cannot say how much if any is due to Muttusamy and Baby Nona. Muttusamy and Baby Nona lived in the hut on Porawagama Estate. The area round the hut was cleared and on the slope towards the east there is high rubber. They are not budded. Weeding was done occasionally.
 40 I went to Bandarawela on the Sunday before Christmas. (22nd December).

About 2 or 3 days before I went to Bandarawela, Banda came to see me about noon. He was employed off and on, on the estate. He told me that the accused had kept his daughter on the estate for two days and that she was kept by Jayaratne then. He was angry over it. I told him that I did not know anything about it, and would look

over it. I asked him whether I should punish the accused or Jayaratne or whether I should Jayaratne and his mistress out of the estate. I told him that I would go to the estate in a day or two and would inquire about it.

He told me further that Muttusamy had killed his wife and child. He said that there were three lives involved. I asked him who the third was. Then he told me that Muttusamy's wife was expecting another child. He told me that after killing, Muttusamy had gone away. I did not believe the murder at all. I drew his attention to what he told me earlier that Muttusamy and his wife had run away. Banda did not reply to this. I went to the estate. In between the complaint by Banda and my going to Bandarawela, I went to the estate. I inquired about Banda's daughter. I did not question the accused about Muttusamy and his wife. I visit the estate once in a month or so. 10

I cannot remember whether I questioned accused whether Muttusamy had run away. I cannot remember whether accused drew my attention to it. On the previous occasion too Muttusamy was alone. Even as a rikshow cooly Muttusamy used to run away. I cannot remember to having seen a sister of Baby Nona. 20

The tools on the estate are in charge of the accused. Shewn P 33. This is my gun. I got the licence with me. It is a D.B.B.L. gun. I have kept it on the estate in the garden. I have kept it for the protection of the estate. Accused had a permit for the use of the gun. I got the watcher's permit for the gun. I gave him cartridges as well. I produce the cartridges marked P 33. There were wild boar and porcupine, on the estate. I thought that the permit had lapsed, and I applied for another.

Muttusamy is about 50 years old. His hair was cut. He was a tall man. He is a Tamil labourer and my experience is they run away sometimes. The accused is my nephew. He is my sister's son. Jayaratne is very distantly related to me. 30

No. 1
(2) R. P. de
Silva, Cross-
examination

XXD. Round about a week or so, after Muttusamy left that Banda informed me that Muttusamy and his wife had bolted away from the estate.

The accused is known as the "Liyanamahatmaya". I have a visiting clerk to check the books, to take money to the estate. At times he makes the payments direct or at times he hands the money to accused to make the payments. That clerk too is called "Liyanamahatmaya". I refer to both "Liyanamahatmaya". I never sent accused out of the estate. The visiting clerk did all my work outside the estate. He is also a nephew. These people were given a reasonable free hand. I have the leading practice in this court. 40

I have often found the one hour for lunch insufficient. It was during one of these hours that Banda gave the information. I knew nothing to raise my suspicion till the day when I was informed that the Magistrate and Police had gone for an inquiry. I immediately

went to the estate.

Rexd. Jayaratne left the estate immediately. Cooray is the visiting clerk. Jayaratne is not on the estate. I did not dismiss him. I do not know whether he dismissed him.

No. 1
(2) R. S. d)
Silva,
Re-examination

Sgd. PERCY A. SENARATNE,
Magistrate.

10 M. G. SIRISENA, affirmed, V. H. 35, Porawagama. I am the V. H. of Porawagama for two years. Before that my father was the V. H. For a short period I helped him. I know the area well. I know Porawagama Estate. I had been to the estate. This accused was the conductor. I know Muttusamy. He had a wife, and child of about 5 years, old.

No. 1
(2) M. G.
Sirisena,
Examination

Porawagama Co-operative Store is in front of my house. I delivered the householders' list. I produce it marked P34. This was for 1945 to 1946. I produce the householder's list P34 and the checking up slip P 34A. The slip gives the number of the current ration books, G 306558 was the book issued to Muttusamy. That book had not been surrendered to me. This year I did not see him. I think that I have not seen him for the last 6 months.

20 I know Muttusamy well. He used to come to the Co-operative Store. He used to wear a pair of blue shorts. He wore a waist-coat which is pink in front and blue behind.

Every death and place of burial is informed to me. I have to send the particulars to the Divisional Registrar. The place of burial also must be notified. During my tenure of office no report has been made to me of a burial in the vicinity of the estate. The estate ends at the slope. From that to the fields there is jungle. No one was buried, in that jungle land. The jungle portion too had been given under the middle class scheme. There is no cemetery. Burials are made on private lands.

30 XXD. : A man called Caralis did not die of consumption, about a month prior to the disappearance of Muttusamy. A man died near Porawagama Estate, and his body was buried 12 chains from the estate.

No. 1
(2) M. G. Siri-
sena, Cross-
Examination

Nanayakkara is my brother-in-law. He did not make a complaint to me. Leclawathie and Gunawathie are distantly related to me.

REXD. : That man was buried in his own land, and across the paddy field. His relations are living on the land.

No. 1
(2) M. G. Siri-
sena,
Re-examination

Sgd. PERCY A. SENARATNE,
Magistrate.

40 It is now 5 p.m.
F. E. on 26-3-47.

No. 1
 (2) M. G. Sirisena, Re-examination
 —continued

Issue SS on Gardia Weligamage Ratchie Appu of Kataluwa and Gardiaweligamage Hinninona.

Intd. P. A. S.,
Mag.

26-3-47. Accused Ebert Silva, pt.

Mr. W. Gunasekera with Mr. C. L. de Silva for accused.

Mr. Poulier calls.

No. 1
 (2) G. Ratchchie Appu, Examination

GARDIAWELIGAMAGE RATCHCHIE APPU, affirmed, 76, Fisherman, Kataluwa. I had four children by my former wife. Babun Nona is the youngest. She was about 33 years old. She was in the village of Horedugoda, up to three years ago. She left and went to Lucy Nona's. After she left to her place I did not see her. She had a daughter. She was about 1½ years old, when I saw her last. Up to date I have not set my eyes on them. She had not been to the village recently.

10

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 8-4-47.

Intd. P. A. S.,
Mag.

20

8-4-47. Accused, Ebert Silva, pt.

Mr. W. Gunasekera with Mr. C. L. de Silva for accused.

Mr. Poulier, A. S. P., Ambalangoda, calls.

No. 1
 (2) M. M. Karunaratne, Examination

M. M. KARUNARATNE, affirmed, P. C. 3549, Photo Branch, C. I. D., Colombo. On 7-2-47, I went with the A. S. P., Ambalangoda to the Porawagama Estate and took photograph of the scene. I produce seven sets of photographs marked P35, A-G. Page 1 shows the front view of the house of Muttusamy. The white spot is on the rear wall. On pages 2 and 3, there are the photographs of stains on the door post. Page 4 shows the stains on the mud and wattle wall inside the room and behind the door. The position of the stains are marked by me in red. Page 5 gives the view towards the west of the house and shows the valley and adjoining hill on which the timber shed stands. On page 6, the picture of a drain is depicted. This a alleged to be the place where the bodies were buried. Page 7 shows the spout.

30

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

A. L. RANASINGHE, affirmed, P. C. 2202, Elpitiya, Police. No. 1
 On 4-2-47, early morning I accompanied the S. I. to Porawagama (2) A. L. Rana-
 Estate. P. C. Hanan and I guarded the house occupied by the accused singhe,
 on the instructions of the A. S. P. till 7-2-47. The accused was in Examination
 occupation of the house when we went to the estate, and arrested the
 accused. During that time the house was locked and the key was
 with the S. I. No one entered the house when it was in our charge,
 except the Government Analyst and the Photographer who came with
 A. S. P. and the S. I.

10 XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
 (2) A. L. Rana-
 singhe, Cross-
 examination

A. Y. HANAN, affirmed, P. C. 1747, Elpitiya Police. I No. 1
 guarded the house occupied by the accused on Porawagama Estate with (2) A. Y.
 P. C. Ranasinghe from 4-2-47 to 7-2-47. The key of the house was Hanan,
 with the S. I. who locked the door. Whilst we were guarding no out- Examination
 sider entered the house. Only the Government Analyst, the C. I. D.
 Photographer entered the house with the A. S. P. and the S. I.

20 XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

Mr. Poulter moves that P10 and P11 be sent to the Government Analyst to be compared with P14 and to report whether P10 and, or P11 are similar in size and composition to any of the metal found on P14.

2. That P25 to be sent to the Analyst to report on the age of the hair, from which part of the body it was and the age of the person from whose body that came. Forward productions returnable 30-4-47.

30 Intd. P. A. S.,
Mag.

Issue com. to Mr. Gunawardana to survey the scene of the alleged incident ret 30-4-47.

Intd. P. A. S.,
Mag.

30-4-47. L. Ebert Silva, pt.

Re-issue com. for 15-5-47. Analyst's report not received.

40 Cite Government Analyst, D. R. O., Bentota, to speak to the non-surrender of rice ration book of Muttusamy and D. F. C., Galle, to speak to the same facts.

Intd. P. A. S.,
Mag.

No. 1
(2) A. Y.
Hanan,
Examination
—continued

14-5-47.

As the Government Analyst will be away on 15-5-47, I propose to record his evidence today.

Mr. W. Gunasekera for accused has no objection.

Mr. Poulrier calls.

No. 1
(2) W. R. Chan-
mugam,
Examination
—continued

W. R. CHANMUGAM, sworn, Government Analyst, Colombo. On 9-4-47, I received at the hand of P. C. 3708 Banda a parcel sealed with the seal of the Minor Courts, Balapitiya. The seals were intact. The parcel contained P 10-2 distorted metal slugs found embedded. P11, two distorted metal slugs found on the surface. P14, pellets and slugs found in the house, and P25 three strands of hair. The two slugs P10 are similar in composition and weight with some of the slugs in P14 and with the stick of metal in P14. One of the slugs in P11 corresponded in weight to an S.G. slug and was similar in composition to the S.G. slugs in P14. The other slug in P11 was similar in composition to the stick of soft metal and to some of the large slugs in P14. The other hairs in P25 were identified as human hair and probably came from the head. One hair is partly grey and the other two show signs of incipient greying. The hairs are short ones. They are about 2 inches in length. The root bulbs of the hair were present. The outline of the bulbs were deformed indicating that they had been subject to pressure. Fair amount of pressure had been used to make the hair fall out of the head. The outlines of the walls of the hair were also dented in a few places, indicating the pressure that had been subjected.

(Mr. Chanmugam wants to remove the hair P25 to photograph them to show the deformities referred to. I hand them over to Mr. Chanmugam).

Intd. P. A. S.,
Mag.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 15-5-47.

Intd. P. A. S.,
Mag.

15-5-47. Accused L. H. Ebert Silva, pt.

Mr. W. Gunasekera for accused. Mr. Poulrier for the prosecution.

No. 1
(2) P. Wickra-
matilleke,
Examination

P. WICKRAMATILLEKE, affirmed, Clerk, Kachcheri, Galle. I am attached to the Deputy Food Controller's branch. I keep the Registers at the office regarding the registration of the rice ration books for the Galle District. On receipt of summons I went through the

Registers to find out whether the ration book G 306558 issued to P. Muttusamy had been returned to the Office at any time after its issue. It had not been returned.

No. 1
(2) P. Wickramatilleke,
Examination
-- continued

It is my duty to make an entry of the returned books. The book is issued to the Bentota-Walallawita Korale. If the book has been surrendered elsewhere even, it would have been returned to Galle.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

- 10 E. MALLAWAARACHI, affirmed, D. R. O., Bentota. Under the Defence Regulations I am empowered to issue ration books and to accept their surrender. Ration books may be surrendered to any Food Control Authority. Ration book No. G 306558 issued to P. Muttusamy in the 6th series had not been returned to me according to my registers. If any ration book issued by a different D. R. O., comes to my hand, I return them to Galle.

No. 1
(2) E. Mallawaarachchi,
Examination

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

- 20 I. M. H. BANDA, affirmed, P. C. 3708, Ambalangoda Police. On 10-2-47, Productions P1-P17 were packed into two parcels by me in the presence of the Chief Clerk and the parcel was sealed with the seal of the minor Courts. I took charge of them and removed them to Colombo, and delivered one to the Government Analyst and obtained receipt No. C/136 of 11-2-47, P27 and delivered the other parcel to the Government Anatomist and received receipt marked P37 from him. I brought the receipts back and handed them to the Chief Clerk of the Courts.

No. 1
I. M. H. Banda,
Examination

- 30 While the productions were in my custody no one tampered with them. On 8-4-47 the productions P10, P11, P14 and P 25 were packed in my presence, by me in the presence of the Chief Clerk the seal was placed. I was directed to take it to the Government Analyst I handed it to him on 9-4-47 with the seals intact, and received receipt No. C/311 of 9-4-47 marked P38 and handed to the Chief Clerk on 11-4-47.

I brought back the productions back with the seals intact and handed them to the Chief Clerk.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

- 40 R. DE Z. GUNAWARDANA, affirmed, Clerk, Magistrate's Court, Balapitiya. On 10-2-47 I was acting Chief Clerk of Magistrate's Court. On that day P1-P4, P7, P15, P15A, P17 were packed

No. 1
(2) R. de Z. Gunawardana,
Examination

No. 1
(2) R. de Z.
Gunawardana,
Examination
—continued

by P. C. Banda in my presence. I sealed that parcel and sent the productions to the Professor of Anatomy. Productions P5, P6 P8-P14, P16, were packed by the same P. C. and the parcel was sealed by me and sent to the Government Analyst.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) C. L. de S.
Wijesundera,
Examination

C. L. DE S. WIJESUNDERA, sworn, Chief Clerk, Magistrate's Court, Balapitiya. On 12-2-47 P. C. Banda brought receipt P27 and P37 from the Government Analyst and the Professor of Anatomy, 10 respectively.

On 8-4-47 P.C. Banda packed productions P10, P11, P14, and P25 in my presence and I sealed them and sent them to the Government Analyst. On 11-4-47 he brought back receipt No. C/311 of 9-4-47 which I produce marked P 38.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

No. 1
(2) E. de Z.
Gunawardana,
Examination

E. DE Z. GUNAWARDANA, affirmed, Licensed Surveyor, Balapitiya. On commission by Court I went to the Porawagama Estate 20 with the S. I. and made a survey. The witnesses pointed out the spots to me. I marked these spots in the plan. I took measurements. I made a plan and I produce 7 copies marked Sk1-Sk7. I affirm to the accuracy of measurements and the plan.

In the portion marked valley by me there is rubber which will be tapped within a few months. Round the house marked A is a cleared portion. W and V are the boundary of the cleared portion, and low jungle.

To the North of the house there is a small declivity. There is low jungle, there. 30

No. 1
(2) E. de Z.
Gunawardana,
Cross-examina-
tion

XXD. : The top of the hill is not flat. The portion within the circle is cleared. It is about $\frac{1}{4}$ of an acre in extent. To the north of it is low jungle. To the North and North-East the jungle is a little thicker.

The witnesses were referred to in the key. Jayaratne too was present.

REXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

F. E. on 29-5-47. 40

Intd. P. A. S.,
May.

29-5-47. Accused L. H. EBERT SILVA, pt.
Mr. W. Gunasekera, for accused.
The Government Analyst can come only on 14-6-47.
Cite Government Analyst and the Photographer for 14-6-47.

No. 1
(2) E. de Z.
Gunawardana,
Cross-examina-
tion
—continued

Intd. P. A. S.
Mag.

14-6-47. Accused L. H. EBERT SILVA, pt.
Mr. Colvin R. de Silva, instructed by Mr. W. Gunasekera for
accused.

10 Mr. W. E. Poulter, calls.

MR. CHANMUGAM recalled, sworn, P.E.R.O.

At the request of Court I took productions P25 and photographed it, three samples of hair. I produce five photographs, three of them P25A, P25B, P25c, showing the bulbs of the hair and 2 longitudinal walls P25D, P25E. The bulbs are the roots of the hair.

No. 1
(2) W. R.
Chanmugam,
Examination
—continued

P25A shows one of the bulbs almost in its entirety. P25B shows a portion of the bulb, part of its outline is broken, P25c more than half broken. P25B and P25c indicates that a certain amount of pressure must have been exerted in removing them from the scalps.

20 P25D and P25E indicate the break of the longitudinal walls. This type of break will not be caused by a normal act of breaking. The walls of the hair have a certain tensile strain and a break of this nature can only be caused by a considerable amount of pressure. If a full tug is given in combing the hair it will cause distortion of the walls but not a cut like this. I cannot say the age of the hair, I also return P25 to Court.

XXD. : Nil.

Sgd. PERCY A. SENARATNE,
Magistrate.

30 M. C. MAHAMOOR, recalled, affirmed, P.E.R.O.

On the evening of 3-2-47 I reported at the Office of the A. S. P. and received certain instructions from the A. S. P. I carried out his instructions early morning on 4-2-47. On 4-2-47 I left Elpitiya Police Station at about 4 a.m. with P. C. C. Ranasinghe, Hannon and another P. C. I picked up the V. H. of Porawagama from his house. I reached the house occupied by the accused on the estate at about 6 a.m. The accused was there with another man. Both of them were asleep inside the house. I explained the purpose of my visit and took the accused into custody.

No. 1
(2) M. C. Maha-
moor,
Examination

40 I found a double barrellled breach loading gun P32 loaded in the left-hand corner of the house as one faces the house. I took out the

No. 1
 (2) M. C.
 Mahamoor,
 Examination
 —continued

cartridges. One was an S. G. and the other No. 4 shot which appears to have been refilled. I produce them marked P39 and P40 respectively. I had the house guarded by P. C. C. Ranasinghe and Hannon and left the accused, in their charge on the verandah. I went to the house of the witness Jayaratne. I removed the key of the accused's house with me. In the meantime I sent a message and got down witnesses Banda, Wilfred and Jane. I questioned Jayaratne and Jane. They took me to the place where they alleged that the wicker box containing clothes were burnt. I found pieces of burnt cloth with the charcoal and ash. I picked them up and produce them marked P41. Jayaratne showed a hollow in the stump of a tree where I found pieces of bone. I collected them. They are marked P2. Round about the place of the alleged original burial and burning I found several pieces of bone scattered over a large area. I collected them. They are P1. 10

From there Jayaratne took me to the hill where the timber shed stands and pointed out a spot where I found burnt pieces of bones P3, burnt button P42, pieces of blue cloth P43, pieces of pink cloth P44, and some burnt material P45. Jayaratne next took me to the spout and I found several pieces of bone P4 among the shrubs scattered along the sides of the stream in the bracken. They all appeared to be charred and were in very small bits. 20

There were two stones at the spout. They were smooth. I also took charge of mamoty P5 pointed out by Wilfred from near the Wadiya which was occupied by the accused earlier.

Then I returned to the house occupied by the accused and where I placed a guard. The A. S. P. came there. I showed him the productions and took him round the place. He left for Ambalangoda to inform the Magistrate.

On 4-2-47 in the house occupied by the accused, I found a small wooden box P6 which contained some provisions to examine for blood stains. I found box P33 containing 17 SG cartridges, pocket check roll P31, check roll and pay list P30, rice ration book of accused bearing No. G 306559 which I produced marked P46, cloth coupon book of accused bearing No. SF 265864 which I produce marked P47, a cloth coupon book without a cover which I produce marked P48. 30

I sifted the earth put on the outer side of the walls of the house occupied by the accused. I found some pieces of burnt cloth P49, pieces of bone P7, a cent piece, P50, and some foul smelling substance P51. Behind the house I found a gold coloured bead P52, I also found near the stump of a tree the wadding P8 and a piece of card board wadding P9, two pellets embedded P10 and two pellets on the surface P11. While sifting the sand behind the house I found wadding P12 with letters 'SG'. I also produce pieces of bottle, one full coconut husked, tins, ladle. These were found round the hole on the side of the house. I discovered these on the statement of Arnolis *alias* Edin. I produce them marked P53. 40

I sifted the ash at the spot where the clothes were alleged to have been burnt. I found a fifty cents coin which I produce marked P54, a piece of silver bangle P55 and some burnt metallic substance P13.

In the house I found a saucer containing pellets, slugs and a piece of lead P14. I took charge of them on instructions from the Government Analyst on his visit there. In a drawer of a table in the house I found the agreement P18 signed by Jayaratne and on the table there was a three cell Eveready torch, P56. I took charge of householders list marked P34 and P34A from the V. H. of Porawagama.

10 I recorded the statements of witness Jane Nona, Jayaratne, Mendis, Sirisena V. H. of Porawagama, Arnolis *alias* Edwin, Erolis, Margaret Nona, Samatapala, Gunawathie and Leelawathie.

I had the house guarded till the Government Analyst visited the spot on 6-2-47 and photographs were taken on 7-2-47. I had locked the door of the house and the key was with me. The productions were in my safe custody until produced in court. I recorded the statement of this accused. I searched the drawers of the house occupied by the accused. They were opened by the accused. I did not find the rice ration book of Muttusamy. There is no evidence as to the owner of
20 the clothing coupon book without the cover.

XXD. : Nil.

Sgd. PERCY A. SENARATNE

Magistrate.

W. E. POULIER, recalled, sworn, P.F.R.O. On 1-2-47 I was at Galle standing by when Nanayakkara came to the office of the S. P., Galle, and gave me certain informatoin. I questioned him whether he would make a statement. He did not agree and wanted the information to be treated confidentially. I made a note of the information. I produce a copy of it marked P57 and I instructed Nanayakkara to produce W. M. Banda and his son before me at Ambalangoda, on
30 2-2-47 if possible. On 3-2-47 morning Nanayakkara came to my office with Banda and his son Wilfred. I recorded their statements. I got up S. I. Mahamoor and gave instructions as to what he should do. I produce a certified copy of the statement of Wilfred marked P58.

At 8.30 a.m. on 4-2-47 I visited and found the S. I. making inquiries on the estate. The accused was in custody. I gave instructions that the house should be guarded.

Pieces of charred bone, burnt cloth were shown to me by the S. I. I gave him further instructions and saw the places where the bones were picked up. I returned to Ambalangoda and informed the
40 Magistrate and went back to the scene for the Magisterial Inquiry the same afternoon. On 5-2-47 I recorded the statement of Mr. R. Piya-dasa de Silva at my office and took charge of P29 from Mr. de Silva. On 6-2-47 I visited the scene with the Government Analyst. I was present when he found stains on the mud and wattle inside the hall behind the doors.

No. 1
(2) W. E.
Poulier,
Examination

No. 1
 (2) W. E.
 Poulter,
 Examination
 —continued

Three strands of hair were also found by the Analyst stuck on a piece of wattle just by the stains. I recorded a further statement of Wilfred on that day. I recorded the statement of Nanayakkara and took charge of bill book P21 from him. In the same evening at about 7.30 p.m., S. I. Mahamoor produced the witness Margaret Nona and I had her statement recorded by the Magistrate.

On 7-2-47 I visited the scene again at about 12.30 p.m. with the C. I. D. photographer, P. C. Karunaratne. I directed him to take the photographs P38, A—G. I removed the mud and wattle P24 bearing the stains found by the Analyst and the stains on the two door posts. I got the portion bearing them P22 and P23 cut and removed. I took them into my custody and took them to the Government Analyst, on 8-2-47 at about 9.35 a.m. The hair was taken charge of by the Analyst at his visit to the scene. On the same evening I produced the witnesses Sumatipala before the Magistrate and had his statement recorded. On 9-2-47 I visited the scene again with S. I. Mahamoor at 9.30 a.m., and I found P16 pieces of burnt khaki material, pieces of burnt rubber scrap P59, some charred material P60, and some tiny pieces of cloth with green stripes marked P61. At the spot on the western side of the estate where the S. I. found the blue and pink material and bones on 4-2-47, I found ~~a~~ plenty of pieces of burnt scrap rubber. I took a sample P59 of it. 10

The same morning I had the mound of earth as appearing in photograph P35 (6) dug. I got the mound dug and sifted in my presence and I found bones P15 and the tooth P15A at the sifting.. The same morning I got down Jayaratne to the estate and he pointed out to me a large sloping rock higher up the gully just above the spout, where there was a mark of a scratching on the face of the rock and below the rock I found pieces of charred bone P17. 20

On 11-2-47 I recorded the statement of G. W. Lucy Nona the sister of Babun Nona. She gave charge to me letters P19 and P20. 30

No. 1
 (2) W. E.
 Poulter,
 Cross-examina-
 tion

XXD. According to P57, I have taken down as Nanayakkara having stated that the triple murder had taken place six weeks prior to 1-2-47. That takes me up to December. We traced the date 3½ months prior to the date in which Nanayakkara reported to me. I did not question him about this discrepancy. None were able to give me the exact date.

I tried to get from Wilfred and Banda as to the exact date.

XXD. : Nil.

Sgd. PERCY A. SENARATNE 40
Magistrate.

This is all the evidence. Mr. Colvin R. de Silva addresses me.
 Call on 19-6-47.

Intd. P. A. S.,
Mag.

19-6-47. Accused L. Ebert Silva, pt.

I find that the four witnesses' evidence has not been recorded.

Call on 21-6-47.

Intd. P. A. S.,
Mag.

No. 1
(2) W. E.
Poulier, Cross-
examination
—continued

21-6-47. Accused L. Ebert Silva, pt.

Mr. Gunaratne for aced.

S. I. Mahamoor, calls,

10 WIFEKON MUDIYANSELAGE WILFRED, affirmed, 12 years, son of W. M. Banda, Porawagama.

No. 1
(2) W. M.
Wilfred,
Examination

My father resides on the edge of the estate. My sister is Jane Nona. She was a daily paid labourer on the estate about 5 months ago. I too was employed on the estate. I left the estate on 1-1-47. I was removed by my father. About 2 or 3 months before I left the estate a man called Muttusamy, his wife Baby Nona and a child Hema came to this estate. They occupied a hut near the timber shed and it is broken down now. One occupying this house. He was asked to leave and the house was given to Muttusamy. That happened soon after they came to the estate. I was employed as cook to the accused. 20 I was staying in the house now occupied by Handy. Handy left to his village after he left this house. I saw Baby Nona wearing a pair of gold earings with some white stones and a pair of silver bangles. During their stay on the estate I saw them wearing the jewels very often. Muttusamy had a rose coloured waistcoat and a pair of blue shorts with black buttons. Baby Nona became pregnant. The accused sent fowl curry to Baby Nona through me whenever a fowl was killed.

On a day Muttusamy went to assault his wife over a talk about some rice. The accused threatened Muttusamy. He went towards his house, but Baby Nona continued to work, signed the register and 30 went away. I did not see Baby Nona after that date. On the night of that date, the accused left his house after his meals with his gun, cartridges and torch. I remained in the house. During the night I heard the report of a gun from this direction. Early morning the accused returned home. I was up preparing tea. The accused had his tea and went towards the house of Muttusamy saying that he was going there.

I prepared the mid-day meals and waited for the accused. I waited till about 2.30 p.m. and as he did not turn up I went towards Muttusamy's. The doors of his house were closed. I called out to him. 40 He did not answer. Stench of flesh burning came from the house. The door was locked from outside with a padlock. When Muttusamy was alive he used to close the door with a piece of coir rope. I called out to the accused. I did not receive a reply. I went towards the slope of

No. 1
 (2) W. M.
 Wilfred,
 Examination
 —continued

the hill on the eastern side. I saw the accused digging a hole in the drain. I got near. I saw pieces of hand, legs, body cut into pieces and charred. There were two heads blackened, one was large and the other small. I questioned the accused. He drove me away. The slope was in shrub jungle and not cleared. I was about 6 fathoms from the accused.

I went home and told my father that the accused was digging a hole and there were pieces of human bodies near him. My father went towards that place with me. Both of us went near. There were the pieces of bodies. My father questioned the accused who asked my father to return home. I returned to the wadiya. My father too went towards his house. In the evening the accused returned home after a bath. He brought a mamoty with him. I spoke to the accused and questioned him. He said that he did a small bit of work. 10

At that time the accused was in terms of intimacy with my sister Jane Nona. He used to visit her but she did not live with him at the wadiya. When she comes for work she used to meet the accused secretly.

The next day my sister came to work at the wadiya. I questioned the accused who told me that Muttusamy had killed and burnt his wife and child in the house and had gone away. I went towards the house of Muttusamy with my sister a day or two later when she came to apply mud on the floor. The accused opened the door. As we entered we saw a heap of ash, blood all over the floor and a hole in the wall abreast of the door. I looked at the hole and I took out a piece of wadding. The accused snatched it out of my hands and threw it away. The accused brought the water. The accused scrapped the blood from the floor and the walls and put the mud into the pit, containing the plantain bush. My sister and I washed the floor. I was asked to bring the water and I did so. My sister applied the fresh mud. The accused closed the hole. At that time the messa over the hearth had been broken and burnt. There was a heap of ash near the hearth about a foot in height. After the work we returned to the wadiya. 20

There was a cane box belonging to Baby Nona and it contained clothes. The accused threw the box with the contents towards the jungle. I saw my sister wearing the earrings, bangles and the cloth, belonging to the deceased. She was wearing them after she was kept by Jayaratne. My sister stayed for two nights at the wadiya with the accused. My father became angry over that. Jayaratne was working on the estate and lived at the wadiya. Jayaratne and the accused were very friendly. Jayaratne and the accused took out some bones from the drain and took them to the drain higher up. The bones were burnt and buried. On the following day the bones were dug up and were carried in a gunny bag towards the ela. I saw some logs being sawn by the accused and Jayaratne near the timber shed. I was sent with Rs. 10 by the accused to the boutique. 30 40

I returned towards the eḷa. I saw a fire had been kindled, and the ashes swept away. I questioned Jayaratne who did not reply.

Sometime after I saw these bodies being buried in the drain. Baby Nona's sister came. She was given meals, money and sent away. She asked the accused for Muttusamy. The accused said that they had run away. I was present when the piece of blue cloth was found by the S. I. It had black buttons. Muttusamy was wearing a pair of shorts of that colour.

10 The pinkish coloured piece of cloth was also of the colour of the waistcoat worn by Muttusamy. I too helped to find the pieces of bones and I handed same over to the S. I. The accused threatened to shoot me if I disclosed what I saw. People are frightened of the accused.

XXD. : Nil.

Sgd. PERCY A. SENARATNE
Magistrate.

WIJEKOON MUDIYANSELAGE BANDA, affirmed, 45, Cultivator, Porawagama. The last witness is my son. He was employed on the Porawagama Estate for about an year. He left in January. Latterly he cooked for about 5 months, as cook to the accused. My
20 house could be seen from Muttusamy's hut, but it is at a distance.

A Tamil man called Muttusamy was employed on the estate. He came with his wife Baby Nona and a child. They came about 4 months before I removed my son. The accused was the conductor. Muttusamy lived in the hut and the accused at the wadiya. Muttusamy wanted to leave the estate. He told me so. My son came one afternoon and told me that this accused was digging a hole on the side of the hill and that there were some pieces of flesh. The accused had driven my son to the wadiya but he came to inform me.

30 I too went towards the house of Muttusamy. I was then not well. My son showed me the place. The accused came up. Then my son went away. The accused asked me why I came. Then I questioned the accused who told me that Muttusamy had killed his wife and daughter and left the estate. Then I told the accused, either to inform the police or the master. I went to the house of Muttusamy. It was reeking with smell of burnt flesh. I hid myself in the jungle and watched. I saw the accused putting some pieces of blackened flesh.

40 I returned home. We did not inform any officer. My son was working on the estate and the accused was friendly with my daughter, who was also a labourer on the estate. The accused had handed over my daughter to Jayaratne as his mistress against my wish in December. I made an entry at the Elpitiya Police Station. The same day I saw Mr. Piyadasa de Silva at Ambalangoda and told him about my daughter and inquired whether he knew what was happening on the estate. Then I added that Muttusamy and his wife and child were

No. 1
(2) W. M.
Wilfred,
Examination
—continued

No. 1
(2) W. M.
Banda, Exami-
nation

No. 1
(2) W. M.
Banda,
Examination
—continued

killed on the estate and the offence was being suppressed by the accused. He thought for some time and asked me to wait for him. I said that I could not and went away.

My son Wilfred and I went to the A. S. P's office and made a statement. I saw Muttusamy before I saw the pits being dug but never after. Muttusamy was wearing a pair of blue shorts and a rose coloured waistcoat.

XXD. : Nil.

Sgd. PERCY A. SENARATNE
Magistrate. 10

No. 1
(2) R. J.
Mendis,
Examination

RUWANPURA JAYARATNE MENDIS, affirmed, 23
Labourer, Talgagaswela. The accused is my uncle. The owner of the land is also an uncle of mine. I was there for about 4 months, on the estate. The accused, Wilfred and I lived at the wadiya. Wilfred was at the wadiya when I joined the estate. One day the accused went to wards Muttusamy's house in the night. A little later I heard the report of a gun, from that direction. I called Wilfred and informed him so. When I got up in the morning I saw the accused and inquired what the report was. The accused told me that it might be the report of a gun from a neighbouring estate. The accused told me that Muttusamy had bolted away with his family. There was no trouble. The accused used to walk about and asked me to join him. I could not go with him. Muttusamy was wearing a pair of blue shorts and a rose coloured waist coat. I saw the accused lighting a fire near the woodshed. I showed the spot to the S. I. Both the accused and I cut logs and kindled a fire. There was a gunny bag hidden in a low jungle. It was wet. I was asked to go down. The gunny bag was opened. There were some bones. They were blackened bones. I saw a pair of shorts similar to the one worn by Muttusamy placed over it. It had black buttons. There was the rose coloured waistcoat. They were burnt there. I helped in the burning. The bones were brought to the spout, and ashes were scattered about. The bones were grounded between the two stones and thrown to the elu. The accused asked me to help him. I did not help to grind the bones or to throw them away. 20

I showed the bones left, to the S. I. I picked up some pieces and handed them over to the S. I. I questioned the accused. He told me that Muttusamy had gone away after killing his wife and child. I inquired whether Muttusamy too was dead. The accused said that he could not say whether he was alive or not. He said Muttusamy had other clothes. The accused asked me to take Jane Nona as my mistress and said that I could cultivate the land. 30 40

About a week prior to the burning of the bones near the timber shed the accused asked me to cut some fire-wood, and to take them towards the drain near Muttusamy's house. I was planting cassava. Some bones were on the ground. There were some pieces of bones and

flesh blackened and giving out an offensive smell. The bones appear to have been cut into small pieces. I put two small pieces into a hole by the root of a tree. I handed the pieces to the S. I. and took them out in the presence of the S. I. I showed the hole from where the accused took out the bones, to the S. I. A week later some bones were burnt near the timber shed.

No. 1
(2) R. J.
Mendis,
Examination
—continued

On the 1st of February, I saw a cane box containing clothes near the shrub jungle where I was weeding with Jane Nona. The accused and Handy who was working on the estate burnt the box and clothes.
10 The accused told me while the box was being burnt that Muttusamy had a lot of jewellery. After the box was burnt the accused and I stirred the ashes to find whether there were any jewellery. Then the accused said that Muttusamy must have removed the jewellery. I informed Handy sometime later that Muttusamy, his wife and child had been killed. I did not see Muttusamy after that. I saw Muttusamy prior to the day when the accused took the gun and went out in the night. I saw his wife and child that day. They returned later after husking paddy. Since that day I did not see any of them.

Baby Nona's sister came before the burning of the bones. She
20 came to see Baby Nona. She inquired for her and Muttusamy. The accused said that they had bolted away. Jane Nona said that the accused was trying to harass her and I wanted to leave the estate.

XXD. : Nil.

Sgd. PERCY A. SENARATNE
Magistrate.

WIJEKOON MUDIYANSELAGE JANE NONA, affirmed, 16
years. Mistress of Jayaratne, Talgaswela.

No. 1
(2) W. M. Jano
Nona, Examination

I worked on Porawagama Estate for some time. I used to weed the estate. My brother Wilfred worked as a cook under the accused.
30 I remember Muttusamy and his family living on this estate.

One day the accused asked me to apply mud on the house occupied by Muttusamy. The accused was on the verandah. The mud was ready. There were no blood stains but the mud had been scraped inside the house in a heap. It is not customary to scrape the mud off the floor before applying fresh mud. The floor had been covered with mud and cowdung. We do not apply pure mud over cowdung. I questioned the accused and he told me that as the house was vacant he wanted the mud to be applied. I did not question why the mud and cowdung was scraped. When I entered the house there was the smell
40 of burnt flesh. I questioned the accused where Muttusamy and his family were before I applied mud. He said that they had bolted away. The accused and I were friends. He used to fool me.

One day Muttusamy tried to assault Baby Nona. Baby Nona went up to the accused. Then he advised Muttusamy not to assault her. After Baby Nona came the accused did not take notice of me

No. 1
 (2) W. M.
 Jane Nona,
 Examination
 —continued

as he used to. After the disappearance of Muttusamy and family the accused treated me as before. I was driven away by my brother and I stayed at the request of this accused at this house.

Now Jayaratne is keeping me. I told Jayaratne that accused asked me to go to the well. Then Jayaratne and I decided to leave the estate.

I saw the accused burning a box on 1-2-47. There were some clothes. The box and the clothes appeared to be rotten. That was Muttusamy's box. I had been inside the house of Muttusamy when he was on the estate. No one else had a similar box on the estate. 10

XXD. : Nil.

Sgd. PERCY A. SENARATNE
Magistrate.

I inform charges to accused and record his statement. Vide Non-Summary forms 2 and 3. I commit accused to stand his trial at S. C. Galle.

ID. for 26-6-47.

Intd. P. A. S.,
Mag.

26-6-47. Accused L. Ebert Silva. 20
 Forward record to S. C. and certified copy to A. G.

Intd. P. A. S.,
Mag.

8-11-47. Attorney-General returns record in terms of sec. 389 of the Criminal Procedure Code and direct to comply with the following instructions :—

(1) In view of witness Wilfred's statement to the Police at B vide P. 7 of I. B. E.—please recall him and question him as to whether he identified the portions of the bodies that he saw when accused was digging a hole, as being those of Muttusamy's wife and child. He has said that one of the heads he saw was large and the other small. Please question him as to whether the small one appeared to be that of a child and the big one that of an adult. 30

(2) Please question witnesses Wilfred, Jayaratne and Jane Nona as to whether anybody on the estate barring Muttusamy wore short trousers or a pink waistcoat or an overcoat and as to the clothes the others on the estate wore.

(3) Please question witness Jayaratne as to whether he identified the blue shorts and the pink waistcoat immediately before they were burnt by accused as being those of Muttusamy. Were those articles of clothes taken from the gunny bag—vide his statement. Did he see the overcoat being burnt? And did he identify it? 40

(4) Please question witness Jayaratne, Wilfred and Jane Nona as to whether the piece of blue cloth P43, the piece of pink cloth P44 and piece of khaki P16 are similar in colour and material to Muttusamy's blue pair of shorts, pink waistcoat, and khaki overcoat.

(5) Please recall witness Banda and question him on the following points :—

- 10 (a) whether he can identify the bead P52 as part of the string of beads worn by Muttusamy's child.
- (b) regarding what the accused told him when he questioned him as to what he was doing with the charred pieces of flesh.
- (c) whether he can say what portions of the body the charred pieces of flesh were? If so, whether they appeared to be those of an adult or child?

(6) Please record evidence regarding the identity of P55, the bangle, if such evidence is available.

20 (7) Please question witnesses Samathapala and Wilfred as to whether the rice they saw scattered about in Muttusamy's house on the day in question was boiled rice or not and whether it was white or country rice. Vide Samathapala's statement to the Police.

(8) Please question Wilfred as to whether the mamoty P5 was the one used by accused in connection with disinterring of the pieces of flesh he saw.

(9) Please forward P5 to the Government Analyst for examination and request him to report as to whether there are traces of human flesh residue on it.

(10) Please forward P13 to the Government Analyst and request him to report as to the kind of metal in P13 and whether P13 have been burnt.

30 (11) Please forward blue cloth P43, pink cloth P44, overcoat cloth P16, P42 and request him to report on the following points :—

- (a) whether P43, P44, P16 and P42 have been burnt.
- (b) what were the original colours of P43, P44 and P16? What were the material and textures of these productions?

The list of productions forwarded to me is confusing and incorrect. Please direct the officer who prepared the list to forward me a list of production showing the productions in numerical order.

Cite witnesses :—

- 40 1. M. C. Mahamoor, Sub-Inspector of Police, Kosgoda,
2. Wilfred,

3. Jayaratne,
 4. Jane Nona,
 5. Banda,
 6. Samathapala,
- for 19-11-47.

Write to jail authorities to produce accused on same date.

Sgd. H. K. S. KEYT,
Magistrate.

19-11-47.

Accused L. H. Ebert Silva, present on remand. 10

Mr. Gunasekera with Mr. C. L. Silva for accused. A. S. P. Poulter for prosecution.

No. 1
(2) W. M.
Wilfred,
Examination

M. WILFRED, affirmed, 12 years, recalled, P.E.R.O.

On the morning I went in search of accused I saw him digging a hole and there were pieces of flesh. I saw two heads. They were the heads of two human beings. They were black. I saw them. One was a small head and the other big. The small one was the head of a child. It was much smaller than the other head. Muttusamy was always in blue short and pink waistcoat. I have also seen Muttusamy in a khaki rain coat. I know he possessed a khaki rain coat. There was no one else on that estate who wore shorts at all. This accused never wore shorts. No one else on the estate possessed a khaki overcoat or raincoat. On that estate the only residents were Muttusamy, this accused, Muttusamy's wife and child and myself. The other labourers did not reside there and they were only a few in number. Those outside labourers did not wear shorts or overcoats or raincoats—none of them did. Samathapala and I when we went to look for accused in Muttusamy's house, I saw cooked rice in the middle of the hall. The rice pot was broken and I saw country rice scattered in the hall. The mamoty which I pointed out to the Police and which they took charge of, is the mamoty which was used to dig the holes in which the flesh was to be buried. That mamoty was in use on the estate for 3 months till I pointed it out to the Police and they took charge of it. 20 30

XXD. : Nil.

Sgd. H. K. S. KEYT,
19-11-47.

No. 1
(2) R. J.
Mendis,
Examination

R. JAYARATNE MENDIS, recalled, affirmed, P.E.R.O.

When accused brought the gunny bag from some bushes in the gully, I was there at the spot. I saw him take out pieces of flesh adhering to bones. Those were the bones of human beings. I can say that because I saw the teeth, fingers and pieces of arms. They were bleached and appeared to have been burnt. Out of that gunny I saw accused took out a pink waistcoat, blue short, a khaki raincoat, some 40

small pieces of white silk, I have seen the clothes which the child wore. I saw some chintz cloth burnt. I have seen Muttusamy habitually wearing the blue shorts and pink waistcoat and I have also seen him wear the khaki overcoat. Neither I nor anyone else on that estate ever wore short trousers, long trousers or waistcoats. No one else possessed a khaki raincoat. None of the residents or outside labourers possessed any clothing of that description.

No. 1
(2) R. J.
Mendis,
Examination
—continued.

XXD. : Reserved.

Sgd. H. K. S. KEYT,
19-11-47.

10

W. M. BANDA, recalled, affirmed, P.E.R.O.

No. 1
(2) W. M.
Banda,
Examination

I worked as an outside labourer on that estate and I live close to that estate. I have seen and know all the labourers. I know Muttusamy. None of those outside or resident labourers ever wore short trousers and waistcoat except Muttusamy. When accused saw me near the bushes we had a conversation between us. When I asked accused what these pieces of flesh were the accused told me that Muttusamy had killed his wife and child and had gone away. The accused told me that that flesh was that of Muttusamy's wife and child and that accused was getting rid of it. I made that statement when the A. S. P. first recorded my statement. The charred pieces of flesh were pieces of human flesh. I can tell by the smell. I saw lumps of flesh and accused was putting them into the hole. I can't say I saw any part of a human body.

20

XXD. : Nil.

Sgd. H. K. S. KEYT,
Magistrate. 19-11-47.

P. A. SAMATHAPALA, recalled, affirmed.

No. 1
(2) P. A. Sama-
thapala,
Examination

On the morning I went to get a tapping knife from Muttusamy's house in search of accused, I saw a rice pot broken near the ash heap and cooked country rice scattered on the floor. I also work on that estate and know all the labourers. There were 10 or 12 labourers. Of all of those only Muttusamy used to wear short trousers. I have never seen accused wearing shorts.

30

XXD. : Nil.

Sgd. H. K. S. KEYT,
19-11-47.

Call for all productions from Fiscal, Galle. Recite Jane Nona.
Others warned to attend except Samathapala.

F. E. on 3-12-47. Remand accused, to be produced on that date.

Sgd. H. K. S. KEYT,
19-11-47.

3-12-47. Accused L. H. Ebert Silva, on remand.

The accused is absent, ill.

Vide Medical Certificate from Prison Hospital.

F. E. on 12-12-47 at 2 p.m. Inform Jail authorities to produce
accused. All witnesses present and warned. 10

H. K. S. K., Intd.

Mag.

12-12-47. Accused L. H. Ebert Silva, on remand.

The accused is absent, ill-certificate forwarded by M. O. Prisons.

F. E. on 2-1-48. Inform Jail authorities to produce accused.

All witnesses present and warned.

Intd. H. K. S. K.,

12-12-47.

2-1-48. Accused L. H. Ebert Silva, present on remand.

Mr. W. Gunasekera for him. 20

Mr. Poulter, A. S. P. for prosecution:

W. M. BANDA, recalled, affirmed, P.E.R.O.

No. 1
Banda, Examina-
tion

I remember the bead chain worn by Hema. (Shewn P52). I
have seen a bead like this bead (P52) in the chain worn by that girl.
The Inspector questioned me about the bead chain but he did not
show me this bead (P52) before. It was a chain of glass beads.
(Shewn P44). This piece of cloth P44 is the faded colour similar to
the colour of the pink waistcoat worn by Muttusamy. This cloth (P43)
is similar in colour to the shorts worn by Muttusamy but I cannot say
these are pieces off that pair of shorts. This khaki cloth (P16) is 30
similar in colour to the overcoat worn by Muttusamy but I cannot
say it is similar material.

XXD. : Nil.

Sgd. H. K. S. KEYT,
2-1-48.

No. 1
(2) W. M.
Wilfred
Examination

W. M. WILFRED, affirmed, recalled, P.E.R.O.

This piece of pink cloth (P44) is similar in colour to the waist-
coat worn by Muttusamy but I cannot say whether the material is the

same or similar. These pieces of cloth (P43) are blue and are similar in colour to Muttusamy's trousers but I cannot say whether it is similar material. (Shewn P16). This is similar to Muttusamy's cap. I remember Muttusamy's rain coat. This cloth (P16) I have not seen before. I cannot say to what apparel this belongs. I cannot say whether it is like Muttusamy's raincoat.

No. 1
(2) W. M.
Wilfred,
Examination
—continued.

XXD. : Nil.

Sgd. H. K. S. KEYT,
2-1-48.

10 R. JAYARATNE MENDIS, recalled, affirmed, P.E.R.O.

No. 1
(2) R. J.
Mendis,
Examination

Shewn P43. This is blue cloth similar to Muttusamy's trousers. I can say these are from Muttusamy's trousers, because I helped to burn these things. I can say that P43 is from Muttusamy's trousers. This button (P42) is similar to those on Muttusamy's trousers. (Shewn P44). This is purplish colour. It is a piece of Muttusamy's waistcoat. I am able to say this cloth (P44) is from Muttusamy's waistcoat. I can say this as I pointed out the place where these were burnt and the Police found these pieces of cloth at that spot. P44 is similar to the waistcoat but I cannot say it part of the waistcoat. This cloth (P16) is from Muttusamy's rain coat. It looks like a piece of his raincoat. Baby Nona used to wear a pair of bangles similar to silver ones. I remember Hema wore ear rings but I cannot remember a necklace. I cannot describe the bangles other than to say they were thin, twisted ones of silver colour. Shewn P55. Baby Nona wore a bangle similar to P55. I used to call her Baby Nona.

XXD. : Nil.

Sgd. H. K. S. KEYT,
2-1-48.

30 W. M. JANE NONA, recalled, affirmed, P.E.R.O.

No. 1
(2) W. M.
Jane Nona,
Examination

No one other than Muttusamy wore short trousers, pink waistcoat or an overcoat. All the others wore sarongs. The accused had no khaki overcoat. I have never seen him wearing one. I have often seen Hema. She used to wear a necklace. It was a white one. They were wax beads. (Shewn P52). Hema had a bead like this at one end of her necklace, when the necklace was tied at the back of her neck. Hema had also two gypsie ear rings. I know Babu Nona. She used to wear two bangles. They were thin, silver white bangles which were twisted ones. Shewn P55. Babu Nona used to wear bangles similar to this piece (P55). She always wore her bangles on her arms. (Shewn together, P43, P16, and P44). I pick out these pieces (P43)

No. 1
 (2) W. M. Jane
 Nona, Examin-
 ation
 ---continued.

as being cloth similar to that of Muttusamy's trousers. This (P16) is the cloth off the coat Muttusamy wore for the cold weather. Muttusamy's waistcoat was purplish. I cannot point out from these three samples cloth like his waistcoat.

XXD. : Nil.

Sgd. H. K. S. KEYT,
 2-1-48.

Forward to Government Analyst for examination and report :—

- (a) P5 as to whether there are traces of human flesh residue—reference his report No. 561 (C/136) of 10 8-3-47.
- (b) P13 as to kind of metal in P13 and whether P13 has been burnt.
- (c) P43, P44 and P16 and P42 and request report on following points :—
 - (a) whether P43, P44, P16 and P42 have been burnt.
 - (b) what was the original colour of P43, P44 and P16?
 - (c) what were the material and textiles of P43, P44 and P16.

20

Request Analyst to forward report as early as possible.

Call case on 16-1-48. Request Jail authorities to produce accused.

Sgd. H. K. S. KEYT,
 2-1-48.

16-1-48. Accused L. H. Ebert Silva, present on remand.

Analyst's report not received. Call case on 30-1-48.

Call for Analyst's report and for productions.

Intd. H. K. S. K.,
 16-1-48.

30

30-1-48. Accused L. H. Ebert Silva, present on remand.

Government Analyst's report not received, yet. Call for same and call case on 13-2-48.

Intd. H. K. S. K.

9-2-48. Analyst's report since received.

Intd. H. K. S. K.,
 9-2.

13-2-48. Accused L. H. Ebert Silva, present, on remand.
Send for productions from Government Analyst's report.

F. E. 17-2-48.

Sgd. H. K. S. KEYT,
13-2-48.

17-2-48. Accused L. H. Ebert Silva, present on remand.
Mr. Gunasekera for accused.

C. L. DE S. WIJESUNDERA, sworn, Chief Clerk, Magistrate's Court, Balapitiya, recalled, P.E.R.O.

No. 1
(2) C. L. de S.
Wijesundera,
Examination

10 On 3-1-48 productions P5, P13, P16, P42, P43 and P44 were packed and sealed in my presence by P. C. 3708 Banda and the package sealed with the seal of this Court and handed to P. C. Banda for delivery to the Government Analyst. On 9-1-48 P. C. Banda handed me Government Analyst's receipt No. C12 dated 7-1-48 (P62) and which I produce. On 9-2-48 Government Analyst's report No. 77 (C/12) of 29-1-48 was received in this Court and I produce the same (P63). On 16-2-48 P. C. Banda brought back productions P5, P13, P16, P42, P43, P44 with Government Analyst's seals intact and handed me the packages. I produce P5, P13, P16 and P42 to P44 now.

20 XXD. : Nil.

Sgd. H. K. S. KEYT,
17-2-48.

I. M. H. BANDA, P. C. 3708, recalled, affirmed, p.e.r.o.

30 On 3-1-48 productions P5, P13, P16, P42, P43 and P44 were packed and sealed by me in the presence of last witness and sealed with the seal of this Court. On 7-1-48 I handed the packages with seals intact to the Government Analyst and obtained his receipt (P62) which I handed to last witness on 19-1-48. On 14-2-48 I took charge of these productions from the Government Analyst and delivered the packages with seals intact to the last witness on 16-2-48.

No. 1
(2) I. M. H.
Banda,
Examination

XXD. : Nil.

Sgd. H. K. S. KEYT,
17-2-48.

The Attorney-General's instructions having been complied with—
Return record to S. C. and brief to Ay. G. duly brought up to date.
Remand accused.

Sgd. H. K. S. KEYT,
17-2-48.

No. 1
Magistrate's
Court Proceed-
ings (3) Non-
Summary Form
No. 1

NON-SUMMARY FORM NO. 1.

INFORMATION TO AN ACCUSED OF THE CHARGE

(Section 156.)

Name of Accused: L. H. Ebert Silva.

I read over to the accused the charges in respect of which this inquiry is being held. You did on or about the 17th day of October, 1946, at Porawagama, in Ambalangoda District, within the jurisdiction of this Court, commit murder by causing the death of Perumal Muttusamy of Porawagama, and thereby committed an offence punishable under sec. 296 of the C. P. C., Chap. 15 C. L. E. 10

2. At the same time and place aforesaid you did commit murder by causing the death of Gardia Werallagamage Babunona *a* Baby Nona of Porawagama and thereby committed an offence punishable sec. 296 of C. P. C. Chap. 15 C. L. E.

3. At the same time and place aforesaid you did commit murder by causing the death of Gardia Werallagamage Hemalath *a* Hema of Porawagama and thereby committed an offence punishable under sec. 296 of the C. P. C., Chap. 15 C. L. E. 20

I inform the accused that he is not required to make any reply to the above charge at this stage, and that if any reply is made it will not be recorded by me.

Sgd. PERCY A. SENARATNE
Magistrate. 4-2-47.

NON-SUMMARY FORM NO. 2.

STATEMENT OF ACCUSED

(Sections 159, 160, and 161.)

Name of Accused : L. Ebert Silva.

Charge : You did on or about the 17th day of October 1946. at Porawagama in Ambalangoda District within the jurisdiction of this Court commit murder by causing the death of Perumal Muttusamy of Porawagama and thereby committed an offence punishable under sec. 296 of the C. P. C. Chap. 15 C. L. E.

10 2. At the same time and place aforesaid you did commit murder by causing the death of Gardia Wellagamage Babu Nona *a* Baby Nona of Porawagama and thereby committed an offence punishable under sec. 296 of the C. P. C., Chap. 15 C. L. E.

3. At the same time and place aforesaid you did commit murder by causing the death of Gardia Wellagamage Hemalatha *a* Hema of Porawagama and thereby committed an offence punishable under section 296 of the C. P. C., Chap. 15 C. L. E.

The charge overleaf is read out to the accused and the nature thereof explained to him in ordinary language.

20 The accused is informed that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf.

The accused is addressed as follows :—

Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and put in evidence at your trial."

The provisions of section 160 (2) have been complied with.

The accused states^a :—

" I am not guilty "

30 Sgd. in Sinhalese, Ebert Silva,
Signature/mark of Accused

I hereby certify that the above record was taken in my presence and contains accurately the whole statement of the accuseds, *and that it was not practicable for me to record it in the Sinhalese language in which it was made.*

Sgd. PERCY A. SENARATNE,
Magistrate.

The requirements of section 160 having been complied with the accused is asked whether he desires to give evidence on his own behalf and whether he desires to call witnesses.

The accused states :—List of witnesses to be filed later.

Sgd. In Sinhalese.

Signature/Mark of Accused.

I hereby certify that the above record was taken in my presence and contains accurately the whole statement of the accused, *and that it was not practicable for me to record it in the Sinhalese/Tamil language in which it was made.*

10

Sgd. PERCY A. SENARATNE,

Magistrate.

Date : 21-6-47.

NON-SUMMARY FORM No. 3

(Sections 163, 165, and 165B.)

On the 21st day of June 1947.

Accused present : Lathuwahandi Ebert Silva.

The accused is committed for trial to the Supreme Court of Galle.

The accused elects an English speaking Jury in the event of the trial being held before the Supreme Court.

20

The accused wishes the following witnesses to be summoned².

List to be filed later.

Sgd. PERCY A. SENARATNE,

Magistrate.

INDICTMENT
 Supreme Court No. 13
 Magistrate's Court of Balapitiya
 Case No. 57,809

No. 2
 Supreme Court
 Proceedings
 (1) Indictment
 against the
 accused
 2.6.49.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON
 [Criminal Jurisdiction]

10	Southern Circuit District of Balapitiya. Third Western Session, Colombo, 1948.	}	At a session of the said Supreme Court in its Criminal Jurisdiction for the Southern Circuit, to be holden at Galle in the Year of our Lord One Thousand Nine Hundred and forty-eight.
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THE KING vs. LATHUWA HANDI EBERT SILVA

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 :—

20 1. That on or about 17th October, 1946, at Porwagama, Ambalangoda, in the district of Balapitiya, you did commit murder by causing the death of one Perumal Muttusamy of Porwagama; and that you have thereby committed an offence punishable under section 296 of the Penal Code.

2. That at the same time and place aforesaid and in the course of the same transaction, you did commit murder by causing the death of one Gardia Welligamage Babu Nona *alias* Baby Nona of Porwagama; and that you have thereby committed an offence punishable under section 296 of the Penal Code.

30 3. That at the same time and place aforesaid and in the course of the same transaction, you did commit murder by causing the death of one Gardia Welligamage Hemalatha *alias* Hema of Porwagama; and that you have thereby committed an offence punishable under section 296 of the Penal Code.

This 2nd day of June, 1948.

Signed. H. A. WIJEMANNE
Crown Counsel.

Colombo, Monday, 27th September, 1948.

To this Indictment the prisoner Lathuwa Handi Ebert Silva pleads :

“ Not Guilty ”.

Signed. M. D. A. DE SILVA,
Clerk of Assize.

List of Productions

No. 2
Supreme Court
Proceedings
(2) List of
Productions

1. Statement made by accused before Magistrate, Balapitiya.
2. Pieces of bone found at spot marked P1.
3. Pieces of bone found in hollow of tree marked P2.
4. Pieces of bone found on western side of Muttusamy's house marked P3.
5. Pieces of bone found near spout marked P4.
6. Mamoty marked P5.
7. Wooden box marked P6.
8. Pieces of bone found on sifting earth marked P7. 10
9. Pieces of wadding marked P8.
10. Piece of card board wadding marked P9.
11. Two pellets found embedded in earth marked P10.
12. Two pellets found on surface soil marked P11.
13. Piece of outer wadding marked P12.
14. Burned pieces of metal marked P13.
15. Pellets and slugs found in house marked P14.
16. Bones found amongst soil marked P15.
17. Tooth marked P15A.
18. Pieces of burnt khaki material marked P16. 20
19. Pieces of bone found below slope of sloping rock marked P17.
20. Agreement signed by Jayaratne Mendis and Jane Nona marked P18.
21. Two bill books : 1871 of 31-10-46 and 1068 of 26-11-47 marked P21.
22. Chip from right door post marked P22.
23. Chip from left door post marked P23.
24. Mud on wall with blood marked P24.
25. Hair marked P25.
26. Five photographs showing bulbs of hair marked P25A-P25E. 30
27. Report of Government Analyst marked P26.
28. Receipt of Government Analyst marked P27.
29. Report of Government Analyst marked P28.
30. Old check roll marked P29.
31. New check roll marked P30.
32. Pocket check roll marked P31.
33. Gun marked P32.
34. Cartridges marked P33.
35. Householder's list marked P34.
36. Sheet attached to P34 marked P34A. 40
37. Photos of scene marked P35A-P35C.
38. Government Analyst's report marked P36.
39. Receipt from the Anatomist marked P37.
40. Receipt from Government Analyst marked P38.
41. Cartridges found in D. B. B. L. gun marked P39-P40.
42. Burnt pieces of cloth marked P41.

43. Burnt button marked P42.
 44. Pieces of blue cloth marked P43.
 45. Pink cloth marked P44.
 46. Burnt material marked P45.
 47. Rice Ration Book of accused G. 306559 marked P46.
 48. Cloth coupon book of accused S. F. 265364 marked P47.
 49. Cloth coupon book without cover marked P48.
 50. Burnt cloth marked P49.
 51. One cent piece marked P50.
 10 52. Foul smelling substance marked P51.
 53. Gold coloured bead found behind house marked P52.
 54. Pieces of bottle, coconut, shell, tins, etc., marked P53.
 55. Fifty cent coin marked P54.
 56. Piece of bangle marked P55.
 57. Torch 3 cell marked P56.
 58. First information by Nanayakkara marked P57.
 59. Statement of Wilfred marked P58.
 60. Pieces of rubber scrap marked P59.
 61. Pieces of burnt material marked P60.
 20 62. Pieces of white cloth marked P61.
 63. Receipt from Government Analyst marked P62.
 64. Report of Government Analyst marked P63.
 65. Sketches marked SK1-SK7.
 66. Deposition of I. M. H. Banda, Police Constable 3708,
 Ambalangoda.
 67. Deposition of N. R. de Z. Gunawardena, Clerk, Magistrate's
 Court, Balapitiya.
 68. Deposition of C. L. de S. Wijesundera, Chief Clerk,
 Magistrate's Court, Balapitiya.

No. 2
 Supreme Court
 Proceedings
 (2) List of
 Productions

30 List of Witnesses.

1. W. M. Wilfred, Porwagama, Elpitiya.
 2. W. M. Banda, Cultivator, Porwagama, Elpitiya.
 3. R. Jayaratne Mendis, Labourer, Porwagama, Elpitiya.
 4. W. M. Jane Nona, Porwagama, Elpitiya.
 5. B. G. Margaret Nona, Porwagama, Elpitiya.
 6. K. A. Samathapala, Labourer, Ketandola Estate, Elpitiya.
 7. M. C. Mahamoor, Sub-Inspector of Police, Elpitiya.
 8. W. E. Poulter, Assistant Superintendent of Police,
 Ambalangoda.
 40 9. Dr. P. K. Chanmugam, Professor of Anatomy, Ceylon
 University, Colombo.
 10. W. M. Arnolis, Labourer, Porwagama, Elpitiya.
 11. K. V. Eralis, Cultivator, Porwagama, Elpitiya.
 12. G. W. Lucy Nona, Unawatuna, Galle.

No. 2
 Supreme Court
 Proceedings
 (3) List of
 witnesses

No. 2
Supreme Court
Proceedings
(3) List of
witnesses

13. David Nanayakkara, Manager, Co-operative Stores, Porwagama.
14. W. R. Chanmugam, Government Analyst, Colombo.
15. A. H. Leelawathie, Porwagama, Elpitiya.
16. A. N. Gunawathie, Porwagama, Elpitiya.
17. A. Edirisinghe, salesman, Co-operative Stores, Porwagama.
18. R. Piyadasa, Proctor, Ambalangoda.
19. M. G. Sirisena, Village Headman, 35, Porwagama.
20. G. W. Ratchchie Appu, Fisherman, Kataluwa.
21. M. M. Karunaratne, Police Constable, 3549, Photo Branch, Criminal Investigation Department, Colombo. 10
22. A. L. Ranasinghe, Police Constable, 2207, Elpitiya.
23. A. Y. Hannan, Police Constable 1747, Elpitiya.
24. E. Mallawaarachchi, Divisional Revenue Officer, Bentota.
25. P. Wickramatilleke, Clerk, Kachcheri, Galle.
26. E. de Z. Gunawardena, licensed Surveyor, Balapitiya.

This 2nd day of June, 1948.

Signed: H. A. WIJEMANNE,
Crown Counsel. 20

No. 2
Supreme Court
Proceedings

No. 2
Supreme Court Proceedings
(4) Evidence for the Prosecution

Supreme Court, Ceylon
Number 13.

Magistrate's Court, Balapitiya,
Number 57,809.

REX vs. LATHUWA HANDI EBERT SILVA.

Date of Trial: 27th September, 1948.

Counsel for the Prosecution: ALAN ROSE, K.C., Attorney-General with ANANDA PEREIRA, Crown Counsel.

Counsel for the Defence: DR. COLVIN R. DE SILVA with 30
E. O. F. DE SILVA, K. C. DE SILVA and G. G. WEERAMANTRY
(Assigned) instructed by CLARENCE DE SILVA, WIJEPALA
GUNASEKERA and R. L. DE SILVA.

After appearances were mentioned, Dr. de Silva moved that the Jury be asked to retire as he has a submission to make to court.

Jury accordingly retire.

Dr. de Silva submitted that this was a proper case for direction by court for separate charges.

Attorney-General replied.

Court stated that reasons would be given in writing in the Order 40
which is the trial will proceed on the Indictment.

Court : Both learned Counsel ask for shorthand notes—allowed.

Charges : (1) Murder of Perumal Muttusamy—section 296 of the Penal Code.

(2) Murder of Gardia Welligamage Babu Nona *alias* Baby Nona—section 296 of the Penal Code.

(3) Murder of Gardia Welligamage Hemalatha *alias* Hema—section 296 of the Penal Code.

No. 2
Supreme Court
Proceedings
Evidence for the
Prosecution.
W. M. Wilfred,
Examination.—

Plea : Not guilty.

English speaking Jury empanelled, 3 sworn, 4 affirmed.

Attorney-General opens case.

10 Adjourned for 15 minutes.

Certified correct.

Sgd. M. N. PERIES,
Stenographer, Supreme Court.

27th September, 1948. 11.45 a.m.

Crown Counsel calls :—

W. M. WILFRED, affirmed.

20 I am about 16 years, labourer, living at Porwagama. I am the son of W. M. Banda. I have an elder sister called Jane who is about 19 years of age. My father lived on a bit of land just outside the estate of Piyadasa de Silva. The name of that estate is Haddagoda Kande Estate. I have worked on that estate but I cannot remember when I started to work on it.

To Court : I have not gone to school. I cannot read or write. I do not know the name of this month nor do I know what year this is. Today is Monday. Now it is about 11 a.m. (Correct time 11.47 a.m.)

I know this accused. At the time I was employed on this estate this accused was the conductor of it. I was the cook to this accused and I was living in his bungalow.

30 To Court : This was a rubber estate. The whole of that estate was not planted. The rest was in jungle. At this time there were 2 huts on that estate.

40 In one hut the accused and I lived. Jayaratne too was living with us in that hut. There were no women. On one end of the estate there was one hut and at the other end there was another hut. If one were to shout out from one hut it cannot be heard at the other hut. It is beyond a loud shout's distance. A man called Handy was working on this estate. He occupied the other hut. My sister was also employed on this estate. She stayed in accused's hut one night. When she started working on the estate she visited the land while living with my father. One night during the absence of my father the accused detained my sister in his bungalow. I knew a man called Muttusamy.

No. 2
 Supreme Court
 Proceedings
 Evidence for
 the Prosecution.
 W. M. Wilfred,
 Examination.—
 Contd.

He came to work on this estate. No one came along with him. I know a woman called Baby Nona. She came with Muttusamy. Baby Nona had a child called Hemalatha, a little girl. When Muttusamy, Baby Nona and this little child came to the estate they stayed in the house in which they were murdered. That is the house occupied by Handy. Handy was moved out of that house and these people went in. It was the accused who got this done. Then Handy was sent back to his village. Muttusamy and Baby Nona were both employed on this estate. They drew wages. That little girl was kept in the accused's bungalow when they were working in that estate. When fowl-curry was made in the house it was sent through me to Baby Nona. 10

To Court : The fowl-curry was sent to Baby Nona on the orders of the accused.

To my knowledge the accused used to visit the house of Baby Nona during the day. That was when Muttusamy was not there. Baby Nona became pregnant.

To Court : That was after she came to the estate. One day Muttusamy quarrelled with his wife Baby Nona over some rice. Then the accused questioned him and said, " Can you assault the woman " ? Then Muttusamy went away immediately throwing away the mamoty. This incident took place down the hill near the accused's bungalow. That was about 4 p.m. On that day Muttusamy and Baby Nona both worked on the estate. On the following day I did not see Baby Nona and Muttusamy. That was the last day on which these two worked on the estate. After that day I had not seen them. I know a woman called Margaret Nona. She worked on the estate on that day. Work was over on that day just as it was getting dusk. Then Margaret Nona made the remark saying, " We have got to work till night, we have not even the time to have a bath ". 20

To Court : Work is usually over 5 p.m. 30

Baby Nona signed the register after work and went away. I saw that. That night Muttusamy and Baby Nona did not come to the house of the accused. The accused had his dinner that night at about 7 p.m. I too dined after that. Jayaratne also had his meal with me. After dinner the accused got out of the house with a torch and gun. That is the estate gun. It is a double barrel gun. He took with him 4 cartridges. (Shown gun P32). It was a similar double barrel gun like this.

To Court : This gun is usually kept in the accused's bungalow. No one else use this gun except the accused. He used to shoot the animals that come to the land, hare and so on. Before this day the accused used to go out night shooting. It was a three-celled torch. It was about this length. 40

(Witness shows the length of his fore-arm). I cannot say at what time the accused used to return when he goes out shooting on previous occasions. I would be asleep then. When I get up in the

morning he used to be at home. When the accused left with his gun and torch I had not gone to sleep. I cannot say at about what time the accused left with his gun and torch.

To Court : I am sure that he took the gun and torch with him. He took 4 cartridges along with him. They were not locally filled cartridges. They were imported cartridges.

10 That night I heard the report of a gun at about 8 p.m. from the direction of Muttusamy's house. Then my idea was that it was about 8 p.m. At the time I heard the report of the gun I was just falling asleep. I continued to sleep having heard the report of the gun. On the following morning when I got up it was not yet dawn. I used to get up very early in the morning and prepare tea to allow Jayaratne to go and tap rubber. When I got up the accused was not at home. By that time he had not returned. He returned when I was boiling the water for tea. He brought the gun along with him. He also brought the torch with him. He did not bring anything that he had shot. The accused was perspiring at the time. It was just before dawn. I asked him what he had shot. He said, " I shot at a bandicoot ". He also said, " That shot did not fell him, I must go again with the dog ".
20 He had his tea and left. He took the gun and the dog along with him. Then I woke up Jayaratne and gave him his tea. Then we noticed that the rubber trees were damp as a result of the rain during the night. Usually meals are not prepared in the morning. That morning Samathapala came to the estate. He came there in order to get the tools to tap the trees. The tools were kept by the accused inside the house and he had closed the door and gone away. Then Samathapala and I went in search of the accused. Both of us went in the direction of Muttusamy's house. Both of us got up to Muttusamy's house.

30 To Court : That was about 9 a.m. When we approached that house we got a stench. We got a ' pulutu ' smell. That smell came from the direction of Muttusamy's house. Then I looked to find out from where the smell came. The door was ajar. I just peeped and looked. I did not push the door.

When I peeped I saw a heap of ash. There was blood in the house and there was a hole in the wall.

To Court : The hole was in the back wall opposite the door. This hole in the wall was about this size. (Shows). I could not put all my fingers through that hole. It was a hole that went right through that wall. I could have inserted about 3 of my fingers.

40 I called out to Samathapala and said, " Look here, there is blood in the house ". He too peeped through the doorway. While I was there I saw a drag mark as if a log containing ash had been dragged along from inside the house to the outside. While I was near the house no one came there except Samathapala. When we went to the back of the house I saw the dog swallowing some dark flesh. That flesh was blackened for some reason or other. That was the accused's dog.

No. 2
 Supreme Court
 Proceedings
 (4) Evidence for
 the Prosecution,
 W. M. Wilfred,
 Examination
 —contd.

To Court : It was just a small piece of flesh. From Muttusamy's house Samathapala and I went down the hill towards the jungle. Then the accused came up with soot on his person. He was dressed in a white striped sarong. The upper part of his body was bare.

To Court : He had the soot marks all over his body and chest. (Shows).

Samathapala asked him why he was in that state. He said, " Uru adi pare gihilla deli gavila ". (He got his soot by following the track of a wild-boar.) When I saw him he had the gun with him. Samathapala asked him about the tapping knives. Then he said, " We are not tapping rubber today ". Then Samathapala asked him, " What is this smell "? Then he said, " When tracking after pigs I fell over a heap of burnt logs ". He also said that in falling over that heap of logs the bad smelling insects got crushed as a result of his fall. Then I came back home with Samathapala. Then Samathapala went away. I started cooking the noon meal at about 10 a.m. It was ready by about 12 noon. Normally the accused used to have his noon meal by 12. Normally the accused does not eat anything in the morning. On this day too he did not eat anything in the morning. The accused did not turn up at about 12 noon. I waited for him to turn up till about 2 p.m. Then I went in search of him as he did not turn up for lunch. I went towards Muttusamy's house. I found the door of Muttusamy's house locked with a padlock. From there I went down the hill where I met the accused previously. Then I found the accused digging a large hole in the jungle. There was a drain there and he dug this hole in the bed of that drain.

To Court : He was digging this hole with a mamoty. I approached him to a distance from here to the pillar outside the verandah. I was on a higher level than him. (40 feet.) I also saw two human heads. I saw two ' mini olu '. (two human heads).

I saw teeth and the heads were blackened. Both these human heads were not of the same size. One was larger than the other. The larger head was of this size. (Shows.) There was no hair on the head. I saw teeth and the head was black in colour. It got the smell of being burnt.

To Court : When I saw this bigger head it was in the drain just by the edge of the hole which was being dug up by the accused. On that head there were the ears, the nose, two eyes and the head blackened. I also saw the mouth as well.

The bigger head appeared to be the head of a grown-up person. About this much of the neck was attached to it. (About an inch. Shows).

To Court :

Q. Did you make out whose head it was?

A. I could not say whose head it was. But I could say that it was a human head.

The smaller head was also there beside it. On the smaller head there were the two ears, nose, two eyes, mouth and teeth. There was no hair visible. That was also blackened and it appeared to be burnt. The neck of that too appeared to be about this size. (Shows).

No. 2
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(4) Evidence for
the Prosecution,
W. M. Wilfred,
Examination.—
Contd.

To Court: That was also a human head. That was the head of a child. I could not make out whose head it was.

Besides the two heads I saw one hand with fingers.

To Court: That too was inside the drain near the heads. I saw this size of the hand cut and severed. (Shows). All the fingers were there. It appeared to be a human hand. It appeared to be the hand of a grown-up person. That too was similarly blackened. Besides this I also saw a small hand. That was a shorter fore-arm. It was the hand of a little person. (Podi athe). It appeared to be the hand of a child. That too was blackened. I also saw the fingers on that hand. Apart from the two hands I saw some pieces of the trunk. I saw the two legs. The legs were about this size that I saw. (Witness shows the portion below the knee downwards). There was one leg which appeared to be the leg of a human being. It was that of a grown-up person. That too was blackened. I also saw the portion of the body from the waist to the shoulder minus the neck. I saw the large trunk of a person. (Witness shows). It was the trunk of a grown-up person. When I saw these things I asked the accused what those pieces were. Then he rushed at me to assault me. Then he said, "It is none of your business, you better go away". Then I ran home straightaway. I went to my father's house past Ebert's house. That is not at the edge of the estate. The house is visible from the land. Then I met my father. My father was ill at the time. I went home. I told my father that the accused was trying to bury some dead bodies. My father picked up a walking stick and came up. (Bastama). He came along with me. As my father was going the accused was coming towards him. I did not take my father to where the accused was. I took him about 40 feet of where the accused was. Then the accused came to where my father was. Then my father questioned the accused and asked him whether it was true. My father said, "I was told that you are burying some dead people, is it true"? Then the accused said, "Mona boruda Banda, palayan yanda"—(What lies Banda, go away). Then I went to the accused's bungalow. My father also accompanied me. My father stayed back there and I left. My father did not come to Ebert Silva's bungalow even later. The accused came home that evening at about 4 p.m. on that day. He did not have his noon meal on that day. When he came at about 4 p.m. he did not eat anything. He came home after a bath. He came there with his sarong washed. At that time Margaret Nona was in the bungalow having come in search of the accused. When I went to the accused's house Margaret Nona was seated on a stone which was near the bungalow. She had come there to borrow some money from the accused. She had to get the wages that were due to her.

No. 2
 Supreme Court
 Proceedings
 (4) Evidence for
 the Prosecution
 W. M. Wilfred,
 Examination
 —Contd.

To Court : She had come there to get her wages.

She spoke about this to the accused. She delayed there for some time. After that she went towards Muttusamy's house. After the accused came home Margaret Nona said that she had come there to get some money. Then the accused said that he had no money and that when Mr. Corea comes he would give her money. Then the accused asked Margaret Nona to go away. She did not leave the place. She did not scold him, but continued to stay there. Then the accused left the house and went towards Muttusamy's house. Sometime later after the accused went towards Muttusamy's house Margaret Nona followed him. Margaret Nona left the estate and went away. I did not see at what time she left the estate. I used to go towards Muttusamy's house to tie cattle. On the day of this incident I went towards that side and also on the day after that. The door of that house was closed. The accused had dug out mud which was inside the house and strewn them behind the house in the back-yard. The accused asked me to bring water, and so on, in order to apply mud to that house. It was about 3 days after that that the accused asked me to bring water. That was 3 days after I saw the accused in that pit. It was Jane who mudded the house. I went and helped the accused. When I went to the hut I found the mud scraped and put outside. I know the hole in the wall which I spoke of. That was covered up on that day. On the first day when I peeped through the door I saw the room. Now I said that the hole in the wall was closed. In between those 2 days I went to that house. 10

To Court : I said that I peeped into that house on a certain day. After that I looked into the house about 2 days later.

During that occasion the accused was present. My sister was also there. That is Jane. On that day I did not notice the hole in the wall. It had been covered. The only occasion when I saw that hole as a hole was on the first day. It was closed when I saw it on a subsequent occasion. 20

Q. At any time did you take anything out of that hole?

Defence Counsel objects to that question being put as that question carries an assumption in the face of the evidence already elicited. 30

The Attorney-General submits that it is quite a legitimate question to be put to the witness.

To Court : Somebody had closed that hole. The accused must have closed it. I did not see it being closed. 40

Q. At any time before the hole was closed did you get nearer to it?

A. Yes.

That was after the murder and the dead body was buried.

To Court : That was after the day the accused was in that pit.

I went up to that hole and took some wadding. When I did that the accused was present in the house. I took it out and showed it to the accused and he took it to his hand and threw it to the jungle. He snatched it from my hand and threw it into the jungle. I helped my sister in the mudding operation. I saw the accused mixing the clay and carry it to the hut. That sort of work is not normally done by the accused who is the conductor of the estate. This was the first time I saw him doing that sort of work. He did not order me to dispose of any articles. I did not see him throwing away any articles. Nor did I see anything being burned. I saw a cane box with some clothes. I do not know what he did with that box.

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To Court: I saw the cane box on the day that Muttusamy came to this house. That is the cane box belonging to Baby Nona.

I did not see that cane box on the day I saw the accused in that pit or on the following day. Muttusamy used to wear a pair of blue shorts while in the estate. He would also wear a 'dang' coloured waistcoat. The colour of it like the dark blue on that coat of arms. (Shows). Muttusamy also uses a khaki rain coat. Jane Nona, my sister, did not possess any jewellery of her own. After the disappearance of Muttusamy and Baby Nona I saw Jane Nona wearing some jewellery. They were being worn before by Baby Nona. She was wearing a pair of silver bangles, 2 ear-studs with red stones and a chintsz cloth. I had seen Baby Nona wearing a flowered chintsz cloth. I saw Baby Nona wearing it and after her disappearance I saw my sister wearing it.

Court adjourns for the day.

Certified correct,
Sgd. R. S. PERERA,
Stenographer, Supreme Court.

30 Tuesday, 23th September, 1948. 9.30—11.15 a.m.
Accused present.
Same Counsel as before.

Court: Gentlemen of the Jury, I am sorry to trouble you. Will you please retire for a while?

JURY RETIRE.

Court: I stated yesterday that I would give my reasons in writing for the order I made permitting the trial of this prisoner on three charges of murder in the Indictment.

It is clear from the authorities that the matter is one of judicial discretion, which is to say that each application will be considered upon its merits and upon sound and recognized principles. My present decision is limited to the case now before me.

40 The present application is on the ground of prejudice. I have read the depositions. I have heard learned Counsel on both sides of

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the Bar. I am satisfied that in the present case no embarrassment or prejudice whatsoever will be caused to the accused by his trial in the form proposed.

There is another matter which I think it is better to mention in the absence of the Jury. It relates to the question put to witness, Wilfred, yesterday, whether at any time he took anything out of the hole in that wall. The question was objected to on two grounds; one, that it carried an assumption and two, that the question could not be asked at that stage. I was concerned with the second ground because the witness had already stated:—“ About three days after I saw the accused near the hole. Jane mudded the house. I helped. I found all the mud from the ground had been scraped and the hole in the wall had been covered up. About two days after I peeped into the house. I had another look inside the house. The accused was present. Jane was there. The hole had been covered ”. He also said: “ I saw the hole as a hole only on the day I peeped into the house. The next time, I saw it, it was covered ”. 10

Now when a witness has said something elsewhere which he does not say here, it is for one of two reasons, either he has forgotten or it never happened at all. The submission for the defence was that it never happened at all, and that the witness having already twice said he found the hole covered after the day he had peeped into the house, the prosecution was not entitled to make a third try. My own view of the matter was that before I ruled upon the question proposed to be put, the witness should be given an opportunity to have his memory refreshed. It was, therefore, that I myself put the question from the bench: “ Did you at any time get near the hole before it was closed ”? 20

JURY RETURNED

W. M. WILFRED, Re-affirmed.

30

Examination continued:

Q. You told the Court yesterday at an early stage of your evidence that the accused kept your sister Jane Nona in his house?

A. Yes.

Q. I want to know when that took place, before or after the disappearance of Muttusamy, Baby Nona and Hemalatha?

A. This happened when they were alive.

Q. After the disappearance of Muttusamy, Baby Nona and Hemalatha, what did your sister do?

A. She remained at the accused's bungalow.

40

Q. Did she come to the accused's bungalow or was she living at the accused's bungalow at that time?

A. The accused kept her in that bungalow.

Q. Before that she was living with her father?

A. Yes.

Q. And how many days after the disappearance of Muttusamy did the accused get your sister, Jane Nona, to this house?

A. About two weeks after their disappearance.

Q. At that time were you living in the house too?

10 A. Yes.

Q. And Jayaratne?

A. Yes, he was also in the house.

Q. For how long was Jane Nona, your sister, staying in the house of the accused, being kept by him?

A. The accused kept her there on one night.

Q. When was it that you saw your sister, Jane Nona, wearing the jewellery you had previously seen worn by Baby Nona, before or after she was kept by the accused in his house?

A. After.

20 Q. After the accused kept your sister in his house it was then you saw her wearing the jewellery which was worn by Baby Nona?

A. Yes.

Q. And also a chintz cloth?

A. Yes.

Q. During this period, after the disappearance of Muttusamy, were the accused and Jayaratne friendly?

A. Yes.

30 Q. Did the accused and Jayaratne, do anything together, busy themselves in common, over anything on the estate?

A. Yes.

Q. What?

A. The accused and Jayaratne were talking in secret.

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Q. That is after the disappearance of Muttusamy?

A. Yes.

Q. Did you see Jayaratne doing anything?

A. No.

Q. Did you see anything being burnt?

A. I saw Jayaratne chopping firewood.

Q. Where?

A. On that hill.

Q. About how long after the disappearance of Muttusamy?

A. About three weeks after the disappearance of 10
 Muttusamy, Jayaratne was chopping some firewood on that hill.

Q. Did you see that firewood being used for anything?

A. No, My Lord.

Q. Did you see any places where anything had been burnt?

A. Yes.

Q. You did not see the actual burning, but you saw something
 burnt?

A. That is so.

Q. Did you see anything being buried?

A. Yes.

20

Q. Where?

A. Down Muttusamy's house, down the hill.

Q. Is that the place you spoke about yesterday, or another
 place?

A. The place I spoke about yesterday.

Q. You said once your sister, Jane Nona, came to the accused's
 house and that she spent a night with the accused?

A. Yes.

Q. After that what became of her?

A. Jane Nona was kept by Jayaratne after that.

30

Q. Where did they live?

A. In Muttusamy's house, in the house that had been occupied by Muttusamy.

Q. How long after the disappearance of Muttusamy did Jayaratne and Jane Nona move into that house?

A. About a month after their disappearance, Jayaratne and Jane Nona went into occupation of Muttusamy's house.

Q. Did anybody come to this estate enquiring after Baby Nona?

A. Yes, Baby Nona's eldest sister came there enquiring after
10 Baby Nona.

Q. How long after the disappearance was that?

A. About two weeks after their disappearance.

Q. Did she meet the accused?

A. Yes.

Q. Were you present?

A. Yes.

Q. Did the accused tell her anything?

A. Baby Nona's sister asked where Muttusamy and others were and the accused replied: " Panela gihilla " (they had bolted from
20 the estate).

Q. Did he say all three bolted away or one of them?

A. He said all three had bolted.

Q. Baby Nona's sister, is a witness in this case, and she is called Lucy Nona?

Q. Do you know Lucy Nona?

A. Yes, My Lord.

Q. Did the accused give her anything when she came there?

A. Lucy brought some medicine for the child.

Q. My question is, did the accused give her anything?

A. Yes, the accused gave Lucy Nona money and sent her away.
30

Q. You know what is meant by a Rice Ration Book?

A. Yes.

No. 2
Banda,

Q. How many were there on the estate in charge of the accused?

A. The accused had two rice ration books in his charge.

Q. Whose were they?

A. Muttusamy's and the accused's rice ration books.

Q. After the disappearance of Muttusamy, did you see both rice ration books on the estate?

A. Yes.

Q. Were they actually used after the disappearance of Muttusamy?

A. Yes.

10

Q. You personally know this?

A. Yes.

Q. You said yesterday that you told your father about what you had seen, that the accused was burying certain things?

A. Yes.

Q. Did the accused ever tell you anything about not telling anybody else?

A. Yes, the accused asked me not to tell anyone else. He threatened to kill me if I did so.

Q. Did you tell anybody else?

20

A. No, My Lord.

Q. Apart from your father, who was the first person to whom you mentioned it—it may be some time afterwards, did you tell anybody about it?

A. No.

Q. Did you make a statement to the Police?

A. I made a statement to the A. S. P. at Ambalangoda.

Q. Who took you there?

A. My father took me to the A. S. P.

Q. Thereafter, did the police come to this estate?

30

A. Yes.

Q. Did you go round with a police officer and point out any places to him? No. 2
Examination

A. Yes.

To Court: Muttusamy's hut was in existence. I showed the spot where the hole existed to the police officer.

Q. Did the police officer to whom you pointed that hole dig in that place?

A. Yes.

Q. Did he unearth anything?

10 A. I did not notice anything being taken out of the hole.

Q. Did you point out anything near the house of Muttusamy?

A. Yes.

Q. What?

A. I showed mounds of earth behind the house.

Q. Who had made those mounds of earth?

A. The accused.

Q. Were you present when these mounds of earth were sifted?

A. Yes.

Q. Did you observe anything being taken by the police officers?

20 A. I did not.

Q. Did you point out any other places to the police?

A. No. I pointed out only those two places.

Q. After the police commenced investigations were you shown any bits of cloth?

A. Yes.

Q. If you are shown them again, could you identify those bits of cloth?

A. I could.

30 Note: A little time is being taken by the peon in sorting out the productions.

Q. I will come back to that point again. You said Jayaratne and Jane Nona moved into occupation of Muttusamy's house?

A. Yes.

No. 2
Examination

Q. How long did they live there?

A. After they went into residence of Muttusamy's house, I left the estate.

Q. How long after?

A. About a month after they went into occupation of Muttusamy's house.

Q. Who took you away, or did you go alone?

A. My father got me to live the estate.

Q. And then you were living with your father?

A. Yes.

10

Q. When you went back to the estate with the police, who was in occupation of Muttusamy's house?

A. One Handy was staying in that house. Jayaratne and others had put up another house, a new house, and they were staying there.

Q. You say: "Jayaratne and others"?

A. Jayaratne and my sister, Jane Nona.

Q. Where was the accused living?

A. The accused was living in the bungalow.

Q. In the interval between your leaving the estate and going with the police, had you been to the estate?

A. Yes.

Q. Now, listen to the question before you answer. You said you left the estate and stayed with your father?

A. Yes.

Q. You had made a statement to the Assistant Superintendent of Police and you went back to the estate with the police?

A. Yes.

Q. Now, I want to know whether, after you left the estate to stay with your father, you had been to that estate before you went there with the police?

A. No.

30

Q. (Shown P3).

Note : At this stage Court directs that a peon be placed in charge of the productions; that the peon should be responsible for taking the productions out and replacing them in their respective covers; that the seals must be broken up in the presence of the Court; that there should be no confusion in so doing.

A peon is accordingly put in charge of the productions.

A. P3 is a piece of khaki cloth. I am unable to identify it.

Note : P3 is examined by Counsel on both sides.

10 *Counsel for the Defence* : I ask that the production be shown to the Jury without the envelope in which P3 is enclosed as this envelope contains on it the police description.

Court:

It might be placed on a sheet of paper and shown to the Jury. (Jury inspects P3).

Q. You said Jayaratne and Jane Nona were living in a new house?

A. Yes.

Q. Who put up that house?

A. I do not know who put it up.

20 Q. And how long after you left the estate did Jayaratne and Jane Nona remain on the estate?

A. About three months after I left the estate.

Q. At the time when you made your statement to the police were Jayaratne and Jane Nona still living on the estate?

A. Yes.

Q. Did they leave after that?

A. Yes.

Q. Did you see any signs of anything having been broken and strewn about on the day you peeped into Muttusamy's house?

30 A. I saw a pot of boiled rice broken.

Q. The pot was broken and the rice was strewn about on the floor?

A. Yes.

Q. It was country rice?

A. Yes, the rice was scattered on the floor.

No. 2
Examination

Q. The next time you saw the interior of that room, had that rice been disposed of, had it been cleaned up?

A. Yes, My Lord.

Q. Had the accused treated you kindly on the estate?

A. Yes.

Q. Were you drawing a salary?

A. I was paid Rs. 5 a month by the accused.

Q. Had you any ill-feeling towards this accused?

A. Later on he threatened to kill me if I came out with it.

Q. That is something that he told you. Had you any ill-feeling towards him? 10

A. No, My Lord.

Q. Is there any reason why you should give false evidence against him?

A. No.

No. 2
Cross-examina-
tion

Cross-examined :

Q. If you were giving false evidence, would you admit it in this Court?

A. I am not giving false evidence.

Q. If I may tell you kindly, please speak up. Not only is it necessary as His Lordship pointed out, but also for this reason. I wish to be able to hear what you say in Sinhalese, as that would assist me to find out what is going on in your mind. 20

Now, Wilfred, you said you are about 16 years old?

A. Yes.

Q. And that you had never been to school?

A. That is so.

Q. Can you read the clock?

A. I cannot.

Q. So that really what you understand is that the sunrises and the sun sets and the rough time given by you was by the position of the sun? 30

To Court:

Your Lordship will remember when he was asked the time yesterday he said it was 11 o'clock when actually it was 11.47 by the clock here. In relation to this he

had a rough idea because he was informed of the time he has to come to Court.

No. 2
Cross-examina-
tion

Court:

Q. What is the time now?

A. I cannot give the time now.

Q. He said something like 9.30 first did he not?

Interpreter:

He first said 9.30 and then he said: "I cannot give the time now".

10 Q. Do not be afraid, we do not want to put you into any trouble at all. What do you think the time is now?

A. It must be nearly 12 o'clock.

Note.—The time according to the Court clock is 11.30 a.m.

Q. Also witness, when you speak of months in particular, you have no conception of a month?

A. No.

Q. Do you know the number of months in a year?

A. I do not know.

Q. Do you know the number of days in a month?

20 A. I cannot say.

Q. Do you know the number of days in a week?

A. Yes.

Q. That is a unit you understand apparently. How many days are there in a week?

A. Seven days.

Q. I suppose you get in the estate what is known as "Sumana Kasi"?

A. Yes.

30 Q. The next point I want to get out from you is this: Try to carry your mind back to the time of the disappearance of Muttusamy. At that time you were living on the estate in the same house as this accused?

A. Yes.

No. 2
Cross-examined

Q. This land, Haddagoda Kande, does not abut on the road?

A. No.

Q. Do you know North, South, East and West?

A. No.

Q. To go to this estate, one has to go along a village committee road?

A. Yes.

Q. That village committee road is the nearest cart road to that estate?

A. Yes.

10

Q. From that village committee road you have to go some distance by a footpath to reach the estate?

A. Yes.

Q. This estate consists of three hills with three little valleys between?

A. Yes.

Q. As you enter the estate, you have to climb part of the way up a slope to get to what you call the ' wadiya ' or the bungalow where the accused lived with you at that time?

A. Yes.

20

Q. The portion of the estate round the bungalow was even at that time fully planted with rubber?

A. Yes.

Q. Then, if you look further up that slope, there is a place where, more or less on the top of the first hill, there was a timber shed?

A. Yes.

Q. Near that timber shed, at the time when Muttusamy first came to the estate with Baby Nona, there was a hut?

A. Yes.

Q. That hut was abandoned and broken down about a week or so after Muttusamy and Baby Nona arrived on the estate?

A. Yes.

30

Q. And it was after that, that Muttusamy was sent with his family to live in that hut of which you have been speaking in this case, as having peeped into and seeing blood and so on?

A. Yes.

Court:

Q. Muttusamy and his family lived in that hut?

A. Yes.

Q. That was his first house?

A. Yes.

Q. Do you know the measurement of distances?

Can you speak in terms of fathoms or chains?

A. I am unable.

Q. If I ask you what was the distance from the bungalow to
10 that timber shed can you answer me?

A. I cannot.

Q. Can you point out the distance?

A. I can.

Q. Supposing you are standing at the bungalow and looking in
the direction of the timber shed which is up a slope to the left of your
bungalow, tell us how far from where you are that timber shed is?

A. From here (witness box) to just somewhat further than that
building near the ' Mara ' tree.

Q. A distance of about 50 yards or so, in other words 20 to 25
20 fathoms?

A. I cannot say that.

Q. You say it is somewhat further than that building which is
near the ' Mara ' tree?

A. Yes.

Registrar:

That would be a little more than 114 feet.

Q. If you go near that timber shed you would be more or less
on a little hill?

A. Yes.

30 Q. If from the top of the hill you looked in the same direction
as you walked to get to it there is a heavy slope down leading towards
and ending on the boundary of the post master's estate?

A. Yes.

No. 2
Cross-examina-
tion

Court:

Q. As you get down that hill you get to the boundary of the post master's estate?

A. Yes.

Q. In that valley or ravine, there is a little 'dola' or stream?

A. Yes.

Q. From the hut near the timber shed Muttusamy and his family were transferred to what I may call the hut in this case?

A. Yes.

Q. Now let us try to assist the gentlemen of the Jury as to how you get to that hut. At the time, Muttusamy was staying in the hut near the timber shed, and in the hut we are now speaking of was living that man called Handy? 10

A. Yes.

Q. Handy left the estate?

A. Yes.

Q. And Muttusamy and his wife were transferred there?

A. Yes.

Q. The point I want cleared is this. That hut in which Handy lived is very much further away from the bungalow than the hut near the timber shed? 20

A. Yes.

Q. Now, there is a path along the middle of the estate and through its whole length, to get to that second hut where Muttusamy went to live?

A. Yes.

Q. We will call it Muttusamy's house. That path leads in a different direction from the timber shed?

A. Yes.

Q. When you go along that path from the bungalow you would leave the timber shed well on your left? 30

A. Yes.

Q. You would go, so to speak, on the side of the hill on which that timber shed stands?

A. Yes.

Q. If you go along this path from the bungalow we are speaking of you would find a second hill on your right?

No. 2
Cross-Examina-
tion.

The first hill is on the left, and the second hill on the right?

A. Yes.

Q. That path goes up that hill on the right?

A. Yes.

Q. From the top of that hill, you can look across to the third and last hill on the estate?

A. Yes.

10 Q. There is a sharp declivity between these two hills, a sharp drop?

A. Yes.

(Witness uses the word "Pallamak").

Q. The path goes down that second hill and goes up to the top of the third hill?

A. Yes.

Q. And on the top of that third hill is what you have so long referred to as Muttusamy's hut, the hut in this case?

A. Yes.

20 Q. Now, let us complete that path. That path, after climbing the hill to Muttusamy's hut, continues down a further slope?

A. Yes.

Q. At the foot of that further slope the estate ends at the boundary of a paddy field?

A. Yes.

Q. At this boundary, the path turns sharply to the left?

A. Yes.

Q. Following the boundary between the estate and the field?

A. Yes.

30 Q. Then, more or less where the estate itself ends, the path turns right across the fields?

A. Yes.

No. 2
Cross-examina-
tion

Q. And lands across the fields right at your own house? That is at your father's—Banda's house?

A. Yes.

Q. From the crown of the third hill, that is where Muttusamy's hut was, you could see straight across the field to your house?

A. Yes.

Q. The path which thus reached your house continues and later re-crosses the fields?

A. Yes.

Q. It re-crosses the field and again links up with the village committee road of which we spoke at the beginning?

A. Yes.

Q. And falls on that gansabawa road exactly at the house of the village headman of Porwagama?

A. Yes.

Q. And opposite the house of the headman, at that spot on the opposite side of the village committee road is the co-operative stores?

A. Yes.

Q. Shall we put it this way—the house of the village headman of Porwagama and the building housing the co-operative stores are separated only by the width of the village committee road?

A. Yes.

Q. Your father's name is Banda?

A. Yes.

Q. How many brothers and sisters did you have in October, 1946, at the time of this incident?

A. I had four younger brothers and one elder sister.

Q. That elder sister of yours is Jane Nona?

A. Yes.

Q. Any elder brothers?

A. One elder brother.

Q. Arnolis *alias* Edwin?

A. Yes.

Q. Before you became the cook-boy under the accused, you were No. 2 an ordinary labourer on the estate?

A. Yes.

Q. Your father, Banda, also worked on the estate off and on ?

A. Yes.

Q. Your brother Edwin also worked on the estate?

I will call him Arnolis as he is called that in the record. What do you call him?

A. I call him " Aiya "—(brother.)

10 Q. What do other people call him?

A. Edwin.

Q. Then we will call him Edwin. Now, this brother of yours, Edwin, also worked on that estate?

A. Yes.

Q. Coming to work from your father's house?

A. Yes.

Q. Just like Jane Nona who used to come to work from your father's house?

A. Yes.

20 Q. And just like your father when he was fit to do so also came to work from home on the estate?

A. Yes.

Q. At the time when these things happened, the portion of the estate in which the last two hills you spoke of stand was more or less under jungle?

A. Yes.

Q. Take the hill on which Muttusamy's hut was. On the very top of the hill there was a clearing sufficient for Muttusamy's hut?

A. Yes.

30 Q. Adjoining the compound round the hut there was jungle?

A. Yes.

Q. It was a jungle which consisted of low shrubs and a thick undergrowth?

A. Yes.

No. 3

Q. Can you give the Court some idea of the height of these shrubs at that time—just point out?

A. About this height (points out a height above his head).

Q. Now, at that time, supposing you stand in the verandah of Muttusamy's hut, in front of you would be a little clearing?

A. Yes.

Q. Supposing you are standing on the edge of the verandah—I am speaking of that time—would it be correct to say.....No, first of all, the path goes quite close to the verandah of the house?

A. Yes.

10

Q. If you imagine where you are standing, that is the witness box, to be the edge of the verandah, that path would not be much further than the Jury box on the Registrar's table? (seven feet).

A. A little further than that, to the end of the bar table. (twelve feet).

Q. Beyond the path was there any further little clearing?

A. Yes, there was a little.

Q. So that if the path was at the edge of the bar table, as you say, would you say that up to the wall behind the Jurors it was cleared?

A. Yes. (Distance of 12 feet.)

20

Q. So that behind that was the shrub Jungle of which you spoke?

A. Yes.

Q. Now, think that you are still standing on that verandah facing that path which you have mentioned. As the path comes up from the right hand side, if you were coming from the bungalow, you would come from your right-hand side and go towards your left-hand side?

A. Yes.

Q. So, now take the place where the path goes to your left hand side. On that side too, as you said, there was jungle?

A. Yes

Q. Imagine you are standing on the verandah (i.e., witness box). From about what distance then did the jungle start?

A. If where I am standing is the verandah, the jungle commences from about the distance of that door (points out to the door behind him to his left—a distance of 21 feet).

Q. After that path went down the slope, it was a path through ^{No. 2} the Jungle leading down to the field?

A. Yes

Q. That is how it was at the time of Muttusamy's disappearance?

A. Yes

Q. Just behind the house and to the left as you say when standing on the verandah and looking at the footpath?

A. Yes

10 Q. Imagine you are still standing on the verandah looking at the footpath. At the back of the house a little to the left was a pit or hole dug in the ground?

A. Yes

Q. It was wide, but in depth it was not very much. That was the pit from which mud had been dug for building the hut?

A. Yes

Q. Now, think again of Muttusamy's hut. It consisted of a verandah?

A. Yes

20 Q. From which there is a door-way?

A. Yes

Q. If you face the house, the door-way is nearer the left hand wall than the right hand wall?

A. Yes

Q. If you are standing on the verandah facing the path, where is that door?

A. Behind me, on my right.

30 Q. Think of yourself walking from the verandah into the house through the door way. As you enter on your right stands a low half wall?

A. Yes

Q. That low half wall does not extend right to the back but leaves room between the back wall and its end to go round?

A. Yes

No. 2

Q. And if I may put it that way, that low half wall divides the kitchen portion from the living room or the sleeping portion?

A. Yes

Q. If you were looking at the house and supposing the gentlemen of the jury ask you to say what is the length of that verandah from one end to the other, what would you say?

A. About the length of this bar table.

Q. How wide was this verandah?

A. From here to there (points out a distance which according to tape measurements give a distance of four feet.) 10

Q. What is the distance from the door way to the back wall? Supposing you are standing at the door way, where is the back wall?

A. From here (witness box) to where that gentleman is seated (witness points to a member of the bar seated just behind Counsel for Defence, about a foot in front of the dock—a distance of 12 feet, i.e., from the witness box).

Certified correct.

Signed N. W. Lewis.
Stenographer, Supreme Court.

28-9-1948.

20

W. M. WILFRED :

Cross-examination continued :

This door way is about this width. (3 feet measured). Its height is a little higher than me. It is a mud and wattle house with a tiled roof. I spoke of a drain. That was down the slope. That drain did not go right straight. If I am standing here on Muttusamy's hut the drain would be even further away from that ' Mara ' tree. (witness points out the distance).

To Court :

When this land was opened up I was not on the estate. 30

That drain went through the jungle on that slope, at the time of Muttusamy's disappearance.

Q. If anyone from your father's house wishes to come to the estate for work or for any other purpose he has to come along the path across the field that you described?

A. Yes, past Muttusamy's house, and so on, to the jungle.

This accused was the conductor of Haddagoda Estate. There ^{No. 2} was no watcher on this estate. The accused himself performed the task of watcher. This area and this land was not opened up during my life time. I do not know whether this land was opened up during my life time. There is plenty of uncleared jungle during this time, in the areas outside the estate. In the village of Porwagama itself there is plenty of jungle. Not far away from this estate there is a well known jungle called Berelia Mukalana. That Mukalana is very far from this estate. In this area people used to go hunting.

10 To Court :

There are green doves and wild boar. There is porcupine too.

Court adjourns for 15 minutes.

Resumed after interval.

W. M. WILFRED, re-affirmed.

Cross-examination continued :

20 Plenty of people even in the village go out hunting in these jungles. People even use trap guns. There are people who own guns in that area. On the adjoining estate, that is the Post Master's estate, there are guns. There are no watchers in that estate. I said that the accused used to perform the functions of a watcher too. He used to do rounds on the estate to see that it was properly protected.

To Court :

The accused used to go on night rounds as well.

30 I know for a fact that animals too have been shot on this very estate. There have been animals shot in this very jungle. I cannot say whether animals have been shot on the hill around Muttusamy's hut. I remember I spoke of a timber shed. I said that beyond the timber shed the hill slopes down to a " dola ". Between the timber shed and the " dola " there is a big slab of rock. People in the estate do not use that rock for any purpose. I said in examination-in-chief that before I was questioned by the police the only person to whom I made any disclosure of what I saw was my father. It was my father who took me to the police station. I remember on a certain day the Magistrate came to the spot. I gave evidence before the Magistrate when he came to the spot. That was on an afternoon. I made my statement to the police on that very morning. I am sure about it.

Q. Was it on the same day the Magistrate came to the estate or was it on the day before you made a statement to the police?

A. I made my statement to the police on the day previous to my giving evidence before the Magistrate.

No. 2

I said that Jane Nona my sister stayed in the estate on a certain night in the bungalow of the accused. That was the first time she stayed in that bungalow of the accused. At that time Jayaratne was also living in that bungalow. Just about the time she stayed in that bungalow she started living with Jayaratne.

Q. Are you aware personally of the fact that Jayaratne started living with her after signing a document?

A. I am not aware of that.

Jayaratne was an ordinary labourer on this estate. I do not know whether he is related to the accused. I know Jayaratne's caste. 10 I know the caste of the accused. Jayaratne and accused are of the same caste. Our family is of a different caste. At the time Jane Nona took to living with Jayaratne I was still in the employ of the accused.

To Court :

I am of the " Goigama " community. The accused belongs to the " Salagama " community.

Q. Did Jayaratne and your sister after they started living together continue for a length of time in that bungalow?

A. Yes.

Q. At the time Jayaratne took Jane he was living in the 20 accused's bungalow?

A. Yes.

To Court :

Jayaratne took Jane After Muttusamy disappeared. Then he was living in the accused's bungalow. I cannot say for how long.

They stayed there for a short time. Then they moved into Muttusamy's house. My sister and Jayaratne were transferred after some time to the hut in which Muttusamy lived.

To Court :

Jayaratne and Jane my sister were asked to move into Muttu- 30 samy's bungalow by the accused.

Q. Is it correct that Muttusamy's hut was empty till Jayaratne and Jane moved there?

A. Yes.

Q. When Jayaratne and Jane went in to reside there was nobody else there?

A. Handy was there.

At that time Handy was having a wife living in the same No. 2 bungalow.

Q. You remember you said that when Muttusamy and his wife were transferred to this hut Handy left for the village?

A. Yes.

Q. After he left the estate like that when did Handy return to the estate? Did he return after Jayaratne and Jane went to live on that hut?

A. It was after Jayaratne and Jane took up residence in
10 Muttusamy's hut that they went to live there.

He came there with his two children. The eldest was about four years of age at that time. The youngest was about two years of age, then. I remember Hema, Baby Nona's daughter. Handy's child was younger than Hema at that time.

Q. You said in examination-in-chief that after a period of time Jayaratne and Jane moved to another hut that was built for them?

A. Yes.

Q. Can you say whether Handy was still living in Muttusamy's house at the time Jayaratne and Jane moved to the new hut?

A. Yes, they continued to live there.
20

Q. You said in principle examination that at a certain stage this accused went to live in Muttusamy's hut?

A. Yes.

Q. I take it first of all that this was after Jane and Jayaratne left the new hut?

A. Yes.

Q. When the accused went into residence at Muttusamy's who was residing at the bungalow?

A. It was Handy and his family who were living there then.

Q. Did Handy and his wife continue to live for a period of
30 time in Muttusamy's hut after Jayaratne and Jane went to live in their new hut?

A. Yes.

Q. Jayaratne and Jane went to the new hut, Handy and his wife went to the accused's bungalow and accused came to Muttusamy's hut?

A. Yes.

No. 2

I was not cooking for the accused at that time. At the time this accused moved into Muttusamy's hut I ceased to be his cook. I went back to my father's house. I was still not coming to work on the estate. When the police went for inquiry Jayaratne was in the new house. The accused was in Muttusamy's house and Handy was in the accused's house. These changes have taken place after I left and before the time the Magistrate came for inquiry. I left the employee of the accused at the end of an year and at the beginning of another year. That is called "Jaeru Davasa". When I went to live with my father Jayaratne and Jane were living in Handy's house. There were two families in Muttusamy's house. Later on Jayaratne and Jane came to live in a house close to my father's house. That is outside the estate. That was after the Magistrate had visited the estate. 10

Q. You remember you said that a man called Samathapala an employee on this estate came there one morning for the tapping knife?

A. Yes. When he came there I was alone in the bungalow. I said that he came in the morning.

At that time Jayaratne had gone somewhere. I spoke to Samathapala when he came there. At that time I said certain things to Samathapala. I told Samathapala that Muttusamy and others had bolted from the estate. Then Samathapala and I got out of the bungalow in search of the accused. I knew where to search for the accused. I went to the place where I knew I would find the accused. That was to the hill-top where Muttusamy's hut is. The two of us went straight along the path from the bungalow to that hut. 20

Q. When you got to that hut you told Samathapala, "Come here, I will show you something"?

A. Yes.

Then I took him to the door of Muttusamy's hut. The door was closed. 30

Q. When you say the door was closed was it secured or fastened with anything so that the door plank was shut?

A. The door was ajar—(adaval).

When I looked through the threshold I was able to see into the room without pushing the door. I did not push open the door.

Q. You looked through what I might call through the gap between the door and the threshold?

A. Yes.

I looked through the gap between the door and the threshold. The gap between the door and the threshold is about this size—shows— 40

(measured about a foot). Samathapala also looked through that gap. No. 2
 He too peeped through that gap. I put my head through that gap and
 looked into the room. I did not push the door in doing so. I just
 put my hand on the threshold and put my head through the gap and
 looked. Samathapala only peeped through that gap. When I went
 to that hut Samathapala and I were conversing with each other. After
 peeping I went past the house beyond the compound. I went beyond
 the compound down the further slope which we referred to. (Witness
 at this stage given a chair at the instance of His Lordship).
 10 down that further slope I did not get into the path where the path
 enters the jungle portion which I referred to. As we were going down
 the slope the accused emerged and met me.

Q. You have already told this Court that when you came up
 the compound outside Muttusamy's house when you approached this
 house you told Samathapala: "Come along, I want to show you
 something"?

A. Yes.

Q. What was it that you wanted to show him?

A. I called him to show blood inside the house.
 20 That was the 'badua' that I wanted to show him.

Q. Now will you explain to this Court how before you peeped
 into Muttusamy's house you knew there was blood inside that hut?

A. I came to know about the presence of the blood inside the
 house after I peeped in.

What I meant to show was the drag mark which was on the
 verandah. Samathapala and I came to the verandah together. Sama-
 thapala is older than me. He could see the verandah just as myself.
 I had seen the drag mark before I went to Muttusamy's house. If I
 go from the bungalow to my father's house along the path I got to
 30 pass Muttusamy's verandah.

Q. Before you went near Muttusamy's hut that morning with
 Samathapala did you pass along that path on the way to your father's
 house?

A. No, I did not go.

Q. Did you pass Muttusamy's house for any other reason
 before you came with Samathapala?

A. No.

I showed the drag mark to Samathapala before I peeped through
 the door. There was a bad smell emanating and it looked as if a
 40 charred piece of firewood had been dragged along. What I meant by

No. 2

'badua' was that drag mark. I got a very bad smell. It was not the sort of smell that I had encountered before. I associated that smell with the drag mark. I thought that something had been burnt and dragged along. When I peeped in I saw blood. That roused my curiosity. It made me frighten. I said that I met the accused further down the slope. I did not tell the accused what I had seen. My curiosity was roused by seeing all this. After that Samathapala and I returned home. Samathapala left the estate and I proceeded to my cooking. The next time I went to the bungalow of Muttusamy's was in the afternoon. I went there in order to call the accused for his mid-day meal. On a certain morning I went with my father to the Police Station. I know that I was being taken to the police that morning to say what I knew about this matter. The first thing I got to know about this matter was what I saw in Muttusamy's house that morning which I was just speaking to. 10

At this stage the Jury retires. Dr. de Silva agrees that P57 is the first information in this matter. He undertakes to mark P58 or any portion of it which he may put to this witness. The Jury returns.

From what I saw when I peeped into Muttusamy's house was that some evil had been done. When I saw it Samathapala was with me. When I was taken to the Police Station I knew I was being taken there to make a statement of what I knew. That morning I mentioned everything that I saw. I told the police that I went with Samathapala to Muttusamy's house. I mentioned to the police about the peeping into Muttusamy's hut. I also told the police that I saw blood inside that hut. 20

At this stage the Jury retires.

Dr. de Silva states that he wishes to get out of the witness that he did not mention to the police anything about the "Samathapala incident". The Attorney-General points out that the witness has already admitted it. Dr. de Silva says that he did not appreciate it then and he now proposes to question the witness further on P58. 30

Jury re-called.

After I went and made a statement to the police the next time I made a statement to anyone was when I gave evidence before the Magistrate on the afternoon of the 4th. The Magistrate took my evidence just near Muttusamy's hut. It was in fact taken in the compound of that hut.

Q. Is it not the case that even on that occasion you did not mention anything about having gone to Muttusamy's house that morning with Samathapala? 40

A. Yes, I could remember it.

To Court :

Q. Do you remember telling the Magistrate that you went with Samathapala that morning and saw these things?

A. I cannot remember whether I made that statement.

I spoke of certain jewellery belonging to Baby Nona. In particular I spoke of a pair of bangles. I also spoke about a pair of ear-studs and a chintz cloth. I remember that Baby Nona had a cane box.

To Court :

10 I had not seen the inside of that cane box.

I knew that clothes were kept in that cane box. After Baby Nona's disappearance I did not see that cane box. That cane box was not given to Jane Nona at any time. Besides that cane box Baby Nona did not have any other box. A clothes box was not given by this accused to Jane Nona. I said that I saw my sister Jane Nona wearing a pair of silver bangles belonging to Baby Nona. At the time I went to the police for the first time Jane Nona was still in possession of those bangles. She also had the ear-studs. She also had the flowered chintz cloth. I do not know where these things are today. Jaya-
 20 ratne and Jane Nona came to live in a house near my father's house. I did not see the bangles worn by her then. Nor did I see the ear-studs that she had. I do not know personally how Jane Nona obtained these bangles originally. I saw Jane Nona using these jewellery after I left the services of this accused. I know the witness Margaret Nona. As far as I know Jane Nona had no transactions with Margaret Nona at any time. I do not know whether those ornaments were shown to the police at any time. In examination-in-chief I spoke of the accused having disposed of some cut up portions of the human body. I also spoke of Jayaratne borrowing some timber
 30 to make a fire. It was after the house of Muttusamy was re-mudded that these preparations for the fire were made. When Jayaratne was living in Muttusamy's house he borrowed this timber. I did not know for what purpose that timber was used. From the accused's bungalow one could see that timber shed I spoke of earlier. I said that I went with my sister and the accused in connection with the mudding of Muttusamy's hut. It was 2 days after the day I went to Muttusamy's hut with Samathapala. I went with Samathapala one morning to Muttusamy's house. The same afternoon I went back to inform the accused that his noon meal was ready. After that I went back to that
 40 hut for the purpose of mudding. That is 2 days after the day I saw the cut bodies being disposed of. On that occasion when I went into that house there was no hole in the wall of that house. The hole that was in the wall had been covered. The hole that was in the rear wall had been covered. On the occasion I went to call the accused for his mid-day meal I did not look inside the house. I went by the

No. 2

back-yard of the house to see. I just went there. On that occasion when I went to call the accused for his mid-day meal I went up to the drain where he was working. I went down the hill. When the dead body was on that drain the drain had been silted up. There was a mark as if there had been a drain there. The hole was dug by the accused is about the height of my arm-pit from the ground. (Shows). Portions of the body were not in that pit. All the portions were in the drain. When I saw the accused he was still digging the hole. I left the employment of the accused about the beginning of the month of January and went and lived with my father. After I went back home I was working in Thalgaswela estate digging trenches. I went to that estate to work everyday from my house. That estate is also at Porwagama. I had to go through Porwagama village to go to that estate. My father was displeased that Jane Nona came to live with Jayaratne. He was very greatly upset about it. I am not aware whether my father made any complaint to anybody about Jayaratne taking Jane Nona. When I got up and was preparing tea the accused came back home after going out on his rounds in the previous night. When he left the bungalow again that morning he took with him the gun. Jayaratne was at home when the accused came home that morning. The accused did not have any conversation with Jayaratne before he left again. Jayaratne did not talk to him. I did not speak to the accused. The accused did not tell anything to me that morning. The accused said that Muttusamy had bolted from the estate. Then I asked him what animal he had shot. The accused said that Muttusamy and his family had bolted. That is all the three of them. He did not at any time tell me that Muttusamy had killed his wife and child and bolted. When I went to work I did not at any time question the accused about Muttusamy. The accused said that Muttusamy had killed his wife and child and had bolted away from the estate. He said that to me long after this murder had taken place. That was after some days of this murder. I remember I went with Jane Nona to mud that hut. On that occasion I did not question the accused. I did not ask him why he was mudding the house. He was mudding the house in which I had previously seen blood. I also had later seen the place where the bodies were disposed of. I concluded that the presence of that blood was the result of the killing of some people. I did not question the accused as to what had happened to Muttusamy and his family. I did not see this accused disposing of a box at any time. I did not at any time see the accused throw a box of clothes into the jungle. I gave evidence before the Magistrate in the estate in the compound of Muttusamy's house.

Q. Did you say this to the Magistrate: "There was a cane box belonging to Baby Nona and it contained clothes. The suspect threw the box with the contents into the jungle"?

A. I did not say so. (D1).

I said a little while earlier that the accused never gave a clothes box to Jane Nona. I did not say that to the Police. I said in this

Court that I was taken along with Jane Nona to mud Muttusamy's No. 2 hut. When I went to mud that hut there was nothing in that house belonging to Muttusamy. There was no clothes box.

Q. Did you say this: "He got Jane Nona with his help to wash the floor to re-mud the house. Then he took the clothes box containing the clothes and gave them to Jane Nona"?

A. No, I did not say so. (D2):

The accused did not burn anything of Muttusamy's house. The accused did not burn any property from Muttusamy's house at the spot
10 where the bodies were buried.

Jayarathne did not at any time tell me to assist him in exhuming certain bodies. Jayarathne did not tell me at any time that he burnt certain clothes or assisted in burning clothes. I know the grave where these bodies were originally buried.

Court adjourns for the day.

Certified correct.

Sgd. R. S. Perera,
Stenographer, Supreme Court.

Wednesday, 29th September, 1948. 9.30 a.m.

20 W. M. WILFRED, re-affirmed:

Cross-examination continued:

Today I am employed at the Elpitiya Police Station. I started by saying Kurundugathakma. That is a hamlet between Ambalangoda and Elpitiya on the Ambalangoda Elpitiya road. I remember the time I gave evidence in the Magistrate's Court of Balapitiya. At that time I was employed at Thalgaswela estate. Shortly after that when I gave evidence in the Magistrate's Court I was taken over to the Police Station. Since then I have been kept at that Police Station. That is the very police who were prosecuting officers in this case. In that Police
30 Station this case is not freely discussed. Even the policemen do not discuss about this case. During the whole period I have been employed at this Police Station, I have not heard anybody discussing anything about this case. I have spoken to seeing the disposal of portions of certain bodies. On that question too I made a statement to the police.

Q. Is it or is it not the fact that you said to the police that you saw the cut up portions of Muttusamy's wife and child?

A. I said so.

Q. Is it not the fact that you said to the police that you never saw Muttusamy's corpse at any time?

40 A. I said so to the police.

No. 2

Q. Yesterday and day before you sought to make out that you peeped into Muttusamy's house at the time you went with Samathapala you saw a hole in the wall opposite the door?

A. Yes.

I gave a description of Muttusamy's hut yesterday. Yesterday I said there was a door to enter into the room from the verandah. I also said that when one stands at the threshold and looked in front there is the back wall. That wall has neither door nor window. The only door to this house is the door by which I entered. Yesterday I said that I made my first statement to the Magistrate at the spot in the compound outside Muttusamy's house. 10

Q. Did you say this to the Magistrate that morning when the Magistrate came and recorded your statement: "As we entered Muttusamy's house I saw a heap of ash, blood all over the floor and a hole in the wall abreast of the door"?

A. The hole was in the back wall. I did not say so. (D3).

I gave evidence before the Magistrate in the Magistrate's Court of Balapitiya towards the very end of this case.

Q. On that occasion did you say as follows: "As we entered we saw a heap of ash, blood all over the floor and a hole in the wall abreast of the door"?

Court to witness:

Q. What is the truth?

A. The hole was in the back wall.

From the floor of the house the hole was about the height of my knee (shows).

I actually saw a hole in the wall. That is a mud and wattle hut. I said yesterday that I looked at the hole a second time. That was the occasion when I went to inform the accused that his noon meal was ready. On that occasion I was alone. 30

To Court:

I saw that hole a second time on the same day.

I looked at the hole all by myself. Then I went past that hut and went down the slope and came upon the accused.

Q. You said that Margaret Nona met the accused that evening when the accused was coming in a wet sarong?

A. Yes.

Q. After you gave evidence in the estate you next gave evidence No. 2 in the Magistrate's Court. Then you said this: "Margaret Nona spoke to the accused. Accused asked her to go away saying that her wages would be given later"?

A. Yes.

Q. "I saw Margaret Nona going towards the Post Master's estate"?

A. Yes.

Q. Did you tell the Magistrate that Margaret Nona went in the
10 direction of the Post Master's estate?

A. Yes.

10 a.m.

Certified correct,

Sgd. R. S. PERERA,
Stenographer, Supreme Court.

10 to 11.45 a.m.

W. M. WILFRED:

Cross-examination continued:

I know a man called Corea. That was the name by which I knew
20 the owner's agent.

Q. In that portion of the estate which is under jungle, to your knowledge did that man Corea kill a wild boar by shooting?

A. Yes.

Q. You said in answer to me yesterday that before you left with Samathapala towards Muttusamy's house, you knew that Muttusamy was missing?

A. Yes.

Q. You in fact knew at that stage that Muttusamy was missing and that his wife and child were dead?

30 *Court:* He said: "The accused told me Muttusamy had bolted. He said all three had bolted". Then he said: "A few days later the accused said that Muttusamy had killed his wife"

Q. I will put it to you in another way. Before you left with Samathapala, you knew that Muttusamy was missing?

A. Yes.

No. 2

Q. I also put it to you, you also knew that Muttusamy's wife and child were dead?

A. What I knew was that they had bolted. I deny that I knew that morning that they were dead.

I cannot say how long the accused was out that night. At no time that night did the accused wake me up. That very night before dawn the accused did not tell me that Muttusamy's wife and child were dead and that Muttusamy had bolted. After that night the first time I went to my father's place was on the noon of the following day. My father did not come to the bungalow at any time on that day. Early that morning this accused did not send me to my father's place to fetch him. I have a brother called Edwin. My brother did not come to the estate at all that day. 10

Q. I want to put it to you specifically witness that all this story of your having seen cut up pieces of bodies is something you are imagining. In fact, you, your father Banda, your brother Edwin and Jayaratne, together with this accused, I want to say that specifically, on that day buried two corpses, those of Muttusamy's wife and child, on that land?

A. No. 20

At any time I did not see any grinding of bones being done. I did not see that pit being dug up again at any time. Jayaratne did not tell me at any time about any digging up of that pit. Between the date of my telling my father what I saw and the date I went to the police I did not hear anything more about what had happened on this estate from anybody else.

Q. As far as you were concerned, when you were taken to the police station, you knew nothing about that pit being dug up again and the bones inside it being disposed of?

A. No. 30

Q. You knew nothing about such an incident, and therefore is it your position that you never mentioned any such incident even as having been heard of by you to the police?

A. I knew nothing. I told the police that I saw dead bodies.

Jayaratne did not tell me that bodies were exhumed and burnt with the clothes. I did not tell the police that Jayaratne had told me such a thing. I could not have said such a thing because I had never heard of it before I went to the police.

Q. Did you tell the police this: "Jayaratne told me that the bodies were exhumed and burnt with the clothes"? 40

A. No. (marked D6).

Q. It was on the day after you made your statement to the police that you made your statement to the Magistrate on the estate? No. 2

A. Yes.

Q. Did you see any bags being stitched?

A. Yes.

Q. Marginal page 9, My Lord, fourth line onwards. You stated categorically that you never saw Jayaratne and this accused take out some bones from that pit?

A. Yes.

10 Q. Did you say as follows to the Magistrate on the very day after you made your statement to the police: "Jayaratne and the suspect dragged out some bones from the drain and took them to the drain higher up"?

A. No.

Q. "The bones were burnt and buried"?

A. No.

Q. "On the following day the bones were dug up and were carried in a gunny bag towards the 'ela' (stream)"?

A. I deny, My Lord, that I said so (marked D7).

20 Q. Did you at any time go towards Jayaratne kindling a fire in the direction of the ela?

A. No, I said he was chopping some firewood.

Q. Did you see near the ela a fire being kindled and the ashes being swept away?

A. No.

Q. Did you ever question Jayaratne about such a thing?

A. No.

30 Q. Marginal 9 and 10, My Lord. On the estate itself did you say this to the Magistrate: "I went towards the ela. I saw a fire had been kindled and the ashes swept away, I questioned Jayaratne who did not reply"?

A. I did not say so.

Crown Counsel: In answer to me, My Lord, he said he saw certain places where fires had been lit. It is not the same as being kindled.

No. 2
(2) W. M. Wil-
fred, Cross-
examination

Q. When did you first know you were to be taken to the police station?

A. I did not know I would be taken to the police station.

Q. It was only when you were taken to the police station that you first knew that you were being taken to the police station.

A. Yes.

Q. Before you left your village to go to the police station that day you were not told you were going to the police station?

A. No, My Lord.

Q. You went to the police station with your father?

10

A. Yes.

I know that gentleman by the name of Nanayakkara. He is the Manager of the Co-operative Stores at Porwagama. That is just opposite the house of the headman. At any time before I went to the police station I did not tell Nanayakkara anything about these matters. My father is friendly with Nanayakkara. My father too went with me to the police station and made a statement. I said earlier that the sister of the deceased woman—the sister's name is Lucy Nona—came to visit her on a certain date. Lucy Nona came there about a week after I peeped into Muttusamy's house. Lucy Nona had come in search of the deceased woman, Baby Nona. 20

No. 2
(2) W. M. Wil-
fred, Re-exami-
nation

Re-examined:

Q. When you went alone, after having cooked the meal, in search of the accused and came to that house, you said you saw the door padlocked?

A. Yes.

Q. You said that you had already seen the hole in the wall when you peeped through the door?

A. Yes.

Q. And that having peeped through the door you saw the opposite wall?

A. Yes.

Court: Q. You said that afternoon you went to the back of the house and peeped at the wall?

A. Yes.

Q. And you noticed the hole?

A. Yes.

Q. It was a hole which went through the thickness of that wall?

A. Yes.

Q. You said: "About the height of my knee"?

A. Yes.

Q. The-day-before-yesterday in answer to me you said that you pulled a piece of wadding out of that hole in the presence of the accused?

A. Yes.

10 Q. And that he snatched it away?

A. Yes.

That happened when Ebert Silva was in this house. It was the following day after the day that I peeped. In the morning when Samathapala came I had not been out of the bungalow. I told Samathapala that the accused had told me that Muttusamy and his family had bolted. I said on an earlier occasion I went with Samathapala. I found a drag mark and I got a funny smell. I went and looked into that house and found blood, and so on.

Q. At that stage did you suspect that the accused's story may not be true?

20 A. I felt frightened. I did not suspect that his story may not be true.

Q. You went further, you said you met the accused, you found him with soot marks on his body and he was sweating?

A. Yes.

Q. Did you believe his story that he had been out shooting, that he had been tracking a pig, or did you have any doubts about it?

A. I did not believe that he was tracking a pig.

Q. And you went back to the accused's bungalow?

A. Yes.

30 Q. The next time you saw the accused was some hours later when he was near that pit which he had apparently dug?

A. Yes.

On that occasion I saw two heads, bits of arms, legs, and so on. My suspicions were then strengthened and I went straight to my father's house. Thereafter I was afraid of this accused. I stayed on

No. 2
(2)
W. M. Wilfred,
Re-examination

the estate after that because I was not allowed by the accused to leave the estate. I saw Baby Nona wearing those bangles and things when she used to come to the estate for work.

To Court : I had seen her wearing them many times. The last time I saw Baby Nona she was not wearing them. That was the day on which she quarrelled with Muttusamy. After I left the estate I saw Jane Nona wearing these, when she went to occupy that new house. I met her outside the estate, that was some time before I made my statement to the police. I said in cross-examination that at no time did I question this accused about Muttusamy and his family because I had no occasion to question the accused. 10

Q. You admitted having told the Magistrate that Margaret Nona went in the direction of the Post Master's estate?

A. Yes.

Q. That is not in the direction of Muttusamy's house?

A. No.

Court :

Q. That day did you at any time see Margaret Nona go towards the Post Master's estate?

A. Yes. 20

Q. You said in answer to me that the accused went in the direction of Muttusamy's house?

A. Yes.

Q. And that Margaret Nona also went in that direction?

A. Yes.

Q. Is that true?

A. Yes.

Q. Did you see her go in the direction of the Post Master's estate later or at the same time?

A. Later. 30

Q. That night can you say how long the accused was out of the house or whether he came back to the house or went back while you were asleep?

A. I cannot say.

To Court : Once I went to sleep I slept right through till morning.

I saw some bags being stitched by the accused in his bungalow. It was some days after I peeped in. They were manure bags. I did not see anything put into those bags.

No. 2
(2)
W. M. Willred
Re-examined

I saw Jayaratne cutting timber. I also saw some places where some fires had been made. I did not see live fires but places where things had been burnt. I did not go and examine those places closely. It is not unusual for fires to be lit on an estate. When jungle is cleared the jungle is also set fire to.

To Foreman: There was jungle at the spot at which I saw dead bodies. I could have seen clearly those portions through that jungle. I could not say whether the trunk belonged to a male or to a female.

E. D. Z. GUNWARDENA, affirmed, 50 years of age, Licensed Surveyor and Leveller, Balapitiya.

No. 2
(4) E. D. Z.
Gunewardene,
Examination

Examined:

(Plan with key are handed to the Jury).

I was commissioned by the Magistrate, Balapitiya, to prepare a plan of this estate. I went along to this estate with the Sub-Inspector and made a survey. Various witnesses were present who pointed out spots which I have marked on the plan. Along with the plan I have prepared a key or reference. This key states the various points marked by me according to what each witness told me. There is an inset in this plan giving a plan of the house said to be occupied by Muttusamy the deceased. Taking the plan proper, the extent of this estate is 50 acres. It is hilly country. I have marked there two hills. I have also marked a valley in between. This is a rubber estate and about three-fourths of the estate is planted. I have marked on the plan towards the left from Watahena to the main road that Village Committee Road. From that I have drawn a brown line going across a paddy field. That brown line represents a footpath leading on to this estate. This footpath goes right through the estate to the opposite boundary where there are some fields; it more or less skirts the boundary of the estate and then goes off across the fields and continues.

Q. Does it join the Village Committee Road at some point further down?

A. Probably it is a village there.

On the plan itself I have marked.

"A" is the house said to have been occupied by Muttusamy, his wife and child, the scene of the alleged murder. It is on the northern side.

"B" is said to be the deep trench in which dismembered parts of bodies (bone) were said to have been buried, according to the witnesses, Wilfred and Banda.

No. 2
 (4) E. D. Z.
 Gunawardene,
 Examination

" C " is said to be the spot from where the bones were said to have been dug up.

" D " is the spot where the bones were said to have been burnt.

" E " is the spot from where the bones were said to have been recovered by the police.

" F " is said to be the spot where witness Jayaratne hid the bones at a hollow tree according to him.

" G " is the house occupied by Jayaratne and his mistress according to him.

" H " is said to be the house under construction.

10

To Court : I made this survey on 26th April, 1947.

" J " is said to be Baby Nona's house.

" K " is said to be the house of witness W. M. Banda. That house is opposite the estate and across the paddy fields.

" L " is the spot where the bones were crushed according to witness Jayaratne.

" M " is said to be the slab of rock, 10½" × 10" on which the bones were crushed.

" N " is said to be the spot where the bones are said to have been burnt and where the police had found a piece of a blue shorts, 20 buttons, and khaki material and a piece of pink cloth.

" O " is where the gunny bag containing the bones were said to have been hidden.

" P " is said to be the timber shed.

" Q " is said to be the bungalow site. The house occupied by L. H. Silva in October, 1946, according to witnesses.

" R " is said to be the house of one K. Erolis.

" S " is a ' kenda ' tree-stump which had two pellet marks embedded in it according to the police. I did not see the pellets.

" T " in which the belongings of the deceased were said to have 30 been dumped according to witness Jayaratne.

" U " is the place at which the dog of the accused was said to have been eating some flesh according to witnesses Wilfred and Samathapala.

" V " is where the wicker box was hidden, as pointed out by witness Gunawathie.

" W " is the spot where the wicker box was burnt according to witnesses.

" X " is the spot where Margaret Nona was turned away according to witnesses.

40

" Y " is the spot at which witness Jane was weeding at the time Margaret was turned away according to witnesses.

I have measured certain distances on this.

No. 2
(4) E. D. Z.
Gunawardene,
Examination

- A to B : 77 yards.
 A to C : 75 yards.
 A to D : 73 yards.
 A to E : 73 yards.
 A to F : 68 yards.
 A to G : 132 yards.
 A to H : 305 yards.
 A to J : 318 yards.
 10 A to K : 484 yards.
 A to L : 165 yards.
 A to M : 176 yards.
 A to N : 352 yards.
 A to O : 362 yards.
 A to P : 352 yards.
 A to Q : 418 yards.
 A to S : 5 yards.
 A to T : 4 yards.
 A to U : 4 yards.
 20 A to V : 20 yards.
 A to W : 25 yards.
 A to X : 341 yards.
 A to Y : 286 yards.

- The inset picture is the enlargement of the house I have marked as "A" on the big plan. I have placed it in relation to the cardinal points on the big sketch. The footpath runs on the southern side of it. The entrance is also on the southern side by a verandah and there is a door leading into really one big room. There is a half-wall dividing that room into two, the smaller portion of which is used as a kitchen.
- 30 I have marked in that kitchen portion the spot where the heap of ashes is said to have been seen by witness Wilfred. I have marked a window on the western wall and a window on the eastern wall. There is no window on the closed wall. I measured the size of that room and its walls, 7 cubits or $10\frac{1}{2}$ feet. The long side of the house, east to west, is 12 feet. The other side is $10\frac{1}{2}$ feet. Then the verandah is also 12 feet long, three feet broad. The height of that half-wall partition near the room was not measured by me. With regard to the door I have marked in that the doorway, originally the door was fixed to the western door-post and later it was changed and fixed to the eastern
- 40 door-post. I have also marked on that a fireplace just by the wall. I

No. 2
(4)
E. D. Z. Guna-
wardene,
Examination.

have drawn this to a scale of eight feet to an inch, and the other also is to a scale, 200 feet to an inch. I testify to the accuracy of the plans made by me. I produce seven copies.

To Court: I am a qualified Surveyor. I am a private Surveyor, not a Government Surveyor.

I have marked that group starting from B, C, D, F. Those spots are on a steep hill. Below the level of the house there is a slope. The trench in which the dismembered parts of bodies, and so on, were said to have been buried, at the time I saw it was three feet deep. It was the usual estate drain. The land towards the west of that point 10 sloped upwards, towards the hill. From this house marked "A" it slopes down in that direction. The land indicating the hill according to the sketch stopped short of the spots marked B, C, D, F. Actually the hill continued there also.

Cross-examina-
tion.

Cross-examined:

The distances I have given from the point "A" to the various other points are direct distances, not as if one would walk along the ground.

Q. In fact, this portion you have marked "bungalow site" is itself at the crown of a hill? 20

A. It is on a side.

Q. Yes, more or less the crown of a hill, and what you mean by 'bungalow site' is this: There had been a site cleared there in order to build a bungalow?

A. Yes.

Q. But it had not in fact been built?

A. That is so.

Q. The building that functions as the bungalow is the building "Q"? That is the main structure present on the estate?

A. Yes. 30

Q. You have marked two hills?

A. Yes.

Q. There is a pretty sharp declivity between these two hills?

A. Yes.

Q. Is it correct that even at the time you went there, the portion of the land to the east of the bungalow "A" was in jungle?

A. It was planted, but mostly under jungle.

Q. There had been a plantation of young rubber there which had apparently been abandoned and the whole area had again come under jungle?

No. 2
(4)
E. D. Z. Gum-
wardene,
Cross-examina-
tion.

A. Yes.

Q. Low jungle?

A. Yes.

Q. What year did you say you went to the spot?

A. On 26th April, 1947.

Re-examined: The rubber trees in that abandoned plantation were about three years old. Some portions were weeded and the rubber was growing satisfactorily, whilst other portions were not weeded.

Re-examination.

R. JAYARATNA MENDIS, affirmed, 23 years of age, tapper, residing at Talgaswela.

No. 2
(4) R. J. Men-
dis,
Examination

Examined: I am related to this accused. He is my cousin (my aunt's son). I am also related to the owner of the estate, Piyadasa de Silva. I went to work on his estate in the year 1946. I cannot remember the month, it may have been October, 1946.

To Court: This month is September.

When I came to the estate I lived in the accused's bungalow. In October, 1946, I lived in this estate. I had not done any work on the estate before I came to live there. I was living in the accused, the conductor's bungalow. The accused is this prisoner.

A man called Muttusamy was working on this estate, at the time I came. He had a mistress called Baby Nona and a child called Hemalatha. They lived with Muttusamy in a hut on the eastern side of the estate. At that time I was friendly with the accused. I know the boy called Wilfred. He had a sister called Jane Nona. She is a witness in this case. She is my mistress now. At one time the accused was on terms of intimacy with Jane Nona. I could not say whether that was so at the time I came to the estate. I am aware that Mutusamy and his family disappeared in October, 1946.

Q. To your knowledge was the accused on terms of intimacy with Jane Nona before or after the disappearance of Muttusamy and his family or was it both before and after?

A. Before their disappearance he was talking to Jane Nona. They were friendly. After the disappearance of Muttusamy and his family they were friendly for a short period. My impression is that Jane Nona came and lived in the bungalow of the accused for a day or two. After that Jane Nona went home to her father's house.

Now I am keeping Jane Nona. The accused gave over Jane Nona to me on a written document given by me. (Shown P18).

No. 2.
(4) R. J. Mendis. Examination.

To Court: The handwriting in the body of P18 is that of the accused. He wrote it. He wrote it in my presence. I can sign. I signed and Jane Nona also signed it on a six cents stamp. I did not put the date on it.

Witness reads the document: It says here "17th December, 1946". I can read Sinhalese. It reads as follows: "I, Juanpura Jayaratne had joined in matrimony with M. W. Jane Nona and promise not to desert her. If I send her astray I promise to give Rs. 5,000 of Government Currency". The witnesses are L. Ebert and K. Handy. This document was signed by me about six weeks or three months after the disappearance of Muttusamy and his family. 10

To Court: This document was made in the estate itself, in the accused's bungalow, in the presence of one Handy, the accused, myself, Jane Nona. Banda was not there. The accused drafted the whole of this document that day. After Jane Nona and I signed, the accused and Handy signed as witnesses.

Q. The cross mark was not there on that date? Did Jane sign with a cross mark?

A. No, thump impression.

Q. Banda did not put a cross mark in your presence. 20

A. No.

Q. Did anybody else put a cross mark near Banda's name?

A. The accused wrote Banda's name and put a cross mark.

By this document I undertook to take Jane Nona as my wife. If I deserted her, the accused said he would take action against me according to the law.

Q. To recover the sum of Rs. 5,000?

A. Yes.

Q. Why did the accused take so much trouble to draw up that?

A. I cannot say that. 30

Q. Was Jane his mistress at that time?

A. I cannot say, as I did not see anything.

The accused had a house built for Jane Nona and me to live in. Pending the construction of the house the accused allowed us to live in the house that had been occupied by Muttusamy. I do not know why he did all this. Muttusamy and his wife worked on this estate. They were daily workers, and they used to sign the check-roll. One night in October they disappeared. On the night which I called the night of their disappearance I was living in the accused's bungalow.

11.45 a.m.

Certified correct.
Sgd. N. W. Lewis,
Stenographer, Supreme Court. 40

29th September, 1948. 11.45 a.m.

R. JAYARATNA MENDIS.

No. 2.
 (4) R. J. Mendis.
 Examination.

Examination continued: The accused that night went out of the bungalow. While going he took with him a gun, a torch and cartridges. That is the estate gun. (Shown gun P32). It was a gun like this. I remained in the bungalow that night. The accused went in the direction of Muttusamy's hut. He went towards the east.

To Court: The dog used to follow him whenever he goes out.

10 That night I heard the sound of the report of a gun. I heard the report of the gun about 5 minutes after the accused left the bungalow. There was enough time within that interval for the accused to go from his bungalow to Muttusamy's hut. I did not pay attention to that gun shot, but I went to sleep. I woke up on hearing the report of the gun. I got up in the morning. When I got up the accused had not come back. Before this too the accused had gone out hunting. On such occasions the accused does not stay out the whole night. I got up and had my tea. The accused came there when I was having my tea. He brought with him the gun and the torch. His body was wet at the time. His body was wet with water. It appeared to me as if he has had a bath. He was wearing a white checked sarong.
 20 It was also wet. He had his tea, but did not say anything. I asked him at what animal he had shot the previous night. He said he did not shoot at any animal. He said, "Vedi thibbe ne" (did not shoot). The morning I did not do anything. I stayed in the bungalow. I first came to know that Muttusamy and his family had disappeared on that morning when the accused brought the gun. After tea the accused went in the direction of Muttusamy's hut. At about 8 or 9 a.m. after the accused had his tea he said that Muttusamy and his family had disappeared.

To Court: After the accused had his tea he did not speak to me.
 30 I spoke to him. I asked him, "Where is the animal that you shot last night"? Then he said that he did not shoot. Then after tea he went again towards that side.

The accused came and told me that Muttusamy and his family had disappeared. He came from the back of that house at about 9 a.m. The accused had his tea, went in the direction of Muttusamy's house and then came back and said that Muttusamy and his family had disappeared. It was about 9 a.m. then. He said, "Muttusamila panala gihilla" (Muttusamy and others had bolted). By that I understood that Muttusamy and his family had bolted. At that time my
 40 suspicions were not aroused in any way. After that nothing happened to arouse my suspicions. I was on this estate. Some days after I saw the accused disposing something I saw a fire in the jungle. I do not know what the accused was burning. I saw the accused burning something. The accused asked me to cut some firewood. A gunny bag was brought from the jungle by the accused. When it was opened there was a pair of shorts. I saw it. It was a blue pair of shorts.

No. 2.
 (4) R. J. Men-
 dis. Examina-
 tion.

I had not known anybody who had worn a blue pair of shorts. Muttusamy was wearing a blue pair of shorts similar to the one which was in the gunng bag. I saw a waist-coat in that bag which was worn by Muttusamy. I identified it as Muttusamy's waist-coat. I also saw a rain-coat inside that bag which was also worn by Muttusamy. That belongs to Muttusamy. I had seen him wearing that. Inside that bag there were some bones. There was no flesh. There was a smell emanating from those bones. They appeared to be pieces of bones. They appeared to have been burnt. That bag and its contents were burnt by the accused. They were burnt on top of a hill in the very same land. He used firewood to burn them. They were the firewood that I chopped. When I saw this bag with the pair of shorts, waist-coat, rain-coat and bits of bones my suspicions were aroused. I questioned the accused and he said, "Muttusamy, ganie dharuwa marala panala gihilla"—(Muttusamy had bolted after killing his wife and child). I believed it. He told me not to tell about this to anyone. This incident about the finding of the sack was about three months after the disappearance of Muttusamy and his family. That was about the time when I took Jane Nona as my mistress. I assisted the accused to dispose of those bones. I got firewood and I carried those bones here and there. I carried them to various spots. The small bits of bones that remained were grounded on a stone. That was done by the accused. That was at a spot lower down where the bones were burnt. There is an 'ela' there. Some pieces of bones were flung into that ela. I first made a statement to the Police when they came to the land. Till the Police came to the land I was living on the land. I first came to know that Muttusamy had killed his wife and child and bolted on the day those bones were being burnt. I was on the estate for 3 months without knowing any of these things. The owner of that estate is my uncle. When the accused said that Muttusamy had bolted away having killed his wife and child I did not mention that fact to the owner. Shortly before I made the statement to the Police I saw a cane box containing clothes. That was found in the jungle. At that time I was clearing the jungle. Handy was there, Gunawathie, Jane Nona and Gunawathie's sister were the people who were there. It was Gunawathie who spotted the cane box. When that was found I did not do anything. I informed the accused about it. There were some clothes inside that cane box. On top of it there was a chintsz cloth. It was the cloth of a woman. There were no flowers on it. There was a check chintsz cloth. There were other pieces of cloth which I did not notice very well. They appeared to be clothes that had been put there recently. That box was burnt by the accused. I was present then. It was burnt with the clothes. Handy was also present then. The accused was there and there were some women whom the accused sent down at the time of the burning. Handy and his wife were living with me and Jane Nona in Muttusamy's house. I had not seen my wife wearing jewellery at any time. I had seen Baby Nona wearing jewellery. She had a pair of ear-studs;

a necklace and a pair of silver bangles. I had not seen my wife wearing any of these articles. I had not seen my wife wearing a chintsz cloth which belonged to Baby Nona. When the Police came for inquiry I pointed out the various places to the Inspector. I made a statement to the Police. I pointed out a pit in the trench. It was a deep pit. The accused unearthed something from that pit and burnt them. That was about 3 months after the disposal of Muttusamy. That was about the time that some things were found in a bag. Some things were taken out from that pit. That pit is on the eastern side of Muttusamy's house down the slope. Besides the pit I also pointed out to the Police the bones. They were bones which had been hidden. There was an ant-hill mound just above the spot where this burning was done and I hid those bones there. The accused said they were human bones and I hid them there. I hid them there through fear. It was on my own that I hid them there. If anybody questioned me I wanted to show those things. That is why I hid them instead of allowing them to be destroyed. When I hid those bones I suspected something because it was mentioned that they were human bones. I accepted the story of the accused that they were the bones of Baby Nona and her child. My statement to the Police was made on the estate itself. At that time I was still living on the estate. I shifted off from the estate later. That was after I made my statement to the Police. I took Jane Nona as my mistress three months after the disposal of Muttusamy. That was about January, 1947. Jane Nona's father was not pleased with me for having taken Jane Nona. He was not a party to this document though his name appears in that document. After I left the estate I was living in a house. That house does not belong to Banda. Hemalatha was about five or six years at the time of her death. She could speak. Her milk teeth had not dropped.

30 Court adjourns for lunch.

Certified correct.
Sgd. R. S. Perera,
Stenographer, Supreme Court.

Resumed after lunch. 1—2.15 p.m.

R. JAYARATNA MENDIS, re-affirmed.

To Court: Muttusamy does not wear his hair in a 'konde', his is a short crop similar to mine. I remember he had grey hair on his head. He appeared to be about 45 years of age. He was a tall, well-built man.

40 Q. Had you at any time by day or night, seen him wearing a sarong?

A. No, My Lord.

Q. Whether by day or night when you saw him he had on that pair of blue shorts and a 'dang' colour waist-coat?

A. Yes.

Cross-examination :

Q. Is it your position that the only clothes Muttusamy owned in this world consisted of one pair of blue shorts and one dang coloured waist-coat?

A. He had sarongs also.

I normally saw Mutusamy when he attended work.

Q. You say his dress consisted of this prominent and easily noticeable combination of colours?

A. Yes.

It is a common thing for a labourer on an estate to have a bath 10 at the end of the day's work and to change one's soiled linen.

Court :

Q. Did you at any time see Muttusamy wearing a sarong?

A. Yes.

Q. To me you said " No " a little while ago?

This accused is called " Liyana Mahathaya " (or writer mahathaya). It was a common term applied to conductors and such other persons who did any writing work, such as keeping check-rolls, and so on. This accused kept the check-rolls among other things on the estate. Liyana Mahathaya is a man of some position in the area 20 being a conductor of a 50-acre estate, and is much above the ordinary run of labourer in the village.

Q. His ways and habits are also a little different from those who have grown up in a village such as Porwagama?

A. Yes.

He has work to do even after the day's work on the estate is over. He would have to check up on the tools being returned safely to the Tool Shed and attend to all such matters that would require his supervision at the end of the day. He too like any of us would like to take a bath in the evening after his day's work. In his case, he 30 would not be able to take his meals at about the same time as would the other labourers, but a little later.

I am not a man of Porwagama itself. I come from Ambalangoda, a place called Bogahawatta, which is outside Ambalangoda town. I am 23 years of age.

Q. When you took Jane Nona to live with you, you meant to take her as your wife?

A. Arrangements had been made by Liyana Mahathaya.

Q. It was Liyana Mahathaya who did the Kapurala's business, but I want to get at your intention. You were not taking Jane Nona as some kind of a temporary mistress but you meant to take her as a man takes a woman to wife apart from the legal formality?

No. 2.
(4) R. J. Mea-
dis. Cross-Ex-
amination.

A. Yes.

Q. And in fact subsequently you gave notice of marriage with this woman?

A. Yes.

Q. That was also done while you were on the estate?

10

A. Yes.

Q. In fact, I think you gave notice of marriage a couple of weeks or so after you took her to live with you?

A. Yes.

Q. You know it is quite the usual thing when a labourer and his family went to live on an estate to provide them with a dwelling place, say, a mud hut?

A. Yes.

20 At the time I married, Muttusamy's hut was vacant so my wife and I were put in that hut. While I was living in that hut, on the opposite slope of a hill there, another little hut was put up, and after it was built Jane Nona and I were allotted that hut. While I was living in Muttusamy's hut, Handy and his family also lived with me. It was after I married Jane Nona that this incident of the burning of bones of which I spoke of happened. I was occupying the new hut when this incident took place. Having occupied Muttusamy's house it was about three weeks later that I went into occupation of the new hut.

30 (P18 is handed to witness). I signed this document on the day that I took Jane Nona as my wife. The date here, viz., '17th December, 1946' is correct. I am aware that in villages it is quite a common occurrence for a man to marry a woman on a deed. I was willing to marry Jane. I said earlier that Jane Nona at one time spent a day or two at the bungalow of this accused. I was myself living in the bungalow at that time. That was about the time this document P18 was signed.

40 Over my marriage with Jane Nona, her father Banda got displeased with her. I cannot say definitely it was because Banda considered that as a labourer I was not good enough for his daughter;

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 amination.

it may be that. The reason I can give for this displeasure is that I am a man of the "Salagama" caste; we were of different castes. I admit that this accused, as Conductor of a 50-acre estate at Porwagama, would have been a good catch for a young working woman over there. Before I married Jane Nona, Banda used to come frequently to the estate. Similarly, up to that time, Jane Nona used to come for work to the estate from her home. Wilfred used to visit his home people frequently. There is also a brother of Jane Nona, called Edwin. He too used to come to work on the estate. I too once in a rare way paid a visit to my own house. The distance from Porwagama to Ambalangoda is about 15 miles. There are buses running up to the turn-off of that village committee road to Porwagama. Up to that turn-off the distance from the estate would be four-and-a-half to five miles. If I got out on the other side of the estate just across the field I would come to a road along which I could go to Galle. Similarly, if one were to go from Porwagama into the country for about half a mile or so, one would again come to a road by which one could get to Bentota. 10

After I married Jane Nona, her father Banda visited the estate once or twice. When Jane Nona came to live with me she did not bring with her any property whatsoever from her father's house. She brought with her only the clothes she was wearing. That is all she brought with her. After I married her and before I left the estate I did not purchase any jewellery for her as I could not afford it. Neither did I buy her any fresh clothing. As most women did she had one camboy inside and the other was worn over and similarly a jacket inside and another over it, that was all she had. At no time since I came to know Jane Nona did I see her wearing any kind of ornaments. 20

I said earlier that I came as a labourer on this estate in the month of October. During the period October/December, I used to see Jane Nona almost daily as a member of the working party on the estate. During that period I saw Jane Nona wearing no ornaments whatsoever. 30

Q. If she had not led a proper life before would you have taken her as your wife? For instance, if you knew there was any intimacy between her and another man? If that had been so, no man would have had her?

A. I would have taken her even if I knew she had anything to do with another man. 40

I mentioned about a cane box which I saw in the jungle which was being cleared one day. I remember the day, it was the 1st of February, 1947, three days before the Magistrate came to the land. I told His Lordship that it was a fresh, good cane box. I had worked in this portion which was being cleared previous to that day too.

Q. Can you remember how many days or weeks before the clearing of that area had been started? Shall we say 4, 5, 6, 7 days before?

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A. Yes.

Q. This was a portion of land which had jungle such as 'kekila' and other undergrowths?

A. Yes, there were 'kekila' trees also.

Q. In fact you were clearing it by cutting and uprooting trees that had been felled?

10 A. Yes.

Q. And, as is usual, before you started on that chopping, first the undergrowth was set fire to?

A. First of all we had to uproot the trees.

Q. When it comes to cutting, that is the final part.

Court :

Q. What is the first thing you do when you want to clear jungle?

A. We cut the jungle.

Q. The first step towards clearing land of jungle for the purpose of a plantation is to set fire to it on a good, warm, sunny day, is it not?

20

A. No.

Q. Very well, I shall come back to it later. I will now take you back to that incident about the cane box. Taking your mind back to that period of time could you say when this jungle was set fire to?

A. The jungle had been set fire to earlier.

Court :

Q. What do you mean by earlier?

A. Even after the fire some of the roots had grown. About three months earlier.

30

I had not seen that cane box at any time before the 1st of February. That was the first time I had seen it in my life. I had not visited Muttusamy's house when he was alive. This cane box was a round cane box. The cane of that box was similar to this (points

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to a cane tray on the bar table). But the box itself was not of that shape (the tray pointed out by witness was a rectangular basket). It was round, it was of the same shape as the basket used by snake-charmers but larger.

I stated that some time after dinner on that material night this accused went out of the bungalow on to the estate with his gun. A few minutes after that I heard the sound of a shot. When the accused set out from the house I was awake.

Q. I suppose you must have been chatting together before he set out? 10

A. Two or three of us were chatting.

Q. Wilfred, the accused and yourself?

A. Yes.

Q. I suppose after dinner you must have done the usual thing, indulged in a chat discussing your own affairs?

A. No, we did not chat about any such things.

Q. All right then, when you heard the shot were you awake?

A. Yes.

I had not gone to sleep, I was seated on the bed. Wilfred was lying on his bed. He too was awake. When I say 'bed' I mean a loft. 20

Q. Did you say to His Lordship that the sound of the shot woke you?

Court: This is how my note reads:

"I heard the gunshot about five minutes after the accused left the bungalow. The accused could have reached Muttusamy's house by that time. I heard the gunshot. I went to sleep. I woke up hearing a gunshot. I went to sleep again".

I paid no attention to that gunshot because in these areas it is quite common to hear gunshots at night. After I heard that gunshot I did not sit up very long. After I heard the shot, a short time later I fell asleep. 30

Q. I put it to you that the next time you awoke was when you were awakened by this accused?

A. The accused did not wake me.

Q. Your position is that the next morning was the first time you saw the accused after he had left with his gun?

A. Yes.

Q. At that time also Wilfred was there?

A. Yes.

Q. Did Wilfred talk with the accused?

A. Yes.

Q. Did you talk with the accused?

A. Yes.

Q. Was it that the three of you had a sort of a mutual talk having your tea?

A. Yes.

10 Q. Now you said after tea the accused went out again?

A. Yes.

Q. How long did the accused stay at the bungalow before he went out again?

A. Not more than ten minutes.

20 The accused had a cup of tea and having changed his clothes he went away. He put on another shirt and sarong. He came home, he stayed in the house for a time necessary to have a cup of tea and changed his sarong and shirt. He put on a reddish colour check sarong and a blue shirt. At this time Wilfred was in the bungalow. He too saw what I saw. The three of us were together when we talked to each other. I heard that Wilfred said and Wilfred heard what I said, Wilfred spoke to the accused and asked him: "Where is the animal that you shot last night"? The accused then replied: "I did not shoot last night". I do not know what Wilfred said to that, although I was close by, I had an injury on my foot and I was worried with that. It was in my presence that Wilfred asked the accused what he had shot last night.

Q. So that was an unnecessary question for you to ask?

A. Yes.

30 Q. So, did you ask the accused anything?

A. I also asked the accused: "At what did you shoot last night"?

Q. Why did you repeat the same question?

A. We just asked him what the animal he shot was.

After that the accused went away towards Muttusamy's house. He took about 2½ hours to return. He returned at about 8 or 8.30 a.m.

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 amination.
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I stayed in the house in the meantime. Wilfred was also with me in the house in the meantime. When the accused came back a second time that morning I am unable to say how long he stayed in the bungalow on that occasion.

Q. Unfortunately for you, you cannot get away like that. You said before the luncheon interval that you were in the bungalow that whole day, that you did not go to work that day?

A. Yes.

Q. That is correct, is it not?

A. Yes.

10

Q. Therefore, please tell the gentlemen of the jury. You say the accused came back at 9 or 3.30?

A. Yes.

Q. Now, how long did he stay at the bungalow on that occasion?

A. He was there for about five or ten minutes, and he said that he was going towards the working party side.

Wilfred was not at home at that time, as he had gone to tether cattle.

Q. Tell us, how long before the accused came the second time had Wilfred gone out to tether cattle?

20

A. A short time after the accused left the place after tea, Wilfred went off to tether cattle.

Wilfred told me that he was going to tether cattle. When the accused returned Wilfred had not returned. The accused returned at 8 or 8.30 and left in ten minutes time to the place where the working party was.

Q. Still Wilfred was tethering cattle?

A. That is what he told me.

Q. How many hours after the accused went away to where the working party was did Wilfred return to the bungalow?

30

A. He came at about 10 or 10.30 a.m. I was fast asleep at the time.

Q. In the village a person who sleeps in the forenoon, that is after tea and before the midday meal is considered a ' kalakanniya ' (waster of time, an odious term used in villages on persons who spend their time sleeping in between morning tea and the midday meal)?

A. I slept because of the injury on my foot.

Q. When he came did he wake you.

A. Yes.

Q. He told you: ' I have finished with tethering the cattle ' and he woke you up?

A. He merely asked me to get up.

Q. How long after the accused left for the working party that morning did you again get into bed?

A. At about 9.30 a.m. I laid myself on the ' massa '.

Q. Having got on to the ' massa ' at about 9.30 a.m. having already had a full night's sleep, I take it you found it difficult to go off to sleep again?

10 A. I did not immediately fall asleep owing to the pain in my leg.

Q. I suppose you tossed on the ' massa ' for about half an hour before you went off to sleep?

A. Yes.

Q. Now, witness, where are the cattle kept which you understood Wilfred was going to tether?

A. The cattle belonged to the estate.

Q. Are they all over the estate?

20 A. Wilfred said the cattle are on a side of Muttusamy's house.

Court :

Q. Wilfred told you that?

A. Yes, he said the cattle were there.

Q. Just cast your mind back a little please. Did Wilfred go that morning to tether cattle as you say after the accused left the bungalow or at the same time as the accused left the bungalow?

A. After the accused left the bungalow, Wilfred went saying he was going to tether cattle. Almost at the same time Wilfred left the estate saying he was going to tether cattle.

30 Q. Wilfred then came back after tethering cattle in the direction where Muttusamy's house was and woke you up?

A. Yes.

Q. Did Wilfred then say anything to you?

A. He asked me to get up. He said nothing else to me.

2.15 p.m.

Certified correct.
Sgd. N. W. LEWIS,
Stenographer Supreme Court.

No. 2
 (4) R. J. Mendis. Cross-Examination.

29th September, 1948. 2.15 p.m.

R. JAYARATNA MENDIS.

Cross-examination continued: Wilfred went to his cooking. Wilfred was doing his cooking and I was seated on the 'messa'. The whole of that day I was almost always on the 'messa'. When I was on the 'messa' and when Wilfred was doing the cooking nobody came there. The accused went away saying that he was going to the working party. I do not know at what time he returned to the bungalow. I was asleep on the 'messa'. I knew that the accused came to the bungalow on that day. I was up when the accused came back. To my knowledge the accused came home at about 12 or 12.30 noon. I had my midday meal on that day. I cannot say at about what time. My impression is that I must have had my midday meal before the accused returned. I did not eat in my sleep. I said that I was up when the accused came. When I woke up the meal had been prepared by Wilfred and he was there. Wilfred served the rice and brought and gave it to me. I cannot say whether it was before or after the accused came there that I had my midday meal. I must have had my meal about the time he came there. The accused had his meal. I cannot remember whether he had his meal. Usually the accused used to come home at about 12 or 12.30 from his working party. At that usual time he came home. He was there in the bungalow for about 4 or 5 minutes. After that he went again. Wilfred was ready with his plate of rice, but the accused went away. Wilfred told the accused that his meal was ready. I did not hear the accused say anything. He stepped out again. He went in the same direction. I saw him going towards Muttusamy's house. People used to work in different places. He went towards Muttusamy's house saying that the working parties were at that side. I believed him at that time, because people had come for work that morning. They had gone to the places where they should work. At that time there was weeding done on the estate. I cannot say whether more than 2 or 3 people worked on that day.

To Court: On that day I saw 2 women working on the estate.

They returned after work from the side of Muttusamy's house. I saw them returning after work with mamoties. On that day they returned at about 12 noon. After that they went back to work at about 1 p.m. They returned at about 4.30 p.m. The women who worked were Jane Nona and another village woman whose name I cannot remember. No men worked on that day. Those were the only labourers whom I saw on that day working on the estate although I was in the bungalow the whole day. I saw them returning after work. Work commences early in the morning. If there is any tapping done, they came at about 5 or 5.30 a.m.

Q. Every tapper knows whether there was rain and whether it was possible to tap?

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(4) R. J. Men-
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—Contd.

A. There was rain on that day. It had rained heavily and it was not possible to tap. No tapping was done on that day as a result of the rain on the previous night. The tools of that estate are kept in that bungalow.

I know where they are kept. They are kept in a room. The accused went away from the bungalow sometime during midday after he returned from the working party. After that I saw the accused at night, at about 6.30 or 7 p.m. I was seated on my 'messa' on the verandah. At the time the accused came he was wearing a sarong and shirt. I cannot remember whether he was wearing the same blue short and the red checked sarong. I was worried with the pain in my leg. I was not thinking about all that at that time. When the accused came Wilfred was there. Besides Wilfred no one else was there. At this time Jane Nona used to come from her father's house. I said that Jane Nona came to leave the tools at the bungalow at midday. She came in the morning to the bungalow and took away the tools. When Jane Nona comes from her father's house to the bungalow she has to walk over the compound of Muttusamy's hut. When Jane Nona came that morning she did not say anything. I cannot remember the name of the other woman labourer who worked on the estate on that day. I cannot remember whether it was Margaret Nona. I cannot remember the name. I know Margaret Nona. At that time there were 7 or 8 women who were doing weeding. I have no idea from where the other women came. I used to tap rubber. When I was there, there were only 4 women labourers. They were Jane Nona, Gunawathie, Leelawathie and Mary Nona. I did not see who it was that came with Jane Nona on that day to work. Out of the 2 women who came I did not see one woman. I saw that other woman handing the mamoty to Jane Nona and going away. The tools were taken from the tool room. Till the accused came they were kept outside. The labourers who come to work on this area also come from early in the morning. They come there by about 7 a.m. The tools are kept outside the store-room and when the accused returns they are kept inside.

Q. That morning the 2 women who went for the weeding party must have come and taken their tools away?

A. Yes. I saw them come to work. They took their tools and went away. Only the mamoties are kept outside the room.

Everything else was locked inside the store-room. In 1946 mamoties were expensive and both difficult to obtain. That night at about 6.30 or 7 p.m. the accused came back home. He was there. I saw him there. We usually call this the wadia. If there are 2 people in it one ought to see each other. That night I cannot say whether the accused had his dinner. That night I did not take my dinner. I had

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 (4) R. J. Mendis. Cross-examination.
 —Contd.

fever as a result of the injury on my foot. A cactus thorn had pierced the sole of my foot and came through the flesh here after 13 years. (Shows).

To Court: Owing to an operation I was in pain on that day. I had been operated before I started working on this estate about a month prior to my coming to the estate. I have got marks of that injury as yet. (Shows). They are 2 old scars. (Witness goes near the jury box and shows the scar to the jury).

I was in hospital for 17 days for that operation. I was not fully cured when I left the hospital. Although I left the hospital I used to get my wound dressed. It was not possible for me to do any manual labour. During that time I was in pain. I was feeling feverish the whole day. 10

I was despatched from hospital about 2 days before coming to the estate. I was at the Elpitiya Hospital. Since I came to the estate I did not do any work. I worked only for about 2 or 3 days. I cannot say whether the accused stayed for dinner that night. On the following day I did not go for work. I continued to stay in the hut. On that day I saw people coming for work.

Q. By next morning everybody in the estate knew that Muttusamy and Baby Nona had disappeared? 20

A. I cannot say that.

At that time the only resident labourers in the estate were Muttusamy and his family. I saw them go to work. I did not see them after that. Muttusamy and Baby Nona were people who used to work on this estate. I saw them going to work. I did not see them after that. Muttusamy and Baby Nona were people who regularly work on the estate. They used to work with the rest of the party. At that time the working party was close to the place where Muttusamy's hut was. When Muttusamy and Baby Nona go to work the child is brought to the bungalow and kept there. I remember the night the accused went out with a gun and a shot was fired. On the following morning he came back with wet clothes. That morning the child was not brought to the bungalow. Neither did Baby Nona nor Muttusamy come to work. On that day at no time did I go up to Muttusamy's bungalow. I did not see Banda, Jane Nona's father. I did see the witness Wilfred having his midday meal. The accused and I took the meal almost about the same time. After that Wilfred was not in the house. He used to go here and there saying that he was going to tether 40 cattle. I know a man called Samathapala.

Court adjourns for the day.

Certified correct.
 Sgd. R. S. PERERA,
 Stenographer, Supreme Court.

Thursday, 30th September, 1948. 9.30 a.m. to 12 noon.

R. JAYARATNA MENDIS, re-affirmed.

No. 2
(1) R. J. Mendis, Cross-examination.
—Contd.

To Court : I said yesterday that the night of this incident, just before the accused set out, Wilfred, he and I were chatting. All three of us did not have dinner together, but we had our dinner almost at the same time. The accused had his dinner first, then Wilfred and I sat. After dinner the three of us chatted for a short while. When the accused took the gun he did not say anything.

Cross-examination continued :

10 Q. I want to question you now about the second main incident you spoke about, that is to say about the business of making up some sort of funeral pyre and burning up the bones afterwards. First of all, the pyre that was built up was built up with timber from the timber shed?

A. No.

I did not draw any timber from that timber shed. To my knowledge nobody drew any timber from that timber shed. "Milla" wood was used. This burning of bones was done in two places. The first place where the burning of the wood was done is near the original 20 grave. That grave itself was re-excavated. The wood obtained for the fire was 'milla' wood obtained from various places. They were trees that had been felled before with trunks about that size (demonstrates). At the time I went and saw the fire there. There was plenty of smoke.

I know Jane Nona's brother, Arnolis *alias* Edwin. He went there with me to cut the wood.

I do not know whether by the side of Muttusamy's hut there was a hollow.

30 Q. Even after the incident do you mean to say you did not notice that hollow just behind Muttusamy's hut?

A. Yes, there was a pit there by the earth being removed. I do not know whether that was a pit that had been dug earlier. I do not know whether that was the pit from which the clay and mud had been dug for building that hut originally.

Q. The point is this. Did Arnolis *alias* Edwin in the presence of yourself and the accused dig up the earth in that pit at any time?

A. Yes.

Q. That was at the time when these bones were burnt?

40 A. During that period. I did not see what was in the pit because I had gone at that time to cut down trees. I am sorry, I mean I had gone out tapping. When I returned after tapping I found the hole dug.

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 (4) R. J. Men-
 dis. Cross-ex-
 amination.
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At the time all was over, I do not know anything. I assisted in the work in that pit in that there was earth at the mouth of the pit and I was asked to spread it out underneath the eaves of the hut and I heaped up the earth along the back wall, behind the back wall. I affirm I do not know what was taken out of that pit. I saw strewn about near that pit pieces of gunny, pieces of mat, and broken pieces of glass. I said there was another fire near the timber shed.

Q. Now, that is in the portion where there was a place cleared for making a bungalow, the bungalow site?

A. Higher up.

10

Q. On that occasion, during that fire, who else helped besides yourself?

A. Apart from the accused and I nobody else helped.

Q. Yesterday you sought to make out that on the day after Muttusamy and his family disappeared you spent the whole day more or less on a 'messa'?

A. I was on the 'messa' only during the morning hours.

After noon I came to the estate. I came to the bungalow in the estate having gone to fetch some medicine which I left in a certain house. When I said yesterday I was lying on the 'messa' waking up and sleeping the whole day on account of my injured foot I was suffering from a pain in my stomach. I cannot quite remember what I said yesterday on that account.

20

Q. On that day you had a pain in the foot which sent you to sleep and yesterday you had a pain in the stomach which caused you to forget. Is that your position?

A. I cannot remember what I said yesterday.

Q. You know that there is a continuous record being made both by His Lordship and the shorthand writer of what is being said here?

A. Yes.

30

Yesterday afternoon I went from this Court to a boutique and had a cup of coffee. From there I went to the hotel in which I am lodging. It is at Maradana and is known as 'Siriya Hotel'. It is in front of the Maradana Railway Station. If I were to stand in front of the railway station, facing it, it is on my right. That hotel is about a quarter mile from the railway station, say from here (witness box) to building over there that could be seen from here (demonstrates). The station could be seen from that hotel. It is on the road where the Tower Hall is situated. From the time I came to Colombo I was lodging in that hotel along with my wife Jane, and

40

there are other outsiders in that hotel. I do not know where Banda and Edwin are. They are not in that hotel. They have also come for this case, so also Wilfred. There is another hotel next to 'Siriya Hotel' and when they came down they were staying there. I did not talk to them. They did not talk to me and I did not talk to them.

No. 2.
(4) R. J. Mendis. Re-examination.
—Contd.

Court :

Q. You said on the day after Muttusamy and his family disappeared in the afternoon you went to a certain house to get some medicine?

10 A. Yes.

After my morning tea, early morning, I went to a house lower down the estate about a quarter mile away to get my medicine and I came back after my midday meal. I had my midday meal in that house, not in the 'wadiya'. I came back somewhere about midday I am not certain of the hour.

That house from where I went to get my medicine is a quarter mile away by the side of the Village Committee road. I know the turn off from the Village Committee road to this Haddagoda Kane Estate. This house is about two or three chains from that turn off in the direction of Kalepotha. Kalepotha junction is the junction of this Village Committee road with the main road. The person to whose house I went is called Podi Kankanu. I do not know his name. He is a Kangany on Marangoda Estate. It is two miles away from Haddagoda. Podi Kankanu was not at home when I went there as he goes out in the morning and returns in the evening. His mother was at home. I went there that morning to fetch some medicine which I had brought from the hospital and left here as I was lodging there, and I went to the estate when the accused wanted me. I had left the medicine behind in that house. I returned from hospital and I remained in that house for two or three days and went to the estate. I know the house of Erolis. Podi Kankanu's house is on the same side as Erolis' house but a little closer to the turn off to the estate.

Q. Today your position is that you did not eat your midday meal at the estate?

A. Yes.

I had a cup of tea on the estate and then went to Podi Kankanu's house to fetch my medicine.

Q. So that you were not in the estate when you say this accused came and went—that is what you said yesterday?

40 A. I was not in the estate.

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 (4) R. J. Men-
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 amination.
 —Contd.

Q. You brought the accused to the bungalow yesterday between the time you woke up and your midday meal three times?

A. I did not know what things came out of my mouth yesterday as I had a stomach ache, and I cannot remember what I said. I was not there when the accused came.

Q. I put it to you witness that far from spending your time on a "messa" that day, you were one of the people who joined in the preparation of the burial of the two corpses?

A. It is true I gave a helping hand to cut the firewood but I did not join in the preparation of the grave in which the two corpses 10 were buried.

Q. Now that you have thought over this matter overnight in your 'Siriya Hotel' did you see Banda at all that day?

A. No, My Lord.

Q. Did you see Edwin that day?

A. Well, they were moving about with me but they had no conversation with me. (Witness misunderstands the question).

Q. Did I ask you about a conversation?

A. I saw Edwin coming along the road coming to the Court.

Q. I am asking you whether you saw either Banda or Edwin 20 the day after Muttusamy was missing?

A. No, My Lord, I did not see Edwin the day after Muttusamy was missing, not even Banda.

I saw Jane Nona in the evening coming to the estate after I had returned to the estate. Speaking of the day after Muttusamy disappeared, I saw Jane Nona coming to the estate at about 5 or 5.30 p.m. She had come to mark her attendance. I did not notice whether she had brought any tools with which she had worked. I saw some mamoties in front of the bungalow. I did not see Jane Nona bring any mamoty with her. I returned to the bungalow about 4 or 4.30 30 p.m. I guess the time, I am not certain of the hour. I saw Jane Nona at about 5 or 5.30 p.m. I don't know from where she came, may be from the working party.

Counsel for Defence remarks—I think I shall leave this witness alone.

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 (4) R. J. Men-
 dis, Re-exami-
 nation

Re-examined: I did not marry Jane Nona. I am still keeping her as my mistress. The person who arranged this for me was this accused. It is usually the parents who arrange marriages.

Q. Yesterday you said that you would not have objected to getting married to this girl had you known that she had not been behaving very well? I put it to you that you did not know that she was being kept by the accused?

No. 2.
(1) R. J. Mendis. Re-examination.
—Contd.

A. They were friendly in the sense that they used to speak to each other freely but I did not know that there was any intimacy between the two.

Q. If you do not answer questions properly, I shall seek the permission to cross-examine you myself. Remember you are here to speak the truth. You said yesterday that this accused kept Jane Nona for a day or two in the wadiya?

A. There was some sort of intimacy. I had an inkling about that.

Q. Why, you were staying at the wadiya yourself at the time? You said so yesterday. Your stomach-ache started after you were being cross-examined? Now be careful and answer me. When you took this woman you knew she had been on terms of intimacy with this accused?

A. Yes, My Lord.

Q. It is for that reason that the accused had the disposal of her, and not her parents?

A. That is so.

Q. And that disposal angered Banda?

A. Yes.

Q. The objection against you was not on the question of caste because the accused is a man of the same caste as yourself?

A. Yes.

Q. The disqualification so far as you were concerned was that you were a labourer?

A. Yes.

Q. Why did the accused go out of his way to provide you with a wife and a house?

A. He told me: "You keep this woman, I will see that you prosper, that you come by property", and so on?

Q. Why, did he love you as a brother?

A. Yes, being a cousin of mine.

No. 2.
 (4) R. J. Men-
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Q. Or is it because you knew more than was healthy for him?

A. I do not know the reason. The accused told me, "Being a relation I shall get this done for you".

Q. In fact, you did know that some bones had been buried or otherwise disposed of on that estate?

A. Yes.

Q. Bones had been taken from the sack?

A. Yes.

Q. Were you there when that pit was excavated?

A. I was there at the time of the excavation. I came to know 10 this about three months after the disappearance of Muttusamy.

Q. I think you said a little earlier that it was somewhere about this time that the accused gave you Jane Nona?

A. Yes.

Q. And that you did assist the accused in the disposal of the bones?

A. I helped.

Q. When does the accused normally take his bath? Does he bathe daily?

A. Not daily, there are days he does not bathe. There is no 20 fixed time for him to take a bath. Sometimes he bathes in the morning, at other times in the evening, just as he feels.

Q. Was it usual for him to bathe at the crack of dawn?

A. I had not seen and I have no idea about it.

Q. Did Muttusamy have a gun or had he handled a gun?

A. I had not seen him handle a gun.

Q. Previous to this occasion on the night of Muttusamy's disappearance, had the accused remained out a whole night?

A. Not to my knowledge.

When the accused goes round the estate as watcher he takes his 30 gun with him. Those rounds do not go on a whole night. When he goes out on his rounds he used to return at about 2 a.m. or 3 a.m. and at times even earlier, and sometimes soon after he has gone.

Q. He would knock at the door and speak to someone to let him in on his return from his rounds?

No. 2.
(1) R. J. Mendis. Re-examination.—Contd.

A. He would call out ' Wilfred ' or ' Ratha '.

Q. So that when he returns at night he has to speak to someone to get in?

A. No, My Lord, it is not necessary for him to call out to anyone to enter because he has got the key of the bungalow. Only if he wants a little water or something like that he would speak to someone.

10 Q. Regarding my movements on the day following the disappearance of Muttusamy and his family, I got up in the morning, had a cup of tea, and I said " Ratha, I am going to fetch some medicine " and I left the bungalow. I had not met the accused at that time. I saw the accused approaching the bungalow at a distance, and just as I saw him I stepped out and went away. I shouted out to him, " Liyana Mahathaya, I am going to fetch some medicine ". I told him that from a distance and went off.

Q. The conversation you spoke of yesterday did not take place?

A. No.

20 Q. Then, why did you say that yesterday?

A. It is so long ago, I have no recollection of the facts.

Q. So that you did not ask him, as you said you did, " Liyana Mahathaya what was that shot " ?

A. While I saw him at a distance I asked him something like that. The accused was near the bungalow at the time and I was some distance away from him.

Q. What was the state of his clothes at the time?

A. The accused was wearing a sarong and a shirt at the time and they appeared to be damp, may be sweat.

30 Q. It was not as if he had a bath?

A. Well, I am unable to say that because I did not see him at close quarters. I left the bungalow that day at about 7 or 7.30 a.m. approximately. I had my noon meal out and I returned to the bungalow at about 4 or 4.30 p.m. I do not know what took place on the estate in the interval of time.

Q. About Wilfred tethering cattle you spoke of yesterday?

A. I was speaking of the practice. There are cattle in the estate and they used to be tethered by Wilfred.

No. 2.
(4) R. J. Mendis. Re-examination.—Contd.

Q. You gave a lot of details. I suppose all that was due to your stomach-ache?

A. As a result of my physical ailments I have fallen into these lapses.

I have not met Wilfred or Banda even today. Wilfred is staying in Colombo with his father, Banda. They move about together. There is physical proximity unavoidable at times on our way to Court and back. I have not been discussing this case with Banda, Wilfred and these people because we have fallen out.

At the time the accused gave me Jane Nona and a house to live in I was on good terms with the accused. This cordial relationship existed for some time but later there was some feeling of unfriendliness towards me. I noticed that. It was not after I became a witness in this case but even before, about a month or two after he gave me Jane Nona and that house to live in. 10

Counsel for Defence: May I point out, My Lord, that this accused was already on remand by the time this accused gave any evidence.

Q. Were you at that time on the estate?

A. I was still on the estate at that time. 20

Q. You continued to be on the estate for another month or so?

A. Yes.

Q. With Jane Nona?

A. Yes.

Q. In the house provided by the accused?

A. Yes.

Q. Then feelings could not have been so very bad?

A. It was not any real enmity or anger.

Jury: No questions.

No. 2.
(4) P. A. Samathapala, examination

PONAPERUMA ARATCHIGE SAMATHAPALA, affirmed, 30
24 years, labourer, residing at Porwagama.

Examined: In 1946, I was tapping rubber on Mr. Piyadasa de Silva's estate. The conductor of that estate was Ebert Silva, this accused. I worked in that estate in 1946, but I cannot remember the month. My attendance is marked on the check-roll by the conductor. I do not sign it.—I remember going to the estate one morning after

a night when it had rained. On this day I went to the estate to tap if tapping was being done. The estate conductor keeps the tapping knives, that is this accused. Having come to the estate I first went to the accused's bungalow. I went to the estate that morning at about 7.30 or 8 a.m. When I went to the accused's bungalow at that time he was not there. Only the boy Wilfred was there. I asked him where the clerk had gone to and he said he had gone in the direction of Muttusamy's house. He further told me, "Muttusamy and his people have deserted, so Liyana Mahathaya said". After my conversation with Wilfred, I told him, "Well, I must go and meet Liyana Mahathaya to find out whether there is any tapping or not", and I set out in the direction of Muttusamy's hut. Wilfred followed me. I took the footpath. Round about Muttusamy's hut there are budded trees as well as some wild growth. Of the two of us Wilfred went ahead. He went and got on to the verandah of the hut. He stood on the door-step, the door had been left ajar, and he peeped in, and having done so he called out to me. He said, "Come to show you something". The words he used were: "Enda wadak pennanda". I then went up and I peeped through the door myself. I saw a pot of country rice broken. It was boiled rice. The pot was smashed and the rice spilt there, not scattered. There were other broken pieces of pots and pans. I saw a heap of ash besides those pots and pans closer to the door. I know that half-wall. It ends after it goes a little way into the room. The heap of ash was on this side of the half-wall (demonstrates) while the broken pots and pans were on the other side towards the back wall. And having called me there Wilfred showed me the drag marks. It appeared as though some logs had been dragged. The drag marks were in streaks, black streaks, like charcoal. These drag marks continued from the place where the heap of ash was up to the verandah.

10 At the time I peeped in I have no idea whether there was any fastening of any kind on the door. That was the first time I had been there and I cannot remember whether there was any padlock on the door which was ajar. Having seen all these things I then came out of the house with Wilfred. As we came out of the house the accused came there. We were about a fathom from the house when the accused came there. From Muttusamy's house there is a slope. There is a footpath down a slope and there is another footpath leading up to the house. I do not know from which direction the accused came because at the time I saw him he had already got on to the compound of the hut. Wilfred was

20 with me then. The accused was perspiring, there was sweat on his body. He was only wearing a sarong, he was bare body, and there were patches of soot on the front part of his body. The patches were about this size (demonstrates), on the front of his chest (demonstrates) and there was soot on his forearms (demonstrates). On seeing the accused I said, "Liyana Mahathaya, Sir, are we doing any tapping today"? and he said, "The trees are a little wet, we have tapped two rounds of trees, we are not, therefore, tapping today."

No. 2.
(d) P. A. Sams-
thapala. Ex-
amination.—
Contd.

No. 2.
 (4) P. A. Samg-
 thapala. Ex-
 amination.—
 Contd.

I am a tapper. Even at that time the trees were a little wet. Other days even under those conditions it used to be done. I went to the estate expecting that there would be tapping.

I did not ask the accused about the marks on his body. I asked him, "Liyana Mahatmaya, where have you been to"? And he said that he had been following the track of a pig. I then turned back and retraced my steps. I saw the dog by the side of the half-wall as I came out. The dog was eating a lump of something of this size (demonstrates). It was dark in colour; I cannot say what it was, something black. I asked Wilfred, "What is it the dog is eating?" and he said, "the day before yesterday we shot a porcupine, probably it is a piece of that flesh". I went home for the day. 10

Q. And when did you next come to work on the estate, how long afterwards? Did you work after that?

A. I cannot remember how many days after that. I worked after that on the estate.

Q. And you ceased working there, when?

A. I got another appointment in Ketandola and on receiving that message that I got a job there I left the estate.

Q. Was it a month, more than a month, how long afterwrds? 20

A. I cannot remember how long after.

I was questioned by the Sub-Inspector in February, 1947. That was some months after the incident I described. I had seen Muttusamy while he was on the estate. He had a mistress called Baby Nona. He had a little child. I had spoken with that child. That child was about five or six years, and about this height (demonstrates). That child speaks well. I used to see Muttusamy on this estate when I go to work. After this thing that I described I did not see Muttusamy on that estate. I did not enquire from the accused where Muttusamy was. I did not suspect anything. 30

No. 2.
 (4) P. A. Sama-
 thapala. Cross-
 examination.—

Cross-examined :

At present I work on Marangoda Estate. I cannot remember when I left Haddagoda Estate correctly. Roughly I think I left Haddagoda Estate about 1½ to 2 years from today. I cannot remember when I left Haddagoda estate or how long after this incident. I stated that I saw certain things that day at Muttusamy's house. In relation to the month in which I went to Muttusamy's house and saw these things I believe I worked up to the end of that month and then left the estate when the month was over. From there I went to Ketandola. Ketandola is about four miles away from Haddagoda Kande Estate. It is on the Pitigala-Elpitiya road. I went and lived on that estate. I 40

came to Marangoda Estate about a year ago from today. Marangoda Estate is about 1½ miles from Haddagoda Kande Estate. I go to that estate from home to work. My home is in Porwagama.

No. 2.
(4) P. A. Sama-
thapala. Cross-
examination.—
Contd.

I know Banda. I came to know him on the estate. I do not know Banda's house. To this day I do not know Banda's house. To this day I do not know his house. Porwagama is a little hamlet. There are more than 35 families in that hamlet. In relation to Haddagoda Kanda my house is situated towards the front of that estate. I live about quarter mile from Haddagoda Kande estate. The estate is above the road while my house is on the lower side away from the road.

Q. You said that it had rained the previous night.

A. I really have no idea of the rain itself but the trees were wet. It must have rained.

Q. What time do you say now you went to that estate that morning?

A. At about 7.30 or 8 a.m.

Q. Why have you corrected your time by nearly two hours from the evidence you gave in the lower court? Marginal 27, My Lord. You gave a statement to the police on a certain day?

20 A. Yes.

Q. I think within a day or a day-and-a-half thereof you gave evidence in the Magistrate's Court?

A. Yes.

Q. Was it the day after or when?

A. Not the next day, a few days later.

Q. You were in fact taken straight to the Magistrate one night?

A. Yes.

Q. The police took a statement from you one evening?

A. Yes.

30 Q. Was it the same night that you were rushed by the police to the Magistrate?

A. Not the same evening, the next night.

Q. The next night you were brought by the police to the Magistrate, to his bungalow?

A. Yes.

No. 2.
 (4) P. A. Sama-
 thapala. Cross-
 examination. —
 Contd.

Q. And there at the Magistrate's bungalow you made a statement to the Magistrate?

A. Yes.

Q. The accused person was not present?

A. No.

Q. That was I believe the 8th of February, 1947?

A. I cannot say the exact day.

Q. Now on that occasion did you say as follows to the learned Magistrate: "I worked continually on this estate for about four months"?

10

A. I said that.

Q. "There was rain during the last month"?

A. Yes.

Q. "One morning I went to the estate at about 9.30 a.m. being delayed on account of the rain"?

A. I cannot quite remember whether I said that.

Q. "There was heavy rain the previous night"?

A. I cannot remember having said that.

Court:

Q. Do you remember whether there was rain that night now that you have been reminded?

20

A. I cannot remember, My Lord.

If there is heavy rain the previous night, as a tapper, I know that tapping is impossible on the following day.

Q. Secondly, as a tapper you know that when there is heavy rain the previous night the tappers do not even trouble to go to work the following day?

A. Even for a drizzle the budded rubber gets wet.

Q. And the rubber in this estate is uniquely budded rubber?

A. Yes.

30

Q. You yourself point out that budded rubber has a way of getting wet even for a slight drizzle?

A. Yes.

Q. You as a tapper, if you have tapping to do you would go to work early dawn?

A. Yes.

No. 2.
(4) P. A. Sama-
thapala. Cross-
examination. —
Contd.

Q. So that actually you would do the round to cut the bark long before the sun can have any effect because there is the question of the flow of sap, and so on?

A. Yes.

Q. And the idea is to get in as much latex as possible in the morning instead of allowing it to delay?

10 A. On days we tap we are there till about 12.30 p.m.

Q. Even on your evidence today you say you came at about 7.30 or 8 a.m.?

A. Yes.

Q. I point out to you that it is recorded that you said, " 9.30 " in the lower Court?

A. I cannot remember that.

Q. You will agree with me that your memory would have been fresher then?

A. Yes.

20 Q. Because it was within three and a half months of this incident?

A. Yes.

Q. Thus you will agree, even on your own admission, you came along after the usual time a tapper would go to do his tapping?

A. Yes, I had gone much later than I usually go to tap.

Q. What did you go to the wadiya for that morning?

A. To find out whether tapping was impossible.

Q. It was not in order to get the tapping knife?

30 A. The tapping knife is with the accused and I wanted to get it from him.

Q. Which of the two reasons did you go for? Did you go to enquire whether there would be tapping or to get the knife?

A. To see if there was tapping and, if so, to get the knife.

No. 2.
 (4) P. A. Sama-
 thapala. Cross-
 examination. —
 Contd.

When I went Wilfred was in the wadiya. He gave me the indication of the direction in which the accused went. He told me the accused went towards Muttusamy's house. I knew Muttusamy's house. It was an estate in which I had been working and I did not feel lonely on that estate. I did not call Wilfred to go with me but he followed me as I proceeded. As I proceeded when I walked about two fathoms he said, " Wait for me, I will come ".

Q. On the same occasion on that dramatic night when you were taken to the Magistrate you made out that you called Wilfred and went towards Muttusamy's hut, so you agree there was no need for Wilfred to accompany you? 10

A. No.

Q. In fact Wilfred has other work in that estate?

A. He is the cook of the accused. I don't know whether he has any other work. I did not see him doing any other work.

When I went to the place I saw a dog eating something black.

Q. I think you said you saw the dog eating it near that half-wall? 10

A. Yes.

Q. That half-wall is inside Muttusamy's house? 20

A. I am referring to that half-wall outside.

Court :

Q. You said : " I saw the dog by the side of the half-wall ". Where was this dog when you saw it?

A. By that main wall. The main wall on the eastern side of the house is shorter than the two side walls. I saw the dog outside the main wall.

Q. What do you mean by main wall?

A. First of all in building a house one puts up the tall pillars on either side and the big wall. That is what I mean by main wall. 30

There is a door in front and there are two short walls coming only half the size of the door.

Counsel for Defence :

I will leave him alone on this, My Lord, and proceed.

I peeped into this house and looked. That was all I did. I got to the door-step and I peeped in like this (demonstrates) into the house. I did not go in. At that time I did not get any smell. I did not go down the further slope to meet the accused. I was still in the compound. After we met the accused, accused remained there while Wilfred and I went to the accused's bungalow. When we returned we did not talk to each other about what we had seen. There was nothing to cause us to discuss with each other what we saw. I did not stay at the wadiya for any length of time. I said, "I am going", and I went
 10 away. After that I discussed this matter with no one. The time I said anything about this to anybody it was to the police.

No. 2.
 (1) P. A. Samathapala. Cross-examination.—
contd.

Re-examined :

It was possible to start tapping at about 9.30 a.m. Tapping is done at that time also. On that estate even when we went late we used to tap. Tapping could be done from about 8 o'clock in the morning till 11 a.m. Budded rubber could be tapped till 11 a.m. When we tap very early morning we stop earlier. That is because we finished off the tapping to be done. There is no objection to tapping till late. Coming late to work, say at 9.30 a.m. as I did on this occasion, I would get a
 20 full day's pay if I succeeded in tapping the entire block allotted to me. I have only 125 trees to tap and even if I start at 9.30 or 10 I could tap all the trees before the required time.

No. 2
 (1) P. A. Samathapala. Re-examination.

Jury : No questions.

WIJEKOON MUDIYANSELAGE BANDA affirmed, 40 years, labourer, living at Porwagama.

No. 2
 (1) W. M. Banda. Examination.

Examined :

I have a daughter called Jane Nona, a son called Wilfred, and another son called Arnolis *alias* Edwin. I was employed on that estate belonging to Piyadasa de Silva. Jane also worked on that estate in 1946. She began by going to the estate from home. I am subject to
 30 asthma. In October 1946 I got asthma very badly and I had to go to hospital. I cannot remember the day I came out of hospital. It was some day in the middle of October. The day after I came out of hospital I was at home. At that time my daughter Jane Nona was living in my house. On that day when I was at home after coming from the hospital Jane went to the estate for work. My son Wilfred came and informed me of something that day while I was at home. He came at about 2 p.m. I am not speaking with reference to a clock, it is a guess. Wilfred came running home and told me that Liyana Mahatmaya was digging a hole. I then asked him, "What for"? Then he said,
 40 "There is some flesh". The words he used were: "Mus wagayak thieyanawa". I asked him, "What is that flesh"? Then he said,

No. 2.
 (4) W. M.
 Banda. Examination.—contd.

“ It is like human flesh ”. I tried to find out what it was. That was all the conversation we had. And I accompanied Wilfred back to the estate. My son drew my attention to the accused who was down in the slope. There is a slope down to the east and Wilfred pointed out to me the accused there. At that time I could only see the accused's head. At that time I was this distance from the accused (from the witness-box to the ‘ Mara ’ tree outside the court-house). I stopped and looked intently. Then the accused came up to me. He came up to me bare-handed. He did not carry anything with him. The accused was wearing a piece of cloth between his legs, an ‘ amuday ’. He was not wearing a sarong as far as I remember. As I saw him covered with mud or earth on his body I felt certain he had been digging a hole. When I went and peeped from under a bush where there was an opening I could see earth heaped up which was taken out of the ground. 10

Q. Did you see anything by that heaped-up earth?

A. That was all I saw.

When the accused came up to me, my son stood at a distance and went towards the accused's bungalow. I asked the accused, “ Liyana Mahatmaya what are you doing ”?

Q. Did you mention to Liyana Mahatmaya what your son had told you? 20

A. Yes, it was after I spoke to him that I told him.

I followed up the question, “ Liyana Mahatmaya what are you doing ” with this remark “ Well, my son says there is some human flesh ”. Then the accused said, “ What rubbish ”. The words he used were: “ Mona boruthe ”. I persisted in asking him and said, “ Tell me the truth, what are you about, what are you doing ”? He then said, “ You are an invalid, it is about to rain, please go away ”. I still persisted and said, “ Do not bother about it, tell me the truth, what is it ”? Then he remained silent scratching his head and after a short while he said, “ Muttusamy had killed his wife and child and gone away ”. He said that after some little hesitation. I then said, “ If Muttusamy had killed them and gone away, what are you doing ”? He said, “ Well, I am covering them. 30

Q. By the word ‘ them ’ what did you understand?

A. From that as my son had conveyed to me about the flesh, I thought it referred to what Muttusamy had killed, that is his wife and child.

At this time the accused was friendly with my daughter, Jane Nona. 40

Q. You knew about that?

A. I came to know of the intimacy shortly after this. There appeared to have been this intimacy at this time but I came to know it later.

No. 2.
(4) W. M.
Banda. Exami-
nation.—contd

Q. At that time did you know that there was this intimacy between your daughter and the accused on the day you went there?

A. Not on this day. At the time I was not aware of any intimacy between my daughter and the accused.

Q. When the accused in fact told you that he was disposing of the bodies of the two murdered people what did you tell him?

A. I told him, " Why should you cover it up, I will inform the police about it.

Q. You said that you will inform the Police.

A. Yes, I said, " I will inform the Police about it "

Sgd. N. W. LEWIS,
Certified correct,
Stenographer, Supreme Court.

Thursday, 30th September, 1948. 12 noon.

WIJEKOON MUDIYANSELAGE BANDA, Examination
20 continued: The accused said it was not necessary. I did not give him any advice. This was all the conversation that I had with the accused. Then I returned home. I did not tell the headman or the Police about it. I came to know that my daughter Jane and this accused were intimate about a month later. I had gone to Ambalagoda and was living with the proprietor of the estate for about 3 or 4 days. I came with him to the estate in his car. Then the accused came and brought a cloth belonging to my daughter soiled with excreta and showed it to me and Mr. Piyadasa de Silva saying, " Bände, Arnolis had been assaulting the sister to this extent ". I asked him
30 what is the reason. Then the accused said that since yesterday she had not gone home and that he was keeping her in the bungalow as his mistress. This took place about a month later. In the interval my son and I were implicated in a case and I was also ill. Besides that I was employed under this accused. I too was working in the estate before I fell ill. By son I meant Arnolis. He too worked in the estate earlier. I was working in the adjoining estate when Arnolis was charged with arson. Because of ill-health and other matters which I related just now I did not want to inform any person in authority. I do not think that I believed the accused entirely when he said that Muttusamy had
40 killed his family and bolted. I had nothing to act upon at that time. I had some doubts about it. As to how it could have happened and at

No. 2.
 (4) W. M.
 Banda. Exami-
 nation.—contd.

whose hands I had my doubts. I thought it was possible that if Muttusamy had done it he may have gone away. I was unable to say who had done it. My daughter was taken by this accused about a month later. I felt helpless and I thought under the circumstances it would be the best. The accused was the conductor of the estate. My daughter continued to be the accused's mistress until this case.

To Court :

When I went to the estate with Piyadasa de Silva, my daughter was in the accused's quarters. After that too she came home and she used to go back to work on the estate. 10

She was at the wadia only on that night until I returned from Ambalangoda. When I returned home she also came home. After the day's work I went back home and she also returned home. I understood that accused was keeping my daughter as his mistress. She was in the accused's estate with Jayaratne in another hut. That is in Muttusamy's hut. I did not appreciate it. Jayaratne was a labourer. My displeasure about it moved me to do something. I felt that there is so much injustice in this world. I told Piyadasa about the injustice that had been done to my daughter. I told him that I had only one daughter and this is what had been done to her. She had been palmed on to Jayaratne. He thought for a while and said, " It does not matter, get them married ". At the same time I told Piyadasa de Silva something else too. I told him, " Very well, you have given me the best advice ". I said that there were Muttusamy's people, " This is what had happened to those people too ". I told him that the accused buried Muttusamy's wife and child saying that Muttusamy's had killed them and gone away. That was the first time that I mentioned this to anybody. I had told no one about it earlier. I know one Nanyakkara also called Appuhamy. I have been discussing things with him too. I did not discuss with him about the burying of flesh. 20 I said that I had conveyed about this to the proprietor also. He said, " If there is anyone in authority or any other suitable person, please convey it ". I told about this to Nanayakkara after having said this to Piyadasa. I cannot remember when I told about this to Piyadasa. When I told about this to Piyadasa I expected him to take some action. I found that no action was being taken by him. I spoke about it to Nanayakkara. I did not make a statement to the Police. I told the Police about my daughter's matter on the day I spoke to Piyadasa. At that time my daughter was still on the estate. Wilfred was also at that time working on the estate. I got Wilfred removed from the estate on the 1st January, 1947. After I had told Nanayakkara the Police did not send for me and question me. It was the Superintendent of Police who got me down. I was sent for to Ambalangoda and questioned by the Police. My son Wilfred also went along with me. That was my first statement to any person in authority about this. 30 40

To Court : I did not see this document before. I am an illiterate person. I cannot sign my name. Court adjourns for lunch.

No. 2
(4) W. M.
Banda, Ex-
amination—
contd.

Resumed after lunch.

WIJEKOON MUDIYANSELEGE BANDA : Re-affirmed.

To Court : I said that Jane was my only daughter. In 1946 she was 17 years of age. I cannot be definite about it. She was under 21 years.

- Cross-examination : Jayaratne and my daughter are not living in a house next to mine. Today they are living about 3 miles away.
- 10 At the time I first gave evidence in this case they lived quite close to my house. They went to the other house about 3 miles away, about 2 years prior to today. I first gave evidence in this case about 2 years ago. At that time he was living in a house close to mine. They were there for about a month or two. When we came to the Balapitiya Court we all got into a bus and came together. We all came from the same village of Porwagama. I deny that about the time of this case I had reconciled with my daughter and her man. I am not a man of Porwagama itself. I am a man from Matale. From there I went to Bentara. Then I was 12 years when a gentleman brought me there as an employeee.
- 20 Then from Bentota I was going from place to place about my employment. I was at Ambalangoda at one time. Then I was at Karandeniya and then at Ramaduwa. I was not at Elpitiya. I have been in this Porwagama Elpitiya for about 20 years. I did not rise in life in this Porwagama area. I was all along employed as a labourer. I did not marry well. I married from a family of the same status as myself. It is not only the headman of Porwagama who had a big house in that village, but there are other houses as well. There are other houses about the headman's house. Porwagama headman is a rich man. I did not marry anyone who is connected with the headman of Porwagama.
- 30 I do not know about the relationship between my wife and the headman of Porwagama.

No. 2
(4) W. M.
Banda, Cross-
examination

Q. Did you say this to the Magistrate : " I am married to a sister of the village headman of Porwagama ? "

A. I did not say so—(D10).

- My wife is not related to the village headman of Porwagama in any way. The headman and I are on quite good terms. I buy my goods from the Co-operative Stores which is just opposite the headman's house. I am quite friendly with the manager of the Co-operative Stores. That is the man called Nanayakkara. He is the brother-in-law of the present headman. The present headman of Porwagama is
- 40 the son of the previous headman. The previous headman of Porwagama is not related to my wife. I do not go regularly to the

No. 2
 (4) W. M.
 Banda, Cross-
 examination.
 -contd.

Co-operative Stores. I go there to buy things when there is any necessity. I do not go there everyday. I used to go there on the due date to purchase goods. I go there once a week to buy my rations. When the Co-operative does not have a particular kind of goods which I require I would go to another boutique in search of it. During the period of the war it is only from the Co-operative Stores that one could buy the goods. I have been implicated in cases. Adjoining this Haddagoda Kande Estate is the Post Master's estate.

To Court : Before I entered hospital for asthma I did not work under the Post Master. I was in charge of that estate. I worked in the Post Master's estate for about one year prior to my having worked on this estate. 10

To Court : I cannot remember in which year I worked under the post master. I was in that estate about an year ago before I worked on this estate. I was not dismissed. I left that estate of my own accord. I was a watcher there. At the same time my son Arnolis too severed his connections with that estate. Thereafter there was trouble between me and the Superintendent of Post Master's estate. In connection with those troubles I myself went and complained to the headman. Shortly after I left that estate a hut caught fire. In connection with that I was charged for arson and acquitted. After that too I feared trouble from the Post Master's Superintendent. In connection with that too I asked for police protection. On 16th November, 1946, one month within the incident I am speaking in this case I handed a petition to the police. That was the petition in which I asked for police protection. I cannot remember handing that petition to the police personally. I sent that petition in the form of an affidavit. I swore that petition before Mr. Walter Thalgodapitiya who was the District Judge of Balapitiya. At that time he was living in the Assistant Superintendent of Police's bungalow. I have no idea of my having gone to Mr. Thalgodapitiya's bungalow. That was the only affidavit I swore before the District Judge. I swore that affidavit in court. After swearing that affidavit I did not take it to my hand. Both my son and Arnolis swore that affidavit. It may have been possible that both of us may have sworn that affidavit. This happened about 3 or 4 years ago and I cannot remember these details. I cannot say whether this question of the affidavit was about the time of this case. I cannot remember whether I went to the police again on the 20th December, 1946. I cannot remember whether I made any statement to the police in the month of December 1946. What I remember, I remember. 30 40

Q. Did you say this in the lower court : " In December I made a complaint to the police? "

A. Yes. (D11).

I went to the police station of Elpitiya in December of that year.

Q. And you made a complaint regarding Jayaratne taking Jane Nona as his mistress?

A. Yes, I went.

I first went to Mr. Piyadasa de Silva. I was dissatisfied with his attitude. Then I went straight to the Elpitiya Police. I went there and complained about this incident of Jane Nona and Jayaratne.

(Mr. de Silva proposes to put the contents of a certain document to the witness which he undertakes to prove later).

10 I went to the Police Station in December after I had fallen out with this accused and with the proprietor.

Q. And you went in the white heat of your anger over that incident?

A. Yes.

If I had told the police then that this accused had buried some bodies I would have fallen into more trouble with this accused. My complaint was that this accused had given my daughter to a labourer. When I told the police this I expected the police to make an inquiry. I also told the police that I further feared that Jayaratne and Jane Nona would insist on occupying my house during my absence. I wanted
20 the police to make the inquiry on this very estate. I made the complaint against this accused and was getting into trouble with the accused. I said that because I loved my master. If I made that complaint to the police my master would get into trouble. Mr. Piyadasa de Silva is my master. When no one takes any notice when a complaint is made I would have to say it to someone. If there is no wrong done I must complain to the authorities or government. In October, 1946, in the morning of 18th I saw a terrible wrong being committed. It is not a small matter. I saw the bodies of people who had come to a violent end being disposed of. I had never seen a wrong like that being committed before. I did not go to the authorities then because of my
30 inability. (Berikama). Even if I complained to the headman or to any other person in authority the result would be the same. Once I start a thing I got to see it through. I came upon the accused at the very time he was disposing of those bodies. From that spot to my house there is a distance of about one fourth of a mile. It is half a mile from my house to the headman's. I could have brought the headman to this very spot. I have no protection even up to date. During the past when I was implicated in several false cases the headman and others took no interest about me. In the past I had complained to the
40 Inspector straight instead of going through the headman. I did not go to the District Judge in connection with this flesh case. I cannot speak to months. It may be that I went to the District Judge about a month after I saw the accused in that pit. Though I went more than once to the police station after I saw this matter in the pit I did not breathe about it to the police. I had complained to Nanayakkara

No. 2
 (4) W. M.
 Banda, Cross-
 examination
 —contd.

about it and he had gone to the police without my knowledge. I had made this complaint to Nanayakkara about 6 weeks before I made my statement to the Assistant Superintendent of Police. It was about 6 weeks before I went to the Assistant Superintendent of Police that I went to the Elpitiya Police about Jane Nona and Jayaratne. I did not tell the Elpitiya Police anything about this though I went there. It was not 4 or 5 days before the 1st October, that I made my statement in this case to the Police that I told Nanayakkara. Even after that I used to say various things to Nanayakkara. I did not want him to take action. Nanayakkara used to go to Galle and other places in connection with his business and I therefore asked him to inform the proper authorities. He goes about his business and I just mentioned to him about this. I told Nanayakkara that some people had been killed on the land and that the estate conductor had buried and covered them (wahala dala thianawa). He had kept it a secret. He had hushed it up. That was what I told him. He asked me for details. I gave him the details. I told him that I myself had seen it. I said that in the earlier afternoon my son Wilfred came to my house and gave me certain information. At that time I was in my house. I saw him coming from the direction of the estate along the field. I got startled when I heard that information. I thought that some trouble had occurred. I promptly went to that spot. When the suspect told me that he was burying or disposing of two bodies I was not satisfied. He was just standing there. I went away. When he asked me to go away I went down that slope and was watching. I was determined to find out for myself what the accused was really doing. After a short time he went up to the pit. He did not get into it. I suspiciously watched from in hiding. I felt that action was necessary. Then I saw him continuing his operations in burying. 10

To Court : I saw him looking here and there and looking up and throwing chunks of flesh into the pit. It was a gruesome sight. The horror of it consumed my mind. I felt that this man was a savage. 30

Q. You must have felt that you should get that savage as quickly as possible under the control of proper authorities?

A. Although I felt it, it was not possible for me to have done so.

I thought that no human being should live with this accused. What else could I have done, my son Wilfred continued to be with him. From my house to this estate there are no so many paths as 25. I continued to go to this estate. My Jane Nona used to go from my house to work on this estate. My son Arnolis also went to work on this estate. I too worked on this estate. I did tell my son that it is dangerous to work on that estate with a man like the accused. He continued on his own to work on this estate up to the end of December and to the beginning of January. I said that I came to the estate with Piyadasa de Silva. When I got down from the car the accused was there. In the presence of Mr. Piyadasa de Silva the accused 40

showed that cloth with excreta and said that it was the result of my daughter being assaulted by my son. I found that my daughter had stayed the overnight with this accused. I did not tell Piyadasa de Silva that I cannot allow my daughter to stay with a brute like this who cuts the flesh of human beings. The accused was not doing me a wrong directly. He had my only daughter. At that time she was about 17 years. Then he palmed her off to a labourer. That was a matter which made me very angry. I did not decide to take revenge on him. I said that on a certain night Jane Nona had stayed with the accused. After that she was handed over to Jayaratne. She was handed over to Jayaratne about a month after she had stayed the night with the accused. After Jane Nona stayed the night with the accused she came back to me. After that she went to Bolonne's house, not on the estate. When I went and complained to my master he said that he was going to Nuwara Eliya and that on his return he would come to the estate.

No. 2
(4) W. M.
Banda, Cross-
examination.
—contd.

10 Q. Did you say this to the police: "On 16th December, 1946, my daughter Jane eloped with one Jayaratne"?

A. I had never given a petition like that. I said like that to the police.

20 Q. "I went to Ambalangoda and informed my master Piyadasa de Silva regarding this elopement"?

A. Yes.

Q. "He said that he would come in a day or two to see about it"?

A. Yes.

Q. "They lived in the estate of Mr. Piyadasa de Silva"?

A. Yes.

Q. "Jane came today and asked for her belongings; I refused"?

30 A. Yes.

Q. "I feared that during my absence they will come and occupy my house"?

A. Yes.

Q. "I lodge this entry for my future guidance. That is all. I cannot sign"?

A. Yes.

There were two ear-studs belonging to her, a pair of bangles. That was all the jewellery. She had one chintz cloth. It was a

No. 2
 (4) W. M.
 Banda, Cross-
 examination.
 —contd.

striped chintz cloth. She did not have two ear-studs but a pair of gypsies. Even grown-up women used to wear gypsies. She had no ear-studs. The bangles were made by me for her. After she came to this estate she did not have a pair of ear-studs. This was jewellery that I had bought for her by my earnings. I knew the dead woman Baby Nona. I had seen her often. I do not associate with her. I did not see her wearing any jewellery. After work on an evening they used to come to my house. I saw her wearing a pair of silver bangles. After the disappearance I did not see a similar pair of bangles with anybody. I must have seen Jane Nona more than once after she left my house. I did not see her wearing a pair of ear-studs and a pair of bangles. I got her a pair of silver bangles made. During the time that Muttusamy was living there I had not gone there. I had gone over his compound. I had not seen the box in which Baby Nona kept her things. I had not seen a round cane box with her. After Muttusamy and Baby Nona took up residence I had not been inside that house. When I met Piyadasa de Silva it was about 12 noon. That was after he had returned from court, for his midday meal. After I spoke to him he left almost immediately to court. Before this occasion when Muttusamy came to live with his wife he had been previously employed on this estate. On that occasion he went away. On that occasion he worked on the estate for about 3 months. He had no wife or child then. On that occasion he went towards Galle. That was what I learnt when he came back the second time. I do not know why he left on the previous occasion. At the time he left I do not know where he went. 10

To Court : When Muttusamy was living on the estate with Baby Nona and child I knew him well. I am unable to say whether he was dissatisfied with the condition of the estate. He did not make any complaints to me. As far as I understood he was going to make a long stay in the estate. 30

(Dr. de Silva hands a question written out to court. Crown Counsel sees it and he says he has no objection to it being put to the witness).

To Court :

Q. Had you any reason to think that Muttusamy wanted to leave the estate?

A. No.

Q. About the time of Muttusamy's disappearance from this estate I was on practically good terms with this accused. It may be that I am 50 years old now. I cannot count nor do I know to read and write. I was the one experienced and elderly man who was working on that estate. I said that Wilfred came to my house at about 2 p.m. I have no idea whether Wilfred came to my house one day early in 40

the morning. He did not come to me and deliver a verbal message from this accused. As a result of that message I did not go to the estate. I do not know whether the corpses were shown to me early in the morning. I was not shown the corpses of Baby Nona and Hemalatha early that morning.

No. 2
(4) W. M.
Banda, Cross-
examination.
—contd.

Q. You yourself counselled the accused to bury these 2 corpses to appear as if the whole family had bolted instead of only Muttusamy?

A. I deny that.

10 On that day Jane Nona went to work. I do not know where she worked on that day. She went to work on that day from my house. From my house the path leading into the estate goes over the compound of Muttusamy's house. She has to go to the bungalow to obtain the tools for working. She came home in the evening after work. Arnolis did not come to work on that day. I am sure of that. He had gone to Pelwatta in connection with his work. That is a jungle where people used to cut timber. That is about 12 miles away from my house. When Jane Nona came home I did not ask her whether she knew anything about this. My wife is living. I did not
20 go home and tell my wife that such a thing has occurred.

Q. You kept these things in your mind not only because you advised the accused, but you yourself along with Jayaratne, Wilfred, Edwin and the accused acted together in the disposal of these 2 bodies of Baby Nona and Hemalatha?

A. I deny that.

I was greatly angered by this Jayaratne incident.

Q. As a result of what happened to your daughter you decided to take revenge by implicating this accused?

A. I deny that.

30 Between the day that Wilfred came and gave me that information and the day on which I went and first made a statement to the Assistant Superintendent of Police, I did not discuss this matter with anyone. I did not question him further about this incident. I never question him as to what happened after that. He did not tell me either. Right up to the day I went to the Police I was on bad terms with Jayaratne. That is from the day he took Jane Nona. I never spoke to him after that. Similarly I had nothing to do with Jane Nona. Before I went to the Assistant Superintendent of Police, I did not know anything about the subsequent burning or grinding of
40 bones. After the commencement of this case I heard about the grinding and burning of bones. I deny that there was at my house when Jane Nona was living there a cane box of clothes belonging to Baby Nona containing clothes. I deny that when Jane Nona was staying

No. 2
 (4) W. M.
 Banda, Cross-
 examination.
 —contd.

with me she had a pair of ear-studs. Jane Nona did not have a pair of ear-studs that belonged to Baby Nona. I deny that she had a pair of bangles belonging to Baby Nona. My son went to the Police Station with me.

Q. Do you mean to tell the court that after your son told you this and 3 months later you went to the Police Station and you did not question him before you all went to the Police Station?

A. Yes, we discussed matters.

I spoke to my son what we were going to tell the police. I spoke to him on the night before we were going to the Police Station. My son and I discussed with each other what we were going to say. I deny that we were prepared to tell the police a definite story. I deny that I introduced that cane box into the jungle near Muttusamy's house before going to the police station.

Q. Did your son on that occasion mention to you that he had seen a pair of ear studs and a pair of bangles belonging to Baby Nona with your daughter Jane Nona?

A. Yes. I asked him when he saw her wearing them.

He said that he saw Jane Nona wearing them in the estate. I did not realise to whom it referred when he said that. I asked him whether he knew how she had got them. He said that the accused had given them to Jane Nona. I did not ask him whether he saw her being given. Wilfred did not tell me that she was wearing the clothes of Baby Nona too. Wilfred did not tell me that a box of clothes belonging to Baby Nona was given to Jane Nona.

No. 2
 (4) W. M.
 Banda,
 Re-examination

Re-examination : There is no reason why I should have concealed the bodies of Hemawathie and Baby Nona if in fact Muttusamy had killed them and run away. As far as I know there was no reason why Wilfred should have concealed the bodies of persons who were killed by Muttusamy. I was not concerned in covering the traces of Muttusamy's sins. I came to Balapitiya Court by bus with Jayaratne and Jane Nona because I had to. That I swore the affidavit before the Judge and handed it to him. I said that I saw chunks of flesh being thrown into the trench. They were black in colour. At the time I came to know about it the accused had already been on intimate terms with my daughter. I put up with the situation when the accused handed my daughter over to Jayaratne. I objected to it very strongly. At the time I made my statement to the police my son Wilfred was out of the estate.

To Jury : Baby Nona is not related to me or to my wife.

Court adjourns for the day.

Certified correct.

Sgd. R. S. PERERA,
 Stenographer, Supreme Court.

Friday, 1st October, 1948. 9.30 to 12 noon,

Accused present.

Same Counsel as before.

B. MARGARET NONA, affirmed, 35 years of age, living at Porwagama.

No. 2
(4) B. Margaret
Nona,
Examination

Examined: In 1946 I was employed as a daily-paid labourer under Mr. Piyadasa de Silva on his estate in Porwagama. I worked there up to the 17th of October that year. I remember this fact that I worked till late at night that day. On that occasion and in that connection I told the conductor, this accused, that it was already late enough, and that we had to go home to bathe and do so many little things, and that he might close work for us for the day.

Court:

Q. Had it become dark then?

A. It was about 6 p.m.

Q. You had never worked so late before?

A. That was the only day we worked so late.

Jane Nona worked on that day. Others who worked that day were Leela, Muttusamy, his wife (Baby Nona) and as I said Jane Nona, besides myself. After the day's work was over I came away.

Q. After work where did Muttusamy, Baby Nona and their child go?

A. They had managed to find some paddy and at the time I left they were still there getting ready to go and attending to the pounding.

Q. Do you know where they were going to get the paddy pounded?

A. They would have to go outside the estate, to a place where there was a mortar.

Q. Has that man called Erolis a mortar?

A. Yes.

Court:

Q. Where did you see Muttusamy, his wife and child last?

A. As I left the place I noticed them following me a short distance when the accused told them, "Don't go to do that".

No. 2
 (4) B. Margaret
 Nona, Exami-
 nation.—contd.

Q. Where did this working party finish their work?

A. We were working that day in front of the accused's wadiya and we stopped work at that place in front of his wadiya.

Q. What about the tools?

A. We left the tools in the compound close to the wadiya.

The accused was in the wadia. He came there himself after closing the work.

Court :

Q. You saw Muttusamy, Baby Nona, and the child at the wadia at the end of the day's work?

10

A. Yes, My Lord.

Muttusamy and Baby Nona had the paddy with them at the time, which they had obtained from the village and they wanted to go outside the estate to get the paddy ground.

Court :

Q. To Erolis' house?

A. Yes, they wanted to go there to get the paddy ground.

Q. Then what did the accused say?

A. He said, " Don't get them pounded today, don't go ".

The words he used were: " Athe kotanda epa " meaning " don't pound today " and added " don't do ". I set off for home, and in spite of the accused's injunction, I saw Muttusamy, Baby Nona and the child following me. They followed me until they left the estate. I saw them go in the direction of Erolis' house. On the following morning, i.e., the 18th, I went to the estate during the latter half of the day, in the afternoon, to draw my wages. I went to the accused's bungalow but he was not there. I met his cook Wilfred there. I asked Wilfred where the conductor, this accused, had gone. He said that the accused had gone some where and pointing out he said, " He went that way ". I then remained squatting on a rock there awaiting his arrival. He came after a long while, for I had remained there for about an hour, when he turned up. I came to the estate to get my wages, after my midday meal, somewhere about 11 or 12. Having come there I remained there for about an hour when the accused came there at about 12 or 1 p.m. I was seated on the rock till he came.

20
30

Court :

Q. You said you went to the estate at about 11 a.m. or 12 noon, sat on a rock and waited for the accused?

A. Yes.

Q. You said you saw Wilfred when you went to meet the accused?

No. 2
(4) B. Margaret
Nona, Exami-
nation.—contd.

A. Yes.

Q. Did you see Jayaratne there?

A. No, I did not see Jayaratne, My Lord.

When the accused turned up he was wearing a sarong. He was carrying some washed clothes in his hand. He appeared to be returning after a bath. He handed the wet clothes over to Wilfred and asked him to spread them out to dry.

10 Court :

Q. What were the clothes that were spread out?

A. A red sarong and a 'nil pata' shirt.

I asked the accused for my wages. The accused said, "I have no money with we now. When the clerk, Cooray, comes ask him for your wages." He further said addressing me, "Margaret Nona, if you were to come here, there will be a lot of trouble. You had better come when the clerk, Cooray, comes and get your wages and go". When he said that I thought it may be that he was trying to get me away because I was in the habit of finding fault and scolding Jane Nona and the others. I used to find fault with Jane Nona and Leela-
20 wathie when they used to laugh and joke. They used to be fond of talking to the accused and when they are found talking to him I used to scold them. After the accused told me that I went off and he was there a while. After handing over the clothes to Wilfred he went in the direction from which he came, that is in the direction of Muttusamy's house.

Q. Had you any need to go towards Muttusamy's house yourself on that day?

A. After the accused went I too went that way because Muttusamy's wife owed me some money and I wanted to ask her for it.

30 When I went in that direction I saw the accused talking to Jane Nona. The spot at which I saw them talking was about half-way between the accused's wadiya and Muttusamy's house, but closer I think to the accused's wadiya, he could have been seen at the place he was talking.

Court :

Q. Were they talking on the path?

A. Yes, My Lord, on the path.

They were standing there talking to each other. As I was approaching he saw me while he was talking to Jane Nona. He asked
40 me, "Margaret Nona, where are you going"? I told him Muttu-

No. 2
(4) B. Margaret
Nona, Exami-
nation.—contd.

samy's wife owed me some money and I was going to get it. He then said, "Muttusamy and his people have deserted last evening, don't go there". The words he used were, "Muttusamila eya handawe panella gihilla, ahay yanda epah". He made a gesture with his hand like this (demonstrates) and said, "Don't go that way". I then went home. Two days later I went to the estate but I did not collect my wages. Ultimately I got my wages from the Proprietor, Mr. Piya-dasa de Silva, the clerk having put me off on several occasions. I did not work on this estate some days later.

Court :

10

Q. Was that the last day you worked on the estate or had you worked there after that day the 17th?

A. I did not work there at all after the 17th.

Q. In 1947 did you work on the estate?

A. Yes, it was later that I worked on the estate for 8 days. I cannot remember the year, it was after the disappearance of Muttusamy and his family.

Q. So that on a subsequent occasion you worked on that estate again for about 8 days?

A. Yes.

20

Q. Did you see Muttusamy and his family after the 17th of October?

A. No.

No. 2
(4) B. Margaret
Nona, Cross-
examination

Cross-examined: I am a woman who has lived in Colombo for quite a few years. I lived in Colombo along with my husband. The police came in search of me in regard to this case and they searched my house. I did not know what they were searching for. They questioned me after searching my house about Muttusamy and his family. They opened my boxes and looked.

Q. They looked for jewellery?

30

A. Yes.

Q. The actual fact is that they searched your boxes, and so on, for Baby Nona's jewellery?

A. Yes.

Q. The actual fact is that they searched your boxes, and so on, for Baby Nona's jewellery?

A. They were looking for some gold jewellery.

I had not seen any jewellery with Baby Nona except the two ear-drops, gypsies, on the child's ears. Baby Nona had no jewellery of any sort, either gold or silver, to my knowledge. Except the clothes Baby Nona wore, I saw nothing else on her person at any time whatsoever.

No. 2
(1) B. Margaret
Nona, Cross-
examination.
—contd.

Q. "Kanakara"—she had nothing like that?

A. Nothing like that, My Lord.

Nor did she wear any kind of ornaments on her arms. She wore nothing whatsoever in the way of ornaments. Except the clothes she
10 wore, she wore nothing else.

Q. You had never been to Baby Nona's house?

A. I had been inside their house.

Q. Often?

A. Not often.

Q. Roughly how many times?

A. Occasionally, if I happened to be working in the neighbourhood and if I felt thirsty I would go there for a cup of water.

Q. Did she have any chintz cloth?

A. Apart from what she was wearing, I did not notice
20 anything.

Q. You had been inside her house?

A. When I said "inside" I had not crossed the threshold. I had got on to the verandah, that is all.

Q. So you don't know whether she had any receptacle or box in which to keep her clothes and other things?

A. I saw her bringing a box when she came there.

Q. What sort of a box?

A. A wicker box.

Q. I am not asking you about the shape of it, but is it that kind
30 of material (Counsel refers to a cane tray on the bar table)?

A. Material like this cane tray.

Q. You said, on the 18th, that is the following day, when you came to draw your wages you saw this accused and Jane Nona at a spot within sight of the Wadiya?

A. Yes.

No. 2
 (4) B. Margaret
 Nona, Cross-
 examination.
 —contd.

Q. Along the footpath leading to Muttusamy's house?

A. About two feet away from the footpath, by the rubber tree.

Q. From that wadiya if you look along the footpath leading to Muttusamy's hut you cannot in fact see very far?

A. Yes.

Q. The wadiya is on the side of a hill?

A. Yes.

Q. Along the slope of a hill. And the slope has been cut in two and flattened out?

A. Yes. 10

Q. The footpath you speak of skirts the wadiya on a side, on the east?

A. Yes.

Q. It skirts the wadiya on a side and goes round the base of a hill?

A. Yes.

Q. If you are where the wadiya is, if you look along that path, you will probably not see much further than that building you see out there in front of you? (Counsel refers to New Chambers of Crown Counsel) 20

A. Yes.

Q. It was not more than that distance you went when you met the accused and Jane Nona?

A. Yes. It was that distance I went from the wadiya when I met the accused and Jane Nona.

I had a chat with them and I came back along the path. I came along, got on to the Village Committee Road and went home direct instead of going to the accused's wadiya. I did not step into the wadiya again. My house is in the Kalapotha direction.

Q. I think you are related to the Village Headman of Porwagama? 30

A. Yes.

Q. You said you used to tell off Jane Nona, and so on. Are you related to Banda's wife?

A. No.

Court :

Q. Is Banda's wife a sister of the Village Headman of Porawagama?

No. 2
(4) B. Margaret
Nona, Cross-
examination.
—contd.

A. No, the present Headman is the son of the *ex*-Headman.

I know the present Headman's father married twice. The second wife is the present Headman's 'kuda amma'. She is said to be from Hikkaduwa, one Sian Baas' daughter. It is Warawita's sister that he married. She is my aunt's daughter, my mother's eldest sister's daughter.

10 I have seen Banda's wife but I don't know who she is. I don't know whether she is related distantly but she is not a close relative of the Warawitas. I was not taken to the Magistrate one night.

Re-examined :

Q. You said you saw a wicker box when Baby Nona came to the estate?

No. 2
(4) B. Margaret
Nona,
Re-examination

A. Yes.

Q. You mean she brought it with her when she came?

A. No, it was Baby Nona's sister, Lucy, who brought it when she came there.

20 Court :

Q. Baby Nona came with Lucy Nona when she came to the estate?

A. No. After Baby Nona came to the estate to reside, later Lucy Nona brought that basket.

Q. Was it given to Baby Nona?

A. Yes.

Jury: No questions.

W. M. JANE NONA, affirmed.

No. 2
(4) W. M. Jane
Nona,
examination

30 Examined: I am about 20 years of age. I live at Talgaswela. I am the daughter of Banda and the elder sister of Wilfred. I used to work on Mr. Piyadasa de Silva's estate. I was a daily-paid employee there. I am now the mistress of Jayaratne. It was Liyana Mahathaya, this accused, who arranged that I should be the mistress of Jayaratne. After Jayaratne took me as mistress we occupied the house that used to be occupied by Muttusamy. How it is that the accused was the person who arranged this was this. First of all, the accused gave me the undertaking that he would not desert me. He

No. 2
 (4) W. M. Jane
 Nona, Exami-
 nation.—contd.

said, " Don't bother about your parents, I will see that you are dressed in a frock and gown and the owner of this estate is going to give me a bungalow, we an settle down then ". He promised me all that.

My brother had threatened me saying I should mind my own business and not be found chatting with this man. He thrashed me one day. That was after I had spent a night on the estate with the accused. After my brother thrashed me by father came to enquire into it and he took me back home. After that too I continued to work on the estate. I used to meet this accused on the estate. At that time Muttusamy and Baby Nona were also working on the estate. Then one day Muttusamy and his family disappeared. The accused had not given me any jewellery, he had only give me a white cloth. The accused had asked me to scrape and mud Muttusamy's house. This was after Muttusamy and his family had disappeared. I went to that hut. I got a smell of dry fish, ' pulutu ganthe '. I did not see any burnt dry fish. The smell was in that hut. When I went to the hut the floor had been scraped. In the corner of the hut by the door I saw a heap of black earth and the floor had been scraped. Usually the colour of the floor is brown, being a mixture of cow dung and mud.

To Court :

I saw only a heap of black earth, not ash. I saw the walls daubed with mud. When I went to the hut fresh mud had already been applied on the wall in patches, not the whole thing. The mud had been applied to about a foot or so from the ground and up to about my waist, about 2½ feet in height, it was applied in patches. It appeared to have been freshly applied. The accused asked me to take that heap outside and have the floor daubed and I did so. My brother, Wilfred, and the accused were there at the time. They had the mud mixed up and they poured water and had the clay prepared for me to keep daubing the floor. They assisted me in that manner.

I do not know the number of days in a month nor do I know how many months there are in a year. After the mudding of this house, it was some short time afterwards that that this accused made arrangements to me to be taken as the mistress of Jayaratne. I cannot be definite about the time, it was some time afterwards. When the accused gave me over to Jayaratne a paper was written. I put my thumb mark on it (shown P18). It is something like this but I cannot read. I put my thumb mark on the stamp. After that Jayaratne and I went and occupied Muttusamy's hut. Handy, his wife and child also occupied that hut. They occupied the room while we occupied the verandah. A new hut was constructed for Jayaratne and me and when that was ready we moved into it. When the police came to make enquiries, Jayaratne and I were still living on the estate. After the police came a cane box was found on the estate (shown cane tray on the Bar table). This is made out of ' half-cane ', that box that was found was made with ' full-cane '. I cannot remember if I saw that box being burnt on the estate before the police came.

My father was not pleased that I had been taken as Jayaratne's mistress. Jayaratne and I have not made up with my father to this day. We do not talk to him.

No. 2
(4) W. M. J. J. J.
Nona, Cross-
examination.
—contd.

I knew Muttusamy and his wife Baby Nona. I did not see any jewellery worn by Baby Nona either on her ears or on her hands. I only saw the clothes she wore. When I was at home my father had got a pair of bangles, gypsies, made for me. I never had any chintz cloth.

Q. Never had a chintz cloth?

10 A. When I was at home I used to wear chintz cloth. That was before I went and lived with Jayaratne.

Q. You knew that child Hemalatha?

A. Yes.

Q. Had she a pair of ear-rings?

A. Yes, a pair of small gypsies.

20 Cross-examined: I remember the fact that Muttusamy and his family disappeared. On a certain day they disappeared. I knew one day they disappeared because when I used to come for work they used to accompany me. On my way to work I had to come through the compound of Muttusamy's house and they would join me and come for work. We would then go to the wadiya together, get our tools, and go to the place of work. I worked with them the very same evening of the night they disappeared, and I went home after work. I went home alone. I went home alone after work was over, there was light at the time. The working party, after finishing off the work went to the wadiya to leave their tools before leaving for home. It was about 4 p.m. By that I mean there was still light, still early in the evening.

No. 2
(4) W. M. J. J. J.
Nona, Cross-
examination

Q. What you mean is that there was still some time to go for it to get dark?

A. The sun had set when I left.

30 I know Margaret Nona. I cannot remember whether she worked with us that very evening. The work we did that evening was weeding. Margaret Nona also does weeding. All the weeding to be done that day was completed. The next morning, as usual, I got up and went for work. We usually set out for work a short while after dawn sets in. We leave home for work with the rising sun. I came as usual along that path leading on to the estate and like on other days I came to Muttusamy's house. I did not step into the house as the door had been locked with a padlock and then there was some black smoke emerging from the house.

40 Q. Was it a lot of black smoke?

A. Yes, a large volume of smoke rose up.

No. 2
 (4) W. M.
 Jans Nona
 Cross-exami-
 nation.
 —contd.

Q. It was as you might term it, flowing out through the tiles and under the eaves of the roof, and so on?

A. Yes, the smoke was getting out through the roof as well as through the walls.

Q. So to speak a singular sight that you had never seen in your life?

A. Yes.

I was barely a few feet from the house. The house was padlocked.

Q. You must have thought some terrible calamity had 10 happened?

A. It did not strike me like that. Only I felt a bad smell.

Q. As far as you were concerned it was as if the whole house was like a house on fire?

A. No, My Lord.

Q. Did you call for Muttusamy and the others at that time?

A. No.

Q. Instead you just went on?

A. Yes.

Q. To the wadiya or back home? 20

A. I went for work.

Q. So you went all the way through the estate?

A. Yes.

Q. You went up to the wadiya to take your tools?

A. Yes.

Q. Who was in the wadiya when you went there?

A. My younger brother, Wilfred and Samathapala.

Q. Did you see Jayaratne there?

A. No, I did not see him. I only saw the two of them.

Q. Who else was in the working party that morning when you 30 began work?

A. Samathapala's mother and I were the only people who were working that day.

Q. What is the name of Samathapala's mother?

A. I don't know her name.

Q. What did you people call her?

A. ' Akkay '.

When I came to the wadiya, I saw Samathapala's mother in the compound. I am not aware that Samathapala's mother's name is " Emalias Hamy ". No one else worked with me in the working party that morning except Samathapala's mother. The two of us took the tools from the wadiya and we went off to do the weeding. We went to
10 do our weeding down the slope of the rubber nursery. There are three rubber nurseries. Of these, we worked in the third nursery. From the wadiya there is a path going towards Muttusamy's house. As you go along that path those three nurseries are near that wadiya.

Q. May I remind you where it is two nurseries or three?
(Counsel indicates the number by the showing of fingers).

A. Three nurseries, My Lord.

The three nurseries are close to each other. The first of them is more or less to the front on a side of the wadiya, more or less near the compound of the wadiya. When you stand in front of the wadiya, you
20 see it right in front. If I am standing on the verandah (witness box) the first nursery would be up to that box on this table (points to jury box placed on the Bar table) *i.e.*, a distance of 8 feet. The nearest of the three nurseries is a few feet away from the verandah of the wadiya and all three nurseries are close to each other.

Q. That place you worked is it near the footpath?

A. I had to start my work just down the footpath.

Q. How far from the wadiya is the place you started working?

A. From here (witness box) to that ' Mara ' tree outside there.

Q. How far is that place where you started working from the
30 footpath?

A. From here (witness box) to even further than the verandah pillar over there (about 40 feet).

Q. From the place where you worked, the path would be there?

A. Yes.

Q. Did Samathapala's mother and you work the whole day that
day?

A. Yes.

No. 2
 (4) W. M. Jane
 Nona, Cross-
 examination.
 —contd.

On working days I used to go home for my midday meal. On that day too I returned home for my midday meal back along that footpath passing Muttusamy's house. I went home and came back again for work in the afternoon. When I went home for my midday meal my father was not at home. My brother Edwin was not at home himself as he was at Palawatta during that time. My mother was at home.

I came back for work after my midday meal along that same footpath passing Muttusamy's house. When we go for our midday meal we leave our tools at the wadiya. I did so on that day too. When I went to the wadiya to leave my mamoty to go for my midday meal at that time I saw only my younger brother in the wadiya. Samathapala's mother and I went to the wadiya, left our tools there and went off for our midday meal. 10

Q. When you came in the morning to the wadiya and met those people there when you went to take your tools did you tell any of them of what you saw was happening to Muttusamy's house?

A. When I was just about to start my talk saying "Muttusamila" as I said that Liyana Mahathaya came up to me and covered my mouth with his hand. As I was about to say that to Samathapala's mother, Wilfred and Samathapala the accused closed my mouth saying, "Aha, Jane Nona". 20

As I said I went home for my midday meals. At the time I passed Muttusamy's house on my way home to have my midday meal the hut was still smoking and the door of the hut was still locked with that padlock. When I went home I met my mother and it was she who gave me my meal. I did not tell my mother, "Ammay, such a thing has happened", or anything of the sort. I only enquired after my father. I can remember that very clearly. My father had gone to the 'kadde'. I then came back to my work. I did not tell my mother anything about it as I am not in the habit of telling such things at home. I had been told not to carry tales. In the afternoon it was only Samathapala's mother and I who did the weeding. After work in the evening again I went home. I passed Muttusamy's house again on my way home after work. It was still smoking and the door was still padlocked. When I reached home that night my father was at home. I did not tell my father about this matter. 30

Q. As far as we understand you, when you went home for your midday meal, you asked for your father, was it in order to tell him about it? 40

A. Yes.

Q. In the evening when you went back your father was there?

A. Yes.

Q. But you just said you did not tell your father anything about it?
 A. I did not tell him.

No. 2
 (4) W. M. Jane
 Nona, Exami-
 nation.—*contd.*

Q. Why did you not tell him?

A. I have been asked, My Lord, not to carry tales. I have been told, " You had better go to work and come home, that is all "; therefore I did not tell my father anything about this.

Q. Who had given you that advice, " Don't bring tales home " ?

A. My parents.

10 Q. That is as to gossiping at home. For a whole day Samathapala's mother and you worked together?

A. Yes.

Q. Did you not mention it even to Samathapala's mother while you were working?

A. I did not mention anything to her.

Q. The fact that you saw smoke emerging from Muttusamy's house that very morning, you never mentioned that in the lower Court?

A. I cannot remember whether I mentioned it.

Court :

20 Take it from me that you have not mentioned that in the Magistrate's Court.

Q. You never even mentioned anything about the accused closing your mouth when you tried to tell someone about it?

A. I cannot remember whether I said it.

Court :

She has not.

Q. Even in the afternoon of that day did anyone else work with you besides Samathapala's mother?

Court :

30 She has said definitely ' No '.

It is my position that up-to-date I am not reconciled with my father.

Q. Some time after you started living with Jayaratne, you went to live in a house on the very boundary of the land on which your father's house stands?

No. 2
 (4) W. M. Jaine
 Nona. Cross-
 examination.
 —contd.

Court :

Q. After you left the estate, did you go to live in a house on the very boundary of the land on which your father's house stands?

A. Yes, My Lord.

Q. Next door to your father's?

A. At the end of my father's boundary.

Q. How far from your father's house was that one?

A. Our house was down the hill and my father's house was up the hill. The distance between would be say from here (witness box) as far as that roof out there with the lightening conductor on top of it (office of the Minister of Justice), *i.e.*, 247 feet. 10

Q. I think you lived there for some time?

A. Yes.

Q. At that time, some portion of the land there was also worked on by Jayaratne and you?

A. No. While living in that house, I went to Marangoda estate for work and Jayaratne went somewhere else to tap rubber.

Q. Is it your position that even whilst you were living like this within that distance of your father's house that your family and theirs did not get reconciled? 20

A. We didn't get reconciled. I went and asked my things. They did not give them to me, therefore, I was not in the habit of visiting my parents' house.

Court :

Q. So that while you lived in that house, you hadn't made up with them?

A. No, My Lord.

Q. Even after this case started in the Magistrate's Court, Balapitiya, they didn't talk to you?

A. No. 30

Q. You have spoken to us how you went up and down from your house to the estate on that day when Muttusamy's house was exuding smoke?

A. Yes.

Q. Now, on the next morning, that is the day after, did you go to work?

A. I cannot remember.

Q. Can you say how many days after that day on which you saw the smoke, did you do this mudding of the hut?

No. 2.
(4) W. M. Jane
Nona, Cross-
Examination
—contd.

A. I cannot remember the exact date, may be a month or two after the smoke emerged from the house.

Q. I suppose what you mean by a 'month or two' is long after?

A. Yes.

Q. In other words, certainly not one or two days?

A. No.

Q. Not a week or two either?

10 A. No.

Q. You remember when you and Jayaratne went to live in Muttusamy's house?

A. I know the fact that we lived in his house.

Q. Could it be round about that time?

A. When we took up residence in Muttusamy's house the hut had been mudded.

Q. Were you ever given a cane box of clothes belonging to Muttusamy by anybody?

A. No, My Lord.

20 Q. Did anybody at any time give you any ornaments belonging to Baby Nona, Muttusamy's wife?

A. No.

Re-examined :

Q. You gave evidence on three days in the Magistrate's Court?

A. I know the fact of going to the Court, but I cannot say how many times.

Q. As in this Court, you were questioned by one party, then later you were cross-examined. I believe my learned friend questioned you?

30 A. I cannot remember.

Q. Do you remember being asked about what happened while you were on your way to work that morning in the Lower Court?

A. I cannot remember.

No. 2
 (4) W. M. Jane
 Nona Re-
 examination
 —contd.

Court :

Q. You were not asked questions there as closely as in this Court?

A. That is so, My Lord.

Q. Even in this Court the first time you mentioned about having seen smoke coming from Muttusamy's hut was when you were asked that question by my learned friend?

A. Yes.

Q. Is that something you had made up, about the smoke?

A. I had actually seen that smoke.

10

Court :

Q. The accused actually put his hand on your mouth as you said earlier?

A. Yes, My Lord.

Q. Is it that you did not tell your mother and father because the accused put his hand on your mouth?

A. He was threatening to kill me if I came out with any of these things to anyone.

Q. You had already been his mistress?

A. Yes.

20

Q. You said you saw the smoke and got a smell?

A. The smell I got when I passed Muttusamy's house that morning was that of burnt dry fish.

Q. It was a similar smell that you got when you went to mud the house?

A. Yes.

Note: At the request of Counsel for defence (Dr. Silva) Court puts the following questions.

Q. Before Muttusamy and his family disappeared, had you spent a night with this woman in the wadiya?

30

A. No, My Lord.

Q. You never had sexual intercourse with him up to that point?

A. No. I was only talking and laughing with the accused prior to that.

Q. It was after Muttusamy's family disappeared that you spent a night with him?

A. Yes, My Lord.

No. 2
(4) W. M. Jane
Nona Re-
examination
—contd.

Jury :

Q. To your knowledge, was there any displeasure between Muttusamy and Baby Nona?

A. Yes.

Q. Was there any intimacy between the accused and Baby Nona to your knowledge?

10 A. I don't know.

12 noon: Certified correct.

(Sgd.) N. W. LEWIS,
Stenographer, Supreme Court.

Friday, 1st October, 1948. 12 noon.

A GUNAWATHIE, affirmed, 16 years, daughter of Lewis Hamy, living at Porwagama.

No. 2
(4) A.
Gunawathie,
Examination

20 I used to work in Piyadasa de Silva's estate doing weeding. I remember the police coming to that estate. About 3 or 4 days before that I was weeding on that estate. I was weeding near the hut which was occupied by the Tamil man called Muttusamy. At the time I was weeding there the accused was in that hut. There is scrub jungle near about that place. I found a cane box in that jungle. It was a round cane box. Inside that cane box there was a blue coloured cloth. When I found it I mentioned it to Jayaratne. Then Jayaratne in turn mentioned it to the accused. Then the accused asked us to weed down the slope. That is out of sight from this place. By us I meant myself, Leelawathie, Jane Nona, Handy and Jayaratne. Jane, Leelawathie and I were asked to go down the slope and weed. I do not know what happened to the box, but we went on our weeding business. After we
30 went down the slope we could not see anything. I did not see the area above us. I saw some smoke emerging from that quarter.

Cross-examination : My sister Leelawathie is married to Arnolis alias Edwin.

Re-examination : Nil.

To Jury : Nil.

G. W. LUCY NONA, affirmed, 35 years, wife of Premachandra Veda-Mahathmaya, living at Kataluwa.

No. 2
(4) G. W.
Lucy Nona,
Examination

I had a sister called Baby Nona. My father is still alive. I have a sister living in Kataluwa.

To Court: My father is married twice. My mother had 4 children by the first marriage. By my mother my father had 4 children.

The eldest is Hinni Nona, then myself, then my younger brother Babun Appu, then Babu Nona *alias* Baby Nona. She was my youngest sister. I cannot say how many years after me Babun was born. Now Babun Appu is about 30 years. Baby Nona would be about 28 years of age if she is alive now. At one time Baby Nona was kept by a railway guard and she had a child by him called Hemalatha. At one time Baby Nona was staying with me for about 10 years. She was very much attached to me. She could write. I too can write. In 1946 she left my house and went away. Baby Nona lived with me for over 10 years up to 1946. We first lived at Kataluwa. Then when the military took over our house we went to Polgahawela and stayed there for 2 months. Then we were at Denuwela past Ahangama. The railway guard got friendly with my sister at Kataluwa. Hemalatha was born at the Galle Hospital. At that time we were living at Denuwela. I cannot remember the year. When my sister left my house in 1946 the child was about 1½ years old. If the child is alive today she would be about 6 years old.

To Court: When the child left me she could speak and walk about.

Leaving my house sometime in 1946 she went and stayed with one Nona Hamy at Magalla. She just went on a visit to Magalla and stayed with Nona Hamy. She went there as a visitor and stayed there. I know Weliwatta. At the time she went to Magalla she stayed there for a short time and then came to Weliwatta of which I was not aware of.

To Court: While she was at Magalla she did not write to me any letters. Nor did she write to me when she was at Weliwatta.

After she left me and when she was at Ambalangoda she wrote to me. From Ambalangoda I came to know that she was working in Mr. Piyadasa de Silva's bungalow. Then I did not go in search of her. I did not go to Weliwatta. She came home after that. That is to Unawatuna. From Denuwela I went to Kaduruduwa and then from there I went to Unawatuna. She brought the child also along with her. That was the only child. She stayed with me at Unawatuna for 2 days. Then she went to Ambalangoda with the child. I met a man called Muttusamy at Piyadasa de Silva, Proctor's house. That was at Ambalangoda. I cannot say whether he is an Indian Tamil. I learnt there that Muttusamy had taken my sister as his mistress. From there we had tea at Mr. de Silva's and went to the estate at Porwagama. All the 4 of us went there. Muttusamy, my daughter, the child and I went there to that estate.

Court adjourns for lunch.

Resumed after lunch.

G. W. LUCY NONA, re-affirmed.

No. 2
(4) G. W.
Lucy Nona,
Examination
—contd.

I said before the adjournment that Muttusamy, child, Baby Nona and I went to the estate. We went to a hut, on that estate. First we went to the accused's house and from there we came to this hut. That was the hut where Muttusamy, my sister and child were living. I stayed with them on that estate for two days. I stayed in Muttusamy's house. My sister had a cane box. I gave her that box when she left us at Unawatuna. That was during the period when I 10 accompanied them to the estate. It was a round box. She took that box to the estate because it was useful to put clothes and other things. While going from Unawatuna I gave Muttusamy either a raincoat or a pair of trousers. I had a raincoat. I got it from Mr. Seneviratne's house. I gave that raincoat to Muttusamy. At the time I stayed with Muttusamy and Baby Nona, Muttusamy used to wear ordinarily a pair of blue shorts. I cannot say what he wears on the upper part of his body.

To Court: During the 2 days I was in Muttusamy's house he 20 did not wear a sarong. He was wearing that pair of shorts.

I did not see him wearing a sarong. The child was suffering from asthma. I returned to my house after a couple of days. I received letters from my sister. After I returned home from the estate I received 2 or 3 letters from him. Those letters were written from Porwagama. Then I was at Unawatuna. I learnt from a letter that she wanted medicine for the child. That is from asthma. She also wanted some oil. That child's birth certificate and horoscope were there. She had written to me asking me to send those 2 documents which were with me. In consequence of those letters I replied saying 30 that I would come with them or send them to her. I took the medicine along with me. I could not take the horoscope with me. I took the birth certificate with me. I went to the Galle Railway Station with the intention of going to Porwagama Estate. On that day the train service was not functioning. That was the time of the railway strike. I could not go on that day. A few days later I made an attempt to go again. On that occasion I reached Porwagama Estate. I went to the wadia occupied by this accused. The accused was there. I told him that I had come there to see my sister. He said that my sister and others had left (Nangila gihilla). When I wanted to go towards their 40 house the accused told me that my sister and others had left the estate without his knowledge and that I cannot go along the path leading to their hut owing to some obstruction by Bin Thambura creepers. Besides the medicine I took some sundries like chillies, &c., for their consumption. I had a meal at the accused's house. After meals the

No. 2
 (4) G. W.
 Lucy Nona,
 Examination
 -contd.

accused gave me Rs. 2 and said that there was no one in the wadia of my sister and asked me to go away immediately. Then I returned home. I left all the sundries in the estate but brought with me the medicine that I took. After that I did not hear from my sister. Up to date I have not heard from my sister nor have I seen her. Nor have I seen the child or Muttusamy. When my sister left the village she had a pair of ear-studs and a pair of silver bangles. The 2 ear-studs were set with 2 red stones. The child Hemalatha had a pair of gypsies. The child's father got the pair of gypsies made for her when her ears were bored. That is the railway guard. The bangles were made by me for my sister together with the pair of ear-studs. My sister was wearing the ear-studs when she left me. I cannot speak to anything after she left me. When I was in the estate for 2 days my sister did not have both those ear-studs and the pair of bangles. At the time I was staying in the estate Muttusamy and my sister appeared to be living in cordial terms. 10

To Court: Muttusamy was fond of the child.

I received letters from my sister about 1½ months after I left the estate asking me to send that medicine. I received 2 letters close to each other. They were received within a period of one week. It was about 15 days later that I attempted to go to this estate on receipt of those letters. I actually went to the estate about 10 or 15 days later by train. I last heard from my sister about 30 days before I went to the estate. 20

Cross-examination: The only time in my life I saw Muttusamy was the occasion on which I saw him at Mr. Piyadasa de Silva's bungalow. No sooner I saw him I identified him as Muttusamy. I identified him as an Indian Tamil. I did not know anything about Muttusamy's antecedents. I did not know from where he came and whose who he was. 30

Re-examination: Nil.

No. 2
 (4) Dr. P. K.
 Chanmugam,
 Examination

DR. P. K. CHANMUGAM, sworn, Professor of Anatomy, Faculty of Medicine in the University of Ceylon.

On 11th February, 1947, I received from Constable Banda a sealed packet from the Magistrate's Court of Balapitiya. The seals were intact. I opened the packet and found the productions marked P1, P2, P3, P4, P7, P15, P15A and P17. P1 contains a piece of human adult bone from the head. Sex indeterminable. There were 2 other pieces of bones. There were signs of charring and burning. This piece of bone that I picked up is a human bone. That is the only large piece. (Piece of adult human bone from the head shown to the jury). P1 comes from the parietal or temporal bone of the head. (Other pieces of bones contained in P1 sent to the jury). (Shown P7). 40

- This is the right knee cap bone of an adult, sex indeterminable. The remaining bones in P7 are unidentifiable. This is a part of the knee cap. The other bones in P7 cannot be identified. All the bones in P7 appear to be charred. (The other bones of P7 sent to the jury). (Shown P15). This contains a portion of the right human rib. It is that of an adult. It also contains the small portion of a human face. (Shown to jury). It is a piece of bone in the region between the eye and nose. It is also that of an adult. Upper cervical vertebrae in the spinal column of an adult. Some of the bones in P15 appear to have been subjected to heat; not all. They are brittle. When it is old also it can be brittle. Out of the identifiable bones the facila bones show some signs of charring. The rib does not show signs of charring. The remaining bones in P15 cannot be identified. (Shown P15A). It is the milk tooth of a child under 8 years of age. This is from the right upper jaw first molar. It is a milk tooth. The child drops this tooth when it is about 9 years of age. It is really the crown of that tooth. That tooth shows signs of burning. (Shown to jury). A child generally begins to drop its milk tooth when it is about the second year. They start growing from the 6th month up to the second year.
- 20 Then from about the 6th year they start to drop. The incised ones drop earlier. The molar tooth would drop about the ninth year. The canine would drop even still later when it is about 11 years. This is only the crown of the milk tooth of the right jaw. That too is charred. The root is not there. It seems to have been dropped from the root, but I cannot say whether it was before or after death. The dropping of teeth may go on even till 10 years. They start dropping somewhere about 8 years. This child is between 1½ and 8 years. That is the safe limit. The other productions I have mentioned marked P2, P3, P4 and P17 contain unidentifiable bits of bones. They are fragments.
- 30 They are very small and impossible to identify. These bones too have been charred.

No. 2
(4) Dr. P. K.
Chanmugam,
Examination
—contd.

Cross-examination : Nil.

To Jury : I am unable to say whether the fragments are human bones.

K. V. EROLIS, affirmed, 63 years, cultivator, living at Porwagama.

No. 2
(4) K. V. Erolis,
Examination

- I live on the village committee road near the turn off to Mr. Piyadasa de Silva's estate. Villagers do not come to me to get their paddy husked. I know the Tamil man who worked in Mr. Piyadasa de Silva's estate. He has never come to me to get paddy husked.
- 40 One day a Sinhalese woman brought to me some paddy. I do not know her name. That woman came with a Tamil man and a small child. I know that Tamil man's name. We used to call him Muttusamy. They came there before sunset at about 5 o'clock. I have no idea of

No. 2
(4) K. V. Erolis,
Examination

time now. They brought some paddy to be pounded. They pounded the paddy by themselves. It was Muttusamy who pounded the paddy. Muttusamy used to come to my house whenever he goes to the estate or whenever he goes to Ambalangoda. I knew him well. He did not borrow any money from me. I did not owe him any money. I had not supplied him with anything. What I gave I got back. I used to give him betel and arecanuts and I get money from him. He used to pay me the money then and there. I used to speak to him when he comes to my place.

To Court : I said that he pounded the paddy. After the pounding was over the family left. It was dark when they left. All the 3 of them went together. 10

Since that night I did not see any of them. That night when they left my house Muttusamy and Baby Nona appeared to be friendly. The child was carried by Muttusamy. The husked paddy was carried by Baby Nona.

Cross-examination : Nil.

W. M. ARNOLIS, affirmed, labourer, living at Porwagama.

No. 2
(4) W. M.
Arnolis,
Examination

I am the elder brother of that girl Jane Nona. I am known as Edwin. I remember there was a man called Muttusamy working on that estate of Mr. Piyadasa de Silva. I too was working on that estate. When I left the estate he was still working on it. After that I came to know that Muttusamy had disappeared. After the disappearance of Muttusamy I was asked to go back and do some work. I was not asked. I went for work. I was asked to dig a pit in the backyard of Muttusamy's house. It was the accused who asked me to do that. There was a pit there already. That was the pit from which the clay was taken to build the house. I took earth out of that pit. He asked me to spread the earth thinly by the back wall of the house. When I dug that pit I found country rice, flower, paddy, onions chillies, coconuts—2 husked coconuts. I asked the accused how they happened to be there. Then he said, "What is the use of this Para Tamil fellow's things for us, I threw them away". This was a reference to Muttusamy. By then I knew that Muttusamy had disappeared. I had heard that Muttusamy had run away from the estate. At this time Muttusamy's hut was closed. It was not locked with a key but tied with a piece of string. At the time that pit was dug that door was closed with a new padlock. When Muttusamy was living that door was fastened with a piece of string tied to it. I learnt that Muttusamy and family had disappeared about a month prior to this digging of the pit. My father told me about it. My sister did not tell me anything. I thrashed my sister after the disappearance of Muttusamy about 2 weeks later. I noticed her going always in the company of this accused and I advised her, but she would not listen 30 40

to it and I, therefore, thrashed her. Before Muttusamy disappeared I did not notice any familiarity between my sister and the accused. I noticed this familiarity after Muttusamy's disappearance. It was about two weeks after the disappearance of Muttusamy that I came to know the familiarity of this accused with my sister.

No. 2
(4) W. M.
Arnolis,
Examination
--contd.

To Court : After I thrashed my sister I came to know that she had stayed a night with the accused.

10 I personally do not know the disappearance of Muttusamy and his family. What I know is what other people have told me. I did not see the disposal of bodies and things like that.

Cross-examination : I did not assist in the collection of timber to make a fire. Jayaratne and I got some logs for making a fire. I do not know why; the accused asked me to do so and I carried out his instructions. I did so on the orders of the accused. I cut these logs near the accused's bungalow. That is near the site for the new building. A little below that timber shed. I cut the ' Mille ' logs and I was asked to bring them and put them on the compound of the accused's house. At that time the accused was staying in the bungalow where Handy and others were. That is not Muttusamy's hut.

20 To Court : I put those logs in the compound of the accused's wadia.

I put those logs down the hill below the timber shed. I did not put them in the compound of Muttusamy's house.

Q. Did you tell this to the Magistrate : " Jayaratne and I were asked to cut some firewood " ?

A. Yes.

Q. " Then Muttusamy was not on the estate " ?

A. Yes.

30 Q. " We cut the logs and gathered them in Muttusamy's compound " ?

A. I deny to have said that (D13).

Q. I will tell you the reason for your denying this. There was a burning done on the slope below Muttusamy's house on a certain day and you actually came up there on seeing smoke?

A. No, I deny that.

I did not see smoke from something burning at that spot. I am 22 years of age. I have no fixed work. I just work about in the

No. 2
 (4) W. M.
 Arnolis, Cross-
 examination
 —contd.

village. When Muttusamy and others were on the estate I left that estate and went to work at Pelawatta. Till the timber contract was over I worked on that estate. I cannot read or write.

To Court: I worked at Pelawatta for about a month. After that I was at home for about 2 weeks. My father asked me to go to the accused's estate for work and I did work there, till my brother was taken out of that estate. After that I have no fixed job. I do whatever work I come across.

Pelawatta is a village. From Porwagama to Pelawatta is 30 miles. The pay given to me in the accused's estate was not sufficient and I left in search of better employment. I was the watcher of a heap of timber. That was at Boralugoda village. 10

To Court: At Pelawatta a gentleman had taken a timber contract and I was guarding that timber. Boralugoda is also a village within that village of Pelawatta.

I did that job for about one month. I cannot say the name of my master. I have no relations at Pelawatta. Pelawatta is beyond Pitigala. I do not know in which Korale it is. I went there by bus. From Pitigala I went by bus. That bus goes to Pelawatta. I deny that I was at Porwagama at the time of Muttusamy disappearance. 20

To Court: I had left this estate about a month prior to that. I left that estate because the pay I was getting was not sufficient.

I deny that I assisted in the disposal of these dead bodies. I deny that this Pelawatta is an invention made in the course of this transaction. I did go to Pelawatta. The accused split the timber that Jayaratne and I collected. He split them in his compound. I did not see accused and Jayaratne removing that timber to the east of Muttusamy's house. I did not see them take the timber down a slope on the east of that house. I did not see any signs of burning nor did I see any smoke coming from there. I told the Magistrate that the accused and Jayaratne removed the logs towards the east of that house. 30

Q. "It was taken down the slope and I saw smoke"?

A. I did not say that (D14).

Re-examination: Nil.

Court adjourns for the day.

Certified correct.

(Sgd.) R. S. PERERA,
 Stenographer, Supreme Court.

Monday, 4th October, 1948. 9.30 a.m.

No. 2
(4) W. R.
Chanmugam,
Examination

Accused present.

Same Counsel as before.

W. R. CHANMUGAM, sworn.

Examined :

I am the Government Analyst of Ceylon. I have also had my training in this line of work at Scotland Yard.

On the 6th of February, 1947, at 9.30 a.m., I went with the Assistant Superintendent of Police, Mr. Poulier, to this estate at
10 Porwagama. I was shown a hut where the deceased, Muttusamy, was said to live with his family. The hut was under police guard and I examined it carefully. This hut consists of a verandah, a living room and a kitchen, the living room and the kitchen being one big room divided in two by a half-wall.

Note: At this stage copy of the sketch is handed to Mr. Chanmugam.

I have before me a sketch of the scene of the incident. There is a door on the southern side of the living room leading on to the verandah. There are windows on both the western and eastern walls. The house
20 is made of wattle and daub.

On this day, the 6th of February, 1947, when I went to the scene, I made my own observations of the place. They are as follows:—The complete floor of the living room and the kitchen was freshly mudded. On the wall opposite the door, *i.e.*, the north wall, there was a freshly mudded portion of an area 12" × 16" and 7" from floor-level. This area had been scooped up by the police in the centre. When I saw it there was a hole in this area; it was only a hole in the centre, not covering the entire area of 12" × 16" and it went through the wall. This hole when I saw it was about 1" × 1¼". If one were to face the
30 house, the kitchen wall on the eastern side was uniformly freshly mudded up to a height of 4' 8". The rear wall on the north was freshly mudded along the entire length of the wall up to 7" from the ground. The partition wall between the living room and the kitchen was freshly mudded on the side facing the living room from the floor up to the first wattle which is about three inches from floor level. Those are the observations I made.

I examined the room for blood stains. There was a smear stain on the left door frame, as one enters, at about 3' 6" from floor level, there was another stain on the right door-frame at about 3' from floor
40 level. On the partition wall between the living room and the kitchen there were five spurt stains in a group towards the living room side, that

No. 2
 (4) W. R.
 Chanmugam,
 Examination
 —contd.

is the partition wall on the living room side. The highest drop of this group was 1' 1" from floor level and 1' 5" from the verandah wall (*i.e.*, the southern wall) that is the junction of the partition wall and the southern wall just on the right of the door. The lowest drop in this group was 8" from floor level and 1' 5" from the southern wall. The directions of the stains was from the top of the wall towards the bottom of the floor.

Then, I picked three strands of hair adhering to the fibres of the wattle and just below the lowest group of stains (P25 produced). I mounted these three strands of hair which I found at the scene between two slides. The slides have apparently broken in transit from Court to Court. On the glass slide which I hold in my hand are two hairs. The third hair is visible on a separate slide. Putting all the three slides together all three hairs are visible (shown to jury). 10

Note : Court orders that the broken pieces of glass be put into a separate envelope and marked " P25—Broken pieces of glass ".

I examined those hairs microscopically and I have also taken enlarged photographs of these three hairs. I took three enlarged photographs of the bulbs of the three hairs and two other enlarged photographs showing the portion of the longitudinal section where two of the hairs are split. These photographs were taken by me personally (P25A—P25E produced). 20

Note : Negatives are handed to jury for their inspection. Counsel on both sides inspect them.

In P25A, P25B and P25C I have taken photographs of the three bulbs. P25D and P25E show the rupture I noticed on the walls of these two hairs. P25A shows the bulb almost in its entirety. P25B shows nearly three-fourths of the bulb with part of its outline broken. P25C shows the bulb with more than half broken.

Q. Do P25B and P25C indicate anything? 30

A. They must have been subject to a certain amount of force to damage the bulb. These are human hairs and they probably came from the head. Each hair is about two inches long. One hair is partly grey, and the other two show signs of incipient greying.

Court :

Q. Is that visible to the naked eye?

A. No, My Lord.

Q. Was it under the microscope you observed it?

A. Under nearly ' 100—enlargement '.

Q. You observed it yourself? 40

A. With my own eyes.

Q. Can you say of what sex it is?

A. There are no scientific tests to distinguish between male human hair and female human hair.

Q. Is it possible to say whether this hair was taken out of a human body before or after?

A. It is not possible.

Q. Looking at P25D and P25C, what can you say about the braids depicted in these pictures?

10 A. They indicate that the strands of hair had been subject to a certain amount of 'shearing', *i.e.*, stress of pressure. (Demonstrates a glancing blow, a blow at an angle). The rupture would be caused by a glancing blow so as to affect one side of it and leave the other side intact. Say, a person falling down like that (demonstrates) and striking his head at an angle.

Q. So that a person falling down like that and striking his head a glancing blow against that mud and wattle wall could have left those three hairs attached to the wattle with those marks found upon them by you?

A. That is so.

20 Q. To get back to the other evidence about blood stains. The two pieces of wooden frame containing blood stains were forwarded to you subsequently for analysis and report (P22 and P23 produced)?

A. Yes.

Q. And these four pieces of the mud wall (P24 produced) were also forwarded to you?

A. Yes, the pieces are fragmented.

Q. They were brought to you by the Assistant Superintendent of Police, Mr. Poulter?

A. Yes.

30 Counsel for Defence :

Might I suggest that Your Lordship issues instructions to the lower Courts in regard to such productions. Productions of this importance are merely put away and left in the various corners of the Magistrate's Court without any care being taken in handling such productions. In the case of P24 being mud if it is not packed away with care, it is bound to be useless when it comes to be taken up as a production later on. I am not making this observation with particular reference to the productions in this case, but I think a useful purpose will be served were Your Lordship to issue the necessary instructions.

No. 2
 (4) W. E.
 Chanmugam,
 Examination
 —contd.

Court :

I shall certainly remember it. In fact, I have already drawn the attention of some of the Magistrates on such occasions as I found it necessary to do so.

Q. These productions were taken by you on the 8th of February, 1947?

A. Yes.

P22 is the right side of the door frame, P23 the left side of it. There was blood on both, but the quantity was insufficient for identification of the species as human blood. 10

In the case of examination for blood, there are three tests made. The first is a preliminary test, what is called a ' sorting out ' test; the second test is one in which we prove that blood is present; the third test is to find out the species of the blood.

Now, in P22 and P23 there was sufficient material to establish the presence of blood but there was not enough to prove the existence of human blood. The quantity present was not sufficient to determine whether it was human blood or any other. But blood was identified.

I also examined P24 (the four pieces of mud) and human blood was identified. These are pieces I found on the partition wall. 20

I sent in my report P26 to the Assistant Superintendent of Police on the 3rd of March, 1947. I produced it in the lower Court marked P26.

On the 11th of February I received three sealed parcels at the hands of Police Constable Banda for which I issued a receipt, P27, and a report P28.

Q. What were the productions in that report, P28?

A. They were as follows—P28 read as follows :—

“ P5 —A mamoty.

P6 —A wooden box. 30

P16—Partly-burnt pieces of khaki.

P8 —Piece of card-wadding.

P9 —Piece of card-wadding.

P10—Two distorted metal slugs.

P11—Two distorted metal slugs.

P12—Piece of card-wadding.

P13—Piece of shining black substance.

P14—Box containing some pellets, slugs, metal bars, etc. ”

Q. Of these shown, P8, P9, P10, P11, P12, P13, and P14, P8 contains a piece of wadding found by the Sub-Inspector behind the house of Muttusamy?

No. 2
(4) W. R.
Channugam,
Examination
—contd.

A. Yes. It is a portion of 12 bore card-wadding found in Eley Kynoch cartridges.

Q. P9 is also a portion of 12 bore card-wadding found in Eley Kynoch cartridges?

A. Yes. Those are pieces of wadding said to have been found by the Sub-Inspector behind Muttusamy's house.

10 Q. P10 are two pellets said to have been found embedded in the earth under the stump of a tree behind Muttusamy's house according to the Sub-Inspector?

A. Yes, My Lord.

The two slugs in P10 do not correspond in weight to any standard size of shot.

Q. Then they must have come out from a home-made cartridge?

A. You can make home-made cartridges with factory-loaded shots. These are not factory-made shots, they are locally-made ones.

20 Q. It is possible to re-load factory-made cartridges using locally-made slugs?

A. Yes, it is possible.

Q. P11 are two pellets said to have been found by the Sub-Inspector in the surface of the soil between the stump referred to above and the rear wall of Muttusamy's house?

A. Yes. One of the slugs in P11 corresponds in weight to an S. G. slug but does not appear to be of the factory-made type. The other slug does not correspond in weight to any standard size shot.

Court :

Q. Do you see any similarity between P10 and P11?

30 A. They are all distorted. Not one of the four in P10 and P11 is factory made.

Q. Are the two slugs in P10 bigger than S. G. slugs or do they correspond with S. G. slugs in weight?

A. They are much larger.

Q. P12, that piece of wadding with the letters "Smokeless S. G.", said to have been found by the Sub-Inspector while sifting the soil near the bark of a tree behind Muttusamy's house?

A. That is a card-wadding of 12 bore S. G. Eley Kynoch cartridge.

No. 2
 (4) W. R.
 Chanmugam,
 Examination
 --contd.

Q. P14, slugs and pellets found by Sub-Inspector at the house occupied by the accused found in a saucer?

(Shown to jury before the Analyst expresses his opinion thereon).

A. P14 contained a mixture of shots of various sizes and types consisting of three large size hand-made slugs; 24 S. G. standard-size slugs; 4 sixteen-bore S. G. slugs; 2 S. S. G. slugs (which are the same for 12 and 16-bore), about 200 pellets corresponding in weight to No. 4 shot and about 150 pellets of moulded size. A "moulded shot" is a locally-made shot. Factory-made pellets will not have a mould. P14 also contained $3\frac{1}{2}$ bars of metal; through-fire cartridge percussion caps at anvil and one in-fire percussion cap. By 'anvil' I mean a small piece of metal that is fixed to the base of the broken cap. 10

I produce my report marked P28. (Shown P32). This is a double-barrel breech-loading 12-bore gun. The type of cartridge used in this gun would be a 12-bore cartridge.

Q. If a person fires with a 12-bore gun standing at the door of Muttusamy's house, having regard to the dimensions of the room and nothing interrupting the passage of the shot, could they pass out of the rear door of the house in a column without any spread?

A. With a factory-made cartridge fired from a gun similar to P32 there will be no spread of shots between six feet from the muzzle-end of the gun and the target. 20

Q. The depth of that room from the front door to the rear wall is 10' 8"?

A. I measured it. It is 11' 8" from the door to the rear wall.

Q. So that if a person were to stand just within the threshold and take up the gun, making allowance for the length of the gun and the body of the man standing inside, the end of the gun would be approximately about six feet from the rear wall?

Note: At this stage P32 is measured with a tape. 30

A. P 32 is 3 feet 10 inches long from the muzzle-end to the butt-end.

Q. At what range, Mr. Chanmugam, would the wadding inside a cartridge get embedded?

A. A factory made cartridge has four waddings, three of them cardboard. (Demonstrates with a factory-made cartridge in hand).

This is known as the base of the cartridge. At the base is the percussion cap. The power is placed between the percussion cap up to a distance of about half an inch which, in this case, is known as smokeless powder (in factory-made cartridges); then you have a wadding made of cardboard; above that is another wadding made of felt—this is thicker than the cardboard wadding; over the felt wadding is another cardboard wadding of the same dimensions as the 40

first cardboard wadding; then you have the pellets or slugs. Over that there is another cardboard wadding which you will see on the outside of the cartridge at the crimped or furled edge, which invariably bears the size of the shot and the make of the cartridge. On firing, the trigger impinges on the percussion cap which contains a chemical which decomposes and produces a small tongue of fire right inside where the anvil is fixed between the percussion cap. That flame ignites the smokeless powder. The smokeless powder is instantaneously converted into gas thereby realizing a considerable amount of energy. That energy pushes the wadding and the pellets. Since the other end of the cartridge is open in that the edge is just furled over the top wadding, all these emerge from the muzzle-end of the gun, so that at the muzzle-end of the gun all the pellets and all the waddings will travel together for a distance of six feet. The topmost wadding which bears the size of the shot and the maker's name is the first to drop off as it is the lightest. Generally it drops off within 6 to 10 feet. The other two cardboard waddings and the felt wadding will still continue in their flight up to generally about 15 to 20 feet. The distance they traverse would again depend on the wind that is prevailing at that time. The felt wadding can be carried even up to 50 to 60 feet.

No. 2
(4) W. R.
Chanmugam,
Examination
—contd.

10 Q. So that at a range of six feet any of those waddings can be embedded in the target?

A. All four would be embedded or pass through or would have struck the target and rebound.

Q. Assuming that the hole you found in the rear wall was caused by the passage of a charge of shot, the line of fire from a man holding a gun at his shoulder would have been by the steep end downwards?

A. Yes.

30 Q. A charge of shot when it strikes a body like a human body gets dispersed through the body, it does not travel in a column?

A. If it strikes soft tissues the exit wound would be more or less in a direct line with that entry, but if they strike some hard objects then they are deviated from the line of fire.

40 Q. You examined the scene Mr. Chanmugam and you are in a position to confirm an opinion. In your opinion, if a person stands somewhere near about the door of Muttusamy's house and fires a shot, and if the hole in the rear wall indicated the place where the shot passed out, is it likely that that shot struck any human body before it passed off or is it more likely that it really travelled through the air when it struck the rear wall?

A. The penetrating power would vary in the case of a factory-made cartridge and the others.

No. 5
 (4) W. R.
 Channugam,
 Examination
 --contd.

Court :

We will confine ourselves to the S. G. size.

If a factory-made cartridge of S.G. is fired by a person standing at the doorway of this hut, and if those shots hit a person standing near the rear wall of this room (that is the north wall), the shot will make an exit wound on the human body but will not have sufficient penetrating power to go through the full thickness of that rear wall.

Q. The example you have taken is a cartridge with the highest penetrating power?

A. Yes.

10

Q. So that it would follow that any other type of cartridge also would not have penetrating power enough to go through the human body and the mud wall in a column?

A. Highly improbable.

Locally re-loaded cartridges are made by the use of an empty cartridge case to which a new percussion cap is fitted, because once this percussion cap is fired it is useless, and fresh charges of gun powder (smokeless powder is not available) pellets and slugs are re-loaded.

Now, then, we have either type of a locally filled cartridge, where a man may have only the No. 6 shot, which is a very small shot, or where the small shot from the factory-made cartridge is removed by unfurling that edge and taking off the top wadding and substituting the small shot with slugs.

20

So you will see that there are two types, the re-loaded cartridge and the re-filled cartridge. In a re-loaded cartridge the penetrating power is very much less than a factory-made cartridge. In a re-filled cartridge the penetrating powder is slightly less because the crimping of the edge is done manually and may not be gas-tight.

Court :

Q. So your answer is that the probabilities are even less? 30

A. Yes.

Q. Then, considering all the various types of cartridges from which S. G. slugs could be fired, the probabilities are that a shot fired from the door if it went through a human body would not have penetrated the rear wall?

A. That is so.

Court :

Q. Can you assist the Jury by reconstructing those books to show to the jury the short wall spoken of and the other aspects connected with this hut?

40

Witness demonstrates and reiterates the evidence given by him as to the lay-out of the hut in regard to the verandah, living room and the kitchen, the short-wall dividing the living room and the kitchen, the hole in the wall, the spots where he noticed the blood smears and the group of blood spurts, as well as the portions he found freshly re-mudded giving the dimensions and the location of the re-mudding done.

No. 2
(4) W. R.
Chanmugam,
Examination
-contd

The hole, the hair, and the blood were all to be found in the living room.

Court :

10 Q. You made a distinction between a blood-smear and a blood-spurt?

A. In the case of a blood-spurt there is a distinct outline showing that it has spurted at the same time indicating the direction from which it has spurted. In the case of a smear it would indicate that the blood had been wiped off with a cloth or dragged something right over where the blood happened to be.

It was identified as blood as I said earlier. In my opinion they fell from a human being on to that wall.

Court :

20 Q. Is it likely then that the human being was standing at the time the blood spurted out?

A. It is possible.

Q. And after having got the injury which made the blood spurt out if the human being fell against that wall in a glancing manner would he leave those three strands of hair which you found there?

A. It is possible.

Q. The slugs that you found were all locally-made slugs?

A. Yes.

30 Q. If those slugs had passed through a human body, your opinion is that it is not probable that they would pass right through that rear wall?

A. That is correct, My Lord.

Q. What is that rear wall made of?

A. Mud and wattle.

Q. Of what thickness is it?

A. About nine inches.

No. 2
(4) W. R.
Chanmugam,
Examination
—contd.

Q. Assuming that the shot fired did not pass through a human body, can you tell the jury whether the assailant was inside the room?

A. My inference would be made on the size of the spread on the wall.

I was present when the boy Wilfred gave evidence and I heard him describing that hole.

Court :

Q. Having regard to the slugs put in before you and the gun produced before you, and the hole as described by Wilfred of the living room as you saw it, in your opinion, was the person who fired the shot from this gun, P32, inside that living room when he did so? 10

A. The muzzle end of the gun must have been inside.

Q. If the muzzle end of the gun was inside the living room would it have left any sort of wadding inside that hole?

A. Definitely it would have.

Q. The wadding that was there would it be the first, second, third or fourth?

A. If the muzzle end of the gun was inside the room all four waddings could have been inside the hole, if the target is the wall I saw. Had a shot from P32 been fired into that wall with the muzzle end just near the door, I would expect to find the felt wadding and the two thick card waddings in the hole. It may be that the top waddings might travel even out (P12 shown). This is the first wadding. 20

Q. You have also made a study of firearms?

A. Yes.

Q. And you have given evidence in courts of law in regard to firearms?

A. Yes, My Lord.

Cross-examined :

No. 2
(4) W. R.
Chanmugam,
Cross-
examination

Q. You are an expert in the science of what is known as Ballistics? 30

A. Yes.

Q. And also in the science of chemical analysis?

A. Yes.

Q. Have you any medical knowledge?

A. Not except that which is acquired in the science of toxicology and the action of drugs on the human system.

Q. I think as a matter of general knowledge we can say this. The question of the amount of force necessary to pull out a hair by the root is amongst other things dependent upon the condition of the scalp?

No. 2
(4) W. R.
Channingham,
Cross-
examination
---contd.

A. That is so.

Q. From the scalp of a person suffering from a disease, say dandruff and the like, a hair would easily come out from the roots?

A. Yes.

Q. Secondly, it also will depend to some degree on the part of the head from which the hair comes?

10 A. Yes.

Q. Then as to the hair itself, since you spoke to the walls, the capacity of the walls of the hair to sustain damage would depend on the health of the hair? Are you aware that there is also a thing such as the health of the scalp? For instance, a person in an anaemic condition, in the poorest form of health, with the blood circulation poor and the like, has hair which is in various ways weak?

A. That is so.

Q. I am speaking of the hair as such, not of the root. In certain conditions the hair can be brittle, easily cracked, and so on, is it not?

20

A. That is so.

Q. In short, with regard to the degree of force, (a) to draw this hair out of the head, assuming it to be the head, would it be dependent on the condition of the scalp, and (b) to damage the walls would be dependent upon the condition of the health of the person at the time that the damage was caused?

A. That is true.

Q. You have no data on these matters?

A. No.

30 Q. Secondly, you cannot really say even from which part of the body those hairs came?

A. Must be from the head because in the photograph P25a I found in the root four globules of oil, so that it would probably be from the head, from a portion of the body where oil is applied. The other end of those three hairs show a growth after cutting. Hence, I presume they must be from the head.

Q. You found four globules of oil at the bottom of the root P25A at the very foot of it?

A. Yes.

(4) W. R.
Channugam,
Cross-
examination
- contd.

Q. You suggest it to be oil such as you apply on the head?

A. Yes.

Q. I will then put a further suggestion on that basis. If so, I suggest to you these must be hairs that had come off a head pretty recently in relation to the time upon which you came by it?

[Court :

Q. Would globules of oil on the hair be found on the 6th of February from a person whose head they came off on the 17th of October?

A. Oil does not evaporate. 10

Q. When did you see this oil?

A. On the 8th of February when I examined the hair under the microscope.]

Q. Did you examine that oil in any way?

A. I saw it under the microscope.

Q. My question is did you test what kind of oil it was?

A. No. I can say it is oil, I cannot say what kind of oil.

Q. You found these hairs seven inches above the floor attached to the fibres of the wattle. Think of a house that is occupied, which you can assume is swept at least once daily, and oil as the substance attached to the root of the hair, would you not expect that oil to get even displaced? Would you not expect it to be soaked up in the dust? 20

A. You have dust even on P25A. There are a certain amount of dust particles on it. That blurred outline is due to the dust.

Q. I want to put it to you. The existence of three globules of oil like that, apart from the question whether it could have been possible considering that period of time that elapsed, is entirely consistent with a hair that has come out recently?

A. It is consistent.

Q. Would you say there is a possibility that it can be hair that came out of a head 3½ months earlier? 30

A. Yes, My Lord.

Q. You spoke of the walls, floor, etc., of this hut being freshly mudded. You gave even in the lower Court a precise estimate of what you mean by "fresh"?

A. I said, "About a month" I believe.

Q. You said by "fresh" you meant within a month of the time at which you examined it?

A. I said about a month.

Q. When you said that you did so when your memory was still fresh, is that not so?

A. That is so.

Q. Here is hair on that short wall in the living room portion which according to your tests and opinions had certainly been re-mudded, say, within the period 1st January to 6th February, more or less, and you will agree that for mudding such things as scraping and so on are done?

A. Yes.

Q. There would be clouds of dust?

A. Yes.

Q. I suggest to you that there has intervened between October 17th and February 6th, an actual fairly extensive re-mudding of this house, so that would it not suggest, Mr. Chanmugam, a more recent hair?

Court:

20 Q. Was the portion where you found the hair re-mudded?

A. No.

Q. The portion where you found the hair was barely four inches above?

A. The floor of that living room was re-mudded and carried up to the partition wall to about three inches.

Q. How much below the level of the hair was the re-mudding done?

A. Four or five inches.]

30 Q. The mudding had been done right up to the wall along that corridor?

A. Yes.

Q. That spot where the hair was found was what distance from the front verandah wall?

A. One foot, five inches.

No. 2
(4) W. R.
Chanmugam,
Cross-
examination
—contd.

No. 2
 (4) W. R.
 Chanmugam,
 Cross-
 examination
 --contd.

Q. On the right-hand bottom corner of the sketch you find the ground plan of this house?

A. Yes.

Q. The short wall is indicated there. It was on that wall on the side of the living room that this hair was found?

A. That is so.

Q. That wall connects with the verandah wall?

A. That is so.

Q. From the point where it connects with the verandah well up to the point where the hair was found in a direct line was one foot five inches? 10

A. Yes.

Q. The door of this hut is three feet wide?

A. I measured it—3 feet, 6 inches wide.

Q. What are the exact dimensions of the living room—the length of the western wall from the front verandah wall to the back, how much would that be?

A. 10 feet, 8 inches.

Q. Then from the western wall to the little wall along the verandah side? 20

A. I do not think I have taken that measurement.

Q. Six feet in height and 3 feet 6 inches in width constituted the doorway?

A. Yes.

Q. Have you got a note of the height of the doorway?

A. Yes, 6 feet.

Q. You remember clearly that from that doorway you cannot see over that short wall?

A. That is so.

Certified correct.

30

(Sgd.) N. W. LEWIS,
 Stenographer, Supreme Court.

Monday, 4th October, 1948. 12 noon.

No. 2
(4) W. R.
Chanmugara,
Cross-
examination
—contd.

W. R. CHANMUGAM :

Cross-examination continued :

The police made a hole in the back wall for some purpose of their own. That hole had been made 7 inches from the ground and it went straight through the mud. That hole is about 1" × 1¼". The freshly mudded area was 7 inches from the ground. The police had made that hole in the centre. I cannot say how high was the hole from the ground. It may be between 12 and 14". We went outside the house. I just glanced at the back wall. I do not remember the fresh mud in the back wall. There were no signs of fresh mudding corresponding to the outer side. I was asked by the Crown to assume that a shot was fired from this gun on that wall with the muzzle of the gun inside the room.

Q. The suggestion made through you was that the shot went direct and struck the wall without having struck anything on the way?

A. Yes.

Q. I suggest to you that a distance of 10 feet 8 inches at the maximum if you take the whole length of this gun 3 feet 10 inches, 7 × 7½ feet if the whole gun is assumed to be inside the room? At the door?

A. Yes.

Q. You can visualize in your mind the size of that room which you have gone into. Can you imagine even somebody utterly cock-eyes with the gun missing a person?

Court : He is not an expert on that part to answer that question.

Q. If a shot was fired from that gun at any distance like 5, 6, 7 or 8 feet from the wall I suggest it would have burnt its way through?

A. Yes, it made a hole.

It would have been consistent with a hole of the size of 12 × 16". (Shown P12). This cardboard wadding is almost intact except for one little crack at one end. This is the top wadding. I would expect this to be inside the house. This is the wadding that has the letters written S.G. If the shot had been fired from anywhere inside that room that top wadding I would expect to fall inside the room. That would be the first to hit the wall. It is a very thin wadding. It has absolutely no penetrating power. (P12) was found outside the house. It must have hit something in order to produce this tare. (P12 shown to the jury).

No. 2
 (4) W. R.
 Chanmugam,
 Cross-
 examination
 -contd.

Q. Does the condition of this piece of wadding P12 strike you as being consistent with having been there outside the house on the mudded ground for 3½ months during the rainy season?

A. No.

(Shown P8). This would be one of the 2 cardboard waddings on either side of the felt wadding. (Shown to jury). It is a portion of one of the 2 cardboard waddings.

Q. Would you say that even that wadding is consistent with having been there in the mud outside the hut for 3½ months?

A. It is entirely fresh. 10

(Shown P9). This is also a piece of cardboard wadding somewhat thinner than P8. Even this is thinner than an entire cardboard wadding that is found in a manufactured cartridge. It is more or less undamaged. It is not as fresh as P8. It is not possible that it was lying there for 3½ months in rainy weather. I was shown certain distorted metal slugs P10 and P11. These are of the locally-made type. P11 is also locally made distorted slugs. I was told to assume a person firing with P32 from the door at that spot where it is alleged there was a hole in the wall. I think a man normally fires a gun from the shoulder. (Witness demonstrate the angle the gun would be held when fired from the shoulder). A shot fired from the door-way at an angle directed towards the freshly mudded portion of the rear wall would have struck the ground outside between 2 to 4 feet to continue in a direct line. What I mean is there would be no deviation. 20

Q. If there was any deviation it would fall nearer the wall?

A. It depends on what it strikes. They were reed wattle.

Q. At that distance it would hardly offer any resistance?

A. (No answer). Another way of shooting would be from the hips. (Witness demonstrates). In that way the maximum and minimum assuming that the shot did not deviate would be about 8 to 10 feet. 30

Q. You spoke of the freshly mudded are 1 foot by 1 foot 4 inches?

A. That is the height. I did not measure the distance from that spot to the western wall.

Court adjourns for lunch.

Resumed after lunch.

W. R. CHANMUGAM: Re-sworn.

When I went into that house I looked at the roof of it. The only signs of blackening of the roof is on the portion over the kitchen. That is over the place where the cooking hearth is. The highest point of the roof of that house is about 9 feet. That is the centre of the house. 40

It slopes down. The height of the back wall is the same as the short wall. There is more evidence of blackening on the kitchen portion than on the remaining side. The blackening of the living portion is very slight. I would expect that from the spread of the hearth smoke. The fat of human flesh is volatile. That is to say if you heat any fat that does not volatilise and go up. If it burns it gives a black soot.

No. 2
(4) W. R. Chamugam, Cross-examination
—contd.

To Court: We used to experiment various parts of the body for poisons. I mean the liver and things like that are burnt. I have not carried out burnings of human flesh.

10 Re-examination: The shot would have struck the ground outside the hut if the shot had been fired from somewhere near the door through that rare wall. The point at which the shot would strike the ground would depend on first of all whether or not the shot was deviating through the wall and secondly the lay of the land outside. The land behind that hut was not dead level. I have no note here but as far as I am aware it is 3 or 4 feet; outside the wall is level and after that the land rises. I have myself experimented with shot guns. I know that it does not take a very rough obstacle to cause a deviation. A slightly hard object would tend to deviate the flight of the pellets. The presence
20 of sticks in the mud would cause deviation in the wall if the medium is not used. In speaking of mud and wattle walls it is very difficult to lay down a rule and say that the shot must strike at a particular spot. It is consistent with that the shot was fired from within the hut for a big portion of the wall to go off. I was present in court when the witness Wilfred said that he could insert his 3 fingers through the hole he saw in the wall. That is the entire diameter. The hole inside is $1\frac{1}{4} \times 1$ " in the inside. That would be consistent with a shot being fired to cause that hole. I would not necessarily expect to find first a funnel shaped hole with the narrow end inside. If the medium was uniform
30 then the entrance hole would be smaller than the exit. If the medium is uniform one would expect a larger hole. It is not necessary that all the wadding would be stuck in the hole. It is possible that one wadding got stuck in the hole and might have rebounded further. I did not make a detailed examination about the blackening of the roof. Whatever the quality of smoke resulting by the burning of a body its quantity would depend on the extent of heat supplied and the quantity of flesh that had been burnt. Blackening of the body would depend on the heat. Charring of the skin can occur without burning of the flesh.

No. 2
(4) W. R. Chamugam, Re-examination

40 To Court: I mentioned about a piece of metal which I found in the accused's house (P14).

To Jury: (Witness given P14). These are said to have been found in the accused's house. I did not find them. There are 34 slugs in P14. There are about 27 factory-made slugs. The rest are locally made. The 3 large ones are locally made. (Shown P33) I have no idea when and where this box of cartridges was found. (Witness

No. 2.
(4) W. R.
Chanmugam
Cross-
examination.
—contd.

breaks up one of the cartridges from the box P33). P33 is a box of S. G. cartridges or not I cannot say. The one that I broke is an S. G. cartridge. There are 17 S. G. cartridges in P33. There is no other size cartridge in P33. In the cartridge that I opened out there are 9 slugs. It is a manufactured cartridge.

To Court : These slugs are smaller than the 3 large slugs in P14.

Dr. de Silva suggests :—through court :—P33 is the usual box in which these cartridges are sold. In a packet of this sort there are 2 dozen cartridges. 10

Dr. de Silva suggests another question. The length of the short wall from the verandah wall to its further end is 5 feet 4 inches.

No. 2
(4) R. Piyadasa
de Silva,
Examination

R. PIYADASA DE SILVA : Affirmed, 50 years. Proctor, Supreme Court and Justice of the Peace and Unofficial Magistrate, Balapitiya.

I own an estate at Porwagama called Porwagama Kelle. It is also called Iddagoda Kande. I got this estate in 1938 under the Middle Class Land Development Scheme. It was jungle land and I commenced planting it with rubber in 1938. The accused is my nephew; he is my sister's son. I placed him in charge of the estate as conductor 20 from 1938.

To Court : He was paid Rs. 40. He is not married. I cannot say up to what standard he has studied. He is educated in Sinhalese. He can read and write. A man called Muttusamy once worked for me as rickshaw-puller for several years. That was in 1925 or 1926 at Balapitiya. I thought he was an Indian Tamil. As far as I knew he was an Indian Tamil. I cannot say how old he was then. I bought a car somewhere in 1929 or 1930. Then I dispensed his services as rickshaw-puller. He was with me on 3 occasions as a rickshaw-puller during this period of 4 years. He would do that off and on. Once 30 when he was running away I got him married to a neighbouring Tamil girl. I cannot say whether she is an Indian Tamil girl. I got my car in 1929 or 1930 and I bought my estate in 1938. During the eight-year period Muttusamy used to come and see me. During that period after I got him married he became a rickshaw-puller at Moratuwa under a relation of mine. Thereafter some years later I came to know that his wife had died. It was then that he would drop in and see me. After I got my estate Muttusamy did not come seeking employment. He just came to my house and then I offered him employment after I got this estate. I cannot give the date. It may be about 1940 or 1941. At that time I was clearing the land in blocks. He took up employ- 40 ment under me. He became a resident labourer on the estate. After sometime he ran away. I do not think he was with me for about an year. After a few months under me he ran away without giving me notice. Then he came back after about an year or so. Then I re-employed him. At that time too he stayed under me for some months.

- That was on the same estate. Again he ran away. On both occasions he worked under this accused as conductor. Muttusamy had got a son by the wife I got him married to. He did not bring a child of his to the estate. He came home in May, 1946. At that time he came with a woman and child. I came to know her name as Baby Nona. I re-employed him and I also employed Baby Nona on the estate. I gave instructions to the accused to accommodate them in the estate. I sent them to the estate. (Shown P29 Check Roll). There were 2 check rolls on the estate both maintained by the accused. P29 is one of them.
- 10 This is the older one. This is the check roll of Haddagoda Kande Estate. This is in the accused's handwriting which I know. It shows that Muttusamy and Baby Nona started work on the 31st May, 1946. Muttusamy on the 31st May, 1946, Baby Nona on a half day in the 2nd June. Muttusamy and Baby Nona are shown to have worked in July, August and September. Their names occur up to the 17th October, 1946. That is the last date on which their names occur in the check roll. After that Muttusamy and Baby Nona's names ceased to occur in that check roll. The name of one Margaret Nona occurs in October up to the 17th. (Shown P31). This is the pocket check roll
- 20 maintained by the accused. It shows that in October Muttusamy had worked for 14 days at Rs. 1.50 a day. They have worked up to the 17th October. I also produce P30 which is the check roll in 1947 when these proceedings were instituted. That too is in accused's handwriting. I went to Bandarawela before Christmas in 1946. About 2 or 3 days before I went to Bandarawela one W. M. Banda came to me with a complaint. That is the witness in this case who lives outside the estate not far away. He had been off and on an employee of this estate. He came and complained that the accused kept his daughter on the estate for 2 days and now she was living with one Jayaratne. He appeared
- 30 to be angry about it. I said that I would inquire into the matter. Having told me this he also told me that Muttusamy had run away after killing the wife and child. He said that 3 lives were involved. When I asked him who the 3rd life was he said that Muttusamy's wife was expecting a child. He told me this when I came home for lunch before I went back to court. Sunday before Christmas I went to Bandarawela. Before going to Bandarawela I visited the estate. I believe it was on the day after Banda made that complaint. I did not question the accused about Muttusamy and his wife. I cannot remember having questioned him. I went to Bandarawela on Sunday the
- 40 22nd December, 1946. I went to the estate on the previous day. That is what I believe. I was at Bandarawela till about the 3rd or 4th January. I used to visit this estate about once a month. I believe I visited this estate in January. I probably did so. The police began investigations early in February, 1947. I was questioned somewhere in February, 1947. I thought that Banda was telling me an untruth. He had previously told me that Muttusamy and his family had left the estate. I did not believe Banda. I did not think it necessary to

No. 2
 (4) R. Piyadasa
 de Silva,
 Examination
 —contd.

inform the authorities. At the time I employed Muttusamy in 1946 he may have been 50 years of age. His hair was cut. I cannot say whether he was graying in his hair because I used to see him about once a month.

To Court : That child was about 4 or 5 years old when I saw it. (Shown P32). This is the gun which I keep for the protection of the estate. I have taken out a watcher's licence so that the conductor can use it. I supplied cartridges for the use of that gun. (Shown P33). This is one of the cartridge boxes that I purchased for the use of the estate. I buy S. G. cartridges too. I know there was an employee on the estate called Jayaratne. He too is very distantly related to me. When I went to the estate on the 21st I remember there was a woman called Jane Nona living with Jayaratne on the estate. That was the subject of the complaint by Banda. I inquired into it and I made order that Jayaratne should get married to Jane Nona. Banda never told me that the accused killed these people. He said that Muttusamy killed them and he said as a complaint that the accused did not tell him the fact. When I go to the estate at times I would walk in it. On the 21st I remember going up to the wadia occupied by the accused. I spoke to him and then went up to the place where Jayaratne and Jane Nona were living. I did not go up to that hut but I went in that direction. At that time Jayaratne was on the estate. Shortly after that Jayaratne left the estate after the police began investigations. Up to that time he had not married Jane Nona. 10 20

Dr. de Silva wishes to have an opportunity of checking with the record what Banda told this witness according to the evidence in this court. He moves that the witness be asked to stand out of court. Crown Counsel has no objection.

Court : It was verified from the notes of counsel junior to Dr. de Silva and the Bench that Banda stated in evidence here. " I told him, (Piyadasa de Silva) accused buried Muttusamy's wife and child saying Muttusamy had killed them and gone away ". The typescript of evidence shows a manifest error. Court requests counsel on both sides to bring to his notice any other errors of this type as early as possible. Witness returns. 30

Cross-examination :

Muttusamy when he was a rickshaw-puller under me wore his hair like this. The front portion of his head was cut very short. The rest he had longer hair. He had a half moon cut close to the scalp and the rest a little longer. He did not wear a ' konde '. 40

To Court :

That was about 1925 to 1930. At the time he went to the estate he had no konde. I cannot say whether he had a change because I used to go to the estate only once a month. I cannot say whether he made a style in his hair.

I have been a Proctor of the Supreme Court for 25 years. I have acted as Crown Proctor of Balapitiya. I have a leading practise in that court. I am professionally a busy man. I live about $2\frac{1}{2}$ to 3 miles from the court. The lunch interval of the Balapitiya Magistrate's Court is one hour. I go home for lunch. After lunch I do not even have 10 minutes free before I return to court. I had this conversation that day with Banda during that little time after lunch. This business about Muttusamy was about the last thing he said in the course of conversation. He took up his time in the complaint about his daughter being taken by Jayaratne and he added later about Muttusamy. I cannot remember whether I asked Banda to wait till I returned from court. When I returned from court Banda was not there. If I thought the information about Muttusamy was real I would have made inquiries about it. It is quite usual in the Southern Province or anywhere for well-to-do families to employ their poorer relations. The accused was such a poor relation of mine. He had no planting experience at all when I employed him. At the time I took the accused for employment large numbers of blocks were given to different people in that area for planting. Previous to that it was an undeveloped area. At the time these allotments were given these were high forest. A couple of miles away from this place is Berelia Mukalana which I go past on my way to the estate. Beyond where Banda and others live across the field there is a forest of several hundred acres. That is behind Banda's house. Across this range known as Berelia Mukalana the rainfall is very high. It is about 108 inches an year. During October to December is normally one of the seasons for heavy rain. There is plenty of shooting in this area. There are a lot of wild animals. There has been plenty of shooting in my own estate. (Shown P31) (Witness turns to the month of August). In the month of August Arnolis *alias* Edwin has worked on this estate for $2\frac{1}{2}$ days, the last date is half day. In September he has not worked at all. His name even is not there. Edwin's name appears in October. There are 2 dates on which he has worked. He has worked half day on the 19th October, and half a day on the 29th October. His name is there in November. He has worked in November. There is a total of $10\frac{1}{2}$ days in that month at various intervals on which the first date is the 7th November and the last is 29th November. In December too Edwin has worked for 9 days, of which the first day is the 1st December and the last date 31st December. From the 25th December Edwin has worked everyday either a half day or a full day. From the 25th to the 29th he had come to work everyday but had dropped off the 30th and come on the 31st. In January too I find Edwin's name and he has come to work on the 1st January. After that there is nothing against his name. On the 21st December I said that I went to the estate to inquire about the complaint made by Banda about Jayaratne and Jane. When I went there for the purpose of my inquiry I sent for Banda but he did not come. For the normal purposes of management and supervision on my estate there is another man who functions as a clerk. He is a visiting clerk. He is known to his friends as Corea.

No. 2
(4) R. Piyadasa
de Silva, Cross-
examination
—contd.

No. 2
(4) R. Piyadasa
de Silva, Re-
examination

Re-examination : Nil.

To Court :

I was due for my Christmas vacation on 21st December.

Q. If there was only this matter of Jane and Jayaratne to be inquired into why did you make it a point to visit this estate on the 21st?

A. I did not like this interference with female labour. I took such matters very seriously.

I go by car from Balapitiya. At times when the road is good one could go right up to the estate. I live at Ambalangoda 3 miles from Balapitiya. By car to this estate is about 16 or 17 miles. When the road is good the car can go right up to the estate. The car cannot go up to the estate bungalow. It has to be stopped on the Village Committee road. The distance from the estate to the Village Committee Road is 3 to 400 yards. The car stops at Erolis' house. A run to the estate was about a matter of one hour. An ordinary man who uses a bus from the estate to Ambalangoda has to travel 3 miles along the Village Committee road up to the bus road. 10

To Jury :

Q. Did the accused volunteer any information to you about Muttusamy on December 21st? 20

Dr. de Silva and Crown Counsel have no objection to that question.

A. I cannot remember whether he volunteered any information at any time.

No. 2
(4) P. Wickre-
matilaka,
Examination

P. WICKREMATILEKA : Affirmed, 32 years, Clerk, Food Control Department, Galle.

On receipt of summons from the Magistrate's Court of Balapitiya, I searched through the registers to find out whether the ration book Number G. 30655 issued to P. Muttusamy had been returned at any time after it had been issued. I found that it had not been returned. It is my duty to make an entry on the return of ration books. If the book had been surrendered to the Co-operative stores it would have been returned and I would have come to know about it. 30

Cross-examination : Nil.

No. 2
(4) D. Nanayak-
kara,
Examination

DAVID NANAYAKARA : Affirmed, 43 years, trader, living at Porwagama.

I was the manager of the Co-operative stores at Porwagama in 1946. I know Muttusamy the man who disappeared. (Shown P21)

This is a bill book maintained at the Co-operative store at Porwagama by the salesman Edirisinghe. I recognized his handwriting. I knew Muttusamy well. I also knew W. M. Banda.

No. 2
(4) D.
Nanayakkara,
Examination
—contd.

10 He gave me certain information as a result of which on 1st February, 1947, I went to Galle and saw the Assistant Superintendent of Police. He gave me that information about 3 days before I left for the Assistant Superintendent of Police. The information that Banda gave me was that Ebert Silva had murdered Muttusamy, his wife and child and cut them into pieces and burnt them, and some weeks have elapsed now after the commission of this offence. He wanted me to go and inform a high official, either the Superintendent of Police or the Assistant Superintendent of Police at Ambalangoda. On 1st February, 1947, I met the Assistant Superintendent of Police, Mr. Poulier. I was not anxious to make a detailed statement. I made an oral statement and he made a note of it. He asked me to go back to my village and send Banda and his son Wilfred to him. I returned to Galle with Banda and Wilfred. That was on 3rd February I think. I cannot be definite about the date. I did not make a statement on that occasion.

20 Cross-examination :

No. 2
(4) D. Nanayak-
kara, Cross-
examination

Sometimes both ration books used to be brought by a labourer of the estate. Our Co-operative stores issued two books to this estate. These two ration books were sometimes brought by Muttusamy and sometimes brought by a labourer of the estate. The information which Banda gave me to be conveyed to the Assistant Superintendent of Police, Ambalangoda, was completely fresh in my mind. I got that information from Banda only 3 or 4 days before I went to the Assistant Superintendent of Police. He gave me that information more than once during those few days. After he gave me the first information he reminded me again within about one or two days. This was a startling piece of information. I did not question Banda carefully about the matter.

30 I am the brother-in-law of the headman of Porwagama. The Co-operative stores is just opposite his house. I did not speak to the headman about this. Instead of speaking to the headman I went to the Assistant Superintendent of Police at Ambalangoda. Now I remember what I told the Assistant Superintendent of Police. I told him that I have the information of a triple murder.

Q. You told the police on that occasion that a triple murder has been committed by Ebert Silva, the conductor of Porawagama Estate, owned by Piyadasa de Silva at Kandegedera Estate?

40 Crown Counsel states that he is putting in P57 as the first information.

To Court :

The Assistant Superintendent of Police first spoke to me. After that he wrote down as I made my statement. I took Banda and others to Ambalangoda.

No. 2
(4) D. Nanayakkara,
Cross-examination
—contd.

I went to the Galle Police Office and gave some information to the Assistant Superintendent of Police.

Q. Did he copy down something as you said it or did he write down something after you said it?

A. First he listened to what I had to say. Then later on as I mentioned to him he made a note of it.

Q. You informed the Police that this was about six weeks ago?

A. Yes, I said that.

Q. "The bodies you said had been buried in the wadia after the three people had been shot in their house"?

A. I did not make that statement in detail. I did not say so to the Assistant Superintendent of Police.

Q. Did you this: "The information has leaked out only three days ago through the man named W. M. Banda whose daughter was subsequently kept by force by Ebert Silva"?

A. Yes, I said that.

Q. The Assistant Superintendent of Police noticed that you further made him understood as follows: "Nanayakkara informed me that a boy who was working in Ebert Silva's house is now working in the village. This boy is Wilfred son of Banda knows where the burnt bodies are buried. Now Ebert Silva has left the estate and now he is at Ambalangoda. He is said to be off his head. You said that you do not wish to make a statement"?

A. Yes.

Q. You wanted to be an undisclosed informant?

A. The Assistant Superintendent of Police told me that he would not give out my name. I went with Banda and Wilfred to the Assistant Superintendent of Police at Ambalangoda after the visit to Galle.

No. 2
(4) D. Nanayakkara, Re-examination

Re-examination: Banda told me that he was not going to disclose this information if I was going to give this information to the local police or to the local headman.

No. 2
(4) D. Nanayakkara, Cross-examination

Cross-examination with permission: I remember I was cross-examined in the Magistrate's Court.

Q. On that occasion did you say this: "Banda gave me this information 3 or 4 days prior to my going to the Assistant Superintendent of Police. Banda told me that this accused had killed Muttusamy, his wife and child and burnt them"?

A. I cannot remember to have said that (D15).

Q. " I asked him whether he was mad. This is all the information I got from him. I did not question Wilfred before I went to the police " ?

A. Yes.

To Crown Counsel : Nil.

To Jury : Nil.

Court adjourns for the day.

No. 2
(4) D.
Nanayakkara.
Cross-
examination
—contd.

Certified correct.

(Sgd.) R. S. PERERA,
Stenographer, Supreme Court.

10

Tuesday, 5th October, 1948. 9.30 a.m. to 12 noon.

Accused present.

Same Counsel as before.

M. C. MAHAMOOR : Affirmed, Sub-Inspector of Police.

No. 2
(4) M. C.
Mahamoor,
Examination

20

Examined : I am at present at Elpitiya. I was the first police officer to visit the scene. I received my orders from the Assistant Superintendent of Police, Mr. Poulter. I left Elpitiya Police Station at 4 a.m. on 4th February, 1947, with three constables and I picked up the village headman of Porwagama also. I reached the house occupied by the accused on the estate at about 6 a.m. He was occupying the house that had been previously occupied by Muttusamy. Another man was sleeping there when I arrived, one Gunasena. I explained the purpose of my visit to the accused and took him into my custody and commenced investigations.

I found a double-barrel 12 bore breach-loading gun which I produce marked P32. It was in the corner of the room where the accused was sleeping, in the left hand corner as one enters the room.

30

I have produced two cartridges marked P39 and P40. One of them is an S. G. and the other a No. 4 shot. The No. 4 shot appears to be a re-filled cartridge. (P39 and P40 are shown to the jury). I had the house guarded by constables Ranasinghe and Hammond. I left the accused in the verandah under guard and I went to the house of Jane and Jayaratne. I went there shortly after 6.15 a.m. Jayaratne was getting out for work. Jane was not there at the time. She had gone to Handy's wadiya. I got Jane up and I questioned both Jayaratne and Jane. They both pointed out to me a spot where a wicker box had been burnt. This spot was about 30 yards away from the accused's house, the house that was occupied by Muttusamy. There was a heap of ash there. Just then I did not sift the ash. Afterwards

40

I sifted the ash and found burnt 50 cent coins a piece of silver bangle and burnt pieces of cloth. I produce marked P1 the burnt cloth.

Jayaratne showed me the same day pieces of bone in the hollow of a stump of a tree. Roundabout the place where the original burial and burning is said to have taken place I found bones scattered over a

No. 2
 (4) M. C.
 Mahamoor,
 Examination
 —contd.

large area. I produce them marked P1. It was on the eastern side of Muttusamy's house. When I went there I found a drain had been cut and covered, on top of which manioc plants had been planted. This spot was pointed out to me by Wilfred. I made a thorough search of the ground and picked up pieces of bone. It was in that group that the Professor of Anatomy described one such bone as a head-bone. That is the side where the pit was according to Wilfred. In that group was a piece of the skull.

From there I was taken to where the timber shed stands by witness Jayaratne and he pointed out to me a spot there. I searched that place and I found burnt pieces of bones which I produce marked P3; a burnt button marked P42; and pieces of cloth P43; P44 pieces of pink cloth. 10

Crown Counsel : P42 is mentioned in the Indictment as ' pieces of bone '. I move to amend the Indictment to a ' burnt button '.

Court : Yes.

I also found some burnt material P45.

Jayaratne took me to a spout—that is the point " L " on the sketch—where I found pieces of bone which I produce marked P4. I found them among the shrubs scattered along the side of the stream. All of those pieces appeared to be charred and in fragments. I found two stones at the spout which appeared to be smooth, as having been rubbed. 20

I came back to the house of Muttusamy which was being occupied by the accused and from there I went to the wadiya occupied by Handy. I took charge of a mamoty. I then came back to the house of the accused which was occupied earlier by Muttusamy. It was then the Assistant Superintendent of Police, Poulier, came. It was about 8.30 a.m. I reported to the Assistant Superintendent of Police the investigations I had made so far and he left to inform the Magistrate. 30

In this house that was occupied by the accused I found a small wooden box P6 containing certain productions. I produce a box containing 17 cartridges found in the house of the accused. I took charge of the check roll P31 and a pay list marked P30. I also took charge of one rice ration book and one cloth coupon book which I produce. Only one rice ration book has been produced. The other is a cloth coupon book.

I sifted the earth put on the outer side of the walls of the accused's house on the statement of Jane Nona. In that earth I found some bits of bones which I produce marked P7. P7 is the group of bones in which the Professor of Anatomy found fragments of the right knee-cap bone of an adult person. I searched behind that house and found near the stump of a tree a wadding which I have marked P8, the cardboard wadding which I have marked P9, two pellets P10 and two more pellets P11. P10 and P11 (shown) are really slugs. While sifting the 40

sand behind the house I also found a piece of wadding P12 with the letters "S. G." on it. In the house I found a saucer containing pellets and slugs and a piece of lead (marked P14). I took charge of them subsequently after the Government Analyst came there. I examined the house minutely and in a table there I found a document which I marked P18, which had been signed by Jayaratne. The officer who first saw the newly-mudded area on the 4th is myself. Inside this house said to have been occupied by Muttusamy on the southern wall I found a newly-mudded area, about a foot in diameter. I noticed that after I returned having collected all those productions I spoke to, round about 8.30 a.m.

No. 2
(4) M. C.
Mahamoor,
Examination
—contd.

I showed it to the Assistant Superintendent of Police and both of us examined it. We made that hole in the centre. That area was exactly as I found it till the Analyst saw it. I recorded the statements of the witnesses Jane Nona, Jayaratne, Arnolis *alias* Edwin, Erolis, Margaret Nona, Samathapala and Gunawathie. I had the house under police guard from that time onwards until the photographer came so that it was continuously under police guard and I kept the key of the house with me.

To Court: I made a thorough search of the premises round Muttusamy's house. Jane Nona and Jayaratne pointed out various spots to me. Edwin too showed me certain spots. The people who assisted in showing me the various spots were Jayaratne, Jane Nona, Wilfred and Arnolis *alias* Edwin. Those produced by me are all the human remains I found there.

Cross-examined: (Shown D12). Is a certified copy of a complaint made by a person called W. M. Banda, obtained from the Elpitiya Police Station, that is the police station within the jurisdiction of Porwagama, at which I was stationed.

No. 2
(4) M. C.
Mahamoor,
Cross-
examination

Note: D12 is read as follows:—

" D12—COMPLANT OF BANDA TO ELPITIYA
POLICE STATION

Extract from the Complaint Information Book.

Date: 20. 12. 46. Time: 4.50 p.m.

Page: 124. Para: 90.

Complaint of future guidance.

W. M. Banda, age 40 years, labourer, lives at Porwagama states:—On 16. 12. 46, my daughter, Jane, age about 16 years eloped with one Jayaratne. I went to Ambalangoda and informed my master, Piyadasa de Silva, regarding the elopement. He said that he will come in a day or two to the estate to see about it. They live in the

No. 2
(4) M. C.
Mahamoor,
Cross-
examination
—contd.

estate of Mr. Piyadasa de Silva. Jane came today and asked for her belongings. I refused. I fear that during my absence they will come and occupy my house. I lodge this entry for my future guidance.

This is all. I cannot sign. Read and explained. Signed Police Constable 2166 Ruben.

I certify this is a true copy taken by me.

Signed Ruben, P. C. 2166.

I certify that this is an exact copy of the entry made in the Information Book.

Signed Ruben, P. C. 2166.

10

Signed ”

I am not aware whether the Police took any action in pursuance of that complaint. The police constable who recorded that complaint is a Sinhalese. I have known Banda previous to my starting investigations in the present case, previous to February, 1947. I had known him then for about six months. I came up against him in various Court matters.

To Court : So far as I remember he was an accused in two of my cases.

He made a complaint once by petition against his former master, Mr. Peter Wickremasekera, the Postmaster's Superintendent. I remember the complaint only against Mr. Wickremasekera. He must have come about two or three times to the Elpitiya Police Station with complaints previous to the occasion in connection with D12, i.e., before the 20th of December, 1946.

20

This covering petition (shown) with which that affidavit was sent came to me through the Assistant Superintendent of Police. It is a petition to the Magistrate, Balapitiya, along with an affidavit sworn before Mr. Thalgodapitiya. The date of the affidavit is 16th November, 1946. The date of the covering petition is the same.

Counsel for Defence : I mark both documents D16.

30

Note : The covering document is read :—

“ D16—PETITION OF BANDA AND ARNOLIS TO
MAGISTRATE

To :

His Honour,
The Magistrate,
Balapitiya.

The humble Petition of W. B. Banda and W. M. Arnolis, both of Prowagama in Talgaswela, respectfully sheweth as follows :—

1. Your Honour's humble Petitioners whilst expressing their 40 loyalty to the British Throne beg to prostrate themselves at Your Honour's feet and crave for relief and succour in a matter of the utmost anxiety and concern to them.

2. The Petitioners annex affidavit hereto stating their complaint for Your Honour's justifiable and sympathetic consideration as they fear that some serious harm may happen to them at any moment from the persons whose names are affirmed to by them in the said affidavit.

No. 2
(4) M. C.
Mahamoor,
Cross-
examination
--contd.

3. Wherefore the Petitioners respectfully and earnestly beg that Your Honour be graciously pleased to issue notices on all parties and inquire into the matter and on proof of the statements affirmed to in the affidavit grant them justice and safety at your most gracious hands, for which act of justice the Petitioners as in duty bound shall ever pray.

Left Thumb Impression of W. M. Banda.
Left Thumb Impression of W. M. Arnolis.

Randombe,
16.11.46.

True copy.
Sgd.

Assistant Superintendent of Police,
Ambalangoda,
27.7.48."

20

The man referred to therein " Arnolis *alias* Edwin " is the man who has given evidence in this case. Mr. Thalgodapitiya was the District Judge at that time.

To Court: This petition was sent on to me by the Assistant Superintendent of Police. I took no action on this petition.

I sent a report to the Assistant Superintendent of Police.

Court to Registrar: Will you please have copies of this made.

Re-examined: Nil.

Jury: Nil.

30

W. E. POULIER: Sworn, Assistant Superintendent of Police.

Examined: On 1st February, 1947, I was stationed at Galle.

No. 2
(4) W. E.
Poulier,
Examination

When witness Nanayakkara Appuhamy came to the police station I was standing by then. At the time I was Assistant Superintendent of Police, Ambalangoda. Nanayakkara gave me certain information. I questioned him as closely as possible and I then put down the gist of what he told me. I produce a copy of the note I made marked P57. P57 is read:

" P57—FIRST INFORMATION BY NANAYAKKARA
TO POLICE

40 Extract from the Information Book of Elpitiya Police Station

C. I. B. page: 167. Para: 42.

Date: 6. 2 47 Time: 9.30 p.m.

1. 2. 47 Galle Police Office.

No. 2
 (4) W. E.
 Poulter,
 Examination
 —contd.

D. Nanayakkara, Manager of Porwagama Co-operative Society, is produced before me by Inspector Robert.

Nanayakkara informs me that a triple murder has been committed by Ebert Silva, the conductor of Porwagama Estate, owned by Proctor Piyadasa de Silva of Kandegoda. This was done about 6 weeks ago and the three persons who were murdered were a Tamil family employed and living on this Estate. The bodies had been buried in the wadiya after the three people had been shot in their house.

The information has leaked out only three days ago through a man named W. M. Banda, whose daughter was subsequently kept by force by Ebert Silva. 10

Nanayakkara informs me that a boy who was working in Ebert Silva's house at the time this crime was committed, is now in the village. This boy is W. M. Banda's son.

Banda knows where the burned bodies are buried.

Now Ebert Silva has left the estate and is at Ambalangoda. He is said to be 'off his head'. Nanayakkara does not wish to make a statement.

Signed W. E. POULIER.
 Assistant Superintendent of Police. 20
 1. 2. 47.

I instruct Nanayakkara to produce W. M. Banda and his son before me at Ambalangoda tomorrow.

Signed W. E. POULIER.
 Assistant Superintendent of Police.
 1. 2. 47.

I certify that this is a true and correct extract of the entry in the Information Book.

Signed W. E. POULIER.
 Assistant Superintendent of Police. 30
 Ambalangoda, 15. 5. 47."

I was going back to Ambalangoda after standing by that evening when the Superintendent returned from Colombo. I instructed Nanayakkara to produce W. M. Banda and his son before me at Ambalangoda at my office on the 2nd if possible, but it was on the 3rd morning that he brought Banda and the boy along to my office. I recorded their statements. I sent for Sub-Inspector Mahamoor and gave him the necessary instructions and he began investigations on the 4th February. After recording Wilfred's statement I went to the Co-operative Stores and recorded the statement of Nanayakkara. The Sub-Inspector recorded the statement of Margaret Nona and produced her before me and I took her to the Magistrate that very same evening. 40

On 7th February I visited the scene with a Criminal Investigation Department Police Constable named Karunaratna who took photographs of the various places. They were taken on my instructions and under my direction. They are correctly labelled.

No. 2.
(4)
W. E. Poulier,
Examination.
—contd.

P22 and P23 are two pieces of wood from either side of the door frame which had smear-stains on them. P24 are portions of mud and wattle removed from the mud and wattle wall where there were blood stains. I removed them. I took P22 and P24 to the Government Analyst on the 8th morning. On the same evening I produced witness
10 Samathapala before the Magistrate.

That mound of earth appearing in photograph P35c, photograph No. 6 (shown to Jury) is what I found on the 9th of February. That is the mound in the picture appearing between the places where those two men are standing. In relation to Muttusamy's hut it is on the eastern side. On the sketch it is just below the red cross at the point marked " E ". I had the mound dug up and the earth sifted and I found the bones which I have produced marked P14 and a tooth marked P15A. In the group marked P15 the Professor of Anatomy has identified a portion of a right human rib (a small portion of it) and the
20 upper thoracic vertebrae of the spinal column of an adult. The tooth P15A was identified by the Professor of Anatomy as a pre-molar, the tooth of a child under eight years of age.

On the same morning, the 9th, I got down Jayaratne and he pointed out to me a large sloping rock in the gulley above the spout. I went there with him and examined that rock. I noticed scoured marks, indicative of something having been ground on it. On the 11th of February I recorded the statement of Lucy Nona, sister of the deceased woman, Baby Nona.

To Court :

30 On the 4th morning I saw a freshly mudded area on the rear wall of the house said to have been occupied by Muttusamy. I reached the spot at about 8.30 a.m., had a look round the place and it must have been about 9 a.m., when I went into the house. The walls were mudded up to about eight inches right round. There was one spot where it was mudded up to about a foot in diameter. My recollection is quite distinct.

40 The Sub-Inspector and myself made that hole in the wall. We probed that place as Wilfred pointed it out to us as the place where the shot had struck. I probed that place to find out if there were any shots there. After that I gave instructions that the whole house was to be guarded, as well as the surroundings, until I got down the Analyst. I am the Senior Police Officer in charge of this case. The Police have produced all the remains that were to be found. We have produced every bit that we found and very extensive searches were made by us.

No. 2.
(4)
W. E. Pouiler,
Examination.
—contd.

Crown Counsel :

May I put a further question, My Lord?

Court :

Yes.

Q. When you went to this hut on the 4th did you look at the roof?

A. I cannot remember anything except that a point at the corner of the roof—where the wall joins the corner of the roof—was very black indicative of long use, such as a place used for cooking. That is the place above the fireplace. It is a small kitchen about 5 to 6 feet. 10
I also found fresh mud on the inner side of the outer wall up to about 6 feet I think.

Cross-examined :

The first thing, so to speak, that put me on to this matter was that of Nanayakkara coming to me.

Q. But the first material on which you were able to take action in relation to the estate and the accused and the others was on the statement made to you on the 3rd of February by Wilfred?

A. By Wilfred and Banda.

Q. There is one thing I wish to get out from the Assistant 20
Superintendent of Police, My Lord.

Court :

Will you please write it down first.

Note : Question is shown to the Attorney-General before being passed on to Court.

Attorney-General :

I have no objection.

Court :

You got that out through Wilfred?

A. By all means. 30

Q. Wilfred's position before you went to this estate was that he had not seen Muttusamy's body at all but only the cut-up portions of Muttusamy's wife and child?

A. That is so, My Lord.

Q. I have to put to this witness D2 and D6. You have before you Wilfred's statement as it was taken down by you?

A. Yes.

Q. I am referring to D2 about the clothes box. He said to you :
 " Then he took the clothes box containing the clothes and gave this to
 Jane Nona " ?

No. 2.
 (4)
 W. E. Pouiler,
 Cross-
 Examination.
 —contd.

A. He said that to me.

Q. D6—" Jayaratne told me that the bodies were exhumed and
 burnt with the clothes?"

A. Yes.

Q. I believe Samathapala first made a statement to Sub-
 Inspector Mahamoor until he himself made a statement?

10 A. Yes.

Q. Until this nothing was known by the police about what I
 will call the Samathapala incident?

A. The Inspector was making inquiries at the spot and he got
 the information. Till Samathapala made his statement I did not know.
 Samathapala made a statement to Sub-Inspector Mahamoor and
 Mahamoor brought him before me and I took him to the Magistrate. I
 did not question Wilfred a second time in consequence of the statement
 of Samathapala. The date on which I questioned Wilfred a second
 time was the 6th February. Samathapala was questioned a second
 20 time on the 7th.

Q. It was pursuant to Wilfred's statement on the 6th that you
 questioned Samathapala on the 7th is it not?

A. Yes, that is so.

Re-examined : Nil.

Jury : No questions.

M. M. KARUNARATNA, affirmed, Police Constable 3949.

No. 2.
 (4) M. M.
 Karunaratna,
 Examination.

Examined :

I went to the scene on the 7th February, 1947, on the orders of
 the Assistant Superintendent of Police, to take photographs. I have
 30 produced copies marked P35a to P35g.

The first photograph shows the house of Muttusamy and of the
 deceased woman and child. That is a view from the south, from the
 verandah side. The door there was open when I took this snap. The
 second photograph shows the blood stain on the door frame. The third
 photograph shows the blood stains found on the opposite wall. The 4th
 photograph shows the blood stains found on the wall, the blood stains
 marked in red ink. As you go in through that door there is a short
 wall on the right, it is that wall. The 5th photograph shows the timber

No. 2.
(4) M. M.
Karunaratna,
Examination.
—contd.

shed where some clothes were found. (Demonstrates by pointing to the picture). That thing there is a bush. The 6th photograph—that is that mound on the eastern side of Muttusamy's house which had been dug up. The 7th photograph shows the place where the bones were ground. That is the photograph of the spout and the surrounding land.

Cross-examined : No questions.

Jury : No questions.

Crown Counsel : I move to read the depositions of the Chief Clerk, Magistrate's Court, of Police Constable I. M. H. Banda.

Note : The following were read by the Registrar :—

10

No. 2.
(4) Deposition
of I. M. H.
Banda.

DEPOSITION OF POLICE CONSTABLE BANDA :

I. M. H. Banda, affirmed, Police Constable 3708, Ambalangoda Police.

On 10-2-47 productions P1 to P17 were packed into two parcels by me in the presence of the Chief Clerk and the parcel was sealed with the seal of the minor courts. I took charge of them and removed them to Colombo and delivered one to the Government Analyst and obtained receipt No. C/136 of 11-2-47—P27—and delivered the other parcel to the Government Anatomist and received receipt marked P37 from him. I brought the receipts back and handed them to the Chief Clerk of the Court.

20

While the productions were in my custody no one tampered with them.

On 8-4-47 the productions P10, P11, P14 and P25, were packed in my presence by me in the presence of the Chief Clerk. The seal was placed and I was directed to take it to the Government Analyst. I handed it to him on 9-4-47 with the seals intact and received receipt No. C/311 of 9-4-47 marked P38 and handed to the Chief Clerk on 11-4-47.

I brought back the productions with the seals intact and handed them to the Chief Clerk.

30

Cross-examined : Nil.

(Sgd.) I. M. H. Banda, P.C. 3708.

(Sgd.) PERCY A. SENARATNE,
Magistrate.

No. 2.
(4) Deposition
of N. R. de Z.
Gunawardena.

DEPOSITION OF ACTING CHIEF CLERK GUNewardENA :

N. R. de Z. Gunewardena, affirmed, Clerk, Magistrate's Court, Balapitiya.

On 10.2.47, I was Acting Chief Clerk of the Magistrate's Court. On that day P1 to P4, P7, P15, P15A, P17 were packed by Police

40

Constable Banda in my presence. I sealed that parcel and sent the productions to the Professor of Anatomy. Productions P5, P6, P8 to P14, P16 were packed by the same Police Constable and the parcel was sealed by me and sent to the Government Analyst.

No. 2.
(1) Deposition
of N. R. de Z.
Gunewardena
—contd.

Cross-examined : Nil.

(Sgd.) N. R. de Z. Gunewardena.

(Sgd.) PERCY A. SENARATNE,
Magistrate.

DEPOSITION OF CHIEF CLERK WIJESUNDERA :

10 C. L. de S. Wijesundera, sworn, Chief Clerk, Magistrate's Court, Balapitiya.

No. 2.
(4) Deposition
of C. L. de S.
Wijesundera.

On 12.2.47, Police Constable Banda brought receipt P27 and P37 from the Government Analyst and the Professor of Anatomy, respectively.

On 8.4.47, Police Constable Banda packed productions P10, P11, P14 and P25 in my presence and I sealed them and sent them to the Government Analyst. On 11.4.47 he brought back receipt No. C/311 of 9.4.47 which I produce marked P38.

Cross-examined : Nil.

20 (Sgd.) C. L. de S. Wijesundera.

(Sgd.) PERCY A. SENARATNE,
Magistrate.

STATEMENT OF ACCUSED LATHUWA HANDI EBERT
SILVA MADE ON 21.6.1947 :

No. 2.
Supreme Court
Proceedings (5)

' I am not guilty '.

Statement of
Accused
21.6.47.

Crown Counsel : The receipt and report on these productions have been spoken to by the Government Analyst, My Lord.

Court : Yes.

30 Crown Counsel : I close my case putting in the statement of the accused and productions P1 to P4; P7 to P15A; P17, P18, P22 to P33; P35A to P35G, P39 and P40; P41 to P45; P54 and P55; Sketches Sk 1 to Sk 7, the three depositions which were read out and the first information P57.

Counsel for Defence : Will Your Lordship be pleased to permit me to do so. I wish to make a submission which has to be made in the absence of the jury. I am also informing the jury of the fact that I am making a submission.

No. 2.
Supreme Court
Proceedings (5)
A submission of
Defence
Counsel.

No. 2.
 Supreme Court
 Proceedings (5):
 A submission of
 Defence
 Counsel.

Court : Gentlemen, will you please retire.

Jury retires at 11.10 a.m.

Counsel for Defence : Before Your Lordship decides the question of the calling on the defence in respect of the three counts on the indictment, I seek to make this submission to Your Lordship that, in the state of the evidence before Your Lordship, Your Lordship would not call upon the defence in respect of count 1 because there is no case to go to the jury on that count inasmuch as there is no evidence on which the jury would be entitled to hold in Muttusamy's case. Under Section 234 of the Penal Code, page 403, Your Lordship's Court has always the power, so to speak, to take the case out of the hands of the jury, to direct the jury to take a certain course if Your Lordship considers there is no evidence that the accused committed the offence. 10

The fact that I make this application in respect of count No. 1 in the first place, I think, requires some explanation. My Lord, I am not seeking to hark back at this stage to the fact that the defence at the outset made application for the suppression of the trial on the various counts, but from the angle as it would appear before Your Lordship's Court, at the stage of the close of the prosecution. It is relevant to refer to the fact that in this indictment, or rather in this trial, the reality of what would otherwise have been the subject of a separate indictment is being tried simultaneously. In other words, My Lord, the indictment here is not of the nature where the counts spoken to—count 1 let us say—so to speak, are contained within count No. 1. They are three counts, all on the same level relating to the killing of three different people, whose trial is being taken together primarily on the ground that the prosecution seeks to prove that it has all happened in the course of one transaction. Now, My Lord, in respect of each of these counts, it is incumbent upon the prosecution, before it invites Your Lordship's court to consider the question of the guilt or otherwise as alleged of the prisoner, to prove on evidence which would entitle a jury to draw that conclusion that the persons who are the subject matter of each of these counts are actually dead. 20 30

In the case of counts 2 and 3 there is, in the course of this case itself, the admission in the form of suggestions through cross-examination that the woman, Baby Nona, and the child, Hemalatha, who are the subject matter respectively of counts 2 and 3 on the indictment were in fact dead as at the time in respect of this charge, when this charge was laid.

As to count 1, My Lord, I very respectfully submit to Your Lordship that the burden continues on the Crown before all else, or, if I may say so, My Lord, as a condition precedent to the raising of the question of the accused's guilt or otherwise, to prove that Muttusamy is in fact dead. Now, My Lord, if I may refer to a term that was referred to by the Attorney-General in his opening address, this question of the corpus delicta is a question antecedent to the question of the responsibility of the person for the corpus delicta. By the corpus 40

delicta apparently is intended three propositions which, if I may say so, are set out fully at page 346 of "Will's Handbook on Circumstantial Evidence, Seventh Edition" from which I am quoting. It is summarized:—

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"In cases of homicide, three propositions must be made out in order to establish a corpus delicta:

- (1) That death has taken place;
- (2) That the deceased is identified with the person alleged to have been killed;
- 10 (3) That the death was due to unlawful violence or criminal negligence", and it goes on to say:

"and it is not till these propositions have been proved that the question not included in the inquiry as to the corpus delicta, namely, the accused or suspected person arises".

Not until these three matters are disposed of. Now, My Lord, I do not mean to suggest that the proposition that these three factors must be antecedently proved before the question of guilt or otherwise of the prisoner comes up is anything other than a proposition as to the logical order of consideration, and I do not suggest for an instance
20 that there should be a preliminary inquiry or trial, so to speak, into those three propositions or a subsequent inquiry appointed in point of time. As far as the prosecution is concerned, it is fully entitled to lead the evidence which related to all these three propositions as well as the proposition of the guilt of the accused together. But at the stage, My Lord, where Your Lordship's court has to address itself to the question whether the accused person is to be called upon for his defence in respect of the counts on which he is being tried then, My Lord, is not only entitled but I would submit under an obligation to
30 consider this question whether it is raised before the Court or not. On that question I would respectfully submit Your Lordship has to address yourself to each separate count. The fact that Your Lordship's court is of the opinion that there is evidence in respect of which the defence can be called upon in respect of counts 2 and 3 does not of itself suffice to dispose of the question whether Your Lordship would also call upon the accused in respect of count No. 1. That is because, My Lord, in the first place, the joinder of counts on an indictment is a matter that proceeds expressly in terms of the criminal procedure. Your Lordship will be pleased to remember that under Section 198 for every distinct offence of which any person is accused, there shall be a separate
40 charge and every such charge shall be tried separately except in the cases mentioned under Sections 179 to 184. They are not sections directive or obligatory but merely enabling sections, that is to say, Your Lordship's court may. It is thus, if I may say so, clear in a trial of this nature simultaneously carrying on in effect three distinct trials instead of one. That they are intermixed is laying the foundation for trying

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them together. Nevertheless, that they are intermixed is no reason for not distinguishing between the various counts at the stage at which Your Lordship's court addresses itself to the question of whether to call upon the accused for a defence, and in respect of which counts Your Lordship's court will call upon the accused for his defence. I think it can be an agreed and self-evident proposition that where there is no proof that a person is dead, there can be no question arising whether he has been murdered. That I would urge, My Lord, is a proposition that is common to both sides of the Bar. I do not think it is necessary to labour that point or it is necessary, in a case where the murder of a person is alleged, to prove the various ingredients that constitute that offence, and the basic first ingredient to be proved is that the person alleged to have been murdered is in fact dead. I did not even come to the state of raising the question of whether the person is dead. The next question is whether the person has been killed, which is logically the second proposition. Now in regard to that, My Lord, it is manifest that the problem before the Crown in this case is to prove that Muttusamy is in the first place dead. 10

Now, My Lord, the next proposition I would seek to submit to Your Lordship's court is the fact that a person is missing does not and cannot by itself warrant the conclusion that he is dead. My Lord, that too I would respectfully urge is a self-evident proposition that a person is missing, that fact by itself can warrant no conclusion whatsoever that he is dead. It means evidently that he is absent from wherever he was last seen and from wherever any person may have looked upon him. Therefore, it is necessary for the Crown to prove some further circumstances which necessarily and cogently attach to the fact that Muttusamy is missing and point to the fact that he is missing because he is dead if I may put it that way. That means some other circumstances than this one fact that he is missing. 20 30

Now, My Lord, in this case in regard to this matter, quite independent of their evidential value, what are the facts which the Crown has sought to prove, and which if it is accepted that they are proved, assuming that, are placed before Your Lordship's court as entitling the jury to come to the conclusion that Muttusamy is dead.

If I may put a proposition in this form, may I submit that disappearance coupled with circumstances which exclude the possibility of his being alive must be proved by the Crown where a man's dead body has not been seen by anyone and identified as such. Your Lordship will be pleased to note that I have made this submission on the footing on which a jury would be entitled to come to that conclusion. In other words, for the purpose of my present submission, I must satisfy Your Lordship's court of matters on a much higher footing than in the case of a jury. To the jury the defence would be entitled to say: "It is not sufficient that you can come to a conclusion on this evidence but it must be that you would necessarily come to a conclusion on this evidence". But at this stage it is necessary to satisfy Your 40

Lordship that taking all the circumstances placed by the Crown before Your Lordship in relation to count No. 1 that a jury would not be entitled to come to the conclusion that Muttusamy is not dead. Now, here My Lord, the first fact is this. There is no evidence, no witness in this case, who says either "I saw Muttusamy being subjected to violence" or anybody who says "I saw Muttusamy's remains". The most that we have in this case is the evidence of the witness Wilfred and subsequently of the witness Jayaratne and also the productions in this case that there were portions of human bodies disposed of, but not a scintilla of evidence to the effect that the portions of bodies thus seen being disposed of have any relation to Muttusamy's own body. Nobody claims, My Lord, to have thus identified the remains that were disposed of as that of Muttusamy. I will bring in certain other facts. There is more, My Lord, as the case stands at the end of the prosecution case. There is the evidence that the portions alleged to have been disposed of by the accused were some, those of an infant and some those of an adult. Now, My Lord, if the only evidence before Your Lordship's court was that Muttusamy is missing and that a person was seen disposing of the remains of some portions of a body or bodies I would submit that if they are the only circumstances which point in that direction even then the conclusion that Muttusamy is dead does not hold. I am taking the evidence exactly as it stands. The Crown led certain further circumstances. I think it is relevant at that stage to remind Your Lordship that the accused has taken the position that the remains he disposed of were the remains of a woman and child. Then, My Lord, the Crown leads evidence through Jayaratne to the effect that there was seen a gunny bag containing some bones, a pair of blue trousers and a 'dang' pata waistcoat. That those were concealed in that bag which links itself with the burning up at a point of time considerably subsequent to the original burial and with the burning of certain bones. It is also in evidence, My Lord, that Muttusamy was accustomed to wear a pair of short blue trousers and a waistcoat of the nature mentioned. The Crown also places before Your Lordship evidence that in the house in which Muttusamy was living at the time of his disappearance there has been found three and half months later three hairs which at the highest it can be put could come from Muttusamy's house. I would respectfully urge that those are all the circumstances before Your Lordship's court, which could be in no way with the connection whether Muttusamy is dead but he discussed on the footing that Muttusamy is missing.

Now, my submission to Your Lordship is that on those facts it would not be possible to come to the conclusion that these point to Muttusamy being dead because in respect of these facts Your Lordship will be pleased to see the following factors which prevent them getting connected together in the way that would entitle a person to hold that Muttusamy is dead. In the first place, My Lord, there is nothing before Your Lordship's court to indicate, even if it be held that those are hairs from the head of Muttusamy, the stage at which

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those hairs came to be detached from the head of Muttusamy. Similarly My Lord there is nothing to connect, even assuming the fact to be true that those clothes were seen in the gunny bag, with the bones dug up in the grave, to connect that in any way with the suggestion that Muttusamy is not alive. I submit, My Lord, that the allegation that the accused disposed of certain cut portions of flesh is not relevant to it at this stage. I do not think, My Lord, as far as I have been advised of the situation that there are any other circumstances to which the Crown can point which can attach itself to the fact that Muttusamy is missing, in relation to the question whether he is missing because he is dead. 10

I think, My Lord, that is all I have to say. Those are succinctly the points I have to raise.

Court : Dr. de Silva, if I do not propose to hear the Attorney-General, it is not because I have not listened to you with the greatest attention and as always with the greatest pleasure. You rightly point out that the law puts on me the duty at the close of the prosecution of every trial before this Court, which is of necessity a trial involving the most serious consequences to fellow human beings, the duty to decide whether there is a case to go to the jury in respect of each person accused as well as in respect of each charge with which each accused person is charged. This is a duty I have never lost sight of at any time. In this particular case, as each day's trial concluded, I have studied the evidence and I may give you the assurance that I have never lost sight of this requirement of the law. 20

It is my considered opinion that in this case there is evidence upon which the jury is entitled, if they are so disposed and it is entirely a matter for them, to come to the conclusion both that Muttusamy is dead and that the accused caused his death with a murderous intention. 30

Jury returns at 11.45 a.m.

Court : I call upon the Defence.

Counsel for Defence : My Lord, in this case I propose to place the accused in the witness box to give his own version of events so that Your Lordship's court may be better assisted to come to a conclusion on the matters at issue in this trial.

NO. 2.

SUPREME COURT PROCEEDINGS

(6) EVIDENCE FOR THE DEFENCE

L. EBERT SILVA, affirmed, 40 years, conductor, Porwagama

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Estate.

Examined : I have never given evidence in a Court of Law before now. At the times material to this case I was conductor of Porwagama Estate. I have also performed the functions of watcher at the same time. My village is in Kandegoda, a hamlet on the outskirts of Ambalangoda. 40

In October, 1946, there was working on this estate a man called Muttusamy, the woman Baby Nona and her child Hemalatha. When this family first came to the estate I put them up in a shed near my wadiya. While this family was living in that shed near my bungalow Baby Nona used to come to the wadiya for necessary things. In the course of those visits I became intimate with Baby Nona. Some time after a short period of their staying there I transferred them to another hut on the estate, the hut called " Muttusamy's hut " in this case. That is the hut on the furthest hill overlooking Banda's house.

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10 Q. Before that particular hut was built was there any other hut or structure on that self-same hill?

A. There was a house on that site before, a little in front.

Q. Not on the same side of this but a little in front as you say?

A. Yes.

Q. That hut has since fallen down?

A. Yes.

Q. Now, witness, did you as ' watcher ' go on night rounds in this estate?

A. As watcher I went on my rounds after dinner.

20 Q. You go out with your gun, your torch and you had a dog which always accompanied you wherever you went?

A. Yes.

Q. Now, when you speak of going on a round, you actually used to go round the whole estate, did you not ?

A. Yes.

Q. The point I want to get from you is whichever way you started, where was the final point at which you would begin to turn back towards the wadiya?

30 A. I go up to Muttusamy's house and return and come through the hill.

Q. From the top of that hill you can see down the slope to the furthest boundary of the estate?

A. Yes, from the front compound I can see the furthest end.

Q. Now, is there much game on that estate?

A. At times I used to meet game and shoot them.

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Q. In which part of this estate did you most frequent and usually find game when you went on your rounds?

A. At the extreme end of the estate, about where Muttusamy was living.

Q. Have you yourself at various times shot game on that hill in that area?

A. Yes.

Certified correct.

(Sgd.) N. W. LEWIS,
 Stenographer, Supreme Court. 10

Tuesday, 5th October, 1948. 12 noon.

Examination-in-Chief of the accused continued:

When that hut of Muttusamy was built I was the conductor of this estate. The door frame of that house was that of the house which collapsed. The old door was slightly damaged. It was the same door that was fitted on to the new house.

Q. You remember the time of Muttusamy's final disappearance from this estate?

A. Yes.

Q. On the evening or afternoon of that day did you see any 20 quarrel between Muttusamy and Baby Nona?

A. I cannot recollect.

About one month prior to Muttusamy's disappearance, as Muttusamy and Baby Nona were going for work in the morning, Baby Nona rushed into my house and appealed to me to save her. Muttusamy was also coming running towards us at the time. I felt that he was coming to assault her. I reprimanded Muttusamy and asked him not to assault women. I advised him saying, "When you assault women they get spoiled". I advised Baby Nona also and told her to live in peace and brought about a settlement. 30

Q. On the night on which Muttusamy disappeared, did you go out on your night round?

A. Yes.

Q. Will you please tell the court, in your estimate, about what time that night you set out on your round?

A. Must have been about 10.30 p.m.

Muttusamy's hut was on the top of a hill. I started from my wadiya and passing an adjacent wadiya I climbed up the hill nearby

where there was a bungalow in the course of construction. Passing that bungalow I went to the extreme end of the estate on that side. At that point there is a hill. I looked round and climbed up the hill. Then climbing down that hill and coming round the base I came near the bungalow which was being built on the other side. Then as you walk down there is a 'deniya' by the side of which there is a water spout. I crossed the deniya and from there went up to Muttusamy's house straight away. When I set out that night I had my gun, a torch, and about 5 or 6 S. G. foreign-made cartridges with me. I had a stock
 10 of such cartridges in my house. When I buy them I keep them in a drawer in my wadiya. On this occasion when I went on my night round I got the 5 or 6 cartridges from a box. To go to the house of Muttusamy, from whichever direction you come, you have to climb a hill.

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Q. Could you give the court your estimate of the time at which you approached the house of Muttusamy that night?

A. Must have been past 11 o'clock.

After climbing that hill I reached the compound outside his house.

20 Q. Now, tell the court what happened? What did you do and what did you see?

A. I climbed up on the side of the house. As I went up to the compound of his house I saw the door of his house opened. I then enquired, "Muttusamy, why is the door opened"? I then moved from that compound. As I was passing the edge of the verandah it was that I saw the door open. Then I saw Baby Nona lying fallen inside the house near the doorstep.

Q. By what light did you see?

A. I was going with my torch flashed on.

30 When I saw Baby Nona I was on the doorstep. I saw bloodstains on her jacket. Then I jumped back to the compound and shouted out, "Baby Nona". As I jumped back I saw the little child also nearby; they were together. The child too was having stains of blood. I then flashed my torch into the house, looked about and as Muttusamy was not to be seen about the place, I took to my heels as I got frightened and went back to my wadiya. I was running the whole time and as I was approaching my wadiya I was shouting, "Jayaratne, Jayaratne!" At that time Jayaratne and Ratta, who is also called Wilfred, were there in the wadiya. Before I could reach the wadiya they both came
 40 out and asked me what was the matter. I told them, "Light the lamps immediately. There is some trouble". I told them, "I found Muttusamy's wife and child murdered and Muttusamy is also not about the place". So I asked them, "What shall we do about the matter"? I enquired whether we should go and inform the police. Then Jayaratne said, "We cannot get out at the moment".

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Q. Why?

A. We were all frightened. This conversation between us took place on the verandah of my wadiya.

Q. You said earlier that as you came up you said,, “ Light the lamps. There is some trouble ”?

A. Yes.

Q. Were any lights lit?

A. Yes.

Q. So, it was inside the wadiya you all talked?

A. Yes.

Then Jayaratne said, “ We do not know whether we ourselves might get involved in this ”. I got a little more frightened at that statement. Then we arranged between ourselves that we should summon Banda as he was an elderly man and as he was a man from whom one could seek advice.

Court adjourns for lunch.

Court resumes after lunch.

L. EBERT SILVA, re-affirmed.

Examination-in-Chief continued :

We did not go to fetch Banda that night itself through fear. 20
We were in a state of fear and, therefore, we did not want to go. Early morning, a little before dawn, we proceeded to get down Banda. We sent Ratta ahead with the torch to fetch him whilst Jayaratne and I followed him. Jayaratne and I went near Muttusamy's house and stopped. Ratta went to his own house to fetch Banda. Then Banda came. From a distance he came enquiring, “ Sir, is this story true ”? Then I told him, “ It is true. Come and see. We must all get together and do something in the matter by informing the police, and so on ”. As I told that to Banda he went inside the house. The three of us went inside the house. We first saw the dead bodies. We passed 30
them and looked into the kitchen where we saw broken pots and pans. We then examined the corpses. We were standing and scrutinized them. We saw something like slabs all over the body.

Q. You said you saw marks as if of knife wounds, didn't you?

A. Yes.

There were two corpses. Marks like knife wounds were on both the corpses. We then stepped out of the house and came to the compound when Banda said, “ Sir, you were also in terms of intimacy with

this woman and that night also come out in this affair and it is generally a bad state of affairs. We do not know who will get caught to this. We are bound to be involved in trouble and therefore the best thing is to eliminate the dead bodies and say that all have run away". We all agreed to hide the whole affair. As there was no key to the door of that house, Banda closed it and tied it with a piece of string. Then he said, "Now, this is not the opportune moment for us to do anything. I will go home, have my midday meal and come back. At that time there is bound to be nobody about the place. In the meantime one of you better keep watch here so that nobody may come into the scene". I then told Jayaratne: "You had better stay here as workers might come and ask for implements. I will go back to the wadiya with Ratta". Banda left earlier after tying the door with the string. Ratta and I proceeded to my wadiya. I then sent the workers out for work. After that I went out and verified whether Jayaratne was yet continuing to be there and I set about with my business. I went to the place where my people were working and once I went to my wadiya also. This way the time for noon meal came. In the meantime I went to the wadiya. After the meal time the workers again went out for work.

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Examination.
—contd.

20 To Court :

I could not take my midday meal. I was worried. I was in a state of fear. I could not eat anything and, therefore, I had a cup of tea.

After meal time I went to Muttusamy's wadiya. Ratta also accompanied me. Banda and Edwin came there later. We said, "We must remove it soon". Banda suggested that we should bring a crow-bar and a mamoty. I said that there was a mamoty in Muttusamy's house. I then ran and brought a crow-bar. Then Banda said that there is a ditch on the eastern side of the house and that that was a good place to bury. Banda who was not in a good state of health at the time, Ratta and I were watching; Edwin and Jayaratne started digging the grave. They then came and told us that they had finished digging the grave. We were the whole time on the look-out and we looked about again to see if there was anybody. Then Banda said, "You two better remove the dead bodies". Edwin and Jayaratne caught hold of the dead body at the two ends and took it to the grave. Then Jayaratne ran back and carried the small child also and put her into the grave. Then we closed the grave. At the spot where the two corpses lay there was a mass of blood soaked into the floor. We scooped it up with the mamoty. We scooped deep, about 4 or 5 inches, into the floor. There was a pit close by from which mud was dug when the house was built. From the bottom of that pit we brought some more mud and covered up that hole. There were various other things also in the house. We took the whole lot and dumped them into the mud pit. There were broken pots, clothes. The clothes were slung across a string. Everything that was in the house was dumped into that pit and there was nothing left. There was a box also. Banda removed that box. It was a cane box.

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There must have been things in the box because it was heavy and it was carried. We put all those things into that pit. We then covered the pit with earth. I then asked Jayaratne to bring some water to level the place where there was a hole as a result of our scooping the floor and which hole was later filled up with mud. He brought some water from the spout, poured on the spot and levelled it with the mamoty. Banda and Edwin had left by this time with the box. After levelling the place, Ratta, Jayaratne and I left the place carrying the mamoty and the crow-bar with us. We went back to the wadiya again. After that I went about my normal avocations. 10

Q. After these things had happened, after you had done this with these people, in the period thereafter what was your relationship with them?

A. They were not so obedient to me thereafter as they were before.

Q. You found it difficult to keep control over them as workers on the estate?

A. That is so.

Q. And things went on this way for some time?

A. Yes. 20

Q. Do you remember a certain incident in which Edwin and Jane Nona were concerned?

A. Yes.

Edwin was assaulting on that occasion and chasing Jane Nona into the estate. This happened about one month after this incident. I heard the shouts, went up and met them. Then I reprimanded Edwin and said, "Why do you want to hit your younger sisters? It is not correct to do so". Then Edwin turned back and went away.

Q. What had been the effect of Jane Nona and her clothes on Edwin thrashing her to that extent? 30

A. There was some excreta on her body.

Jane Nona then came and stopped near my wadiya. I asked her why. She told me that she was severely thrashed and I told her, "Never mind the thrashing. You better go home". Then she said, "I shall not go home until my father comes here".

Q. You found her father Banda was away from home?

A. I thought he was not at home.

Jane Nona that night did not go home. She remained in my wadiya. The following day Banda came. I told him, "Last night Jane Nona had been chased into my house. This will bring trouble for 40 me. What is the meaning of this"? Then he took her away.

Q. After that what did you notice about Banda and Jane Nona? No. 2.

A. I often observed Jane Nona being chased into the estate and that she was asked to come here because she stayed with me. Supreme Court Proceedings (6) Evidence for the Defence L. Ebert Silva, Examination. —contd.

Then I asked Jayaratne, "At least, will you accept her"? He agreed to accept her. I asked Jane Nona also. She also agreed.

(At this stage P18 is handed over to Defence Counsel).

Then I wrote down a document so that it may be got signed before somebody. Then I advised Jayaratne to keep Jane Nona and not to abandon her. (P18 shown). This is the document that I wrote that day. I prepared it intending to get various signatures. It is in my handwriting. On it I wrote the names of those people whose signatures I intended to get. I knew that some of those people could not write. I intended to get Banda's signature also on it. I sent for him. He came and I asked him to put his finger-print but he refused.

Q. In fact what was his reaction to your arranging for Jane Nona to live with Jayaratne?

A. He got angry and went away saying that he cannot sign it; he was annoyed; he said, "I am not going to sign it; nor do I want her in my house".

P18 is dated 17th of December. Jane Nona spent that night in my wadiya after being beaten by Edwin about one week before P18 was prepared. When Jane Nona was thus given to Jayaratne on this document, he was staying with me in my wadiya. After Jayaratne took Jane Nona thus to live with him I asked them to stay in Muttusamy's wadiya. Until that time Muttusamy's wadiya had been left unoccupied. They cleared the house, cleaned up the house and then occupied it. After they went to live in there arrangements were made to build another hut also.

Q. You found that Banda had got very angry with you?

A. Yes.

Q. Did that make you frightened of anything?

A. Yes. I got frightened that they might catch me for this incident.

Q. That is you mean that burial incident?

A. Yes.

So I asked Jayaratne and Edwin and got some firewood arranged. We brought them up (meaning firewood) in front of Muttusamy's house. We piled up the firewood and on the following day Jayaratne and I dug up that grave. We piled up the firewood just by the side of the grave. Before we dug the grave we set fire to the firewood. Then we dug the

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grave and exhumed the bodies using the mamoties and started to put them into the fire. I used to take a part with the mamoty once and when the bad smell comes I get to a side and then Jayaratne does it. From the place where we were burning this a smoke was going up. It was seen from Edwin's house and he came there. He came near and told us that he had seen the smoke and had come to see what it was.

Q. Were you able to burn all the remains with that fire, was it sufficient?

A. There were some bones left behind.

As we had exhausted all our supply of firewood, we collected the bones that were left behind, dug a hole and put them into it. The next day Edwin came to work. That day I asked them to open up that mud pit into which those things in the house were put in; they were taken out; there were clothes, mats, and so on; they were all taken out. The pieces of pots and pans were strewn about the place. We put all the mats and pieces of clothes into a gunny bag. The earth from the pit was strewn near about the house. The bones were also put inside the gunny bag. As we had no firewood at the place where we were with Jayaratne, we removed the bag to the back of the bungalow where we got some firewood and burnt the whole lot there. There were yet little pieces left; we put them all into a gunny bag, all that was left behind, brought it to the valley and threw it into the 'dhola'.

I know X'mas. I also know what is called 'Janeru'.

Q. About when it was that you burnt these bodies?

A. Between X'mas and New Year.

After the New Year period the building of that new hut on the opposite Muttusamy's hut was completed. After it was finished I sent Jane Nona and Jayaratne to live in that hut. By that time I knew a man called Handy who lived in that estate. By this time he too had acquired a wife. I kept Handy and his family in Muttusamy's house and sent the other couple (Jane Nona and Jayaratne) to the new house. When I was arrested I was living in Muttusamy's house. Before I went to live there, Handy and his wife were living there. Before I went in there, they were sent to my house. I went into residence to the house of Muttusamy about 2 or 3 weeks before I was arrested. I asked Jayaratne to clean up that house before I went into occupation.

Q. It was cleaned up for you to go and reside?

A. Yes.

Q. Included in the cleaning up, was mudding also done?

A. Yes.

One morning while I was in that house it was that I was arrested by the police.

From the age of about 20 years my hair started to grow grey. There is a tendency of greying in my family. When I was in Muttusamy's house I used to sleep on the floor near the door. When I sleep in the night I used to close the door, put the mat near the door and sleep. There is a short wall in that house. I used to keep my head towards that wall and sleep.

No. 2.
Supreme Court
Proceedings
(b) Evidence for
the Defence
L. Ebert Silva,
Examination.
--contd.

Cross-examination by the Attorney-General is postponed for tomorrow.

Defence Counsel has no objection.

10 Court adjourned for the day.

Certified correct,
(Sgd.) Z. A. HAMID,
Stenographer, Supreme Court.

Wednesday, 6th October, 1948. 9.30 a.m.

L. EBERT SILVA, re-affirmed.

Cross-examined by the Attorney-General :

No. 2.
(6) L. Ebert
Silva, Cross-
examination.

Q. You have told us that Baby Nona was your mistress?

A. She was intimate with me also—yes.

Q. Did that continue up to the 17th October?

20 A. Yes.

She was somewhat an attractive girl. I was fond of her.

Q. According to you, you had taken her part in a quarrel about a month before?

A. Yes.

I told Muttusamy not to ill-treat her. On the night in question, I said, I went out on my rounds, 17th of October. I did that every night. To go round the estate at night was part of my duty. During the day also I worked there.

Q. Wilfred said that you frequently went out at night?

30 A. No. I do my rounds daily, every night, and in fact on some days when I get information that wild animals had come into the estate I do a second round to verify that.

Q. In fact this estate is a very small affair, is it not?

A. Yes, 50 acres.

No. 2.
 (6) L. Ebert
 Silva, Cross
 Examination.
 —contd.

Q. Of that about 10 or 15 acres jungle?

A. To start with another block was cleaned up, but later about that extent was allowed to grow wild—it was neglected.

To Court :

At this time, in October, nearly 20 acres of young plants were destroyed by animals and then there was wild growth of jungle. About 30 acres were cleared and it was all rubber.

Q. It is a very mild affair going round watching that, will take you a very short time?

A. No. It is not so.

10

One does not do an ordinary walk-about; one has to look at things when one walks on. I look to see whether any plants are being attacked by animals; that is the chief thing.

Q. Do you suggest then that every night you stayed all night and came back?

A. If it is till dawn, it is not so.

Q. But Wilfred said that on this occasion you came back after day-break?

A. I did not do so on that day and I do not do so.

O. If by any chance what Wilfred said is true, that would be unusual, would it not?

20

A. Yes.

Q. Muttusamy himself would naturally be aware of your habit of going round this estate at night?

A. I think he ought to know about it.

Q. If you went every night watching this estate, if you so continue, is it not that Muttusamy, too, would have known about it?

A. I really do not know whether he was aware of it or not.

Q. On this night you told us that you went right into the house of Muttusamy?

30

A. Yes, and that is the usual place I go to and it is only after reaching the hut that I retrace my steps.

Q. When you go on your night round what you are concerned with are the animals?

A. Yes.

Q. Are you concerned with the safety of Muttusamy's people?

A. No.

Q. You would not find any animals inside Muttusamy's hut?

A. No.

Q. Then why did you go up to Muttusamy's house that night?

A. The reason why I went to his house is because when I went up to the compound. I saw the door open; as I got into the compound I saw the door open and then I walked forward saying: "Muttusamy, why is the door open"?

10 Q. I take it you saw the door open because you flashed the torch on the door?

A. As the torch is flashed on to the compound one could not but see the door.

I did not suspect that anything had gone wrong in that house.

Q. Then you have said by chance your light fell on the door and you saw the door open?

A. Yes.

Q. Then you told Mr. Silva you called out: "Muttusamy, why is the door open"?

20 A. Yes.

And I got no answer to that. I then got on the hut and looked inside. I got in flashing the torch. I had the torch flashed and I stepped into the verandah. I looked inside by the light of the torch.

Q. And you have told us yesterday that you saw two people lying down?

A. First of all I saw Baby Nona and a little further that side I saw the child.

I also said that I saw bloodstains. Then I said I jumped back, sprang back, and ran back to my house.

30 Q. When you saw Baby Nona and this little child Hema lying down with blood stains were you surprised?

A. I got frightened.

Q. Were you surprised?

A. I cannot be certain whether I was surprised or not. I got frightened.

No. 2.
 (b) L. Ebert
 Silva, Cross-
 Examination.
 —contd.

Q. Were you surprised, it is a very important question?

A. I was not surprised. I was so frightened that I had a burning sensation.

Q. Why not?

A. I really cannot remember now whether I was surprised or not.

Q. That is all you want to say to the jury in answer to that question?

A. Yes, apart from this fear that I had. When I saw this girl whom I was fond of lying down I felt sorry and frightened. 10

Q. Did your sorrow lead you to go and see whether she required any medical assistance?

A. Yes, had she answered my call I would have helped her.

As soon as I saw her lying fallen I called out "Baby Nona!" and then on seeing the blood I sprang back calling out again: "Baby Nona!". And then again standing on the compound I called out once more "Baby Nona", and getting no reply I ran away.

Q. Of all you know she may have been merely in a faint or unconscious?

A. No. I really thought she was quite dead. 20

Q. But you did not bother to find out?

A. She had never been in the habit of getting into a fit or faint. The little child had asthma.

Q. What was the point of that observation? You saw this woman and this little child lying there and you took not the slightest step to see whether they were alive or not?

A. I felt that they were dead.

Q. Then according to you, you then went back to your house and you remained talking through the night in the wadia, till dawn you were there with Jayaratne and Wilfred talking? 30

A. Yes, in my wadia.

Q. During any of those hours of darkness did it occur to you—perhaps you would have been rather hasty in assuming that this woman and the little child were dead—to see whether they wanted any help?

A. I was afraid. I was frightened to step out of the house. Jayaratne got afraid; Ratta was also afraid and all three of us were in fear and we were afraid to get out.

Q. The idea did occur to you but you thought it was too dangerous for the three of you to get out?

No. 2.
(6) L. Eberf
Silva, Cross-
Examination.
—contd.

A. It did not occur to me at all to go. In fact I was afraid to go even in that direction.

I knew that to be quite certain that they were dead when I returned. I was certain of their death.

Q. Didn't it occur to you to get a doctor?

A. There was no necessity for a doctor over a corpse.

Note.—(Accused is warned to answer questions.)

10 Q. Didn't it occur to you to get a doctor?

A. I did not think of a doctor but I thought of informing the headman.

Q. But you did not follow that thought up, did you?

A. I called out at once to Jayaratne to go and inform the headman. He said, "I cannot get out of the house at this time".

Q. At no stage you made any report to any party, either to the headman, the police or even the owner of the estate?

A. No.

20 Q. Now to go back to Muttusamy's house, what did you think had happened?

A. I thought they were dead.

Q. What did you think had happened is the question?

A. As Muttusamy was also not to be seen and as I had seen one day Muttusamy chasing Baby Nona and assaulting her, I thought probably Muttusamy must have attacked and killed her.

Q. And Muttusamy was not there?

A. Not there.

Q. Did you conclude from that that he had run away?

A. Yes.

30 Q. Muttusamy is an Indian Tamil, and, therefore, his home is in India?

A. Yes.

Q. And your position now, I take it, is that you suggest that he ran away to India?

A. I really do not know where he had gone to.

No. 2.
 (6) L. Ebert
 Silva, Cross-
 Examination.
 —contd.

Q. Your case now is that he had gone to India?

A. I really cannot say. I do not know where he had gone to.

Q. You never had the curiosity to consider during the last two years what happened to Muttusamy?

A. I do not know where he is.

Q. Might I suggest the reason why you have not bothered your mind about it, you know quite well what happened to Muttusamy?

A. This much I know; Muttusamy was not there, that is all.

Q. When you got there you found Muttusamy gone, your mistress whom you were fond of and that little child dead and you thought that he had done it and had gone away? 10

A. Yes.

Q. Did you feel angry with Muttusamy?

A. Apart from the sorrow I had, I was not angry with Muttusamy. I did not feel angry with him.

Q. You realise, of course, if your story is true, that Muttusamy, while you were thinking about all this, was going further and further from the scene that night, the very night while you were talking with those people, every moment Muttusamy was getting further and further from the scene? 20

A. I thought he must have gone far interior.

Q. You knew that he was an Indian Tamil and you knew previously that he had gone back to India.

A. I do not know whether he had gone back to India.

Q. Mr. Piyadasa de Silva stated, your relative who came and gave evidence, that Muttusamy had previously gone back to India?

A. But I did not know.

To Court: I knew that he had worked on the estate twice and left.

Q. Where did you think he had left to? 30

A. I did not think of a place but I thought he must have gone far away.

Q. Did you feel that it would be a good thing if Muttusamy was caught?

A. Yes, I thought action ought to be taken.

Q. Because he just killed your mistress?

A. Yes.

I was the conductor of this estate.

Q. Would you just tell the jury any single step that you took that night to apprehend Muttusamy or you took no step at all?

A. I did not see him at all that night.

I thought I should take steps to catch him but later I also got frightened to act.

Q. But if you told the police when you ran back to your house, 10 they would have been fairly hot on the trail of Muttusamy?

A. Yes, they would.

Q. But you say you did not tell the police because you were frightened?

A. I did not inform the police, but I consulted Banda.

Q. Is the reason why you did not tell the police is because you were frightened.

A. Yes. When I ran to the wadia I spoke to Jayaratne. He said: "Oh! I cannot get out of the house. We really do not know what would happen. We would be implicated".

20 Q. What were you frightened of?

A. Thinking that we might be implicated.

Q. Who do you mean by 'we'?

A. I thought I might be implicated.

Q. But why?

A. Because there is no one who appeared to have done this.

Q. Your whole case is that you got there, found these two people killed and Muttusamy absconded?

A. Yes.

30 Q. And a month before you had to intercede on behalf of the woman against Muttusamy?

A. Yes.

Q. And what risk was there of the police thinking that you had committed the crime?

A. Because I was also intimate with this woman and I also felt somewhat frightened about it.

No. 2.
 (6) L. Ebert
 Silva, Cross-
 Examination.
 —contd.

Q. Now, you put this suggestion down in your evidence-in-chief yesterday, you put this thought down to Jayaratne, you say when you spoke to Jayaratne about it, he said, "You were keeping this woman as your mistress. Perhaps, you will be implicated". You remember saying that?

A. Yes.

Q. Till that moment had that aspect of the matter appeared to you before?

A. No.

Q. Then when Jayaratne said it were you afraid of the scandal 10 merely because people would say that you were keeping her as your mistress or that you would be implicated in the murder?

A. I felt fear as well as the thought of the scandal.

Q. Do you seriously suggest to the jury that what motivated you was the fear of the scandal that you were keeping her as your mistress?

A. Yes.

To Court :

Q. Did you say also the fear that you would be implicated?

A. Yes.

20

Q. Mr. Piyadasa de Silva, your employer, was he a strict man?

A. I do not know really whether he is a strict man or not but he is a man who expects proper duty from his servants.

Q. Do you suggest that if he had known that you were keeping this woman as your mistress that he would have been annoyed with you?

A. Yes.

We had all agreed amongst ourselves not to tell about this to any one and Mr. Silva was ignorant about it (meaning the burial of the bodies). He knew nothing about it.

30

Q. I understand that Mr. de Silva said that he was told by Banda?

A. I do not know that; he did not ask me, not from us. He never spoke to me about that at all.

Q. Did he ever say to you about burying dead bodies or words to that effect?

A. He did not.

Q. And yet if it had come to his ears that you had kept this woman he would have taken severe steps, is that your position?

No. 2.
(6) L. Ebert
Silva, Cross-
Examination.
—contd.

A. Because he did not know about it, about this burial.

Q. So that all you can tell us is that the only reason for you not to tell the police is that you thought that the facts were too black against you?

A. Yes, the fear that we might get into trouble.

Q. Rather than face that fear you allowed the murderer of these two people to escape unhindered?

10 A. Yes, on the advice of Banda I did so.
I am about 40 years old.

Q. You are a man of experience, I take it?

A. Yes.

Q. And do you really suggest to the jury that for a very simple problem of this kind you had gone to your house and consulted a little boy Wilfred and a little youth Jayaratne as to what action you should take?

A. I ran to the hut (wadia) and told Jayaratne: "Such a thing had taken place. Let us go to the headman and call him".

20 Q. And he talked you out of it?

A. He said, "Oh, Sir, we cannot go. We do not know whether we might be implicated or not".

Q. In a matter of that kind you were guided by what this boy said?

A. The three of us discussed and we came to the conclusion that we must consult Banda.

Q. What did you do with Banda?

A. To consult; he was the only man available.

30 I wanted to speak to Banda, consult him and having taken his advice go along with him.

Q. Is your case that you did not fire a shot that night?

A. Yes.

Q. Not at all?

A. Yes. I did not fire a shot.

No. 2.
 (6) L. Ebert
 Silva, Cross-
 Examination.
 —contd.

Q. But supposing the gentlemen of the jury come to the view that you did fire a shot that night that would not fit in with your story?

A. I did not fire a shot.

Q. Wilfred heard that he had heard a shot fired and he had told us all about the wadding—that is not true?

A. I do not know. I did not hear the report of a gun.

Q. You heard Wilfred, the boy, give evidence in this court?

A. Yes.

Q. You heard him say that he found that wadding?

A. Yes, I heard him say so. 10

Q. And that you snatched it away from him?

A. He said so but I did not do so.

Q. Now, all that is untrue?

A. Yes.

Q. All three things he said, that he heard a shot from the direction of the hut, that he found the wadding and that you snatched the wadding from him?

A. Yes, all three statements are false.

Q. Have you any reason to suggest to the jury why that little boy should suggest a false story against you? 20

A. Because they got angry with me as a result of Banda's daughter being taken over by Jayaratne.

Q. That is the only reason you can suggest?

A. Yes.

Certified correct,
 (Sgd.) Z. A. HAMID,
 Stenographer, Supreme Court.

Wednesday, 6th October, 1948. 10.30 a.m.

L. EBERT SILVA :

Cross-examination continued : 30

Q. It is absurd to ask the jury to believe that you were frightened of the police if the facts were as you said?

A. It occurred to me and the others also said so.

Q. The position would have been different if 3 other points had existed. First, that there were 3 different bodies in that hut instead of 2?

No. 2
(6) L. Ebert
Silva, Cross-
examination
—contd.

(Defence Counsel objects to this question on the ground that this is in the nature of a comment to the jury).

Attorney-General :

If I do not put these suggestions my learned friend may make a comment of my not having put this to the accused. If there had been 3 bodies there would have been one corpse more. Muttusamy was
10 nowhere there at all.

Q. If Muttusamy's body was there it would not have been possible for you to tell the police that Muttusamy had run away? The position would have been worse would it not?

A. If Muttusamy were dead he would not be there to kill.

Q. Your position would also have been worse if a quarrel had taken place that afternoon during which you threatened Muttusamy?

A. Muttusamy had no quarrel with me.

Q. It is my duty to suggest to you that there was a quarrel on the 17th October afternoon witnessed by the boy, Wilfred, and that you
20 threatened Muttusamy?

A. There was no quarrel. Muttusamy did not quarrel with me.

Q. And also there was the third factor; there was the business of this shot to be explained?

A. I cannot understand.

Q. I suggest to you the reason why you did not go to the police was because of these factors?

A. I deny that.

Q. And that you yourself had killed these 3 people?

A. There was no reason for me to kill these people. In fact
30 when she was carrying a child of mine why should I kill her and the child.

To Court :

Q. The reason might be she might be a witness against you in regard to the killing of Muttusamy. That may be the reason why you killed the woman and child?

A. I did not kill anyone and there was no reason for me to kill them.

No. 2
 (6) I. Ebert
 Silva, Cross-
 examination
 —contd.

Q. There again to follow up an objection which may be taken by my learned friend, the Crown suggestion is that although this woman was your lover, she nevertheless would not approve of the killing of her husband. The unfaithful wife frequently if the husband is murdered turns against the lover?

A. (No answer).

Muttusamy is not a man who is very fond of women. Muttusamy took this woman under his protection.

Q. Is it not in those circumstances likely that supposing she witnessed this man being killed even though she was unfaithful to him she would take exception to the killing of the husband? 10

A. I do not know about that. I cannot explain it.

Q. It is my suggestion that it was as a result of that position that you found it necessary to kill the woman?

A. No, I did not do such a thing.

Q. Had you killed the woman and Muttusamy the little child would have seen it all?

A. Yes, but I would not have done such a thing.

Q. Had the child seen it that of course would have been dangerous because she knew you? 20

A. Yes, if that happened it would have been so.

Q. It is my duty to suggest to you that for that reason you killed this little child?

A. I deny that. How could one do such a thing on a fair lovely child? It is an impossible thing. I need not have done away with them. I could have sent them away.

Q. The position you have taken up now is not the position you have taken all the time? Having killed these 3 people at the beginning you thought you could dispose of the bodies by yourself?

A. I deny that. 30

Q. I suggest to you that is why you told Wilfred first of all that the whole family had bolted?

A. Did I say that? What I told Wilfred and Jayaratne was about the death.

Q. I suggest to you what Wilfred said on that matter here is the truth, and you hoped that you would be able to dispose of these bodies without anybody's knowledge?

A. I deny that.

Q. And that it was only when you found that the disposing of three bodies was rather a big job and when you were seen disposing them you changed your position in saying that Muttusamy disposed them?

No. 2
(6) L. Ebert
Silva, Cross-
examination
—contd.

A. I deny that.

Q. Samathapala told us when he met you with the little boy he saw your condition and when he questioned you, you said that you went after a boar and this is what happened. You heard Samathapala say that?

A. I heard him say that. It is false. He did not come there to the estate. I do not know whether Samathapala had an axe to grind. Banda and Samathapala are people of the same clan and I cannot say whether he is speaking as a result of his being tutored.

Q. You know that Margaret Nona and Lucy Nona told us here that you told them that the whole family had bolted?

A. Yes, they said so. I told them that they had bolted.

Q. My suggestion to you is that you only changed that position when Banda, the father of Wilfred, had been fetched and that he saw you putting the bones into the hole. Then the little boy was sent away leaving Banda there and then you told Banda: "Make the best of a bad job, there are two bodies here and Muttusamy had run away"?

A. It was Banda that fabricated that story and said: "This is the best story under the circumstances".

Q. I further suggest to you that it was only after that making the best of a bad job, it was then that you got Jayaratne to help you in the disposal of these bodies?

A. After Banda fell out with me we got these two bodies burnt.

Q. That was the position then on the 18th of October, the day after these events. I am now going to assume your story is true. Did it occur to you during the months and weeks after that that it would be rather awkward if the authorities got to know about the burial of these bodies?

A. I had that fear all along.

Q. According to you a lot of people knew about it. Banda, Edwin and the little boy Wilfred?

A. Yes, the four or five of us discussed about this.

Q. So that there was considerable risk of a leakage in this matter?

A. We trusted each other so much and I did not think there would be a leakage.

No. 2
 (6) L. Ebert
 Silva. Cross-
 examination
 —contd.

We agreed amongst ourselves that we would not talk about it to anybody. It leaked out to the police about the beginning of February. I did not consider the possibility of a leakage because of the undertaking that was given to one another. I did not anticipate that this would leak out at any time. I never applied my mind to it. When the police arrested me on the 4th of February, I got startled and excited. I did not think about it before that.

To Court: During these 3½ months after it dawn on me that it may leak out I was wondering what to say about it. I never came to any conclusion. All along I was in a state of excited feeling. I had not decided what to say when questioned by the police. The possibility occurred to me on that day that I would have to make a statement to the police. I cannot remember whether I made a statement to the police on the 4th of February. If I had said anything I cannot remember what I had said then. I cannot remember making a statement. I was very excited. At that time I was very much excited. I was not in full possession of my senses. When I was arrested it occurred to me that I had got into a big trouble. I desired to get out of that trouble. I had not decided to say anything at all. I cannot remember whether I made any statement at all. So, I am unable to say when I made up my mind to make a statement. I do not suggest that I was subjected to any cruelty, beating or torturing by the police. 10 20

I was arrested at about 5 or 5.30 a.m. on the 4th of February. Whatever I told the police must have been at about 1 o'clock. I cannot remember whether I made a statement to Sub-Inspector Mahamoor. It is not correct if I had given my age as 32.

Q. Did you say this to the police: "A labourer named Muttusamy was living in this house with his wife and child"?

A. I cannot remember.

Q. "On the morning of the 18th October, Banda came and informed me that Muttusamy and others had bolted away"?

A. I cannot remember.

Q. "This was at about 7 a.m."?

A. I cannot remember.

Q. "I came to the house alone and found the door tied with a coir string"?

A. I cannot remember.

Q. "I opened the door and found nothing inside the house"?

A. I cannot remember.

Q. " All the goods had been removed by them " ?

A. I cannot remember.

Q. " I kept quiet as he used to go away like this and return later " ?

A. I cannot remember.

Q. " His accounts were not looked into " ?

A. I cannot remember.

Q. " I do not know where they have gone to " ?

A. I cannot remember.

10 Q. " I did not search for them " ?

A. I cannot remember.

Q. " I informed my master some days later when he visited the estate about this " ?

A. I cannot remember.

Q. This is all I have to state " ?

A. I cannot remember.

Q. It was signed by you and read over and explained ?

A. I deny that.

(Shown signature from the Inspector's Note Book).

20 This is my signature. I have signed it.

Q. My suggestion is that you came back late to the house as Wilfred said because you were starting to dispose of these 3 bodies and that you found it a bigger job than you expected ?

A. I deny that.

Q. It was then after your first effort you came to the house for a short time as Wilfred said and told them that the family had bolted ?

A. I deny that.

30 Q. And that you went back to carry on this work until you were interrupted by Wilfred and Banda ?

A. I deny that.

Re-examination : Nil.

To Jury : Nil.

No. 2
(6) M. D. A. de
Silva, Examina-
tion.

M. D. A. DE SILVA : Sworn, Clerk of Assize.

I have in my hand the proceedings of the Magistrate's Court of Balapitiya 57809 as recorded by the Magistrate.

W. M. Wilfred said this :—

“ There was a box belonging to Baby Nona and it contained clothes. The suspect threw the box with the contents which contained bones into the jungle ”. (D1)

“ I saw a heap of ash blood all over the floor and a hole in the wall abreast of the doorway ”. (D3)

“ I saw Margaret Nona going towards the Post Master's Estate. 10 It is not in the direction of Muttusamy's house ”.

“ Jayaratne and the suspect took out some bones from the drain and took them to the drain higher up. The bones were burnt and buried. On the following day the bones were dug up and were carried in a gunny bag towards the ela ”. (D7)

“ I saw a fire had been kindled and the ashes swept away. I questioned Jayaratne who did not reply ”. (D8)

Samathapala said this :—

“ One morning I went to the estate at about 9.30 a.m. on being late on account of the rain. There was heavy rain the previous 20 night ”. (D9)

Banda said this :—

“ I am married to a sister of the Village Headman of Porwagama ”. (D10)

“ In December I made a complaint to the Police ”. (D11)

Arnolis said this :—

“ Jayaratne and I were asked to cut some firewood. Then Muttusamy was not on the estate. We cut and gathered them on Muttusamy's compound ”. (D13)

Accused and Jayaratne removed the logs towards the east of the 30 house. It was taken down the slope ”. (D14)

“ I saw some smoke ”. (D14A)

Nanayakara said this :—

“ Banda told me that this accused had killed Muttusamy, his wife and child and I asked whether it was a man. The day after that also he told me the same thing. This is all the information I got from Banda ”. (D15)

Defence Counsel closes his case.

Certified correct,
(Sgd.) R. S. PERERA, 40
Stenographer, Supreme Court.

Wednesday, 6th October, 1948. 11.30 a.m. to 11.45 a.m. No. 2
 Crown Counsel: I re-call Sub-Inspector M. C. Mahamoor in (6) M. C. Mahamoor, Examination.
 rebuttal.

M. C. MAHAMOOR: Re-affirmed.

Q. On the 4th February, 1947, you recorded the statement of this accused?

A. Yes, My Lord.

Q. Can you read out that statement from your handbook?

A. I am reading the statement of the accused as recorded by me
 10 in my handbook.

Statement read:—

“ X—STATEMENT OF ACCUSED TO SUB-INSPECTOR
 MAHAMOOR

Extract from the Criminal Investigation Book
 of Elpitiya Police

Page: 197. Para: 44. Date: 4.2.1947.

Lathuwa Handi Ebert Silva: 32 years, conductor, Haddagoda-
 kanda Estate, Porwagama, states:

A labourer named Muttusamy was living in this house with his
 20 wife and a child. On the morning of 18.10.46 Banda came and informed
 me that Muttusamy and others have bolted away. This was at about
 7 a.m. I came to the house alone and found the door tied with a coir
 string. I opened the door and found nothing inside the house. All
 the goods had been removed by them. I kept quiet as he used to go
 away like this and return later. His accounts were not looked into.
 I do not know where they have gone to. I did not search for them. I
 informed my master some days later when he visited the estate about
 this.

This is all I have to state. Signed in Sinhalese. Read and
 30 explained. (Signed) M. C. Mahamoor, Sub-Inspector ”.

Q. You produce a certified copy of that statement?

A. Yes.

Q. At what time did you take the accused into custody?

A. At 6 a.m.

Q. At what time did you record this statement?

A. At about 1 p.m.

To Court: I know Sinhalese quite well. This statement was
 read over and explained to the accused.

No. 2
 (6) M. O. Maha-
 moor, Cross-ex-
 amination
 —contd.

Cross-examined :

Q. Does that statement include anything which has been said as a result of questions put by you to him?

A. The last portion " I informed my master some days later when he visited the estate.....".

Q. That statement would not start like that unless you asked him his age, and so on?

A. I asked him what his age was.

Q. And then you went on to ask him further questions, I believe? I take it, so to speak, you gave him some point of departure? 10

Court :

Q. Beyond asking him his age, what was your next question?

A. I asked him with regard to the charge.

Q. You have not recorded the charge in your notebook?

A. No.

Q. What is the charge you asked him to answer?

A. The murder of Muttusamy, his wife and child.

Q. You asked him, " Well, you are charged with the murder of Muttusamy, his wife and child, what have you to say "? And you say what is recorded there is what he then said. Well, then, I take it you went there with a posse of armed police that morning? 20

A. No, we went there unarmed.

Re-examination : Nil.

Jury : Nil.

Attorney-General : I close my case.

Court adjourns at 11.45 a.m. till 12 noon.

After adjournment.

Counsel for Defence commences his address.

Court adjourns for the day at 3.30 p.m.

Certified correct.

30

(Sgd.) N. W. LEWIS,
 Stenographer, Supreme Court.

Thursday, 7th October, 1948. 9.30 a.m.

Accused present.

Same Counsel as before.

Counsel for Defence continues his address.

Completes his address at 4 p.m.

Court adjourns for the day at 4 p.m.

Friday, 8th October, 1948. 9.30 a.m.

Attorney-General commences his address.

Ends his address at 10.55 a.m.

10 Court sums up at 11 a.m.

P58—STATEMENT OF WILFRED—6.2.47.

Date: 6.2.47. Time 9.30 p.m. Information Book Page 167. P 58 statement
of Wilfred,
6.2.47.

3.2.47. Police Office, Ambalangoda—9 a.m.

As a result of certain information I received at Galle on 1.2.47 I directed the informant to send me two persons for questioning. These persons now arrive and I proceed to record their statements.

Wijekoon Mudiyansele Wilfred 12 years, son of W. M. Banda, residing at Porwagama states.—

20 I was employed on Mr. Piyadasa de Silva's Porwagama estate for 5 months and left it on 1st January, 1947. The conductor of that estate is Ebert Silva. He has a double-barrelled breech-loading gun. I was living in the conductor's bungalow. There was a Tamil family living in a hut, on this estate within sight of the bungalow—Muttusamy, his wife Baby Nona and his five-year old daughter Heman. The wife and daughter had jewellery and clothes. I saw that she had brought the jewellery with her as Muttusamy got down his wife and daughter from Galle about a month after I had been there. About a month later we noticed that Muttusamy's wife was expecting. The conductor Ebert
30 Silva was on intimate terms with Muttusamy's wife and he used to send her fowl curry and other luxuries by me. I have seen Ebert Silva frequently at Muttusamy's house at night. Muttusamy used to go for gambling and raban parties. Then one day at the working party Muttusamy struck his wife over a quarrel and Ebert Silva interfered and attempted to strike Muttusamy who ran away. This same night I saw Ebert Silva setting out from the bungalow with his gun. He was dressed in a white sarong. It was a dark night. He returned at about 4 a.m. and told me shot at a bandicoot and it missed. He told me this only after I asked him at what he shot at, as I heard the report of
40 a gun at about midnight from the direction of Muttusamy's house. He removed the cartridges from his gun—one spent and the other full. He

P 58 statement
of Wilfred,
C.2.47—contd.

had his meals went for work. He did not return till about 2 p.m. and I went in search of him towards Muttusamy's house thinking he was there. I found Muttusamy's house closed. I spoke and called out Muttusamy but did not get a reply. I got down the slope and I saw Ebert Silva digging a hole with a mamoty in the low jungle. I saw the cut up portions of Muttusamy's wife and child. These had been burnt to a certain extent. I spoke to him and asked him what had happened. He said that it was not necessary for me to know and asked me to go to the wadiya. I ran back and then to the village and informed my father Banda of what I had seen. My father went to where Ebert Silva was, with me, and he saw Ebert Silva digging a hole. My father spoke to him. He drove my father away saying that he will tell later. My father went the direction of his house and I went to the wadiya. Ebert Silva returned to the wadiya later that evening after a bath. He brought a mamoty too. My sister Jane Nona was then being kept by Ebert Silva. The next day at about noon Ebert Silva went to Muttusamy's house with Jane Nona. I also went with him. I went into Muttusamy's house and saw blood all over the floor and on the grinding stone. I saw a hole in the wall as if a shot had struck it and I pulled out a piece of cartridge wadding like horse hair. Ebert Silva snatched this from my hand and threw it into the jungle. Ebert Silva then said that Muttusamy killed his wife and child and went away. He asked me and my sister not to mention a word to any other under pain of death. He got Jane Nona with his help to wash the floor and to re-mud the house. Then he took the clothes box containing the clothes and gave this to Jane Nona. The other property he took and burned these at the spot where the bodies were buried. I did not see this. He employed Jayaratne who works on the estate for this purpose. Jayaratne told me that the bodies were exhumed and burned with the clothes. I went there a day later and saw the grave had been dug up and there were ashes everywhere. My sister is now wearing the clothes belonging to Muttusamy's wife and her jewellery—one pair of gold earrings and a pair of silver bangles. This happened about three months ago. About a week after this happened Muttusamy's wife's sister came from the village near Galle with some medicine for Muttusamy's child. Ebert Silva informed her that Muttusamy had run away with his wife and child. He gave this woman some money and sent her away. Through fear I did not mention this to anyone. I left the estate on 1st January as my father did not want me to stay there any longer. I did not see Muttusamy's corpse at any time. Muttusamy was not seen on the estate after the evening of the finding of the corpses of his wife and child by me when I saw Ebert Silva digging a grave. I saw the bodies cut up in small pieces. This is all I know.

Left thumb impression of W. M. Wilfred.

SUPREME COURT PROCEEDINGS

(8) Judge's Charge to the Jury

CHARGE TO THE JURY

R. R. Crossette-Thambiah, Commissioner of Assize :

Gentlemen of the Jury,

On the 1st February, 1947, Nanayakkara, Manager of the Porwagama Co-operative Society had made a statement to Mr. Poulter, Assistant Superintendent of Police, which is in evidence before you. It is the document, P57, which you will remember. This information spoke of the murder of a Tamil family, must be, living at Porwagama Estate, owned by Mr. Piyadasa de Silva, Proctor. Upon this information an investigation by the Police was set in motion and now we have reached the concluding stages of the trial of this accused who is charged with murder as set out in the indictment.

In the course of this trial the names of Muttusamy, Baby Nona and Hemalatha have transpired. Incidents connected with them and relating to them have been spoken before you. Even as laymen, I think, you will appreciate that all the matters now placed before you would have been led in evidence where the indictment contains one charge or 2 or 3 charges. In so far as I understand the matter, there is not the slightest additional weightage of embarrassment or prejudice to this accused by reason of the fact that he faces 3 charges in the indictment. It has been said that there never has been a case like this in Ceylon. That may be so, but I am bound to say that cases like this are not unknown in other parts of the world. The rules which apply in this case are precisely those which apply in every other criminal case tried in these courts. No more, no less. That you have a responsibility no one can deny, but it is really no heavier than the responsibility which falls upon every other jury.

In this case as in every other case it is not for the accused to prove his innocence. It is for the prosecution to prove his guilt beyond reasonable doubt in respect of each of the three charges. The accused has the right in this case to claim at your hands the benefit of any reasonable doubt which you may entertain in regard to his guilt.

In order to prove the case for the prosecution it must be proved beyond reasonable doubt in respect of each of the persons mentioned in the indictment, first, that he or she was murdered and secondly, that this accused did it. Unless the prosecution proves both these matters the case falls to the ground. You just have read about the definition of prove as it obtains in our Statute book. I will read it to you again.

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(Court reads :)

“ A fact is said to be proved when after considering the matters before it the Court, that is to say, yourselves, 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 ”.

I will read to you the words of a famous Judge who explained reasonable doubt in this way : The doubt must not be trivial such as speculative ingenuity may raise but it must be a conscientious doubt which may appeal purely to the mind of a rational man, that is to say, a reasonable man acquainted with the affairs of life. If the conclusion you are driven to be that there is that degree of certainty in the case, then you would act upon it in the same manner as in your own grave and important affairs. That is the degree of certainty which the law requires and which will justify you in returning a verdict of guilty. 10

As reasonable men you must be reasonably satisfied beyond reasonable doubt of the guilt of the accused. That is the standard of proof required of the prosecution in each count in the indictment. You will consider each count separately and individually. In respect of each count you will presume that the accused is innocent until and unless the contrary is proved beyond reasonable doubt. 20

This is the indictment. This accused Ebert Silva stands charged thus :—

That on or about 17th October, 1946, at Porwagama he committed murder by causing the death of Muttusamy in the 1st count. In the 2nd count for causing the death of Babu Nona *alias* Baby Nona and in the 3rd count for causing the death of Hemalatha *alias* Hema.

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. 30

Intention is something that cannot be seen. You infer intention from all the matters before you which you accept as satisfactory. Every rational human being is presumed to intend the natural and probable consequences of his acts. I may say that in respect of each count in the indictment this is a case of murder or nothing.

Before I pass on to the evidence let me remind you that you are the sole and supreme judges on questions of fact. The admissibility of evidence is for me. The weight of it is entirely for you. Any observations I may make on questions of facts are only by way of suggestions for your consideration. Reject them if they do not commend themselves to you. Put aside from your minds everything which may have reached you and any knowledge of any kind you may have got outside this court. At this moment you are of the status of Judges of 40

the Supreme Court on questions of fact. You are charged to investigate this case on the evidence which is given before you in this court, at this trial and on nothing else. Statements and depositions made elsewhere have been put before you. They are not substantive evidence before you.

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What is substantive evidence in this case is the evidence given on oath here from that witness box. Use those statements and depositions if you are so disposed to test the credit or credibility of the witnesses who came before you in this Court. Now, this remark applies
10 to the evidence given by the accused and to the statement used in that connection as well. As regards these discrepancies, you will remember the comments of the learned Attorney-General this morning. It is a wise thing to ask yourselves whether such discrepancies do go to the substance of the case. At this stage of your deliberations consider the case as a whole. The accused has given evidence before you, and you will pay every attention towards anything he said. One who gives evidence on oath when he is on his trial is entitled to have consideration given to his evidence just as much as any other witness and to a special
20 consideration on the ground that he is a man on trial for his life. If his evidence raises a reasonable doubt in your minds or if upon a review of the case as a whole, i.e., the evidence for the prosecution and the evidence for the defence as well as the submissions on both sides of the Bar, there is a doubt in your minds as to his guilt on one or other of the charges, it is your duty to resolve that doubt in the accused's favour, and to acquit him.

Coming to the evidence I think I can assist you best by considering with you for a while the main items of evidence led on behalf of the prosecution and those on behalf of the defence.

We know from the checkroll of this estate that in 1946 Muttusamy commenced work on this estate on the 31st of May and Baby Nona did so on the 2nd of June. The last date on which their names appear is October 17th, 1946. Is there in the evidence for the prosecution material on which you may ask yourselves whether that day—October the 17th, 1946, was an unusual day? Margaret Nona said that it was the only day on which the labourers of this estate worked so late that she made a protest about it to this accused. Now, in consequence of that if you believe that evidence, it may be that the witness Wilfred speaks to an incident between Muttusamy, Baby Nona and this accused on that same day, namely, the 17th of October. The mention of Wilfred
40 at once reminds me to give you a piece of advice if I may about this group of witnesses consisting of Wilfred, Jane, Jayaratne, Edwin and Banda. It is really not for me to express any opinion on the value of their evidence, but I cannot help thinking that some of you may think that this group of persons are, shall I say, mixed up in this affair. Certainly, not as principals or participants, that is not even suggested, but as those who in their several ways assisted the accused from and after the 18th of October, and some of them you may think enriched.

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themselves with some of the goods in the house of Muttusamy. In this connection it is pertinent to remind you that the first information to the police was not made till February, 1947. Now these witnesses, whose names I have just mentioned, are not accomplices. I do not direct you as a matter of law that it will be unsafe to act on their evidence unless they are corroborated in material particulars. You, and you alone, are the Judges of their evidence. It is open to you to act upon that evidence if you think it is true. You may think that there is good reason and a good explanation for the belatedness of the information. You are the sole judges of their evidence. You saw them here and you heard them and you will apply to them the same test you would apply to the others as to how did they impress you. 10

You may think that one piece of evidence in the cross-examination of Banda may throw some light on this matter. When he was asked why, if he saw what he says he saw on the afternoon of the 18th, he allowed his son Wilfred to go back to the estate, Banda said, "What else could I have done"? He said, "I continued to go to the estate. I sent Jane to the estate. I sent Edwin to the estate". You may think that for poor villagers of that locality, employment on that estate was a big economic factor, or you may think as the learned Attorney-General submitted this morning that there was an atmosphere of fear. Again you may think that even though it is belated evidence that comes from this group of witnesses there is much in common between the prosecution and the defence in regard to their evidence. All these are matters for you. Nevertheless, while considering their evidence, I think it would be fair to ask yourselves whether they are supported by other evidence in material particulars. In this connection, I wish to make special mention of Jayaratne. You will remember that upon the adjournment of his evidence one evening he came back to Court next morning and made a more or less complete reversal of his testimony of the previous day. Such things do happen in Courts of Law, and you as men of the world may well gauge why they happen. I point that out as when considering the evidence of a witness like Jayaratne you will do well to be on your guard. I do not say that you should disbelieve him, as belief or otherwise is entirely a matter for you. I do not wish to say more about Jayaratne because you may remember that some part of his evidence was relied upon in the speech for the defence. Therefore, even the defence it would appear would wish to make use of his evidence. 20 30

To get back then to the evening of the 17th of October and to Wilfred's evidence of that incident I mentioned, this is my note of how Wilfred puts it—"One day Muttusamy quarrelled with Baby Nona over rice. The accused asked Muttusamy 'Can you assault the woman?' Muttusamy throwing away the mamoty went to his house. The incident took place near the accused's bungalow at about 4 p.m. That day both had worked on the estate. That was the last day Muttusamy and Baby Nona worked. I did not see them the next day. I have not seen them on any day subsequently up to today. 40

In regard to this incident you may remember that woman Margaret Nona supports Wilfred. This trial has taken some days. She is that austere looking lady who came into the witness box. It is entirely a matter for you. You may think that she gave her evidence here truthfully. She says, speaking of the 17th October, Margaret Nona says, I saw Muttusamy, Baby Nona and Hemalatha at the accused's wadia at the end of the day's work. Muttusamy and family had some paddy at the time which they had got from the village. They wanted to get off the estate to go to Erolis' house to get the paddy husked, accused said, "Do not pound the paddy today". I set off for home. In spite of accused's injunction Muttusamy, wife and child followed me. They followed me until they left the estate. I saw them going in the direction of Erolis' house. There then his evidence supports Wilfred who speaks to this incident between this accused and Muttusamy and Baby Nona on the very afternoon or evening of this 17th October.

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Now, gentlemen, on this matter a reason or motive I daresay, you heard it said before, but it is nevertheless worth repeating that it is most unsafe to come to any conclusion on the guilt or otherwise of an accused person upon the basis of a motive alone. Motive is as they say a double-edged sword. It means that if it is a reason for the deed alleged, it is also a reason for the suspicion of an innocent man.

Further, it would appear from all that had transpired here that this incident was a trivial one. You will remember the evidence of Erolis that Muttusamy and Baby Nona seemed to have become friendly when they went to his house that evening. Muttusamy pounded the paddy and when that was over he and Baby Nona returned home, Muttusamy carrying the child and Baby Nona the husked paddy. So it would seem that these two, Muttusamy and Baby Nona, had completely got over the misunderstanding or irritation the incident may have aroused. Then you will remember the evidence of Wilfred and Jayaratne that accused had his dinner that evening at the usual time in the usual way and that after the meal the three of them had a chat. So it would seem as though the accused also had regained his composure. On the other hand it is necessary for me to tell you in the case of circumstantial evidence the fact that shortly before Muttusamy and Baby Nona were last seen alive on this estate there was an incident between the accused and Muttusamy is a matter for your consideration. Not as I said as being by no means conclusive of the question one way or the other, but as one item in a series of items. It is unfortunately only too true that in our country even the slightest incident does lead to dire consequences.

The next section of evidence in the case for the prosecution relates to the question whether on the night of the 17th October the accused fired a shot with his gun. On that matter you heard the Attorney-General's comments this morning. I can do no more than

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summarize the evidence on this point and leave it to you. Both Wilfred and Jayaratne say they heard a shot from the direction of Muttusamy's house after the accused had left with his gun and torch that night. Are there in this case other circumstances which you may think throw some light on this question. There is other evidence indicating that the shot was fired at an early hour of the night when both Wilfred and Jayaratne were awake. Then you will remember what Mr. Poulter, the Superintendent of Police, told you. He saw when he visited the scene on the 4th February. That evidence supports the view that a shot was fired. Then there is the evidence of the Government Analyst of what he saw when he visited the scene on the 6th February. Then there is the evidence of what the Police found in the vicinity of Muttusamy's house when they made a search of that place, indicating that a shot had been fired in that locality. Then there is the evidence of what the police found in that saucer, P14, indicating that the slugs found near Muttusamy's house may have come from the same metal in the saucer. Then there is the evidence that when the police took charge of that gun, P32, they found a locally-made cartridge in it, again indicating that the accused did use on occasions locally-made cartridges. And finally on this question there is the evidence of the accused's own statements to Wilfred and Samathapala. 10 20

Mention of the Government Analyst makes it necessary to tell you that even in regard to the testimony of an expert, you are the final judges of what weight you will give to such testimony. Where an expert speaks to facts like any other ordinary witness, for instance, that when he went to the place he saw a patch on the wall, he is of course not speaking as an expert but as any other witness. Here you will treat his testimony in the same manner as any other testimony. But where the expert gives an opinion based on his special knowledge and study, the weight due to such testimony is a matter to be determined by you and that weight will be proportionate to the soundness or otherwise as you may think of the reasons adduced in support of the opinion. Even on matters of expert testimony you are the final Judges and you will 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 intentions. 30

You may think that having regard to the items of evidence summarized on this question of whether a shot was fired there at night by this accused, on the evidence before you it would be possible to reconstruct the events in this way. There is evidence that work was over late that day on this estate; Muttusamy and his family were thus delayed in the preparation of their night meal; by the time the accused had had his dinner and set out with his gun, the meal in the Muttusamy household was, therefore, still in preparation. There is evidence you will remember of the pot of country rice that had been boiled but not consumed. It is, therefore, natural you may think to assume either that the rice of the meal was still in preparation or that the meal was 40

just about to be partaken of when the accused reached Muttusamy's house. It is for you to say whether at that time of the evening after the day's work is over when the meal is being got ready it is not possible that the husband would be in the living room while the wife and child would be in the kitchen. Mr. Poulter, Superintendent of Police, is quite sure that when he went to the scene he saw on that rear wall a patch quite distinct from the rest of the wall. In this he is supported by the Government Analyst. Well, it is for you to say whether in regard to all the matters before you it is or it is not probable that a shot was discharged from a gun from either within that living room or at the threshold of it which would make a hole right through that rear wall if it had hit the wall without striking any other object. The position of the patch would seem to indicate that the gun was pointed low at the time the shot left the muzzle. The three persons in that house that night, one was the woman and the other an infant child. It is again a matter for you whether it is in the circumstances reasonable to suppose that if the gun went off in that manner with the muzzle pointing more or less towards the ground, it was in the course of a struggle and that it was neither Baby Nona nor the child but Muttusamy who grappled with the man armed with a gun that night. Whether it was this shot which witness Jayaratne says they heard about the time that they themselves were falling asleep.

Wilfred is a cook. There is one thing a cook is interested in and I suppose it is what there will be for the pot. So again it seems to me natural that next morning Wilfred should be eager to know what animal had been shot that night. Wilfred says that the accused said that he had shot at a bandicoot but that the shot had not felled the animal and that he must go again with his dog. Wilfred is supported in this by Samathapala to this extent. You will remember that Samathapala told you that when he asked the accused that morning where he had been to, the accused said he had followed the trail of a pig. It is true that Jayaratne said that the accused stated he did not fire a shot, but here I am bound to remind you at the same time that Jayaratne supports Wilfred in his evidence by confirming that Wilfred did ask the accused on the morning of 18th October, "Where is the animal you shot last night?" Well, gentlemen, it is for you to put all these matters together, to say whether you can reasonably come to the conclusion that the shot which Wilfred and Jayaratne heard that night came from this accused's gun when he was inside or on the threshold of the living room of Muttusamy's house. In this connection, the defence points out these things. Firstly, as I have just mentioned, that Jayaratne says that the accused denied having fired a shot that night when questioned by Wilfred; secondly, that while Wilfred purports to have seen the hole in that wall at about 9.30 that morning, Samathapala does not; thirdly, that Wilfred told the Magistrate that the hole was 'abreast' of the door of Muttusamy's house; fourthly, that this hole is a figment having regard to Wilfred's evidence given with obvious reluctance in this court on the point whether he did find a wadding in that hole.

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And lastly, in the opinion of the expert that that patch was one made much later than October 17th or thereabouts. You will remember learned counsel's most elaborate argument on those matters. I cannot hope to put his views more effectively than he has done. It is entirely a matter for you.

The learned Attorney-General submitted to you this morning that Wilfred is a truthful witness and he gave his reasons for that submission. It may have occurred to you that if indeed Wilfred is an untruthful witness giving false evidence in this case under the influence of Banda, Banda the litigant. You may think that the father would have fully achieved his purpose by making his son say that on the night in question that after the accused had gone in the direction of Muttusamy's house Wilfred following on his way home found him which is in the same direction, then there was an eye-witness to the killing by this accused of Muttusamy, Baby Nona and child. It is entirely a matter for you. Here another matter occurs to me to put before you for your consideration as regards the age of that patch seen by the Analyst. You may think that that was a subsequent patch made after the first one had been dug up to make sure that no slugs or wadding were embedded in it. You may think that is a possibility having regard to your views. If that is your view from all you have heard in this case the accused seems to be a very thorough-going kind of person. It is often of importance to consider the acts and the words at the material time of the person who is ultimately accused of a crime.

The submission for the prosecution is that the killing of Muttusamy and his family was done in the comparatively early hours of the night and that the accused was alone in that house thereafter till dawn. Once again there is no requirement that the prosecution should satisfy you why that woman and that child were done away with or in what order the deaths took place.

I am bound to tell you that in law even a child of five is a competent witness in a court of law provided the trial Judge is satisfied that she is possessed of sufficient understanding to testify. Assuming that the accused was alone in that house, if that is your view, he had time perhaps between 10 o'clock on the night of October 17th and dawn to take such action as was available to him single handed for the disposal of those remains.

The prosecution submits that having done what he could have done alone that night in that house the accused returned to his own wadia at early dawn having padlocked the door of Muttusamy's hut. The prosecution next can submit that at that point there arose a situation which was unexpected and which made the accused hurriedly alter whatever plans he may have made.

Jane Nona says that on her way to and from the estate her way lay past Muttusamy's hut. She told you what she saw on the morning of the 18th October. You will remember that. It came out in the

course of cross-examination that when Jane Nona reached the accused's wadia she had hardly said, ' Muttusamila ' when the accused came up to her and covered her mouth and said, " Ha, ha, Jane ". It is then a possible view which the prosecution may submit that it was in this situation that the accused was compelled to take Wilfred into his confidence to the extent of telling him that the whole family had bolted from the estate. Thereafter the prosecution may submit, the accused quickly went back to Muttusamy's hut feeling that it was unsafe to leave whatever was inside that hut, no longer there. Thus it was that when

10 Samathapala and Wilfred went to the hut at about 9.30 a.m. or thereabouts—remember, gentlemen, that all these times are guesses. They found the door ajar and drag marks of something dragged out of that house. Later that day according to Margaret Nona the accused was seen talking to Jane Nona under a rubber tree and when Jane Nona passed that house on her way after her midday meal, once again she says the door was padlocked.

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You may ask yourself who was it that locked, unlocked and again padlocked that door. Was it Muttusamy the fugitive from justice. The evidence of Margaret Nona is that she went to this estate on the

20 18th October at about 11 or 12 noon. The accused was not there. She waited for him. The accused came at about 12 or 1 p.m. This is my note of what she says that the accused came. He wore a sarong and was carrying some clothes. He was coming after a bath. My advice to you is not to pay much attention to these baths. In the tropics people are constantly bathing. Margaret Nona goes on. He handed the wet clothes over to Wilfred asking him to spread them out. There was a red sarong and a ' nil pata ' shirt. I asked the accused for my wages. He said, " I have no money with me now. When clerk Cooray comes ask him for your wages ". He also said, " Margaret Nona if

30 you were to come here, there will be a lot of trouble ". Come when the clerk is here. Get your wags and go away ".

Then you will remember Margaret Nona's evidence. That after handing over the wet clothes and telling her to go away the accused went back in the direction from which he came, that is in the direction of Muttusamy's house. Margaret Nona says that she also went in the same direction as not having had her wages I suppose she apparently wished to get from Baby Nona some money which Baby Nona owed her. She says the accused saw her and said, " Margaret, where are you going to "? She then told him that she was going to get some money from

40 Baby Nona. The accused then made a gesture with his hand—you will remember she showed you that gesture—and said, " Muttusamy and his people have deserted last evening, do not go that way ", so Margaret says she went home.

The accused has admitted, you will remember, that he had no noon meal that day. Wilfred is thus supported when he says he went in search of his master at about 2 p.m. towards Muttusamy's house. That part of Wilfred's evidence and of Banda's evidence, of what Banda

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says he saw is fresh in your minds and I will not repeat it. You will remember learned Council's criticism of Jane and Banda and of their evidence made to you only yesterday. To conclude this part of the evidence relating to the accused's conduct at the material time here is a short summary of the accused's statements as alleged in the evidence of the prosecution. Early on the morning of October 18th, when the accused returned to the wadiya he told Wilfred that he had shot at a bandicoot. Jayaratne at about that time appears not to have known that he had shot at all. When Jane turned up at about 7 a.m. on October 18th he shut her mouth saying, "Ha, ha, Jane". At about 10 that time he seems to have told Wilfred that Muttusamy and his family, that is all three, had bolted. I say so because you will remember Wilfred has admitted in his evidence that when Samathapala went to the accused's wadiya that morning he told Samathapala what the accused had told him, namely, that Muttusamy and his family had bolted. When Samathapala met the accused at about 9.30 or so that morning the accused told him he got soot on his body by following the track of a wild boar. When asked about the smell the accused said that when tracking the pig he fell upon a heap of burnt logs and the bad smell was as a result of what had got crushed by his body. At about 1 p.m. 20 that day he told Margaret, "If you come here, there will be trouble, go away". At about 2 p.m. that day when Wilfred became more curious the accused said to him, "It is none of your business, you had better go away". When Banda turned up, you remember Banda's evidence on the point. "The accused was down in a slope on the eastern side of the estate. At that time I could see only his head. I was thus far (from this witness box to as far as that 'Mara' tree outside the Court). I stopped and looked intently. This accused came up to me. He carried nothing with him. He was wearing an 'amuday' (span cloth), not a sarong as far as I remember. As I saw 30 him covered with mud I felt certain he had been digging a hole. When I went and peeped through a bush I could see earth heaped up. That was the pit that I saw. I asked the accused 'Liyana Mahathaya, what are you doing'? I followed up that question with this remark, 'My son says there is some human flesh.....?' And the accused said, 'Mona borutha' (what rubbish). I insisted, 'Tell me the truth, what are you about'? And he said, 'You are an invalid, it is about to rain, please go away'. I still insisted, 'Dont bother about me, tell me the truth'. Then he remained a while scratching his head and after some time with some little hesitation he said, 'Muttusamy has killed his wife and 40 child and gone away. I then told him, 'If Muttusamy has killed and gone away, what are you doing there'? He said, 'I am covering them up'. I inferred it must have been what Muttusamy had killed, that is Muttusamy's wife and child". That is the summary of the accused's conduct and statements at the material time according to the witnesses for the prosecution. How much of this you will accept is entirely a matter for you.

As regards why the witness Banda was belated in giving information of what he had seen, this is Banda's own evidence on the point. " In the interval I did not inform anybody of what I had seen for many reasons. At that time I was ill; my son Arnolis and I had cases in Court; I was also employed under the accused before I fell ill: Arnolis was charged with arson and I had a number of other troubles. I did not take the accused fully on his word "

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10 " I had nothing to act on. I felt helpless about accused taking Jane. I felt under the circumstances it was the best thing to be done. The mistake had happened and it can be rectified only in that manner ". That is to say by leaving it alone.

At the same time I am bound to point out to you that on the evidence before you in this court you may think that that cane box with its contents both of clothing and jewellery did find its way to Banda's house after Muttusamy and family disappeared from the estate.

20 Banda claims here that he had made for Jane jewellery precisely like those worn by Baby nona. On the other hand Wilfred said in evidence that after the accused kept Jane in his house for one night he saw Jane wearing Baby Nona's clothes and jewellery. It is also to be noted that in that document, D12, Banda has said, " Jane came today and asked for her belongings, I refused ". That document is dated 20th December, 1946. What belongings could Jane have had. Were they of a quarrel with the father except what was in that cane box. You may thus think taking all the matters together that the true reason for the belatedness of information to the police was not as suggested, but that Banda, Wilfred, Edwin and Jayaratne and the accused had jointly buried the remains of Baby Nona and Hemalatha on the morning of October 18th or do you think there were other reasons some of which I have mentioned, some of which the learned Attorney-General mentioned and the fact that Banda had benefited to the extent of the flowered 30 chintz cloth and those miserable pieces of jewellery. It is entirely a matter for you.

40 Whatever be the reason for the belatedness, I am bound to tell you that belated evidence is not necessarily false evidence. True evidence may take time to reach the authorities for reasons which can be understood. It is for you as I say to decide how the witnesses have impressed you. You may think that this matter may have remained undiscovered till a later date but for what we might call the problem of Jane. Jane was Banda's only daughter. Perhaps you may think that both Banda and that hot-headed young Edwin might have been happy to have seen Jane the married wife of this accused. It may even be that that was the price of the hope of their silence, but without any formal marriage Jane did actually spend a night in the accused's wadia. You know how Edwin re-acted. You will remember there was Jayaratne also living in the same wadia. You may think as time went on Jayaratne became aware of a number of matters or you may

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think that the accused found that he required the assistance of Jayaratne in the final disposal of those remains. Whatever the reason may be the accused appears to have been anxious to placate Jayaratne and on the 17th December the document, P18, was made. Thereafter it is significant that after the 20th December Banda had gone both to Mr. Piyadasa de Silva and to the police. It is perhaps also not without significance that Mr. Piyadasa de Silva busy as he must have been with arrangements for his Christmas vacation found the time to sandwich in a visit to this estate on December 21st when those human remains were finally burned and reduced to powder is a matter on which there is evidence but looking at all the matters before you it may be that you will be inclined to think that the real significance of this part of the case, namely, the human remains found when the police went to the scene was that as Mr. Poulier has showed you after a careful search and picked up a few bits of human remains they could find on that estate. All that there is before you here are those odds and ends of bones. You remember the productions. It may be that it will occur to you that by destroying or causing to be destroyed those human remains to the degree that there were only left those odd bits that what was destroyed was the proof of this accused's innocence.

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Indeed, if only that woman and child had been killed, the matter could have been proved beyond all dispute if when the police went to the scene they found the unmistakable remains or the skeletons or the decomposing bodies of a woman and child, and nothing else. Why then did this accused burn up every bit of human flesh in that estate and grind or cause to be ground the very bones to such a degree that the marks of the grinding were visible to the police when they went there? Why did he thus destroy the piece of evidence in support of his innocence? You may think that it was something to which the accused was inevitably driven because otherwise the finding of such as a single thigh bone of an adult male, or parts of the head or face of an adult male or female, or a chest without breasts, would have destroyed the whole of his story. Therefore, the prosecution can submit to you that you are forced to the conclusion by a survey of all these matters, namely, the quarrel, the struggle in Muttusamy's hut, the shot, the accused remaining out all night, his conduct the next day, the soot on his body, the various statements made by him at various times, the mud, the bits of jewellery, the placation of Jayaratne, the total and complete destruction of the very proof of his innocence, that all these matters put together individually and cumulatively prove beyond all doubt that the remains in that estate were those of Muttusamy, Baby Nona and Hemalatha. It is for you to decide. Is Muttusamy dead? The prosecution submits to you that on the facts before you that is the only possible view you can take, and as regards the further items of evidence in that connection, you will remember the Government Analyst demonstrated to you here from that witness box of the freshly mudded patch in the rear wall, the group of spurt drops of human blood and of the three hairs. The prosecution submits to

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you that with all the other matters now before you, you will have no hesitation in accepting as proof beyond reasonable doubt that when Muttusamy grappled with his assailant and managed to deflect the shot intended for him, the assailant whatever may be the means used—it is not for the prosecution to prove every part of its submission—used some other subsidiary weapon which caused the blood to spurt which fell on that wall and brought the man down with his head against the wall. As regards the hair do not forget on the other hand that the accused's evidence was that he too occupied that hut and that living room. From this position what appears to emerge is that it is not challenged that the hair found there was hair from the head of a man. It is for you to say whether the hair got there in the way the prosecution suggests or in the way that the defence suggests.

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I would only in passing remind you of the other evidence which comes from Jayaratne, and it is unsupported, of that gunny bag that was found to contain bones and certain garments identified by other witnesses. In this connection remember the learned Counsel for Defence reminded you of the evidence that there was a clothes line in Muttusamy's house subsequent to Muttusamy's disappearance and also of the evidence that every bit of thing inside Muttusamy's house including vegetables, coconuts, and mats were taken out later and buried and burnt.

Is Baby Nona dead? Is Hemalatha dead? The fact is not in dispute in this case that they are dead. In this, as in all other matters arising from the ingredients of proof which the prosecution must satisfy you about, the prosecution seeks to do so by means of circumstantial evidence. The fact that the body of a person alleged to be deceased is not forthcoming is a fact which you will keep well in mind in your deliberations, but there is no condition precedent that the finding of the dead body is absolutely necessary to proceed to a conviction in all cases. That too is a matter for proof beyond reasonable doubt by the prosecution. This is how Dr. Gower puts it having regard to the definition of proof given in the Evidence Act of what is called "Body Doctrine":—

"The existence of the body is no doubt proof positive of the death but its absence is not fatal to the trial of the accused for murder. It is no doubt a material circumstance which the Court or the jury have to bear in mind in arriving at their verdict".

A word now about 'Circumstantial Evidence'. It has been defined as proof from the irresistible force from a number of circumstances. This is how Lord Darling puts it:—

"One witness proves one thing and another proves another thing and all these things prove a conviction beyond reasonable doubt; neither of them separately proves the guilt of the person but taken together they do lead to the one and inevitable conclusion".

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This is how Lord Hewart puts its :—

“ When you look at all the surrounding circumstances you find such a series of unexpected coincidences that as a reasonable person you find your judgment compelled to one conclusion ”.

That is to say, if the circumstantial evidence is such as to fall short of that standard, if it does not satisfy the usual test, if it leaves gaps, then it is of no use at all, or, as has very often been said in our Courts, the circumstances taken together must in their cumulative effect be inconsistent with the innocence and consistent only with the guilt 10
of the accused.

I now pass on to the defence.

I have already pointed out a number of matters on which there is no dispute between the prosecution and the defence, but it is the same matters alleged with slight variation. For instance, it is not in dispute among other matters that there was an incident between Muttusamy, Baby Nona and the accused, but it is said for the accused that it was not on October 17th. This is the accused's evidence on the point. I hope I have made a full note of it.

“ A month before Muttusamy disappeared as Muttusamy and 20
Baby Nona were going to work in the morning Baby Nona rushed into my house and appealed to me to save her. Muttusamy also came running towards us at the time. I felt that Muttusamy was coming to assault her. I reprimanded Muttusamy and asked him not to assault women. I advised him saying, ‘ When you assault women they get spoiled. I advised Baby Nona also to live in peace and brought about a settlement ’.”

You remember that Wilfred spoke of visits by the accused to Baby Nona during Muttusamy's absence. Accused admits intimacy between Baby Nona and himself. This is not a court of morals. We 30
are not concerned with this intimacy except in relation to the present charge.

You remember learned counsel's submission of the evidence that this intimacy was a strong reason for Muttusamy to have killed Baby Nona. The accused's evidence given here before you is that when he reached Muttusamy's house in the course of his night rounds he found the door of Muttusamy's house opened. He flashed his torch and went up to inquire why the door was open. He saw two dead bodies heaped together with injuries on them. He flashed his torch into Muttusamy's house and looked. As Muttusamy was not seen about the place 40
he took to his heels. “ I got frightened and I went back to my wadia. I ran the whole time. As I approached the wadia I shouted out, ‘ Jayaratne, Jayaratne ’. At that time Jayaratne and Wilfred were in the wadia.”

Then you remember in evidence here he went on to say how the lamps were lit. “ Then I told him that I found Muttusamy's child and wife murdered. Muttusamy is also not about the place ”. Then he asked them, “ What shall we do about the matter? I inquired

whether we should go and inform the police. Then Jayaratne said, 'We cannot get out at the moment'. All three were frightened. Jayaratne said, 'We ourselves might get involved'. I got a little more frightened. Then we arranged among ourselves that we should summon Banda. He was an elderly man and from whom one could seek advice."

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10 Then you remember how in the morning Wilfred went and fetched his father. From a distance he came inquiring, "Sir, is this story true"? I said, "It is true, come and see. We must all get together and do something in the matter. That is by informing the police, and so on".

Then you remember how he said that they went inside the house and what they saw. "Then we stepped on to the house and came into the compound. Banda said, 'Sir, you are also in terms of intimacy with this woman and that also might come out in this affair. This is generally a bad state of affairs. We do not know who will get caught to this. We are bound to be involved in trouble and, therefore, the best thing is to eliminate the dead bodies and say that all have run away. We all agreed to hide the whole affair'".

20 Then you will remember the evidence that afternoon how he and Banda, Edwin and Jayaratne dug up the buried bodies of Baby Nona and the child. Then he told you how the ground that was soaked with blood was scooped out and fresh mud was later put over.

30 Then he told us how the things in the house were put into that pit. The accused told you that Banda removed that cane box. Then he told you the circumstances in which Jane came to spend a night in the wadia and on the following day Banda came and I told him, "Last night Jane Nona had been chased into my house. This will bring trouble for me. What is the meaning of this? Then Banda took Jane home. Then Jane was being chased into the estate because she spent a night with me. Then I asked Jayaratne, 'At least, will you accept her'? Then he undertook to accept her".

40 Accused then told you how the document, P18, was made: Then he wanted Jane to live with him when it was made. "After that document was written I asked Jayaratne and Jane to live in Muttusamy's hut. Till then it was unoccupied. Jayaratne and Jane went into that house and occupied it". Then he went on to conclude his evidence in this way: "Banda had got very angry with me. I got frightened that he might catch me for the burial incident. I asked Jayaratne and Edwin and got some firewood arranged. We brought them up in front of Muttusamy's house. We piled up the firewood and on the following day Jayaratne and I dug up that grave. Before we dug the grave we set fire to the firewood. Then we dug the grave and exhumed the bodies using the mamoties and started to put them to the fire. Jayaratne and I did this by turn. We found the stench so great that I got to a side and Jayaratne did it. From the place where the burning was going on the smoke could be seen at Edwin's house. Edwin came and said that he saw the smoke and came to see

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what it was about. There were bones still unburnt. As we had exhausted all our supply of firewood we collected the bones that were left behind, dug a hole and put them into it. Edwin came to work on the following day. I asked them to open up that mud pit into which the things in the house were put in. They were taken out. There were clothes, mats, and so on. They were all taken out. The pieces of pots and pans were strewn about the place. We put all the mats and pieces of clothes into a gunny bag. The earth from the pit was strewn near about the house. The bones were also put inside the gunny bag. As there was no firewood near Muttusamy's hut we removed them to the bungalow site and burnt the whole lot there. Even in that there were little pieces of bones, and so on, left. We put them all into a gunny bag, brought it to the valley and threw them to the 'dola'. I know the Christmas season. I know 'Janeru'. These bones were burnt between Christmas and New Year."

Then he went on to say: "After the New Year period the building of that new hut on the opposite slope, opposite Muttusamy's hut was completed. After it was finished I sent Jane and Jayaratne to live in that hut. Handy who was living in the estate had acquired a wife and I kept Handy and his family in Muttusamy's house and sent the other couple Jane and Jayaratne into the new house. When I was arrested I was living in Muttusamy's house. I was there for two or three weeks when I was arrested. Before I went into that house I got it prepared. I asked Jayaratne to clean up the house. Including the cleaning mudding was also done. My hair started greying from my 20th year owing to a family tendency. When was at Muttusamy's house I slept on the floor near the door. I used to close the door when I sleep. I used to keep my head towards that wall and sleep. That is towards the short wall."

In cross-examination—I think I had better read from the transcript of the record—the accused said that he went out on his night rounds daily, every night, and sometimes on a second round. We are reminded that this estate is only one of 50 acres. He said that in October, 1946, nearly twenty acres of young plants were destroyed by animals and there was wild growths of jungle. He said that on his night rounds it is usual for him to go up to where Muttusamy's hut was and then re-trace his steps. He was asked, when he saw Baby Nona and child lying there with blood-stains whether he was surprised? He said he was surprised but when the question was repeated he said he was not surprised. He said he was so frightened that he had a burning sensation. He finally wound-up by saying he could not remember whether he was surprised or not. He admitted that when he saw this girl of whom he was fond lying down, he felt sorry and frightened. He was asked whether his sorrow led him to go and see whether she required any medical attention and he replied to that, "Had she answered my call, I would have helped her". He went on to say, "I really thought she was quite dead". He was asked whether he

did not bother to find out. Then he said, "She never happened to be in the habit of getting a fit or a faint". He was asked whether it did not occur to him once he got to the wadiya that these persons in that hut might need help. He said he was so afraid that he was frightened to step out of the house. He was asked whether it did not occur to him to get a doctor. He replied that there was no necessity for a doctor for a corpse. Then he went on to say, "I did not think of a doctor but I thought of informing the headman". He was asked whether he followed that thought up and he said he called Jayaratne to go and inform the headman but Jayaratne said, "I cannot go out of the house at this time". He said that at no stage did he make a report either to the police or to the owner of the estate. He was asked whether he was not curious to know during the last two years what had happened to Muttusamy and his answer to that was, "I don't know where he is". It was then suggested to him that he had not bothered because he knew only too well what had happened to Muttusamy.

You will remember the learned Attorney-General's comments on the accused's cross-examination this morning. I will read to you the statement that the accused made to the police when questioned by them on the 4th February, 1947 :—

"A labourer named Muttusamy was living in this house with his wife and child. On the morning of 18th October, 1946, Banda came and informed me that Muttusamy and others have bolted away. This was about 7 a.m. I came to the house alone and found it was tied with a coir string. I opened the door and found nothing inside the house. All the goods had been removed by them. I kept quite as he used to go like this and return later. His accounts were not looked into. I do not know where they have gone to. I did not search for them. I informed my master some time later when he visited the estate about this. This is all I have to state."

I have already told you elsewhere as to how you should treat these statements and depositions.

The learned Attorney-General's made his speech to you this morning. We are indebted to him and learned counsel for their assistance in this case. I think, I have done. It is now for you to say in respect of each of these charges whether it is proved beyond reasonable doubt. If it is proved you will say so and if there is any doubt the accused must have the benefit of that doubt. If there is no doubt, justice must be done.

Consider your verdict in respect of each count in the indictment.

Certified correct,
(Sgd.) M. M. SEKARAJASINGHAM,
Chief Stenographer, Supreme Court.

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(8) Judge's
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No. 2.
 Proceedings
 Supreme Court
 (9) Verdict and
 Sentence.
 8.10.48.

No. 2
 SUPREME COURT PROCEEDINGS
 (8) Verdict and Sentence

Jury retires at 12.40 p.m.

Jury returns at 1.40 p.m.

Registrar : Mr. Foreman, are you unanimously agreed upon your verdict?

Foreman : Yes.

Registrar : Do you find the prisoner guilty on Count No. 1?

Foreman : Unanimous with regard to all the Counts, My Lord. 10

We find the prisoner guilty on Count No. 1 of the murder of Muttusamy.

Registrar : On Count No. 2—the murder of Muttusamy's wife, Baby Nona?

Foreman : Guilty.

Registrar : On Count No. 3—the murder of Hemalatha?

Foreman : Guilty.

Registrar : Gentlemen, your unanimous verdict is that the prisoner is guilty on Counts 1, 2 and 3.

Please attend while your Foreman signs your verdict. 20

Note.—Prisoner is so informed.

Court : The prisoner at the Bar, before Judgment of Death is pronounced, is there anything you wish to say as to why Sentence of Death should not be passed on you?

Prisoner remains silent.

Court pronounces Sentence of Death.

On this Indictment the Sentence of the Court, pronounced and published this day, is that the prisoner Lathuwa Handi Ebert Silva be taken hence to the Welikada Prison in Colombo and on Thursday, the 18th day of November, 1948, within the walls of the said Prison 30 be hanged by his neck until he be dead.

Note.—Witness Jayaratne is summoned to appear but is found to have left the Court premises.

Court directs that a summons be issued on him to appear before His Lordship on receipt of such summons.

Court : I wish to express my appreciation of the assistance this Court has received both from the Expert and the Police Officers who carried out the investigations in this case.

Gentlemen of the Jury, you have performed your arduous duties with a great sense of responsibility. If any of you wish to be exempted 40 for a period of two years will you please hand in your names to the Registrar?

COURT OF CRIMINAL APPEAL
PROCEEDINGS

(1) Petition of Appeal

No. 3,
Court of
Criminal
Appeal.
Proceedings
(1) Petition
of Appeal.



FORM XXXIII

IN THE COURT OF CRIMINAL
APPEAL

Criminal Appeal No. 87 of 1948 with
Application 251 of 1948

10

REX *v.* LATHUWA HANDI EBERT
SILVA

(Supreme Court, Colombo, Third Western
Circuit, 1948)

Case No. S.C. No. 13/M. C., Balapitiya
No. 57809 of 1948.

NOTICE OF APPEAL OR APPLICATION
FOR LEAVE TO APPEAL AGAINST
CONVICTION OR SENTENCE

20

To the Registrar of the Court of Criminal
Appeal.

Name of Appellant: Lathuwa Handi Ebert
Silva.

¹ e.g., Theft, Murder, Forgery,
&c.

Offence of which convicted¹: Murder.

Sentence: Death Sentence.

Date when convicted: 8th October, 1948.

Date when sentence passed: 8th October, 1948.

² If not in custody here set
out your address in full.

Name of Prison²: Welikada.

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Court of
Criminal
Appeal
Proceedings
(1) Petition
of Appeal.
—contd.

³ If you admit that you are guilty, or only desire to appeal against your sentence cross out the words "against my conviction and".

I, the above-named Appellant hereby give you notice that I desire to appeal to the Court of Criminal Appeal against my conviction³ on the grounds hereinafter set forth on this notice.

⁵ This notice must be signed by the Appellant. If he cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

(Signed) or (Mark)⁵
Ebert Silva (in Sinhalese).

(Appellant).

Signature and address of witness attesting
mark

⁶ If this notice is signed more than fourteen days after the conviction or sentence appealed against the Appellant must obtain and fill in form IX and send it with this notice.

Dated this⁶ 15th day of October, 1948. 10

The Appellant must answer the following questions:—

Questions and Answers

1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal? No.

2. Do you desire the Court of Criminal Appeal to assign you legal aid? No.

If your answer to this question is "Yes" then answer the following questions:— 20

(a) What was your occupation and what wages, salary or income were you receiving before your conviction? —

(b) Have you any means to enable you to obtain legal aid for myself? —

(c) Is any Proctor now acting for you? If so, give his name and address. —

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. 30

If your answer to this question is "Yes" you must obtain Form XXVI, fill it up, and forward it with this notice.

These must be filled in before the notice is sent to the Registrar.

You must here set out the grounds or reasons you allege why your conviction should be quashed or your sentence reduced.

You can also, if you wish set out, in addition to your above reasons, your case and argument fully.

Grounds of Appeal or Application

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(1) Petition
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1. The verdict of the jury is unreasonable.
2. The evidence adduced in the case does not suffice to prove that Muttusamy is dead.
3. The charge to the jury has failed to provide the jury with an adequate direction on the questions:
 - (a) of the elements of proof necessary on the subject of the corpus delicti;
 - (b) of the method of proof by circumstantial evidence of the corpus delicti.
4. The charge has not kept properly before the jury:
 - (a) The fact that on the Crown Case itself as presented in court the possibility of a conviction on counts 2 and 3 depended entirely on the proof under count 1, that the accused murdered Muttusamy;
 - (b) The fact that a conviction on count 1 did not in itself suffice to dispose of the question of the prisoner's guilt on counts 2 and 3.
5. The learned Judge has failed to direct the jury that even if they were satisfied that the accused had fired a shot into Muttusamy's house on the night in question it did not necessarily follow that the accused was guilty of the offences alleged against him in the indictment.
6. The evidence that the accused fired a shot into Muttusamy's house at all on the night of 17th October is not worthy of credence and does not bear analysis.
7. The bones produced in the case are completely consistent with the position of the

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accused that the only bodies disposed of were those of Baby Nona and Hemalatha. The position is also borne out by Wilfred's first statement to the Police.

8. The sheer belatedness of the information given to the Police has not been the subject of an acceptable explanation in the case on the contrary the learned Judge's own view that the cane box of clothes and jewellery did get into Banda's hands after October 17th clearly points 10
to the fabrication of a case against the accused after December 20th.

9. The motive alleged as against the accused is vague and insufficient whereas Mutusamy manifestly had a strong motive to attack Baby Nona.

10. The main witnesses for the prosecution contradicted each other materially. In particular, the version of events given by Wilfred and Samathapala is not reconcilable with the 20
version given by Jane; and the version of neither is reconcilable with the version of Jayaratne. In this state of the evidence it would not have been possible for the jury to have convicted the prisoner if those aspects of the case had been kept prominently before it in the learned Judge's charge to the Jury.

ADDITIONAL GROUNDS.

1. The conviction and sentence are contrary to law and against 30
the weight of evidence.

2. I am absolutely innocent of the offence of which I was convicted.

3. The witnesses for the prosecution contradicted each other in their evidence on several material points. They are related to each other.

4. The witnesses for the prosecution gave false evidence against me through previous enmity and, therefore, their evidence is quite false and unsatisfactory.

COURT OF CRIMINAL APPEAL PROCEEDINGS.

(2) Judgment of the Court of Criminal Appeal.

IN THE COURT OF CRIMINAL APPEAL

Appeal 87 of 1948 with
Application 251 of 1948.

S. C. 13/M. C., Balapitiya 57,809.

Present: Howard, C.J., (President), Canekeratne, J. and
Nagalingam, J.

10 Counsel: COLVIN R. DE SILVA with M. M. KUMARAKULASINGHAM,
K. C. DE SILVA, and K. A. P. RAJAKARUNA for applicant-appellant.

T. S. FERNANDO, Crown Counsel, with ANANDA PEREIRA,
Crown Counsel, for the Crown.

Argued on: 16th and 17th November, 1948.

Delivered on: 25th November, 1948.

20 HOWARD, C.J.—The accused appeals from his conviction on
an indictment containing three counts of murder. The first count was
in respect of the murder of a man called Muttusamy, the second in
respect of Muttusamy's mistress Baby Nona, and the third in respect
of Baby Nona's child Hemalatha.

The accused, since 1938, was the conductor of an estate of about
50 acres situated at Porwagama belonging to his uncle one Piyadasa
de Silva, a Proctor of Balapitiya. The deceased Muttusamy was an
Indian Tamil and had been employed by Mr. Piyadasa de Silva as
a rickshaw-puller. Muttusamy had also worked at various intervals as
a resident labourer under the accused on Piyadasa de Silva's estate.
In May, 1946, after having been away Muttusamy returned and with
the deceased Baby Nona was employed on the estate. They were also
given accommodation on the estate. The names of Muttusamy and
30 Baby Nona appear in the checkroll of the estate up to the 17th October,
1946.

At the time when these murders are alleged to have taken place
the accused had in his employment as cook a boy called Wilfred, 16
years old. He was living in the accused's bungalow together with
Jayaratne who was 23 years old and was employed as a tapper. Jaya-
ratne was a relation of the accused. No one else lived in the latter's
bungalow, but just outside the boundaries of the estate was the house
of Banda, Wilfred's father. His daughter, Jane Nona, a sister of
Wilfred and another son Edwin or Arnolis, lived with him. It was
40 proved in evidence that the house in which the deceased were living
was between the accused's house and Banda's and was 418 yards from
the former and 484 yards from the latter. A footpath running through

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the estate passed by all three houses. It was in evidence that the accused had been intimate with the deceased, Baby Nona, and used to visit the house of Baby Nona during the day when Muttusamy was not there. Baby Nona was pregnant at the time of her death.

According to the witness, Wilfred, Muttusamy quarrelled with Baby Nona about 4 p.m. on the day before these murders are alleged to have taken place. This incident took place on the hill near the accused's bungalow and the accused is said to have intervened. This was the last occasion on which the witness, Wilfred, saw the three deceased. This quarrel between Muttusamy and Baby Nona does not appear to have been of a serious character as a witness called Erolis testifies to the fact that all the deceased came to him that night with some paddy to be pounded and that when they left Muttusamy and Baby Nona appeared to be friendly and the child was carried by Muttusamy. 10

Wilfred and Jayaratne in their evidence state that the accused on the night in question after dinner went out of his bungalow taking the estate gun, cartridges and a torch with him. Wilfred says that the cartridges were imported. Jayaratne says that the accused went in the direction of Muttusamy's hut. Both witnesses say that later they heard the report of a gun. Jayaratne says that it was five minutes after the accused left the hut and Wilfred says that he heard the report as he was falling asleep. Wilfred also states that he got up early in the morning and the accused had not then returned. He returned while Wilfred was boiling water, bringing the gun and the torch with him. He was perspiring and said he had shot at a bandicoot. He had his tea and saying he must go out again with his dog he went out with his gun and dog. Jayaratne states that he spoke to the accused when he came in and the latter said that he did not shoot at anything. According to Jayaratne the accused went away and returned about 9 a.m. and told Jayaratne that Muttusamy and his family had bolted. After the accused had gone away the first time, a rubber tapper called Samathapala, according to Wilfred, came to the bungalow about 7.30 or 8 a.m. to see if tapping was being done. Samathapala and Wilfred then went in search of the accused. They arrived at Muttusamy's house. As they arrived a stench came from the house. The door was ajar, they looked in and saw a heap of ash and blood and also a hole in the back wall opposite the door. They also saw drag marks from inside the house to the outside. At the back of the house they saw the accused's dog swallowing some dark flesh. They then went towards the jungle. The accused came up dressed in a white sarong with the upper part of his body bare. He had soot marks over his body and chest. He said he got those soot marks following the track of a wild boar. He told Samathapala that there would be no rubber tapping today and when asked about the smell said that when tracking after pigs he fell over a heap of burnt logs. Wilfred and Samathapala then returned to the bungalow of the accused and the latter went away. Normally accused, according to Wilfred, has his meal at 12 noon. As 30 40

he had not returned by 2 p.m. Wilfred went in search of him. He went to the house of Muttusamy which he now found locked with a padlock. He then went down the hill and found the accused digging a large hole in the jungle in the bed of a drain. Wilfred also saw two human heads, the teeth and heads were blackened. One head was larger than the other. Wilfred also caught the smell of the burning. The larger head was that of a grown-up person and had ears, nose and two eyes and was blackened. Wilfred could not identify it. The smaller head was also blackened and burnt and was according to Wilfred the head of a child. Wilfred also saw one hand with fingers. It was the hand of a grown-up person and had been cut and severed. He also saw the hand of a child, two legs, and the trunk of a grown-up person. Wilfred asked the accused what the pieces were and the accused rushed at him and said, "It is none of your business, you better go away". Wilfred then ran to his father's house and told the latter that the accused was trying to bury some dead bodies. Banda returned with Wilfred and questioned the accused. The accused first of all denied he was burying dead bodies, but a short while after, according to Banda, said with some hesitation, "Muttusamy has killed his wife and gone away". Banda then states that he said to the accused, "If Muttusamy had killed them and gone away, what are you doing"? The accused said, "Well, I am covering them up". Banda and Wilfred then went to the bungalow of the accused. The latter arrived home about 4 p.m. with his sarong washed. Three days later Wilfred says that he and Jane Nona, his sister, at the request of the accused helped the latter to mud the house where the deceased had lived. During these three days Wilfred says the hole in the wall had been closed. On the day after he had seen the accused burying the bodies he had been to Muttusamy's house and taken some wadding out of this hole. He showed it to the accused who threw it into the jungle.

According to the evidence of Wilfred the accused and Jayaratne were friendly after the disappearance of Muttusamy and his family and were talking in secret. About three weeks after their disappearance he saw Jayaratne chopping firewood on the hill. This was at the place where he had previously seen the accused burying the bodies. Wilfred also states that Jane Nona his sister spent a night with the accused in his bungalow and that after that Jane Nona became the mistress of Jayaratne. About a month after the disappearance of Muttusamy and his family Jayaratne and Jane Nona went into occupation of Muttusamy's house. This witness also states that two weeks after the disappearance, Lucy Nona, Baby Nona's sister, came and asked after Baby Nona. The accused told her that all three had bolted from the estate. The accused also gave Lucy Nona money and sent her away. This evidence was corroborated by Lucy Nona herself. Wilfred also states that after the disappearance he saw Muttusamy's ration book with the accused. Wilfred further states that the accused threatened to kill him if he told anyone about what had occurred.

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The witness Jayaratne states in his evidence that when the accused told him that Muttusamy and his family had bolted his suspicions were not aroused in any way. Some days later he saw the accused burning something in the jungle. The accused asked him to cut fire-wood. A gunny bag was brought from the jungle by the accused. It contained blue shorts similar to a pair worn by Muttusamy. Also a waistcoat which he identified as the latter's. There were also bones in the bag which were burnt. The accused then burnt the bag and its contents. Then Jayaratne says his suspicions were aroused and he questioned the accused. The latter said Muttusamy had bolted after killing his wife and child. His suspicions were allayed and he helped the accused to dispose of the bones. This incident took place about three months after the disappearance and about the time he took Jane Nona as his mistress. He says that the small bits of bone were grounded by the accused on a stone. Later when clearing the jungle with Handy, Gunawathie, the latter's sister and Jane Nona he came across a cane box containing clothes. He informed the accused about it. This box was burnt with the clothes. 10

The first report made to anyone in authority was that of Banda who a few days before Christmas complained to Piyadasa de Silva that the accused kept his daughter on the estate for two days and now she was living with Jayaratne. According to Mr. de Silva Banda was angry about it. Mr. de Silva said he would enquire into the matter. Banda also told him that Muttusamy had run away after killing his wife and child. Mr. de Silva says that he visited the estate before Christmas but did not question the accused about Muttusamy and his wife. He says he did not believe Banda. The evidence of Banda does not tally with that of Mr. Piyadasa de Silva. Banda states that he told Mr. de Silva that the accused buried Muttusamy's wife and child saying that Muttusamy had killed them and gone away. This was the first time he mentioned it to anybody. Later he told one Nanayakkara, the Manager of the Co-operative Stores at Porwagama. The latter on the 1st February, 1947, made a complaint to the Assistant Superintendent of Police at Galle. The Police then instituted enquiries. Statements were taken from Banda and Wilfred. The Assistant Superintendent of Police, Poulter, visited the scene on the 7th February, 1947. The Government Analyst also visited the place and its surroundings. The latter has identified a piece of wadding and card-wadding found by the Sub-Inspector behind the house of Muttusamy as portions of wadding found in Eley Kynoch cartridges. The examination of slugs found by the Police did not carry the case for the Crown any further. With regard to the evidence of Wilfred as to having seen a hole in the back wall the Government Analyst stated that a shot fired from the door if it went through a human body would not have penetrated the rear wall. 30 40

Dr. Changumam, Professor of Anatomy in the University of Ceylon, gave evidence as to the nature of the bones which had been dug

up by the Police from a mound on the eastern side of Muttusamy's house. Dr. Chanmugam states that P1 contains a piece of human adult bone from the head, sex indeterminable. There were signs of charring and burning. P7 was the right knee bone of an adult, sex indeterminable. P15 contained a portion of the right human rib of an adult. In this exhibit there was a small portion of a human face. Some of these bones had been subjected to heat. P15A was the milk tooth of a child under 8 years of age. It was in evidence that Hemalatha was 5 years old.

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- 10 The accused who elected to give evidence on affirmation, stated that he was on intimate terms with Baby Nona and that he had intervened in a dispute between Muttusamy and Baby Nona and told Muttusamy not to assault her. He was also the watcher of the estate and on the night that Muttusamy disappeared he went out on his night round. He had his gun, a torch and 5 or 6 foreign made cartridges with him. It was about 11 o'clock when he reached the compound of Muttusamy's house. He saw his door open and called out. Then he saw Baby Nona lying inside the house near the doorstep. There were blood stains on her jacket. The little child was near by with stains of blood on her.
- 20 As Muttusamy was not to be seen he took to his heels as he got frightened and went back to his wadia. He shouted, "Jayaratne" as he ran. Both Jayaratne and Wilfred came out from the wadia and asked what was the matter. He said he found Muttusamy's wife and child murdered and Muttusamy not about the place. He asked them what they should do about it and whether they should inform the Police. Jayaratne said, "We cannot get out at this moment. We might get involved in this". He got frightened and they arranged they should summon Banda who was an elderly man from whom one could seek advice. Through fear they did not fetch Banda that night.
- 30 morning they went to Muttusamy's house and Wilfred fetched Banda. They saw broken pots and pans in the kitchen and stabs over the corpses. As they came out of the house Banda said, "You are also on terms of intimacy with this woman and that might come out in this affair. The best thing is to eliminate the dead bodies and say all have run away". They all agreed to hide the whole affair. Jayaratne was left to watch the house which was closed. The accused then set the workers to work. He could not take his midday meal through fear. After meal time they went to Muttusamy's house and Edwin and Jayaratne dug the grave and put the bodies into it. They scooped up the blood on the floor and
- 40 covered up the hole with mud. Into a pit near by they put broken pots and clothes and cane box with clothes. Subsequently he arranged for Jayaratne to take Jane Nona as his mistress as she was being beaten at home by Edwin her brother. He put them in Muttusamy's bungalow. Banda was angry with him after this. Later he got frightened and dug up the grave, exhumed the bodies and put them in a fire prepared by Jayaratne and Edwin. The following day the mud pit was opened and the things taken out and burnt.

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One of the points taken by Dr. Colvin R. de Silva is in connection with the evidence of Jane Nona. This witness stated in cross-examination that on the morning of the disappearance she left the house of her father Banda just after dawn. She came to Muttusamy's house and saw that it was locked with a padlock and a large volume of smoke was emerging through the roof and walls. There was also a bad smell. Jane Nona then says she passed the wadia of the accused and was about to tell the people there what she had seen when the accused came up and put his hand over her mouth. When she returned from work Muttusamy's hut was still smoking. The other witnesses for the Crown were not questioned in regard to Jane Nona's evidence. Dr. de Silva takes the point that they should have been recalled by the Attorney-General. We think there is no substance in this complaint. The evidence was elicited in cross-examination and was not part of the Crown's case. Dr. de Silva could himself have asked for the re-call of the other witnesses. 10

The main point taken by Dr. de Silva on behalf of the appellant is that there is no proof that Muttusamy is dead. In these circumstances the first count in the indictment is not established. With regard to the second and third counts Dr. de Silva argues as follows: The Crown put forward as the motive for the killing of Baby Nona and Hemalath the fact that they were privy to the killing of Muttusamy. In these circumstances if it is not proved that Muttusamy is dead the convictions of the accused on counts 2 and 3 cannot stand. 20

The first question that requires consideration is whether there is in law sufficient proof that Muttusamy is dead. No portion of his body has been identified. In these circumstances, does the evidence surrounding the whole affair establish that he is dead? This evidence is purely circumstantial. In regard to the English Common Law the caution laid down by Hale was that a man should never be convicted of murder or manslaughter on circumstantial evidence alone, unless the body has been found. This caution, however, according to later opinion need not be followed when very strong circumstantial evidence of death can be given (Archbold 27th Edition p. 866). In this connection I would refer to the cases of *R. v. Hindmarsh* (168 E. R. 387), *R. v. Cheverton* (175 E. R. 1308), *R. v. Hopkins* (173 E. R. 631). In *R. v. Hopkins* the Jury were told by the Judge to acquit the accused. In *R. v. Cheverton* the case was allowed to go to the Jury and the accused was found not guilty. In both cases the body of the deceased was not found and the principle formulated in Archbold was followed. It was also followed in *R. v. Hindmarsh* where the accused was convicted although the body was not produced. In this case the murder took place at sea and there was evidence that the accused was seen to take up the deceased, the Captain, and throw him overboard into the sea and that he was not seen or heard of afterwards. The evidence establishing the death of the deceased is much stronger than in the present case. We have also been referred by Mr. Fernando to the law in India as laid down by Gour in the 5th Edition of the Penal Law of India; 30 40

p. 1019. In paragraph 3390 the learned author refers to the caution formulated by Hale. In paragraph 3392 he states as follows:—

“ But, of course, having regard to the definition of “ proved ” given in the Indian Evidence Act, there is no room for the ‘ body ’ doctrine. The existence of the body is no doubt a proof positive of the death; but its absence is not fatal to the trial of the accused for murder. It is no doubt a material circumstance which the Court or the jury have to bear in mind in arriving at their verdict, but that is all. Indeed, any other view would place in the hands of the accused an incentive to destroy the body after committing murder and thus secure immunity for their crime. To recognize such a principle, would, in some instances, under the administration of justice, be impossible. Of course, in such cases there may remain a doubt as to the actual death of the victim, but if such doubt is reasonable, the prisoner is entitled to an acquittal. If it is only a doubt, the Court may regard it as sufficient not to justify the passing of the extreme penalty, but it can never by itself be a ground for acquittal ”.

In paragraph 3394 it is stated as follows:—

“ So far as this country is concerned, it may then be taken to be now settled, that there is no rule of law that no person shall be convicted of murder unless the body of the murdered person has been found. When the circumstances are such as to make it morally certain that a crime has been committed, the inference that it was so committed is as safe as any other such inference; so Glover J. upheld the conviction of the accused for murder on their confession corroborated in some particulars by circumstantial evidence. The accused confessed that the deceased had an intrigue with the accused Pettah’s wife. He plotted with the other two accused to lie in wait for him on his next visit; they then attacked him and killed him outright with lathies, and afterwards buried him in a grave close by a pond. Their confession led to the discovery of a grave, which was, however, empty, but in which there were found two pieces of cloth belonging to the deceased on the night of his disappearance, and strong smell of decomposed matter pointing to the recent removal of the body. There were marks on the earth close by, as if a body had been dragged along. Their confession was most circumstantial, and the Court held it to be sufficient to support their conviction notwithstanding the non-discovery of the body ”.

The evidence against the accused in the case referred to in this paragraph was much stronger than in the present inasmuch as the confession made by the accused proved the death of the deceased beyond all reasonable doubt. In the *Empress of India v. Bhagirath* (I. L. R. 3 Allahabad 385) it was held by Straight J. that the mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder. In *Adu Shikdar v. Queen Empress* (I. L. R. 11 Calcutta 636) it was held by Norris J. that he would require the strongest possible evidence as to the fact of murder if the dead body was not forthcoming. I would also invite

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attention to the 7th Edition of Wills on Circumstantial Evidence. At p. 346 it is stated as follows:—

“ In cases of homicide three propositions must be made out in order to establish the *corpus delicti*. (1) That a death has taken place. (2) That the deceased is identified with the person alleged to have been killed. (3) That the death was due to unlawful violence or criminal negligence: and it is not till these propositions have been proved that the question—not included in the inquiry as to the *corpus delicti*—Is the accused or suspected person the culprit, arises ”.

In the present case the death of Muttusamy has not in our opinion, been established beyond all reasonable doubt. The bones discovered have not been identified as belonging to him. It is possible that on the night of the murder of Baby Nona and Hemalatha Muttusamy escaped and is in hiding through fear. There was no evidence of police or other search for Muttusamy. He may be alive. In these circumstances as he is not proved to be dead the question as to whether the accused is the killer does not arise. The verdict of guilty on count 1 must be set aside.

With regard to counts 2 and 3 we are not prepared to assent to the proposition put forward by Dr. Colvin de Silva that because of the motive put forward by the Crown the convictions of the accused on these counts cannot be maintained. Proof of motive was not a requisite for conviction. Nor was the Jury so charged by the learned Commissioner. The question is whether the evidence established these charges beyond reasonable doubt. The only evidence against the accused being of a circumstantial nature it must be only consistent with his guilt and incompatible with innocence. We think it was. The chain of circumstances clearly establishes his guilt. It is true that the motive may be obscure. On the other hand if the evidence of Wilfred is accepted the following facts are established:—

- (a) The accused with his gun, cartridges and a torch left his house on the night of the murder about 8 p.m.;
- (b) shortly afterwards a shot was heard from the direction of Muttusamy's house;
- (c) the accused did not return to his house that night;
- (d) he returned in the morning while Wilfred was preparing tea. The accused was perspiring and asked if he had shot anything said he shot at a bandicoot. To Jayaratne he said he did not shoot at anything;
- (e) about 9 a.m. Wilfred and Samathapala went to the house of Muttusamy. They got a stench. They saw ash and blood and a hole in the back wall. Also signs of something having been dragged from inside the house. They also saw a dog swallowing some dark flesh;
- (f) towards the jungle they met the accused with soot marks all over his body and chest. He said that he got the

- soot marks through following a wild boar and that he fell over some burnt logs;
- (g) at 2 p.m. Wilfred again went to Muttusamy's house and found the door locked with a padlock. Down the hill he saw the accused digging a large hole in a bed of a drain in the jungle. He was preparing this hole for the disposal of various human remains including two heads one larger than the other. Asked by Wilfred what the pieces were he rushed at him and said it was none of Wilfred's business and he had better go away;
- (h) on the arrival of Banda on the scene he said that Muttusamy had killed his wife and child and run away and that he the accused was covering them up.

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There is also the evidence of Jayaratne as to the later activities of accused and himself in burning bones and belongings of Muttusamy and his family, which the accused brought in a gunny bag from the jungle. According to Jayaratne the bones before being burnt were ground on a stone. There was also the burning of the cane box with its contents. The evidence of Lucy Nona to the effect that the accused told her that all three had bolted from the estate also points to the guilt of the accused. There is also the evidence of the attempts made to cover up the events of that night by mudding the bungalow of Muttusamy. The evidence of Professor Chanmugam proves that the remains of bodies produced in Court were from an adult and a child. The finding of wadding by the police is consistent with the firing of an imported cartridge from a double-barrelled gun. Even without the evidence of the accused the facts elicited by the Crown point in one direction and in one direction alone and that is to say the guilt of the accused. The evidence of the accused and his attempts to explain his behaviour in failing to notify the authorities of the discovery of the bodies of Baby Nona and Hemalatha and in disposing of them only serves to emphasize his guilt. No other explanation of his conduct is possible. His suggestion that in failing to notify the police and in disposing of the bodies he acted on the advice of Banda is just not credible having regard to their relative positions. Nor can it be accepted that he acted through fear. If Muttusamy had run away how could the accused possibly be suspected of committing this crime. The chain of evidence against him is complete.

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In addition to the points I have mentioned Dr. Colvin de Silva made certain complaints in regard to the learned Commissioner's charge to the Jury. Taking the charge as a whole we think that the case was fairly and squarely put to the Jury.

In the case of count 1 the appeal and application are allowed and the conviction is set aside. In regard to counts 2 and 3 the appeals and applications are dismissed.

Signed: J. C. HOWARD,
President of the Court.

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GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH, EMPEROR OF INDIA
IN THE COURT OF CRIMINAL APPEAL
Appeal No. 87 of 1948.

REX

vs.

LUTHUWA HANDI EBERT SILVA Accused-Appellant. 10
S. C. Case No. 13 of the Third Western Circuit, 1948.
M. C. Balapitiya No. 57809.

Counsel for Appellant: Mr. Advocate Colvin R. de Silva with Messrs.
Advocates M. M. Kumarakulasingham, K. C. de Silva
and K. A. P. Rajakaruna.

Counsel for Respondent: Mr. Advocate T. S. Fernando, Crown
Counsel, with Mr. Advocate Ananda Pereira, Crown
Counsel.

This case having come before—

the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, President,
the Hon. Mr. Arthur Reginald Henry Canekeratne, K.C.,
and the Hon. Mr. Chellappah Nagalingam, K.C.,
Judges, of this Court, for hearing and determination on 16th and
17th November, 1948. 20

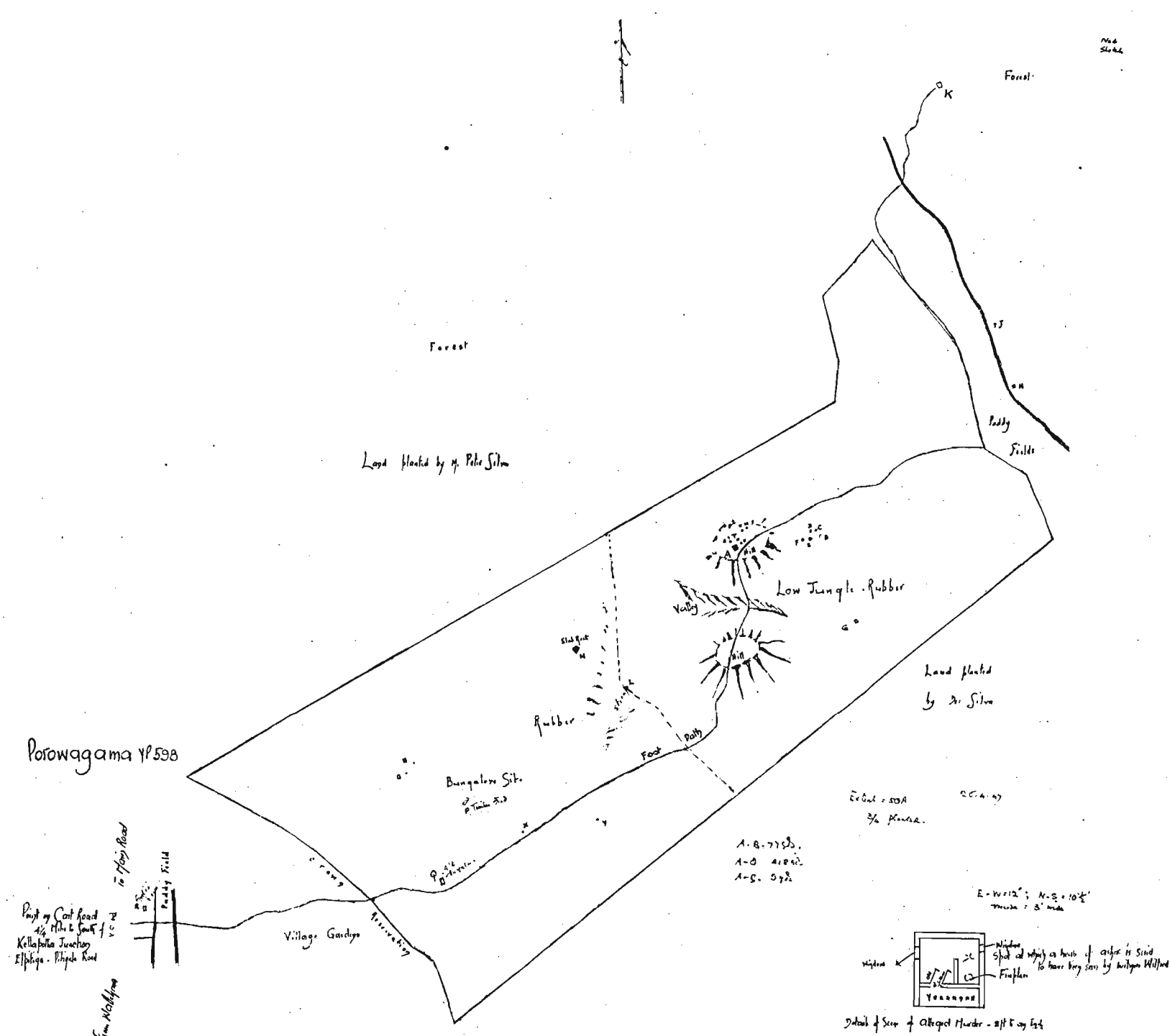
It is considered and adjudged that the conviction of the appellant
dated the 8th day of October, 1948, on count 1 only be and the same is
hereby allowed. In regard to counts 2 and 3 the Appeal is dismissed.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, President, 30

the Hon. Mr. Arthur Reginald Henry Canekeratne, K.C.,
and the Hon. Mr. Chellappah Nagalingam, K.C.,
Judges of this Court, at Colombo, the 25th day of November in the year
of Our Lord One thousand Nine hundred and forty-eight and of Our
Reign the Twelfth.

(Sgd.) CLARENCE DE SILVA,
Registrar, C.C.A.

Map
Scale





GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH, EMPEROR OF INDIA
IN THE COURT OF CRIMINAL APPEAL

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Application No. 251 of 1948 for leave to appeal from a conviction
dated 8th October, 1948, under section 4 (b) of Ordinance No. 23 of 1938.
REX

vs.

LUTHUWA HANDI EBERT SILVA Accused-Appellant.
10 S. C. Case No. 13 of the Third Western Circuit, 1948.
M. C. Balapitiya No. 57809.

Counsel for Appellant: Mr. Advocate Colvin R. de Silva with Messrs.
Advocates M. M. Kumarakulasingham, K. C. de Silva,
and K. A. P. Rajakaruna.

Counsel for Respondent: Mr. Advocate T. S. Fernando, Crown
Counsel, with Mr. Advocate Ananda Pereira, Crown
Counsel.

This application having come before—

20 the Hon. Sir John Curtois Howard, Kt., K.C., Chief
Justice, President,
the Hon. Mr. Arthur Reginald Henry Canekaratne, K.C.,
and the Hon. Mr. Chellappah Nagalingam, K.C.,
Judges of this Court, for hearing and determination on 16th and
17th November, 1948.

It is considered and adjudged that the application of Lathuwa
Handi Ebert Silva for leave to appeal against conviction on count 1
only be and the same is hereby allowed. In regard to counts 2 and 3
the application is refused.

30 Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief
Justice, President,

the Hon. Mr. Arthur Reginald Henry Canekaratne, K.C.,
and the Hon. Mr. Chellappah Nagalingam, K.C.,
Judges of this Court, at Colombo, the 25th day of November in the year
of Our Lord One thousand Nine hundred and forty-eight and of Our
Reign the Twelfth.

(Sgd.) CLARENCE DE SILVA,
Registrar, C.C.A.

King's Order granting Special Leave to Appeal

AT THE COURT AT BUCKINGHAM PALACE

The 31st day of May 1949

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

SIR FRANK SOSKICE

MR. SECRETARY NOEL-
BAKER

SIR DAVID JENKINS

MR. GAITSKELLI.

SIR CYRIL RADCLIFFE

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 2nd day of May 1949, in the words following, viz. :—

“ 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 Lathuwa Handi Ebert Silva in the matter of an Appeal from the Court of Criminal Appeal of Ceylon between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters) : that the Petitioner prays for special leave to appeal against that portion of a Judgment of the Court of Criminal Appeal of Ceylon dated 25th November, 1948, by which the Petitioner's Appeals against his conviction on 8th October, 1948, after trial in the Supreme Court of Colombo by a Commissioner of Assize and a jury of the offences of murder of one Baby Nona (mistress of one Muttusamy) and of one Hemalatha (daughter of the said Baby Nona by another man) were dismissed and the sentence of death passed on the Petitioner in respect of the said two offences confirmed at the same time as the Petitioner's Appeal against his conviction at the same trial of the offence of murder of the aforementioned Muttusamy was allowed : that the main questions which arise in this Appeal are :

30 (i) Whether the Court of Criminal Appeal in the circumstances of the present case and in view of the provisions of section 243 of the Ceylon Criminal Procedure Code exceeded the limits of the appellate jurisdiction conferred on it by law and substituted trial by itself for trial by jury in respect of the conviction of the Petitioner on counts 2 and 3 of the indictment (the murder of Baby Nona and Hemalatha, respectively).

(ii) Whether the Court of Criminal Appeal in view of its finding that the evidence led at the trial could not sustain the conviction of the

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petitioner on count 1 of the indictment (the murder of Muttusamy) was entitled to confirm the conviction of the petitioner on counts 2 and 3 in the circumstances of the present case where:—

- (a) the Crown case itself made the allegation in count 1 the very basis of the allegations in counts 2 and 3.
- (b) the truth of the allegation in count 1 was in fact an essential link in the chain of circumstances from which the jury was asked to draw as a necessary inference the conclusion that the petitioner was guilty on counts 2 and 3. 10
- (c) the trial judge in his charge to the jury not only failed altogether to put the case in respect of counts 2 and 3 to the jury from the point of view of the consequences flowing from an acquittal on count 1 but also failed even to draw the attention of the jury to the intimate bearing a finding of ' Not Guilty ' on count 1 would have on the consideration of counts 2 and 3.
- (d) the trial judge despite the statutory direction contained in section 243 of the Ceylon Criminal Procedure Code (to ' charge the jury summing up the evidence ') failed altogether in his charge to the jury to marshal the evidence in relation to counts 2 and 3 separately from count 1 : 20

(iii) Whether the facts as found by the Court of Criminal Appeal were such as would have entitled any court to hold that the petitioner had murdered Baby Nona and Hemalatha :

(iv) Whether the petitioner was gravely prejudiced by the fact that three separate charges of murder were joined in one indictment and whether such joinder has resulted in a grave miscarriage of justice :

(v) Whether the Commissioner of Assize should have directed the jury that on one view of the facts which he indicated in his summing up the principal witnesses for the Crown were all accessories after the fact and that in the absence of corroboration such evidence should be treated with great caution: And humbly praying Your Majesty in Council to grant the petitioner special leave to appeal against the Judgment of the Court of Criminal Appeal dated 25th November, 1948, or for such further or other relief as to Your Majesty in Council may seem meet : 30

“ The Lords of the Committee in obedience to His late Majesty's 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 against that portion of the Judgment of the 40

Court of Criminal Appeal of the Island of Ceylon dated the 25th day of November, 1948, by which the petitioner's appeals against conviction were dismissed.

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“ 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 upon payment by the Petitioner of the usual fees for the same ”.

10 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. LEADBITTER.
