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Judgment
74, 1956

IN THE PRIVY COUNCIL

No. 20 of 1955

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

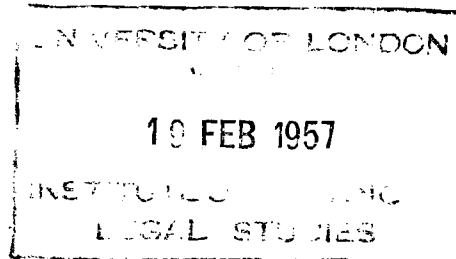
BETWEEN:

S. K. SUBRAMANIAM Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS



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ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

S. K. SUBRAMANIAM

Appellant

- and -

THE QUEEN

Respondent

UNIVERSITY OF LONDON
L.S.1

19 FEB 1957

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
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LEGAL STUDIES

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1.

IN THE PRIVY COUNCIL

No. 20 of 1955

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N: S. K. SUBRAMANIAM Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

No. 1.

INDICTMENT

In the
Supreme Court
at Jaffna.

10 Magistrate's Court of Point Pedro
Case No. 16525

No.1.

In the Supreme Court of
the Island of Ceylon Criminal Jurisdiction

Indictment.

Northern Circuit (At a Session of the said
District of Pt. Pedro (Supreme Court in its Crim-
Session (inal Jurisdiction for the
 (Northern Circuit to be hold-
 (en at Jaffna in the year One
 (thousand nine hundred and
20 (fifty three.

24th July, 1953.

THE QUEEN

versus

Verrakathey Tharuman alias Tharumalingam

30 you are indicted at the instance of Hema Henry Bas-
nayake Esquire, Q.C., Her Majesty's Attorney-General
and the charge against you is That on or about the
27th day of November 1952, at Nelliaddy Junction in
the division of Point Pedro, within the jurisdic-
tion of this Court, you did commit murder by caus-
ing the death of one Murugesu Kandasamy of Alvai
South; and that you have thereby committed an of-
fence punishable under section 296 of the Penal
Code.

This 24th day of July 1953.

Sgd. J.G.T. Weeraratna
Crown Counsel.

In the
Supreme Court
at Jaffna.

List of Productions.

- | | | |
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Indictment.
24th July, 1953.
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X3. Payment Register of Nelliaddy Post Office.
X4. Loose Leaf Register.</p> | <p>10
10</p> |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|

List of Witnesses

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| <p>1. S.K.Subramaniam Village Headman No. 132 Karaveddy North.
2. Dr. S. Vaithilingam District Medical Officer Pt. Pedro.
3. M. Chinnaih Goldsmith Alvai South.
4. M. Arumugam Goldsmith Alvai South.
5. T. Aiyadurai Cultivator Alvai South.
6. S. Kanapathipillai Cultivator Karaveddy West.
7. C. Vairamuttu Cultivator. Alvai South.
8. Thangamma wife of Sinnathamby Nelliaddy.
9. C. Subramaniam <u>alias</u> Vairamuther Cultivator Alvai South.
10. C. Nadaraja Police Constable 116, Vavuniya.
11. V.J. Alagiah Officer-in-Charge Police Station Pt. Pedro.</p> | <p>20
30</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|

Summonses at the Instance of Court.

1. P. Kandappoo Tea Boutique Keeper, Nelliaddy.
2. R. J. Nadaraja I.P. Kankasanthurai.
3. R. S. de Silva. S.I. Police do.
4. Z. Hameem Sgt. 1229 Pt. Pedro.
5. S. Markanda P.C. 2024 Pt. Pedro.
6. V. J. Perera S.I. Police Colombo Fort.
7. E.A. Velupillai Post Master, Nelliaddy.
8. Mudiyanse P.C. 5001.

No. 1(a)

PROCEEDINGS.

S.C.4. - M.C. Pt. Pedro. 16525

THE QUEEN

versus

V. Tharuman alias Tharumalingam

To this indictment the accused pleads 'I am not guilty'.

Sgd. E. Dissanayaka.
Clerk of Assize.

In the
Supreme Court
at Jaffna.

No.1(a)

Proceedings.

8th and 15th
March, 1954.

10

Supreme Court Jaffna 8th March 1954.

Monday the Fifteenth day of March One thousand nine hundred and fifty four. The unanimous verdict of the Jurors sworn to try the matter of accusation in this case is that no useful purpose would be served in continuing with the trial and that the accused is not guilty of any offence.

Sgd.

Foreman.

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Sgd. E. Dissanyaka
C/A 15.3.54.

Monday the Fifteenth day of March One thousand nine hundred and fifty four. On this Indictment the sentence of the Court pronounced and published this day is that on this finding of acquittal by direction of Court entered of record in favour of the prisoner V. Tharuman alias Tharumalingam and he is discharged.

Sgd. E. Dissanayaka

Clerk of Assize.

In the
Supreme Court
at Jaffna.

PROSECUTION EVIDENCE

No. 2.

THARMAR IYATHURAI

Prosecution
Evidence.

Tharmar Iyathurai, Affirmed,

No. 2.

Tharmar
Iyathurai.

8th March,
1954.

Examination.

35, cultivator, Alvai South. I live about one mile from the Nelliaddi junction. The junction which is closest to my place is the Malsandi junction. That is not the same as the Nelliaddi junction. Malsandi is about $\frac{1}{4}$ mile from my house. I generally buy my provisions at the Nelliaddi junction. One does not get all necessary provisions at the Malsandi junction so I don't go there for my provisions. I knew Murugesu Kandasamy the deceased in this case. I remember the occasion when I saw him assaulted at the Nelliaddi junction. It was on the 27th November, 1952. On that day I went to the Nelliaddi junction in the evening at about 4.30 or 5 p.m. to buy provisions and I was at that junction for about 2 hours buying provisions. When I decided to get back home lamps had been lighted. The time was about 5.30 or 6 p.m. When I got back home there was no light on the road but there was lights in the shops. When I was going home I saw Kandasamy. It was about 6.30 p.m. I saw him at the moment I got into a boutique to buy a cigar and he was taking some betel from a woman at the entrance of the boutique. I did not speak to the deceased. I got out to go away. I know the accused in this case. He is Tharman. He lives at Karaveti. I saw the deceased buying betel and chewing it. As I was about to get out of the boutique I saw the deceased being assaulted. I saw the assailants. It was the accused, Tharman and two Malayalees. The deceased was at the entrance to the boutique and the two Malayalees assaulted him first, using two flat rather broad irons and the accused assaulted him then with a club, which was round and about two feet long and as thick as my wrist. The blows of the accused alighted on the left upper arm and on the left side of the face. The accused struck him four or five times. I was watching the assault. (To Court: One of the Malayalees assaulted him first. The deceased was standing when the accused assaulted him, and then he fell). After assaulting the deceased the accused and the two Malayalees

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left the place. The boutique keeper asked the people standing there, "why do you allow the deceased to lie in front of my boutique?" The accused and the two Malayalees left in the direction of Jaffna along the road. The deceased was not left lying there, he was carried and left under a tamarind tree on the other side of the road. A Malayalee and one Marain carried him there. I was there waiting. The tamarind tree is on the side of the road opposite to Sinniah's boutique. I did not go near the deceased when he was lying under the tamarind tree. I remained near the boutique. After that this accused came back with a kris knife and stabbed the deceased on the abdomen. The whole knife was about a foot long and the blade alone was about 6" long. The accused came back to the scene in about 5 minutes of the first assault. I saw the accused stab the deceased once. After that I left for my home. At that time the accused was not at the scene. After the stabbing the accused went away in the direction of Jaffna along the road, taking the kris knife with him. When I went home I did not mention the fact that I had seen this incident to anyone. The following day I mentioned the fact that I had seen the incident to the elder brother of Kandasamy, named Arumugam. The Police came to my house and recorded my statement about 10 or 12 days later.

Cross-examined by Mr. Balasunderam.

I know Kandasamy's brothers, Arumugam and Sinniah. They are both goldsmiths. They live near the Malsandi junction in South Alvai and their houses are about 70 or 80 yards apart. I have known them for a long time. My house is about $\frac{1}{4}$ mile away from their houses. The deceased Kandasamy had been to jail about 8 times. He was charged with the murder of one Chelliah by stabbing him. He was found guilty and sentenced to imprisonment. That Chelliah was stabbed under the very tamarind tree where Kandasamy lay after he was assaulted. I know Sahotheram Sinniah. That is the man I referred to earlier. I do not know whether the Chelliah who was killed by the deceased was related to Sinniah.

Q. Did you tell the Magistrate that Chelliah and the botique keeper Sinniah were related? ... I did not. I did tell the Magistrate, 'I remember the murder of Chelliah'. "That murder was at the same

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 2.

Tharmar
Iyathurai.

8th March, 1954

Examination -
continued.

Cross-
Examination.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

spot". I did not know that Chelliah and the boutique keeper Sinniah were related, and I did not say that. Chelliah and Sinniah are Vellalah people and the deceased and his brothers are goldsmiths. The accused is a Koviari. I know Markandu of Alvai. He is related to me. I am a Vellalah and so is Markandu.

Q. Markandu is an influential man? ... Yes, he is. I do not know that he sometimes procures witnesses in cases. I know Kanapathipillai the witness in this case. I came to know him after this case, when he became a witness. I had not seen or known him before that. Sinniah, the brother of the deceased had his work shop in his house. I draw my rations from a shop close to my house. The shopkeeper is an authorised dealer. He sells rice and flour, but not other things. His name is Vallipuram. I came to this junction at about 4.30 or 5 p.m. to buy vegetables.

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8.3.54. (11.10 a.m.)

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Tharmar Iyathurai (continued)

Cross-examination continued.

I came to Nelliadi junction to buy vegetables. I went to the market. I took two hours to buy the vegetables to the extent of Rs.1/50 or Rs.2/-. I carried the vegetables in a small hand-bag which was full, in my hand. (witness indicates the size of the bag). On the day of this incident I bought a cigar in a boutique adjoining Chinniah's boutique, belonging to a Malayalee whose name I do not know. I go to the Nelliadi market daily to buy vegetables. I went to that boutique to buy one cigar which I lit. There is a verandah to Chinniah's boutique and the road is beyond the verandah. The deceased Kandasamy was standing on the steps leading to the verandah and buying betels. At no stage did the deceased stand on the verandah.

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Q. Did you say this to the Magistrate (marginal 23), "I saw the deceased Kandasamy talking to a woman, the wife of one Sinnathamby on the verandah of one Chinniah's boutique?" I said that the deceased Kandasamy was standing at the entrance to the verandah and talking.

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This woman is Thangamma the wife of Sinnathamby. She was not selling betel but giving betel to the deceased from her waist. (Witness says " i.e., "Vethilai vangai" meaning

"taking betel" and not "buying betel") I do not know whether Sinnathamby's wife is related to the late Chinniah.

In the
Supreme Court
at Jaffna.

Q. Did you say this to the Magistrate (marginal 54), "The wife of Sinnathamby is also related to Chelliah and Chinniah?" ... I do not know whether Sinnathamby's wife was related to these people. I did not give evidence to this effect.

Prosecution
Evidence.

No.2.

10 A Malayalee came and gave a blow to the deceased. As I was lighting the cigar which I had purchased I saw the deceased Kandasamy being assaulted. I have not seen Kandasamy going armed with a knife. He has no home of his own but he lives with his elder sister. Kandasamy had been to gaol for throwing at a car. After he returned from gaol he comes to the Nelliadi junction after dusk.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

To Court: He sometimes used to go to the Nelliadi junction during day time.

20 I did not see the deceased at Nelliadi junction mostly after dark. He was a bully.

To Court: He behaved like a bully; he had committed murders; he had assaulted people.

I am not aware whether he intimidates boutique-keepers. He has intimidated boutique keepers.

To Court: He has intimidated one Soori an old man who has a boutique at the junction. This is what I heard.

30 I have never seen this man the deceased intimidating boutique keepers.

I have not seen Kandasamy carrying a knife with him.

Q. (Marginal 52) Did you say this to the Magistrate: "After he returned from gaol he was sent to prison for committing mischief by throwing stones at a car. Kandasamy had no permanent home. When he is out of gaol he used to be found at Nelliadi junction. He was a bully" .. Yes, I have said so.

40 Q. Further, "he used to intimidate boutique Keepers?" ... I have not said so.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharman
Iyathurai.
8th March, 1954.
Cross-
Examination -
continued.

Q. Further, "He used to carry a knife with him al-
ways." ... I did not see. I did not say this.

To Court: I have said in the lower court that
Kandasamy had been sent to gaol for throwing
stones at a car. I did not see this incident
nor did I go to court in that connection. I
have seen Kandasamy at Nelliadi junction at
certain times. I said I heard that Kandasamy
intimidated boutique-keepers.

I did not see Kandasamy carrying a knife. I 10
have seen Kandasamy after liquor, and also drunk
many a time. When he is drunk he becomes danger-
ous.

To Court: He used to be drunk and abuse people
I have not seen Kandasamy threatening anybody.
Kandasamy and the woman were facing each other
when she was giving him betel.

While giving betel the woman was seated on
the verandah while the deceased was standing. The 20
deceased bent down and received the betel. A Mal-
ayalee came from inside Sinnathamby's boutique and
gave a blow - The accused and two Malayalees came
from inside Sakotheran Sinnathamby's boutique.
S.Chinniah is the same man as Sakotheran Sinna-
thamby. A Malayalee's boutique is adjoining
Chinniah's boutique. The name of one Malayalee
is Ramakrishnan while I do not know the name of the
other Malayalee. Ramakrishnan came from inside
the boutique and dealt the first blow on the de- 30
ceased, and which struck the deceased on the left
shoulder. All the three people dealt a number of
successive blows. I cannot say how many times
Ramakrishnan dealt blows. The blows alighted on
the left shoulder, on the left side of the face
and on the left leg of the deceased. I saw the
blows being dealt. Tharman, this accused, dealt
the blow on the left leg. The blows dealt with
by these three people alighted all over the body
of the deceased. I am unable to say where the 40
other blows by Ramakrishnan alighted. The blows
dealt by the other Malayalees alighted all over the
body - on both sides. When the first blow was
struck the deceased asked them not to assault him
- that is all he did. He did not raise any shouts.
At that time the woman moved to a further distance
from the spot and stood watching. I did not ob-
serve whether Chinniah was in his boutique. In

Chinniah's boutique betel, and vegetables and also arrack are sold. There were people in Chinniah's boutique and they did not say anything. After receiving the blow the deceased fell down. With the first blow the deceased did not attempt to run away. I cannot say whether Chinniah was inside his boutique or not but I did not see him. I did not say anything. Having lighted the cigar I stood there and watched, smoking the cigar. I know this accused but I did not try to find out from him what the matter was.

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To Court: People had collected and were watching.

These people did not raise shouts. The people in the market also came up - a crowd of about 35 to 40 persons collected. As soon as the deceased fell down the two Malayalees and this accused ran away in the direction of Jaffna. Even at this time I did not go to the deceased to try to find out what the matter was. The people were watching and I too was watching. The deceased was lying there and was waiting to see what would happen to him. I did not try to find out what had happened to the deceased by going up to him. By that time I had thrown my cigar as it had gone off. I do not know the name of the boutique keeper, from where I bought the cigar. The people of that boutique would have come to the scene but I did not see them come. The light of the shops, which were kerosene oil lamps or petromax lamps, fell on the road but there were no street lamps. The lights were inside the boutiques. This was a busy time at the market and all the shops were open. I did not speak to anyone at the spot. Immediately after the deceased fell I saw Chinniah near the spot; he had come from inside the boutique. Chinniah asked the people present to carry the deceased. Supramaniam who is a car driver from Karaveddy, and a Malayalee were present at that time. Supramaniam's car was parked opposite the spot and opposite Chinniah's boutique about 17 feet away. When I came to the market I saw Supramaniam's car at the same place halted with Supramaniam seated in it. Nobody else was inside the car. During the incident Supramaniam did not say anything.

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To Court: At the time of the incident Supramaniam got down from his car and came to the spot.

The other Malayalee was also standing near abouts. I did not see him before that and I

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

cannot say from where he came. The deceased was carried by the Malayalee holding the deceased by his legs and Supramaniam holding under his arm-pits, with both hands. The deceased was dressed in a verti and a sleeveless gauze banian. These two people placed the deceased on a heap of stones (metal) under a tamarind tree. The stones were for metalling the road. The deceased was placed with face upwards. I did not try to find out from anybody what the matter was. After placing the deceased on the heap of metal, Supramaniam and the Malayalee turned back. Some people were standing at the spot and others passing and re-passing. People did not crowd round the deceased but they went and saw him and turned back. After placing the deceased on the heaped metal, Supramaniam went some distance away and stood, I cannot say whether near his car or not. His car was where it was before. Then the accused came and stabbed the deceased on the stomach. I saw the accused stab the deceased on the stomach. In that light I could see only one side of the knife was sharp. The knife was held by the handle and I could see only the blade. It looked like a kris knife. Kris knife is one which cannot be folded - that is the difference between a kris knife and an ordinary knife. That is the kind of knife which I called kris knife. The accused went up to the deceased bent down and stabbed and went in the direction of Jaffna. As soon as the deceased stabbed the accused turned and left the place. I also turned to go home. Then I saw a bus and I got into the bus and went home. I did not speak to anyone at the spot. To go to my house from the place of incident I had to pass the house of Sinniah, Arumugam and Malisanthi junction. The house of Sinniah and Arumugam are near the Malisanthi Junction. This Sinniah and Arumugam are the elder brothers of the deceased. On the following day I went to inform Sinniah about this incident. On the day of this incident, when I was on my way home from the place of incident I did not go to their house. I said I went to Sinniah on the following day at about 3.30 or 4 p.m. When I was going to Sinniah's house, on the way I met Arumugam, and I told him. I met him near the Pillaiyar temple. Pillaiyar temple is some distance away from the Malisanthi Junction. The distance between Malisanthi Junction and the Pillaiyar temple is about 100 yards (witness

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indicates). At that time Arumugam was on his way somewhere. I did not know that the Magistrate and the Police came to the spot on the following day. I did not learn from others that the Police were holding inquiries on the spot on the following day.

Q. Did you tell the Magistrate this "I learned that the Police were holding inquiries on the spot on the following day?"

10 A. I did not say so. (marked D2) I did not see the Magistrate coming to the spot and holding inquiry. When I spoke to Arumugam he did not ask me to go and inform to anybody. Arumugam did not invite me to go before the Magistrate or the Police to make a statement.

Q. Did you tell this to the Magistrate "I did not tell anyone what I had seen for five or six days but later I told Arumugam about this incident?"

20 A. I told the Magistrate that I told the Police about five or six days after the incident and I told Arumugam about the incident on the following day".

I made a statement about this incident for the first time to the Police on the 16th December 1952.

(To Court: I do not remember the day when I made a statement to the Police about this incident.)

30 Q. You remember the date of incident as 27th of November 1952. How is that? A. I know that, because I knew the incident I remember it. I do not remember the day when I made my statement to the Police - it was about 19 days after the day of incident.

(To Court: I cannot say whether it was definitely 19 days. What I meant is that it was a number of days later that I made my statement to the Police.)

40 The Village Headman of Alvai South is not living close to my house. His house is about $\frac{1}{2}$ or $\frac{1}{4}$ mile away from my house. The Karaveddy North Vidan lives very close to the Nelliady Junction. I did not tell the Village Headman, Karaveddy North

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.2.

Tharmar
Iyathurai.

8th March, 1954.

Cross-
Examination -
continued.

about this incident. The deceased did not appear to me after liquor at that time.

Q. I put it to you that it was Markamdu who procured you for giving false evidence in this case? A. I deny that. For the first time after the incident I spoke to Sinniah the brother of the deceased, about 2 or 3 days after the incident. I told Sinniah that I had seen this incident. The deceased Kandasamy might have been struck on the back of the neck also. I did not tell Sinniah that the deceased received the first blow on the nape of his neck. I learned that a Malayalee had been arrested in connection with this case. I did not tell Sinniah that somebody assaulted Kandasamy on his knee.

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(To Court: I can remember the details of my conversation with Sinniah)

Re-
Examination.

Re-examined: I do drink occasionally. I did not drink arrack at Sakotharam Sinniah's shop on the day of this incident. I do drink arrack at this shop occasionally. I cannot precisely say the number of blows that were dealt on the deceased by this accused and two others. I can say that the accused stabbed only once

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(To Court: I was standing about 30 feet away from the deceased when he was being stabbed. There were people passing and re-passing along that road at that time. There were people passing along the road in between where I stood and the place where deceased was).

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To Foreman: Nil.

No.3.

No. 3.

Dr.S.Vaithilingam

DR. S. VAITHILINGAM.

8th March 1954.

Dr. S. Vaithilingam: Affirmed.

Examination.

Examined: D.M.O., Point Pedro. I was D.M.O. Point Pedro on the 28th November 1952. I held the post mortem examination of one Murugesu Kandasamy on

the 28th November 1952 at 9 a.m. The body was identified by (1) Murugesu Sinniah, elder brother of the deceased, and (2) Murugesu Arumugam, another brother of the deceased. I found the following external and internal injuries.

Injury No.1. - Incised wound on the left cheek 1" long $\frac{3}{4}$ " deep. 2" in front of the left was directed from above downwards. (Doctor indicates the injury on the Court Peon)

10 Injury No.2. - Incised wound $\frac{1}{2}$ " long $\frac{1}{4}$ " deep just below the outer margin of left elbow directed from above downwards.

Injury No.3. - contusion on the left side of face.

Injury No.4. - Fracture on the left forearm on the upper curve. The arm was broken. There would have been contusion. This injury corresponds with that fracture.

20 Injury No.5. - Incised wound $1\frac{1}{2}$ " long $\frac{1}{4}$ " deep at the base of the right little finger on the palmer aspect extending to the cleft between the ring and the little finger on the right side i.e. at the base of the little finger.

Injury No.6. - Contused wound on the inner aspect of right hand $\frac{1}{2}$ " long $\frac{1}{4}$ " deep.

30 Injury No.7. - Incised wound 4" long on the right side of abdomen $\frac{1}{2}$ " above the right of the middle line penetrating into the right side of abdomen and situated transversly. The large and small intestines and omentum were protruding out. I did not find any other injury on the other organs of the abdomen. I guessed from the injuries that they must have been caused as a result of a drawn cut. This injury, i.e., injury No.7 was 4" long. No other internal organs were damaged as a result of that penetration.

40 (To Court: On the post mortem examination I did not find no other injuries on the other organs of the abdomen. Injury No.7 is a vital injury, i.e. if the deceased would have been rushed in time to the hospital and medical attention was given immediately he might have recovered. It is necessarily a fatal injury and it is sufficient in the

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ordinary course of nature to cause death. On opening the abdomen I found the presence of fluid blood. There was bleeding.

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continued.

In this case even if immediate attention was given there was hardly any chance of the deceased's recovery. Injury No.7 was sufficient in the ordinary course of nature to cause death. I would not call injury No.1 a grievous injury - I cannot say whether it was a grievous injury. No.5 is a non-grievous injury. Injury No.2 is also not a grievous one. Injury Nos. 3, 4 and 6, contused wounds, they are non-grievous. Injury No.4 is grievous. That is a fracture of the bone. These injuries would have been caused if the deceased was struck with an iron rod or club or a hard object. Injury No.7 could have been caused by a knife.

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(To Court: On internal examination I found a fracture of the left upper jaw. That injury corresponds with injury No.3. I did not find any injuries externally because there were no marks.)

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Fractures of the 3rd, 4th and 6th ribs on the right side - that does not correspond with any other injuries externally. There were fractures on the 4th, 5th, 6th and 7th ribs on the left side of anterior aspect. There was laceration on the anterior aspect of both lungs. In the stomach there was fluid semi-digested matter. There was smell of liquor.

(To Court: The deceased might have had his meals about two or three hours prior to his death.)

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After having sustained injury No.7 if there was bleeding he would have died in a few minutes. Injury No.7 by itself led to the deceased's death.

Cross-
examination.

Cross-examined: Injury No.1 is a cut and not a stab wound. That is an injury directed downwards. This injury was received while the deceased was standing. The abdomen injury must have been caused in the course of a struggle. Injury No.1 is not a stab injury - it is a cut injury. Injury No.2 is also directed downwards from above. This is also not a stab injury - it is a cut injury. This is definitely a incised wound and not a lacerated wound. These injuries were caused while the man was standing and not while he was

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lying. Incised injury Nos. 1 and 2 may be result of a drawn cut.

Q. Injury No.5 would have been inflicted when the deceased was trying to get hold of the knife with his hand? Very likely. It is also a cut injury.

10 Q. Injury No.7 - were the muscles cut? I did not find any injury on the internal organ. That is a long cut. The depth of his muscles would have been more than 2". It was not an injury which was tailing. If that injury was inflicted by anyone from behind I would have found tailing. It all depends on how the knife was drawn. It is definitely a stab injury.

(To Court:

Q. In the case of an injury on the abdomen, the danger comes if there is any bleeding and shock?

A. Yes. In this case the omentum and the abdomen were cut and there was bleeding.)

20 There were a number of cases where people with internal injuries on the abdomen had survived, after medical attention. In this case the deceased was a well nourished person.

Q. Will you agree with this? (Reads from Sir Sydney Smith - p.161 - 1941 Edition) "Non-penetrating incise"

A. I agree.

Adjourned for the day.

9th March 1954

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30 Dr.S.Vaithilingam, Re-affirmed, (Cross-examination continued)

I was describing the injury on the abdomen yesterday. I said that none of the internal organs were cut or damaged and the cut was of uniform depth. The injury could have been caused with the assailant standing behind the deceased but I did not find a tailing of the injury. It could have been caused when the man was standing up. I agree with the passage from Sidney Smith quoted to me yesterday (p.151) the abdominal organs are protected by muscular tissue only. I agree that non-

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penetrating incised and lacerated wounds of the abdomen are of slight importance except for the possibility of infection which might result in peritonitis. If the wound was outside it could not cause peritonitis but there may be some infection outside the wound. In a case where none of the internal organs are cut or damaged the man may die as the result of infection of the wound. In this case the injury had gone right into the abdomen but it had not cut or damaged any internal organ. It had cut into the cavity. In a good many cases like this the man recovers. I agree with Sidney Smith that punctured and perforated wounds are extremely dangerous.

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(To Court: In this case there was no damage to the internal organs. There was no puncture. It is a punctured wound into the abdomen but it has not damaged the internal organs.)

Where the intestines are perforated you cannot leave them perforated. If there is no perforation it is not dangerous.

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(To Court: If left to the ordinary course of nature it would prove fatal.)

I found on cutting up the body at the Post Mortem examination that there was a fracture of the sternum. That is the breast bone. It is the chest plate. In order to cause a fracture of that bone it would require to be a blow with some violence. If the blow was given when the man was lying down it would be easier to cause it than when he was standing up. I also found a fracture of the upper jaw bone. If he had received that when he was standing it would have felled him. The blow on the breast bone could have been given when the man was standing but it would have greater force if the man was lying down. I did not note any specific contusion on the external breast because the body of the man was covered with blood. If the man was lying down and something heavy had been dropped on his chest that injury could have been caused. (To Court: The fracture of the sternum would be more likely if the man was lying down.) The ribs on the right side as well as on the left were fractured on the right the 3rd, 4th and 6th. I found the fracture only on opening up the body. I saw it clearly when I dissected the

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ribs muscle by muscle. A blow on the side would be necessary to cause the fracture of the ribs. The man would have fallen for the blow on the face. Then the blows on the ribs may have been received, and they would require great force. He might have got blows on both sides of the body simultaneously.

10 (To Court: If two or three people attacked the man at the same time he could have got the blows on both sides at the same time. If one man had attacked him the blows would have been given one at a time. If the man had received one of those blows he would have fallen, and he could have got the other blows while he was lying down or he could have got up again after falling down.)

20 The fracture of the sternum could not have been caused by the blows on the sides. Any one of those blows would have disabled the man. Both lungs were lacerated on the anterior aspect and the thoracic cavity was full of blood. That has nothing to do with the wound on the abdomen. The filling of blood had taken place later. If the man with blood in the abdominal cavity is rushed to hospital his life could be saved. If no medical attention was given he would have died. The blood in the chest cavity came from the lungs. That bleeding must have been slow. If no medical attention was given these injuries would have resulted in death.

30 (To Court: Assuming that the man died as the result of the stab wound, I cannot say whether by that time blood would have filled the thoracic cavity. If the man died as the result of the stab wound the thoracic cavity must have been filled with blood.) If he was not treated the blood in the thoracic cavity would have been sufficient to cause his death. The fracture of the ribs of both sides and the fracture of the sternum and the shock and haemorrhage would have caused his death.

40 (To Court: If the man had received those injuries first and had subsequently come by the injury on the abdomen he would have been alive at the time.) I cannot say which injury was inflicted first, but I can say this that the injuries were inflicted while the man was alive. They might have been inflicted simultaneously. The nature of the injuries appear to indicate the possibility of their being inflicted simultaneously. The shock of the fractures would have been tremendous. As regards

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the abdominal injury I cannot agree that the shock would not have been very great. Even when meddling with the internal organs in an operation it causes great shock to the patient. I have stated that there was "presence of blood in the abdominal cavity." With regard to the thoracic cavity I have said "it was filled with blood." A man who suffered that amount of shock from these fractures would have died.

(To Court: The injury to the abdomen was definitely caused when the man was alive and that injury was sufficient in the ordinary course of nature to result in death.)

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The circulation of the blood stops almost immediately after death, but immediately after death if a vein is opened up there would be oozing of blood.

(To Court: There will be no pumping of blood from the heart. Immediately the heart stops there is no pumping of blood, but there may be oozing of blood from the veins.)

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Although the heart stops there is still some blood in the veins. That blood would ooze out.

(To Court: Once the heart stops the blood begins to clot. I cannot say how long it would take to clot. Until it stops the blood would ooze from the veins. Clotting takes a little time. Blood does not clot instantaneously) Cells do not die immediately. If a man died the cornea of his eye could be taken and used in an operation on another man. If an injury is inflicted immediately a man dies there would be the presence of blood. From the time the abdomen was cut there would be bleeding till the blood vessels emptied. The presence of blood does not necessarily show that the injury was caused before or after death. The blood vessels in the abdomen if cut would produce blood. The presence of fluid blood suggests that the man was cut while he was still alive. You cannot have co-agulated blood coming out. I cannot say that the blood that flowed into the cavity would remain fluid for a considerable length of time. It would only remain till the man was alive. I held the Post Mortem Examination 12 hours after the death of the man and I still found fluid blood. What causes the blood to co-agulate is its coming into contact with foreign substances and being exposed to the air. I cannot say why it remains

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fluid. I examined the man 12 hours after death. At the time I examined him I found in the chest cavity fluid blood.

10 Q. So that even during the period of 12 hours the blood had not co-agulated? There may have been some co-agulation. The mere fact of the presence of blood in the abdomen does not exclude the possibility of the injury being caused while the man was not alive. I stand by what I have said. I admit that immediately after death the blood in the veins flows. The mere presence of blood does not exclude the possibility of the injury being inflicted after death. I say that the injury on the abdomen was caused while the man was still alive because of the presence of fluid blood in the abdomen. The presence of blood in the abdomen shows that the injury was caused while the man was alive. Mr. Balasunderam says the blood may have oozed in after death.

20 (Court: You told Mr. Balasunderam that the presence of blood in the stomach cavity does not necessarily indicate that the injury was received when the man was still alive. At the same time you have stated that the injury was caused while the man was still alive. The two things cannot go together? ... The blood that oozed out from the veins after death would be clotted blood from the veins.

30 (Court: You said that the clotting would take place only if the blood came into contact with some foreign substance or was exposed to the open air? ... Along with the fluid blood there is always clotted blood. With regard to the chest injury I have said filled with fluid blood. That shows it had not been clotted. In the abdomen I have said "the presence of fluid blood." The Fracture of the bones had damaged the lungs and caused bleeding and that blood had flowed into the chest cavity and filled it. The man died at 7.30 p.m. or so and I held the Post Mortem Examination the following day more than 12 hours after the death and I found fluid blood. That showed that the blood had not co-agulated for more than 12 hours. There was laceration of the lungs and there was oozing of blood from the veins. There was no blood in the heart. There was no injury to the heart. The emptying of the heart was due to the injuries the man had. That blood had gone to the chest cavity and the abdominal cavity. There was no blood in

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the lungs. It was all on the anterior aspect of the lungs. The blood goes into the lungs for purifying. When there is haemorrhage the blood comes out. Although the heart stops pumping the blood in the veins would remain. When all the blood has gone out of the lungs it is pale. It is only when the heart is in action that there is a flow of blood.

Q. You held the Post Mortem 12 hours after death and you found fluid blood in the cavity, the reason being that the blood had not come into contact with foreign matter? Yes, it was in a closed cavity so it remained. In the abdomen too I found the presence of blood. 10

(To Court: I cannot now say how much fluid blood there was in the chest cavity. In the abdomen it was not full but it was present. I agree that in both places I found blood. In the case of the chest cavity after 12 hours I found fluid blood.

Q. What is the reason for the blood in the chest cavity to have remained fluid although you examined it more than 12 hours after death? The blood had not come into contact with foreign matter or been exposed to air. It had flowed into the cavity while the man was still alive. It had not coagulated because it was in a closed cavity. 20

Q. The mere fact that the blood remained fluid cannot indicate whether the injury was received before or after death? Yes. (Court: The opinion you expressed earlier is wrong? Yes. I cannot say whether the man received the abdominal injury after or before death.) 30

To Court: Of the injuries found on the man there was one on the left cheek, No.1. I referred to it as an incised injury. That injury did not correspond to the fracture of the upper jaw. It was a non-grievous injury. No.2 is an incised wound just below the outer margin of the left hand. That did not correspond to any internal injury. It was non-grievous and caused by a sharp cutting instrument. No.3 was a diffused contusion on the left side of face. It was caused by a blunt instrument. A diffused contusion is one which had spread. It corresponded with the fracture of the upper jaw. The next injury No.4 was a fracture of the left humerus. The bone was completely and the arm deformed. It was caused with a heavy blunt instrument. It could have been caused by a 40

heavy blow with an iron bar or a wooden club. On receipt of that blow the man would have been in severe pain. There was no bleeding. The next injury was an incised wound of the right little finger caused by a sharp cutting instrument. I said that it could have been caused when the man tried to seize the knife of his assailant. The next injury is a contused wound on the inner aspect of the right hand, $\frac{1}{2}$ " long and $\frac{1}{4}$ " deep. It was a bump. It could have been caused by a blunt instrument in warding off a blow. No.7 was an incised wound 4" long on the right side of the abdomen. It penetrated into the abdominal cavity. I said that the thickness of the abdominal wall was about 2". The injury was not a tailing injury. The intestines were protruding. The weapon was a sharp cutting weapon. It was not a stab but a cut. I found on internal examination the fracture of the sternum. It was a transverse fracture. I did not notice any contusions externally because of the blood all over the body. Along with that he had fractures of the 3rd, 4th and 6th ribs on the right side and the 4th, 7th and 8th ribs on the left side. These fractures had nothing to do with the fracture of the sternum. They were caused with three separate blows with some heavy blunt instrument. The fracture of the ribs had caused the laceration of the anterior aspect of the lungs, and that laceration had produced bleeding and the blood which came from the laceration of the lungs filled the chest cavity. The lungs had not collapsed. The cavity was filled with the lungs and the blood. If there was a lot of blood it would have pressed the lungs down and they would have collapsed. When I said "filled with blood" I meant that the lungs and the blood filled the chest cavity. Whatever space there was between the lungs and the cavity was filled with blood. There is not much space. The lungs practically fit the chest cavity. Sometimes air gets into the chest cavity. Then it presses against the lungs and makes them collapse. The lungs had not been pressed down in that way. I would say there had been a fair amount of bleeding and it was all at the base of the cavity. On opening the chest I found both sides of the chest filled with fluid blood. The lungs do not fully fill the chest cavity. They were in the normal position and on the top of them I found the blood. It is the walls of the chest cavity that prevent the lungs expanding too much. The lungs were of the normal

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size with the blood round them. There was no blood in the lungs, they were pale. It is only when the lungs are engorged with blood that they are full. In this case there was no blood in the lungs. The lungs had not collapsed in any way. There was air inside the lungs. The bleeding was from superficial laceration of the lungs on both sides. The small blood vessels in the lungs had bled but I cannot say how much blood there was. I can only say the bleeding was profuse. I found the plural cavity filled with blood. The lungs were in the normal state, except for the superficial laceration. When the lungs are normal they fit into the plural cavity. When a man breathes the lungs extend and the plural cavity walls press against the lungs. If air escapes from the lungs it would fill the cavity and press against the lungs and the lungs would collapse. If there is profuse bleeding it must collapse the lungs. In this case I did not notice the lungs collapsed. Had they been collapsed I would have noted it. I did not measure the quantity of blood in the cavity. The fractures of the ribs on both sides and the fracture of the sternum were dangerous because of the shock due to haemorrhage and fracture. That shock was sufficient to cause death. I cannot say whether the shock from these fractures would have been sufficient to cause death. It would depend on the individual. In this case the deceased was well nourished. He would not die immediately but eventually if he developed complications he would die. The laceration was superficial. In this case I found haemorrhage in addition to the shock. The shock and haemorrhage resulting from the fractures to the ribs and sternum was sufficient in the ordinary course of nature to result in death. Normally the man would die in a few hours, within an hour or two. The bleeding must go on for some time to cause death, at least for an hour. A man receiving the injuries which caused the fractures would have lived for some time, about an hour. I cannot gauge the amount of bleeding. The injury to the abdominal wall was a cut, and blood vessels were cut but they are not big blood vessels. It was a dangerous injury because of the shock and haemorrhage. After receiving that injury he could have lived for some time, without consideration of the other injuries, and without medical aid, for about 5 to 6 hours. Unless he was rushed to hospital he would have died.

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To Mr. Balasunderam. The liability to shock does not depend on whether a man is well-built or not. It depends on the person's general temperament.

(To Court: Severe bleeding causes shock. For instance the cutting of the carotid artery causes shock and haemorrhage. It is irreversible shock. Increased bleeding produced greater shock.) There is a number of well nourished persons who at the sudden news of somebody's death die, or at the receipt of sudden good news or joyful news. The degree of liability to shock does not depend on necessarily on the man's physical stature or build. It may or may not to some extent depend on it, but it depends on the man's temperament, and general health of the person. A normal person is one free from any organic disease. I cannot say whether there are instances of that kind of person dying suddenly at some sudden news. The fracture of the sternum is not easily caused. It requires considerable force. That would produce tremendous shock. It brings in a state of unconsciousness. The fracture of the upper jaw produces shock. On the top of that the fracture of the breast bone would produce shock. The two separate blows causing the fracture of the ribs on the two sides would produce tremendous shock. It would be primary shock, but there was secondary shock caused by the haemorrhage. It would produce a state of unconsciousness quickly followed by death.

(To Court: There would be bleeding going on which would exhaust the blood in circulation. The heart is empty for a short time and if the man does not revive he would die.)

Q. Is it your position that a man does not die without external injuries of shock? ... There are instances.

To Mr. Balasundaram: Do you agree with this - Sydney Smith Edition page 121 - "Death from shock may occur " A. Yes I agree. If blows are dealt to a person and those blows may cause shock to him. In certain cases shock itself, without haemorrhage, may cause death. In this particular case the man had received many blows one after the other and each of them would have caused added shock. The moment the person gets a shock he would get into a state of unconsciousness. A number of blows were dealt to this man and good amount

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of force must have been used and it would have caused tremendous shock and that shock could have caused the death of the man - he could have died immediately. If a man was standing on the deceased and jumps upon him with certain amount of force the fractures of the ribs could have been caused.

To Crown Counsel: Excluding the incised wounds the fractures of the ribs and the sternum could have caused the death of the injured man. I did not give my thought to find out as to how many hours before the post mortem examination the deceased died.

To Jury: Nil.

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No.4.

S.Thangammah.
9th March 1954.
Examination.

No. 4.

S.THANGAMMAH

S. Thangammah: Affirmed.

Examined: 42 years, Nelliady. I am the wife of Sinnathamby. I live at Nelliady. My husband Sinnathamby is running a textile shop. Sinniah is not my husband. I do not know whether Sinniah is also known as Sinnathamby. I live with my husband. My husband's textile shop is at the Nelliady junction. I know Sahotharam Sinniah of Nelliady. I do not know why he is called as Sahotharam Sinniah. Sahotharam Sinniah's shop is about 125 yards away from my husband's shop. My house is about 150 yards away from the Nelliady junction. I know the deceased, Kandasamy. I do not know this accused. I have not seen him before. He is not a man from Nelliady. I have not seen him at any time in my life. I came to know Kandasamy because he used to be a frequent visitor to a goldsmith's shop at Nelliady. I used to see Kandasamy at the shop of one Sabapathy. Both Sabapathy and the deceased are goldsmiths. I used to go to Sabapathy's shop in order to collect rent from him. During the time when I go to that shop if I happen to meet Kandasamy I used to speak to him. I do not know where Kandasamy lives. The Kandasamy whom I referred to is dead. I do not

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know the person who caused Kandasamy's death. On the day of this incident there was a fight going on at the Nelliady junction late in the evening and through fear I ran away home. On seeing that fight I had shock and as a result of that shock I got a fit and I was given treatment for it. When I was returning from the Nelliady market I saw some people fighting under the tamarind tree and through fear I ran away. I went to the hospital because I got a fit and I was taken to the hospital for treatment.

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(To Court: I went to the hospital after the incident on that night. It was after seeing that fight I got a fit and I went to the hospital. I did not get the fit on seeing the fight but I get it off and on. I used to get a fit if I walk fast or run or through fear. This day I ran through fear and I got a fit. I got the fit when I arrived at home. The inmates of my house took me to the hospital while the fit was on. I did not know how long I was in the hospital. I knew that I was in the hospital, after I regained consciousness. My husband took me to the hospital. My children might have informed my husband who was at the textile shop and it was my husband who took me to the hospital, of Dr. Viswalingham. It is not a government hospital. That hospital is situated at Point Pedro. I was taken to the hospital by car. To go to the hospital from my house I had to pass Nelliady junction. I do not know whether I was given a hospital ticket. The people who took me to the hospital would know about it. There was a fight on that day evening and I went to hospital after the fight. When I was taken into the car from my house I was unconscious. I do not know the time at which I returned home. The fit I was suffering from is known as "Kakkai Vali". The symptoms of the disease are that the body begins to shiver, a burning sensation all over the body. I got the fit about four or five days ago from today. On this occasion my children informed my husband and he took me to the hospital. On the day of this incident, in the evening, I saw the deceased going past near the Nelliady junction.

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(To Court: I met the deceased on the day of this incident at the centre of the Nelliady junction. He said that he was going and left in the direction of Nelliady market. I was going in the direction of my house from the junction. On this occasion,

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on that day, I went to Dr. Visvalingam to buy medicine for fever. Having bought the medicine I returned to Nelliady and went to the market to buy betel and brand. On that day after my noon meals I left home to Dr. Visvalingam to get medicine. On the day of this incident I visited Dr. Visvalingam twice. That day I had fever. On my return home I came to the Nelliady junction and proceeded to the market to buy betel and brand. I bought betel but I did not buy brand. Then I returned home
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past the Nelliady junction. I did not notice anything unusual about the market place. I said that on my way back I met the deceased (He said that on my way back I met the deceased). He said that he was going. I also told him in reply that I was going. I did not hear anybody calling out.

(To Court: Deceased went past me. I was going towards my house. Then I heard a sound "Akkah" - elder sister - I did not know at that time whether that sound was referred to me or to anybody else. I then turned to the direction from which I heard the sound. Kandasamy went past me fast and he had gone some distance before this shouting sound was heard.) It was dark at that time. I was unable to recognize the voice of the person who said 'Akkah'. After hearing this sound I looked back.
20

(To Court: When I looked back I saw a crowd of people.) The crowd was at a distance and it was dark - I was ill and I went away. I was not well at that time and that is why I ran away. When I looked back I saw a crowd of people. I did not see anything else. I was not able to recognize anybody in that crowd.
30

(To Court: Even before giving evidence in the Magistrate's Court I had fit. When I turned and looked at the crowd neither did I see Kandasamy, nor did I identify anybody else. I heard sounds of assault. I heard the sound of a tap on a box. I did not think that it was the sound of assault on somebody.) The fit I got was not as a result of fear I had on seeing the assault. The fit I got was as a result of fast walking and on seeing the crowd. Usually I get fit if I walk fast and on that day I was not well and I walked fast and that is why I got the fit. I did not think at that time that it was unusual for a crowd of people to be there at that junction. I gave evidence in the Magistrate's Court.
40

Q. Did you say this to the Magistrate? "I heard somebody going past me calling "Akkah"? A. I said so.

Q. Did you say this to the Magistrate "That person was the deceased Kandasamy? A. Yes.

Q. Is it true? A. Yes it is.

Q. Did you say this to the Magistrate "When I turned back I saw 7 or 8 people fighting with each other? A. I said so.

10 Q. Is it true? A. Yes it is. I made a statement to the Police. I told the Police in my statement "Kandasamy called out to me "Akkah" and I turned back and saw somebody assaulting him"? Yes I said so.

Q. Is it true that someone assaulted Kandasamy? Yes it is true. I saw Kandasamy being assaulted by somebody that day. I did not give betel to Kandasamy that day.

20 Cross-examined: I went to the market and when I was returning from the market I met Kandasamy near the junction - I met him about 45 feet away from the junction. Then I said that I heard a voice "Akkah". Then I turned back and saw a crowd of people under the tamarind tree. I saw Kandasamy being assaulted near the tamarind tree, i.e. under the shade of the tree. I saw a number of people assaulting Kandasamy. I do not know who and who assaulted him.

30 (To Court: I did not tell the Magistrate about the fit I had after the incident - I cannot say whether I said so or not). I did not go to Sahotharam Sinniah's shop on the night in question. I also did not sit on the Verandah of Sahotharam Sinniah's shop. I made my statement to the Police on the 16th December for the first time, i.e. a number of days after the incident. Until that time I did not make a statement to anybody else.

40 (To Court: I know Sahotharam Sinniah's shop. On that evening I did not observe whether Sahotharam Sinniah's shop was open.

To Jury: Nil.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 4.

S.Thangammah.
9th March 1954.
Examination -
continued.

Cross-
Examination.

In the
Supreme Court
at Jaffna.

No. 5.

SINNAVAN KANAPATHI PILLAI

Sinnavan Kanapathipillai: Affirmed.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

9th March 1954.

Examination.

Examined: 55 years, Cultivator, Karaveddy West. I know the man called Kandasamy. He is a well known man in that area. I know the accused in this case. He lives at Karaveddy West. Both the accused and I are from the same village. I live about half a mile away from the Nelliady junction. I live in the direction of Jaffna on the south of Nelliady junction. I remember the day when I saw the deceased fallen at the Nelliady junction on the 27th November 1952. On that day I went to the Nelliady junction at about dusk. I went to a shop to buy some medicine at Nelliady. I went to buy cod liver oil for my child. When I was on my way to buy cod liver oil I saw Kandasamy being carried from one side of the road to the opposite side of the road. Prior to this I saw this accused and two other persons going in the western direction, i.e. in the direction of Jaffna. That is in the opposite direction in which I was going. I found a club in the hands of this accused and the other two persons had something black. The thing they had were also similar to a club. 10

(To Court: Those clubs were long, and black in colour. I did not talk to these three persons. When I got to the junction I saw the deceased man being carried from northern side of the road to the southern side; i.e. across the road. One Subramaniam and a Malayalee carried the deceased Kandasamy to the other side of the road. Subramaniam is also from Karaveddy. They placed the deceased under the tamarind tree and went away. It was just then that I arrived at that spot. I stood on the road to see who that person was. Then I identified that it was Kandasamy, the deceased. As I stood there the accused came there from behind and stabbed the deceased with a kris knife. The blade of the knife was about 6 or 7 inches long (Witness indicates the length of the blade). The knife was about 1 foot long (Witness indicates). The accused bend down and stabbed the deceased only once. I saw this. I saw it clearly. There was light at that time. It was dark at that time. There were lights in the boutiques and with the aid of those lights I was able to see the incident. 20 30 40

He stabbed hard. After stabbing the accused returned in the direction in which he came.

(To Court: After the accused stabbing the deceased I stood about 8 to 10 feet away from the deceased. I saw the injury. It was a long injury across the abdomen. Apart from the length of the injury I did not observe anything else. I did not go very close to the injured man. The width of the blade used about 1 inch. The accused stabbed and pulled out the knife. I saw the knife being pulled out after stabbing. After the stabbing, the accused was about to leave the place and by that time a car came there and stopped about 2 or 3 shops away. Then I saw the accused wiping the blood of the knife with a piece of paper with the aid of the rear light of the car. Then I also left the place. The accused also left the place. A large number of persons had seen the incident. After that I was going along the road. I was not worried to go and inform the Police or the Village Headman.

(To Court: I did not know that on the following day the Police were unable to discover as to who had committed this murder. On the following day I casually met Arumugam and I told him about this incident.)

Cross-examined: I am a Palla man living at Karaveddy West. My name Sinnavi Kanapathipillai. This accused is a Kovuya man living at Karaveddy West. I know this accused only as Tharuman. I do not know whether he has any other name. People in my village call me 'Kanapathy' as well. I am aware that there was some trouble prior to this incident between the Vellalas and the Pallas - I am not aware whether the Koviya were also involved in that. Koviya are people who serve to the Vellalas. As a result of the trouble referred to above a number of houses belonging to Pallas were set on fire by Vellalas. Prior to this incident, i.e. setting houses on fire, there was a fight between the Vellalas and the Pallas and several people were injured on both sides. Thoraithamby and others of the Vellala side were on one side and Pallas were on the other side. A few days after that fight 17 houses of the Pallas were set on fire. I live at Karaveddy West about half a mile away from the Nelliady junction. Even if I go to my house from the Nelliady junction along the road the

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

9th March 1954.

Examination -
continued.

Cross-
Examination.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

9th March 1954.

Cross-
Examination -
continued.

distance is about half a mile. In connection with the burning of the houses an arson case was filed. I did not take any interest for the prosecution in that case. My sympathy was towards the Pallas, who were the complainants in that case.

(To Court: I did not do anything for the Pallas in that case.)

I attended Court only one day, i.e. on the first day of the trial of this case. I went to witness the case.

The word interested means "Katisinaikattuthal".

Q. Did you say this in the Magistrate's Court:
"There was an arson case and I was interested in the prosecution. Thoraithamby was interested in the Defence?"

A. I did not say so. I do not know whether Thoraithamby was an interested party of the defence in the arson case. The case was committed to the District Court and a number of Lawyers appeared. One of them was Mr. R.L. Perera, Q.C. It was on the first day of the District Court trial that I attended Court to witness this case. I have son called Rason. When returning home after the first days trial of the arson case in the District Court there was no fight between my son and Thoraithamby and others. I am not aware of that. Up to now I have not heard anything from my son about that incident. I have made complaints against Thoraithamby. There was toddy being tapped in my palmyrah garden and spades were cut by somebody and I suspected Thoraithamby, to have cut the spade and I made a complaint to the Police. This happened after the houses were set on fire. Thoraithamby is a relation of some of the persons who were charged in that arson case. Some of them are brothers of Thoraithamby. I am not a litigator. I had instituted two civil actions. I am not a legal adviser to Palla community. From my birth I was called as Kanapathipillai.

To Court: The two civil actions filed by me were money cases. One was for the recovery of money and the other was a partition case.

Adjourned for the day.

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30

40

10th March 1954.

S. Kanapathipillai: Re-affirmed. Cross-examination continued.

10 I do not know that my son Rasan made a complaint against this accused and Ponnambalam. I said that he had only two land cases. I deny having said in the lower Court, "I have been to Court earlier. I have had several land cases in the District Court". I am not the legal adviser to the Palla community of that locality. I get trees tapped by others and I sell in my compound as well as on my land. I have not got a toddy shed in my compound. I have known Sinniah for the last 25 years. I do not know that he had a workshop in Karavetti West. He and I live in the same village. The Sinniah I am referring to is Kandasamy's elder brother. My village is Karavetti West. Sinniah lives in Alvai South. Karavetti North and Alvai South are on either sides of the road. I was born and bred in Karavetti North. I am not a close friend of Sinniah. I know his brother Arumugan for the last 25 years as he too lived close to my house. I went to live in Karavetti West 25 years ago. I came to know these persons before I shifted. I have known Arumugan for the last 15 or 16 years. I do not know whether he has been to jail a number of times.

20
30 (Court rules out a question as to whether the witness had not heard that he had been to jail even once).

40 I do not know whether Arumugan drinks toddy. I had known the deceased Kandasamy for 4 or 5 years. I came to know Kandasamy as a result of meeting him on the road. I did not know Kandasamy as long as the other two brothers because I left Karavetti North before he was born. I do not know what his age was at the time of his death. He appeared to me to be about 20 - 22 years of age. Apart from seeing him on the road I had not spoken to him. I had not seen him drunk at any time. I had heard that he had been to jail a number of times. In May 1952 there was the Parliamentary Elections and two people of Karavetti were contesting a seat. I do not know that the Pallas supported one of the candidates, Mr. Kandiah. I supported Mr. Nadarajah. I do not know whom the accused supported. I did not find other supporters of Mr. Nadarajah.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

10th March 1954.

Cross-
Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

10th March 1954.

Cross-
Examination -
continued.

Q. I put it to you that you are an absolutely false witness put into the case? I deny that I said that I got out that evening to buy medicine. Cod liver oil is a medicine. It was a medicine for my child who was suffering from hookworm.

(To Court: The medicine for that is cod liver oil)

A cousin of mine had been treating the child for hook-worm for about one year. Five or six days before the incident he advised me to give the child cod liver oil, and on this day I set out to buy the cod liver oil after sunset. I intended to buy it from a shop at the junction, the shop of an islander whose name I do not know. I had never purchased anything from him before. 10

Q. I put it to you that your story is utterly false? I deny that.

I took Rs.3/50 with me to buy the cod liver oil and the price of it was Rs.2/75. I went at that time because I had the leisure to go then, and up to that time I did not have the necessary money. I got the money that day and after 6 I left for the shop. From my house I have to go along a lane which falls on to the Jaffna-Pt. Pedro Road. That junction is much further to the Nelliaddi junction than from this witness box to the tree at the turn off to the Police Station. I cannot estimate the real distance. I said that from my house to the Nelliaddi junction is about half a mile but I cannot give the distance from the Nelliaddi junction to the point where my lane joins the main road. I cannot say whether it is $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ mile. The distance from this witness box to any place I can see is not sufficient to point out that distance. I cannot say whether it is about 160 yds. I met this accused and two Malayalees on the east of the Mahatma Theatre. From the Theatre to the junction is a distance of from this witness box to the tree at the junction of the turn off to the Police Station. I saw these three people close to the theatre at a distance of about 27 ft. (Points the distance). I had known the two Malayalees before but I did not know their names. I do not know Remakrishna. I did not know where they lived. I came to know them as they had been sawing timber at a place. This accused had a club and the others had irons or clubs. I had seen them in the house of one Sabapathi at Karavetti West. He is a carpenter. They are not working there now. I do not know whether they 20 30 40

are still at Karavetti. They passed me but I did not ask them what the matter was. It did not strike me as surprising to see them like that. I proceeded. Another Malayalee and Subramaniam were carrying Kandasamy. Subramaniam is a fisherman and lives at Karavetti West. He is a car driver. I did not ask him what the matter was. He is not angry with me and I am not angry with him. It was later that doubts began to spring up in my mind as to whether the Malayalees were carrying irons or clubs. At the time I saw that they were black weapons and I thought they were irons. I did not give my thought to it then, but later I heard that there had been an assault and I thought they might have been clubs. I stood there and watched I did not speak to anybody. While I was there there was no commotion but people stood there. I did not tell the Magistrate, "The deceased was being carried from the north to the south". I did not say "After he was placed there there was a general commotion". I did not tell the Police that there was a commotion. I told the Police that I knew the two Malayalees. People were standing to the north opposite the entrance to the shop of Sinniah but not in front of the deceased. I was not the only person on the road, there were other people coming and going. I was the only one who stood there. The accused came back to the spot from behind me and I did not see him come. He overtook me suddenly from behind and stabbed. He came back a short time after I stopped there. I did not discuss this case with my friends Aiyathurai and company. Aiyathurai gave evidence on Monday and after that the Doctor gave evidence. I do not know what evidence the Doctor gave. The accused plunged the knife into the deceased's stomach and he dragged it. I did not speak about this to anybody. Then a car came. It stopped two or three shops away on the Jaffna Road, about 63 ft. away. After that I saw the Accused go away. I did not buy the cod liver oil I returned home. I gave up the idea of buying the cod liver oil through fear of seeing the incident. The accused stabbed and the cry of the deceased was pathetic to listen to. I told the Police that the accused cried out and I said so to the Magistrate also. I gave evidence on two occasions to the Magistrate and said so on both occasions.

Q. Is it not a fact that after yesterday's cross-examination of the Doctor somebody has been at you and told you this? No, I deny it.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

10th March 1954.

Cross-
Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.

10th March 1954.

Cross-
Examination -
continued.

I was in fear too. When I pity a man it is fear. I did not tell anyone at the spot about this. I was afraid of the sight of the stabbing. I got afraid of the pathetic cry of aiyo by the deceased. The V.H. of Karavetti North lives close to the junction, and his name is Subramaniam. I did not tell him about it. I was going along the road at the time I saw this and I did not think it necessary that I should inform the headman. I went home. On the way I had to pass the house of the Udaiyar but I did not tell him about it. There is a V.H. of Karavetti West but I did not go to his house and inform him about it. The next day I met Arumugan close to the house where I was born on the Uduputti Road 50 to 60 yards from the junction. (Points the distance). Arumugan was going to buy certain things in connection with his brother's funeral. I met him about 2 or 2.30 p.m. as I was on my way to my mother's house. I did not know whether he was going to buy things at the Nelliaddi junction or at the Marasandi junction. He asked me whether I would inform the Police about this and I said I would. I did not tell the Magistrate, "I went to Arumugan's house and informed him". I told him I would go and inform the Police but I did not go as I did not think it necessary for me to do so. I expected the shopkeepers at the spot to give the information. When he asked me whether I would inform the Police I understood him to mean that I would do so when the Police questioned me. He told me that he was going to inform the Police. I did not go and inform the headman. I learnt later that the Magistrate had come to the spot. I was at home. I told the Police that I was frightened, on the 17th. The Police Inspector came home and asked me for my statement and I told him. I told him that I was frightened.

Q. I put it to you that you are a false witness in this case? I deny that.

I heard that a Malayalee was arrested in connection with this case. That was the day after the incident.

Q. You thought the best thing was to tack on the name of the accused? ... I deny that. The accused is not an enemy of mine and I have not spoken about anything which I have not seen. I saw a car halted. It stopped long enough for a person to get out of it, go to the boutique and return. The

accused wiped the knife with a piece of paper which was on the road. He made use of the light of the car to pick up the piece of paper and wipe the knife. The tail light of the car was red.

To Court: I do not know a woman by the name of Sinatchi. I live in Karavetti West. Sahoderam Sinniah is at Karavetti North. I have seen him there after this incident. He is still running a boutique there. After this incident he was continuing to be at that boutique. I do not know one N. Vallipuram of Karavetti North.

Re-examined: Nil.

To foreman: Nil.

(A Bench Summons is ordered by Court to be issued on Ponnambalam Kandappo, tea boutique keeper, Nelliaddi.)

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 5.

Sinnavan
Kanapathipillai.
10th March 1954.

Cross-
Examination -
continued.

No. 6.

SUBRAMANIAM KADIRTAMBY SUBRAMANIAM

Subramaniam Kadirtamby Subramaniam: Affirmed.

20 Village Headman, Karavetti North, Karavetti. I have been headman for 7 years. (To Court: I know the Nelliaddi junction. The Jaffna - Pt. Pedro Road is met at that junction by another road. North of the Jaffna - Pt. Pedro Road at the Nelliaddi junction is Karavetti North and South of that road is Karavetti West. That road is the boundary between Karavetti North and Karavetti West. The headman of Karavetti West is the headman of Karavetti East who is acting in that capacity. The Kattavelu Odayar was the acting headman for Karavetti West, at the time of this incident. The incident resulting in the death of Kandasamay occurred on the road which is the boundary between Karavetti North and Karavetti West. I performed the investigations. I informed the other headman of Karavetti West and he came later at about 9 p.m. I sent the message at about 8.15 p.m. I sent the letter by one Shanmugan Krishnapulle. The headman of Karavetti West did not accept the letter.

No. 6.

Subramaniam
Kadirtamby
Subramaniam.

10th March 1954.

Examination.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 6.

S.K.Subramaniam.

10th March 1954.

Examination -
continued.

and he returned it to me. That letter got back into my hands. I think that letter would be at home in my file. It is a miscellaneous file relating to my official duties. There are 6 or 7 files containing my papers. I have one file for circulars I have one for letters - received from the D.R.O. I know English and I have studied up to the Matriculation. (Witness is asked to speak in English). (To Court: I have a file for those papers that come by the daily mail from the D.R.O. and from the Courts. I have another for Summons from the Rural Court, and another file for various forms. I have charitable receipt forms in another file and all miscellaneous papers in another. This letter was in my diary and I put it into my drawer and subsequently I saw it and put it in the file. I actually sent that letter and it came back to me. I left it in my diary and put it in the drawer. I cannot say now whether it is in my file or not. The V. H. of Karavetti West refused to perform his duties. Nothing happened about it. He has a car and I only informed him in the letter of what had happened, and underneath I said, "Please do the needful). I only wanted a vehicle for the transporting of the injured man. I did not ask him to send his car. I wrote to him in English. I wrote that one Kandasamy had been stabbed and was in a serious condition under a tamarind tree at the Nalliady junction. I informed him that I 'phoned the Pt. Pedro Police and the Reserve P.C. 'phoned me back saying that there was no one at the station available. I also told him that I 'phoned the Civil Hospital Pt. Pedro to send the ambulance to transport the injured man and that they had replied that the ambulance was not in running condition, and that in consequence there was no vehicle available to send the injured man to hospital, and I asked him to "do the needful". I said that as he is my superior officer, I wanted a car and there was no other vehicle available. As there was no other vehicle available I wanted his car. He refused to accept my letter but he came to the spot at about 9 p.m. I have made no note of that fact in my diary.

10.3.54. 11.10 to 1.40
(Interval 11.30 - 11.45 a.m.)

(To Court: I made no note of the fact that the Village Headman Karaveddy West came to the scene.

The boundary for Karaveddy North and Karaveddy West is the middle of the Jaffna Point Pedro Road. Sahotheram Sinniah's boutique is at the northern side of the road and it comes under the Karaveddy North Headman's jurisdiction. That boutique is in my jurisdiction. The place where the injured man was lying is under the jurisdiction of Karaveddy West headman. At the time I went to the scene I saw the injured man lying in a place which comes under the Karaveddy West headman's jurisdiction. There was no fight that took place near Sahotheram Sinniah's boutique.

10

Q. Why did you assume jurisdiction in a matter which is within the jurisdiction of the Village Headman, Karaveddy West.

A. I was informed by somebody that one Kandasamy was stabbed at the Nelliady junction and so I went up to the spot and I saw the injured man lying.

20

Q. The man was lying within the jurisdiction of Karaveddy West Headman and no one had told you where the stabbing took place? Yes.

Q. Did you see a heap of stones there? A. I saw a heap of stones near to where he was lying.

Q. Did the heap of stones appear to be disturbed?

A. I cannot say that.

Q. Why did you assume jurisdiction in a matter where you found the injured man lying within the jurisdiction of Karaveddy West Headman? A. I saw the injured man lying and I conveyed that message to the Karaveddy West Headman.

30

Q. Why did you not inform the Karaveddy West Headman that an injured man is lying within his jurisdiction and call upon him to assume duty?

A. I had written a letter to him that an injured man was lying under the Tamarind tree and I thought the information written in the letter is sufficient.

Q. You telephoned to the Police from where?

A. I telephoned to the Police from Sithamparapillai's boutique. Up to that time I did not take any action. I telephoned from Sithamparapillai's boutique.

40

Q. By what time did you telephone to the Police?

A. I telephoned to the Police at that night at 7.45 p.m.

Q. Was Sithamparapillai's boutique opened? A. Yes.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 6.

S.K.Subramaniam.

10th March 1954.

Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No. 6.

S.K.Subramaniam.
10th March 1954.

Examination -
continued.

Q. What did you tell the Police on the 'phone?
A. I told the Police that one Kandasamy was lying
at the Nelliady junction with stab injuries.

Q. This message which I am going to read could
not have been the one conveyed by you? The mes-
sage reads "A man is being assaulted by some per-
sons"? A. No, this could not have been my message.

Q. Are you aware besides yourself some other
persons had telephoned to the Police? A. Yes.

Q. Who is that other person? A. One Ponnambalam 10
Kandappu, who is running a boutique there.

Q. Are you aware at what time he telephoned to
the Police? A. I cannot exactly say the time.
Before I went to the spot he had telephoned.

Q. Who was the officer who was receiving your
message at the Point Pedro Police Station. A. The
Police Constable 5002.

Q. Before you were making investigations that man
had telephoned to the Police? A. I do not know 20
about that.

Q. Are you aware that there is no record of a
message having been received at the Police Station
from Kandappu? A. I am not aware of that.

Q. Is it correct to say that you assumed juris-
diction in an area in which you had no jurisdiction?
A. Normally if any such incidents happen at the
Nelliady junction and if the Village Headman, Kara-
veddy West is there he will take action and if I am
there I will take action. Only at the junction I 30
do act beyond my jurisdiction.

Q. What does junction mean? A. That is if any
such incident occurs on the border of Karaveddy
West and Karaveddy North at that junction. As
there are boutiques on either side of the road,
which is the boundary, either of us act. I know
Sahotharam Sinniah's boutique. In case if an
incident takes place in Sahotharam Sinniah's bou-
tique Karaveddy North Headman will act.

(To Court: Q. If any incident occurs in Sahothar- 40
am Sinniah's boutique will you allow the Karaveddy

West Headman to assume jurisdiction? A. No, I will not.

Q. If anything happens at Sahotharam Sinniah's verandah? A. Even that place comes under the Karaveddy North Headman's jurisdiction.

Q. Will you allow the Karaveddy West Headman to assume jurisdiction in that place? A. If I am free I will take it up.

10 Q. If you receive an information that an incident had occurred at Sinniah's verandah will you allow the Karaveddy West Headman to assume jurisdiction in Sinniah's verandah? A. No.)

Sahotheram Sinniah's boutique is at the Nelliady junction. It is on the northern side of the road. The point at which the deceased was lying was clearly on the other side of the road.

(To Court: Q. Did the Village Headman of Karaveddy West at any time come to assist you in the investigation of assault on Kandasamy?

20 A. No, he did not come to give any assistance in the inquiry into the death of Kandasamy.

Q. The man was found in a dying condition lying within the jurisdiction of the Karaveddy West Headman's area? He took no notice of the incident? Why did he not take any interest? The Headman, Karaveddy West was with us making inquiries. I was assisting the Police right through. Even after the Police came to the scene I was actively assisting them.

30 Q. But the Karaveddy West Headman took no interest in it? A. Yes.

Q. Why, was he not in any way interested in it? A. Because the Police were doing investigation; I had sent the serial report and the Village Headman, Karaveddy West was with us.

Q. Did you try to trace the woman called Sinnachy? A. No, I did not try to trace the woman called Sinnachy. The Police at no time had asked me to help them in tracing the woman called Sinnachy.

40 Q. You know one Sinnachy living in your area?

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A. There are several Sinnachi's in my area.)

Q. Roughly how many Sinnachi's are there in your area? A. There are about 10 Sinnachi's in my area. I said that I sent a letter to the Headman, Karaveddy West. In that letter I set out certain facts and asked him to come and do the needful - in that letter I also asked him to send his car - I did not want him to come and investigate.

Q. Why did you not want him? A. I wanted his car first.

10

Q. Secondly, did you want from him anything more than a car? A. I did not want him to come and do the investigation in this case. The letter I sent to the Karaveddy West Headman was sent back by him - I got back that letter about 15 or 20 minutes after I sent it. He did not even look into the letter.

Q. Is it not strange? A. Yes, the letter came back in the same way as I sent it.

Q. Are you quite sure that he did not open that letter? A. I cannot say whether he opened it or not. When I received it back I saw that and put it into my files. As soon as I went up to the scene I sent a serial report to the Police.

20

Q. Is that the very first thing you did after leaving home and went to the scene? A. Yes.

Q. Is that the very first act of yours when you arrived at the spot? A. Yes, I saw the injured man lying and immediately I sent the serial report.

Q. What time was it that you sent the serial report? A. It was about 7.30 p.m.

30

Q. At what time did you get the information? A. I got the information at 7.30 and as soon as I received the information I walked up to the spot and it took about 10 minutes to go, to the spot.

Q. You did not question anybody who were on the spot? As soon as you arrived at the spot what did you do? A. I inquired from the people who were there.

Q. How long did that inquiry take? A. I inquired 40

from those persons who were there as to whether they saw or heard what transpired? A. I inquired whether they saw any person stabbing Kandasamy.

Q. Do you know the names of any of the persons who were present at that time and from whom you inquired? A. No, I do not know them.

Q. Is that all you did before you despatched the serial report? A. I spoke to the injured person.

10 Q. Was he living at that time? A. He was living at that time.

Q. What was he wearing at that time? A. He was wearing an arm cut banian and a vertti. The colour of the banian was white. At that time he was bleeding profusely. Nallady junction is a busy place - there is a bazaar.

(To Court: The deceased talked to me.)

20 Over 10 or 15 people were there. I have not made note of the fact that there were 10 or 15 people. There are number of boutiques by the side of Sahotharam Sinniah's boutique.

(To Court: Q. What is the distance from the Nallady junction to the Police Station? A. About $3\frac{1}{2}$ miles.

Q. Were there vehicles moving up and down at that time at that junction. A. There were buses and private cars moving. I stopped one or two cars that went on that way and the inmates of that car were not prepared to assist me.

30 Q. Did you tell them that the deceased may be a bad man but he also has a right to live? A. I told them, they said they were going in a hurry to go.) The cars that I stopped, one of them was going towards Jaffna and the other was going towards Point Pedro. I stopped two cars, one of them going towards Jaffna and the other towards Point Pedro. Both the cars were with enough of people.

40 (To Court: I stopped one bus but the driver of that bus was not prepared to help me. I have

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noted down in my diary that I asked the bus driver and he refused to take the injured man to the hospital. I do not know the driver of that bus, but I requested him and he also refused and went away and that is what I have noted down.

Q. Did you try to take him in a bullock cart? At Nelliady junction were there not a number of cars halted? A. There were no cars at the junction at that time. But usually a number of cars are halted at the junction. After dark all the cars vanished. 10

Q. Are there not a number of cars in Nelliady itself? A. Yes, there are.

Q. Did you attempt to get any of those cars? A. I sent a message to one Mylvaganam to get his car, that car was not there. I sent that message through one volunteer who was there. There were two volunteers at the scene. There are Rural Development Volunteers at Nelliady. On that day two of the volunteers were at the scene. One of them is Krishnapillai, and the other is Thangavelu. 20

Q. Did you question Krishnapillai about this incident? A. Yes.

Q. Did you record his statement? A. No.

Q. Did you question the other volunteer? A. No, I did not.

Q. Then, did you give water or something else to this injured man, who was in a pathetic condition? A. He could not open his mouth.

Q. Did you give him something to drink? A. I was bent on sending him to the hospital and as such I did not give my thought to these things. I did not give him any first aid. Someone had already given first aid to him; i.e. someone had put the intestines in and tied it. I did not make note of the fact that I inquired for the person who tied that wound. The bandage was not taken by anyone later. That wound was tied up with a shawl and a bit was seen. I did not make a note of the fact that the deceased had already been attended to. I knew the deceased Kandasamy. From Police point of view he was a bad man. I saw so 30 40

because I knew him as an Island Re-convicted Criminal. When I arrived at the scene the man was living. The injured man was living till about 8.30 or so. After 8.30 he could not have spoken - he was dead.

10 Q. Up to that time apart from yourself was there any other Police Officer or any other Officer of the Government who turned up to the spot? A. No. Up to 8.30 p.m. I was unable to get any kind of assistance from anybody. Nobody did turn up. Up to 8.30 p.m. I did not give any assistance to the man who was lying injured. I cannot remember whether I found any mark of struggle or blood on the road. There were blood stains on the road. I did not look for blood stains anywhere else.

20 Q. Did you go to the other side of the road where the boutiques are? A. No. All the boutiques on the northern side were closed. But there were two boutiques opened, they were the boutiques of Ponnambalam Kandappu and Vythilingam Asaipillai.

30 Q. Did you question these two persons? A. I questioned one Kandappu his boutique is close to the place where the injured man was lying. I have recorded the statement of Kandappu at about 8.45 p.m. or so. I recorded his statement just before the Police Officers' arrival. The Police came to the scene at 9.10 p.m. I did not record the statement of Asaipillai, his boutique is about 40 or 50 yards away from the scene. I did not go with the Police into Kandappu's boutique. The Police entered the boutique alone. I did not record the statement of Asaipillai. There were no boutiques opened on the northern side of the road. When I said two boutiques were opened, one was situated on the east of the Nelliady Junction and the other on the southern side of the junction.

40 (To Court: Normally, boutiques at Nelliady close at 8 p.m. I know Sahotharam Sinniah. He has a boutique at the junction. I did not question him at any time about this incident. The Police did not question Sahotharam Sinniah at any time when I was assisting them. If the Police wanted my assistance I would have assisted them at any time.

Q. Did the Police at any time ask you to assist in getting at Sahotharam Sinniah? A. That night

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Sahotharam Sinniah's boutique was closed. I know where Sinniah lives. Sahotharam Sinniah lives about 20 yards away from the boutique. The day following the incident Sahotharam Sinniah was in the boutique. That day he was not questioned about this incident. I do not know N.Vallipuram. There is no person in my jurisdiction by that name). The Village Headman, Karaveddy West came to the scene by 9 o'clock. Then the deceased was dead.

(To Court: Q. When the Village Headman, Karaveddy West, came to the scene why did not you ask him, "why did you refuse to accept the letter I sent you? A. I did not ask him at once, I asked him about it about one or two hours later. 10

Q. Did you question Karaveddy West Headman as to why he did not take that letter? A. I did not question him when he arrived.)

When the letter came back to me I put it in my diary. I was at the scene till 2 a.m. the next day. The constables were stationed at the scene. I was staying with the Police till 2 a.m. I went with the Police officers that night - they wanted my assistance. The sort of assistance they wanted was that they wanted to get hold of one Sellappan and I went with them in search of him. 20

Q. Did you have any evidence against Sellappan? A. Yes. I did not have any evidence against Sellappan but the Police had. Police and I searched for this Sellappan till 2 a.m. After that I gave up searching for him. 30

(Court: Q. Do you seriously suggest Headman that there has been attempts to suppress the facts at such early stage about Kandasamy's incident? All the people of the area had got together and tried to suppress the assailants name? A. No answer.) This is my first experience when a man had been seriously injured and although there were people in gathering, none of them were not prepared to come forward and tell as to what they had seen. In all my seven years experience I have not come an instance like this. The Police station for this area is at Point Pedro. On the 'phone I spoke to the reserve constable at the Police Station. I did not know his name, his number is 5002. I asked him to give the message to a particular officer. I asked him to convey this message to Sergeant Hameed. 40

10 First, I particularly asked for Sergeant Hameed. This is a Police Station where there are a number of Inspectors. That day this particular officer was Officer-in-Charge. I gave information to the Police Station. I was informed that there is no one there and I wanted to inform the Officer-in-Charge. At that time the Inspector was on leave. The Inspector who came to the scene was from Valvettiturai. My duty is to inform the Police - I was not concerned as to who receives the information. I gave information on the phone and on that day Inspector of Police, and the Sub-Inspector had gone on leave.

20 (To Court: Both of them were on leave. They were not at the station. The Police Officers who came to the scene were Sergeant Hameed - 1228. He was the person who first arrived at the scene. He came with P.C.2024 i.r. Markandu. They came and viewed the body and made their observations. There are two theatres at Nelliady and most people from all parts of Vadamaraddy come there to see pictures. On that night there might have been few people from Nelliady also. Apart from the volunteers there were a large number of people. When the Police came there were a large number of people. I cannot say definitely whether Nelliady people were also there among other people. The Police were moving within the crowd and asking for information.

30 Q. Did you think it not wise to point out the people of Nelliady to Police and ask the Police to question them? A. All those persons were questioned and the Police shouted 'come forward and give information'. When the Police came there were about 20 or 25 persons. The people would have to come to the junction from the two theatres. The first show starts at 6.30 p.m. and goes on about 1.30 p.m. First show is over at about 9.30 p.m. At the time the Police arrived there were people at the scene. They would not have
40 been people who came for the pictures. Some of the people who came there would have been there for the second show.

Q. Did you ask any one of the people for a car?
A. There was no car. There were no cars on either of the theatres. Normally there are cars on these two theatres but on this day there were no cars at all. That day there were no cars that came for

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the theatres. I did not telephone to the Doctor. I telephoned to the hospital. I am still trying to find out in the village who the assailant is. I knew that there were a large number of petitions in connection with this murder.

Q. Do you know one Santhirasekaram? A. Yes I know him.

Q. Who is he? A. He is a clerk at Vavuniya Kachcheri. He is a nephew of Village Committee Chairman, Kaddaively. During the time of the incident this Santhirasegaram was at Jaffna Kachcheri. Santhirasegaram and his relations are influential people in that area. Santhirasekaram's uncle was the V.C. Chairman at that time. Nelliady is also a part of the Kaddaively Parish. I cannot say whether there was an incident two days prior to this incident in which Santhirasegaram was involved. I know a man called Chelliah, who lost his life some time ago. He is a relative of Santhirasegaram deceased. Kandasamy was the assailant of Chelliah - he was sentenced to four years jail in that case. He came out of jail about the latter part of 1951 or earlier part of 1952. Sahotharam Sinniah is related to late Chelliah and Santhirasegaram. I am not a relation of theirs at all.)

The name of the acting Headman of Karaveddy West is Murugesu. Village Headman Karaveddy West came to the scene. The Village Headman of Karaveddy West did not assume jurisdiction in an area where he should have assumed jurisdiction. I am not a friend of the then Village Headman, Karaveddy West. I am not an enemy of his also.

(To Court: Although he was acting as the Village Headman, Karaveddy West, he was the Udayar of the Kaddaively Parish and he was a superior officer of mine. He could direct me to do things.

Q. Did he find it embarrassing for the acting headman Karaveddy West to look into this matter of Kandasamy's assault? A. I had written to him that I had informed the Police and he refused to take delivery of the letter. He was not prepared to take notice of what I had sent to him. I deny the suggestion that we all of us got together and suppressed the fact as to who the assailant was. I was working in the A.M.W.E., Trincomalee.

(Court: You had better go with the Police Officer

and hand over to him the letter that you sent to the Village Headman, Karaveddy West.)

Witness: It is not possible to trace the letter at once because I have to search for it. I have got it in a big drawer and I have kept it in a file in the drawer. I remember having put that letter into the file and put into the drawer and that drawer is now locked up. I do not have the key with me at the moment. It is at home quite safe.

10 (Court orders the witness to stand down).

No. 7.

PONNAMPALAM KANDAPPU

Ponnampalam Kandappu: Affirmed.

Examined: 26 years, Cultivator, Karaveddy East, Karaveddy. I remember the day when Kandasamy came by his death.

20 (To Court: I sent a telephone message to the Police. I was in my father's shop at Nelliady that day night. I telephoned to the Police from the Karaveddy Post Office. I telephoned to the Police about 7 or 7.15 p.m.

30 Q. Is 7 p.m. correct? A. I cannot say exactly when I sent the message. I went and talked to the Post Master. That is the Post Master who got me the call. I telephoned to the Police in order to protect Kandasamy. Later on my statement was recorded by the Police. The Village Headman spoke to me after the Police arrived. I have given my statement to the Village Headman. After the Police arrived at the scene I made my statement to the Headman. I made my statement to the Police Officers after their arrival. The Village Headman did not record my statement before the Police arrived. About two hours after the arrival of the Police the Village Headman recorded my statement. When the Headman was recording my statement the Police Officers were making inquiries from other

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persons. My statement was recorded in a shop. At that time there were a number of people. I did not remember as having seen the Police recording my statement. The Police questioned me and examined my shop. It is after that the Village Headman recorded my statement. I did not mention any names to the Police as witness. I only mentioned the name of one Sinnachi.

Q. Sinnachi is a person who was present at the time of the incident? A. I told the Police that Sinnachi came to my shop and showed me the crowd of people who were there. I told the Police that Sinnachi was present at the entrance to my shop. During the time of the incident I do not know the name of that woman (Sinnachi) but later somebody called her by the name "Sinnachi". 10

Q. Did you tell the Police that Sinnachi was in the crowd where the incident happened? A. I told the Police so.

Q. Did anybody ask you to point out Sinnachi? A. Yes. The Police asked me to point her out. 20

Q. Who is the Police Officer who asked you to point out Sinnachi. A. That Officer is now present at the witness shed. I did not come to this Court with that officer.

Q. With whom did you come here? I did not know the name of the Police Officer who brought me. I went to the witness shed. I did not talk to that Police Officer.

Adjourned for the day - 1.40 p.m. 30

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Ponnambalam Kandappu: Re-affirmed. Examination in chief contd.

I was asked yesterday whether in my statement I had mentioned the name of one Sinnachi and I said, yes. I did not give her address to the Police.

Court: Don't think this is a place where you can fool about. Did you give the address or not? ... I cannot recollect but I think I did not. I do not know a place called Kottawatti, but I have heard the name. I did not know that she was from 40

Kottawatti, but that night I mentioned that this woman was from Kottawatti. I made inquiries that night. That night the Police made inquiries from me but since it is a long time I cannot remember. I may have made a statement to the Police Inspector that night but I cannot recollect it now. The Police made inquiries from me but I do not remember whether I made a statement to them that night. The Inspector of Police questioned me. (Shown Inspector Nadarajan). This is not the Inspector who questioned me that night. The Inspector was standing outside my boutique while the constable searched my boutique. There is a cattle shed to the east of my boutique but it does not belong to me. I deny that my father was hiding in that shed and found by the Police. My father was on his way from his house to the boutique along the back of the boutique. At the time the Police found my father I do not know whether he was hiding in the shed or not. That night when I made my statement to the Police I admit I mentioned the address of Sinnachi to the Police. The Police Inspector questioned me to the effect that I knew the man who assaulted the deceased but I denied it.

Court: You did your duty first by going to the Police but the Police did not record your statement. They have suppressed that statement. If your message had been recorded at the time the whole thing would have been out. If there is one man who knows about the incident that man is you.

Witness: I do not know about the assault on Kandasamy. If I knew it I would not have failed to have disclosed it. I made way through the crowd in front of my boutique and I saw Kandasamy lying there. There was a large crowd there. I looked at the crowd and asked them who had assaulted the injured person but nobody replied.

(Court: Do you know what the reply from Court to that is? Two years' rigorous imprisonment under the Courts' Ordinance. Somebody is going to pay for this. Did you tell anyone before this that you asked the crowd who had assaulted the man? ... I told the Police that I questioned the crowd as to who had assaulted the man. I mentioned that in my statement to the Police.

Court: There is nothing like that in your statement

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to the Police I told the Police that.

Court: The Inspector did not know that very important fact that a man like you carried out police duties so efficiently to have you rewarded for it I told the Police the whole truth as to what I had seen that day.)

There were about 85 to 90 persons in the crowd. The point where the deceased was lying was to the north east of my boutique.

(To Court: I told the headman that I questioned the crowd as to who had assaulted the deceased.)

10

Court: Your statement is here, but you have said nothing to him. You made your statement to the Magistrate the following day and even to him you said, "No one told me who had assaulted neither did anyone tell me who had stabbed." I told the Magistrate that I questioned the crowd as to who had assaulted the deceased, Kandasamy, and no one replied.

Court: Yes, in that statement to the Magistrate you have said that you questioned the crowd and no one said what happened. Do you suggest that immediately after this assault there was a new crowd? Did you think these people were suppressing facts?

20

.....
I do not know what they were doing but I questioned them and they did not give me a reply. I first looked at the injured man and saw that he was in a critical condition and I thereupon asked the crowd who had assaulted him. I do not remember Inspector Allagiyah questioning me. The Magistrate questioned me.

30

Court: Your boutique is right in front of the place where this man was lying? ... My shop was not opposite the spot where the man was lying, but west of it. My shop was not the nearest to the spot where he was lying. Narayan Nair's boutique, the Malayalee, was the nearest.

Court: You are not speaking the truth even with regard to that My shop is to the right of the road and his is to the north.

40

(Court: The Inspector questioned you first?..... Yes, he threatened me and questioned me to the

10 effect that I knew the person who assaulted Kandasamy. The Police Inspector detained me till day-break. He had to reprimand me, but I deny that I denied to him that I sent the message. The V.H. questioned me before the Inspector did so. I went to the Post Office which is about $\frac{1}{2}$ mile from my boutique. That distance would be the distance by road half round this building, about 500 yards. I remember the headman coming to my boutique to record my statement. That was the first time I met him that night after the Police Inspector visited me. I cannot remember whether I mentioned Sinathi's name to the headman but I think I did. If the headman had asked me who were the people in the crowd at that stage there was no reason for me to have suppressed her name. After that the Police asked for my assistance to identify Sinatchi. There were two constables and they asked me to help search for her and identify her in the market. I do not think they made any notes in their books.)

20 The telephone message I sent to the Police was that a person was lying in a critical condition and I asked for a van to transport him to the hospital. I did not say that the man was being assaulted. I first noticed the deceased Kandasamy, when he was lying near the tamarind tree. I noticed him as a result of Sinatchi shouting out that a man had been assaulted, and was lying there.

30 Court: Did you tell the Police "At the time I heard a commotion I saw a large number of persons whom I know by sight" Yes.

Court: Did the Police ask you to point out those persons after that? They asked me only to point out Sinatchi.

Court: Did you tell the Police that those people whom you could identify were standing close by? Yes, I said that. No one asked me to identify those persons afterwards. I looked for Sinatchi of Kottawatti in the market with the Police.

40 To Crown Counsel: The Nelliaddi Junction is a busy one. There are several cars parked there. The man's condition was critical. He was groaning, "Aiyo, amma". I saw blood on him but I did not know what injuries he had on his person. I went near him and looked at him. At first I saw blood all over his body. Then I went to the Post

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Office and after telephoning I came back and saw the injury on the stomach. At that time I did not see the headman. Before I closed my shop I awaited the arrival of the Police to take the injured man to hospital and while I was waiting I saw the V.H. of Karavetti North arrive. I had arrived at the scene after going to the Post Office before the headman arrived. I closed my boutique before the Police came. The V.H. did not come before I closed my boutique. I did not know at that time that this gentleman was the V.H. of Karavetti North, although he had been the V.H. of that place for 7 years. I did not know that he was the headman at all. When he arrived I did not notice him much. He was going along the edge of the road. He was going towards the shops by the edge of the road. He was going westwards along the northern side of the road, in the opposite direction to the junction. If he had come there and had been making investigations at the spot I would have noticed him. If the V.H. says he was at the spot I say he went westwards and came back and then questioned me. It was after the Police arrived that he came and questioned me.

10

20

Court: Curiously you are said to have made your statement to him before the Police arrived. That is utterly untrue? Yes.

To Court: I had to put through a trunk call on the telephone. I had to pay for it.

Cross-
Examination.

Cross examined: The V.H. of Karavetti North lives about 200 yards from my boutique. It is only now that I know that he is the V.H. At that time I didn't know that. I live in Karavetti East and I used to go to my father's shop sometimes to relieve him when he wanted to go home for some reason. The tamarind tree is about 10 yards from my boutique. That is it is about 10 yards from my present boutique but we were in another boutique at the time of this incident. (To Court: At the time of the incident we were in a boutique to the west of the present one, a mud walled boutique. The present boutique was built after this incident.)

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40

The site of the former boutique is still there. The present shop has been built on another site although it is in the same compound. I sell tea and short eats in the boutique. The counter is facing the road. The old shop was $1\frac{1}{2}$ ft. below

the level of the road. I went to the Post Office and spoke to the Post Master but it was I who sent the telephone message. I deny I told the Police that a man was being assaulted. Before I went to the Post Office I saw a large crowd and this man was lying under the tamarind tree. It was a mixed crowd and I made my way through it and saw the man. I went to the Post Office after going and seeing the man. What I told the Police was that a man was lying in a critical condition. I delayed at the Post Office for about half an hour to 45 minutes. When I returned to the spot I did not see the V.H. there. My statement was recorded by the Police at 10 or 11 p.m. After I was questioned by the Police Inspector I was asked to go and sit at some place and then the V.H. came and recorded my statement. That was about half an hour later. I saw the V.H. passing along the northern side of the road about half an hour after I returned from the Post Office. On returning from the Post Office I was standing near Kandasamy with other people. Half an hour after that I saw the V.H. passing on the side of the road. I did not see him going to where Kandasamy was lying. I stood near Kandasamy till the Police arrived and during that time the V.H. did not come there. I took steps to safeguard the life of Kandasamy and inquired for cars but I could not get one. I did not do anything to Kandasamy nor did I see anyone doing anything to him in the way of bandaging him. After I returned from the Post Office I did not see Kandasamy bandaged. Half the injury on the stomach was covered by the verti but through the other half his intestines were protruding. I did not notice him bandaged by a cloth or a shawl. The man had received no medical attention at all. It was when Sinatchi said that a man was lying there that I knew about this for the first time. Before that nothing attracted my attention to it. Before Sinatchi cried out there was a crowd on the north side of the road but I did not pay much attention as there was usually a crowd there. I told the Police, "Today at about 6 or 6.30 p.m. I was in my boutique preparing tea. I heard a commotion on the road and I saw a large crowd gathered near the tamarind tree close to my boutique. What I actually said was that I heard a commotion and turned and saw a crowd. The noise was people talking in a crowd. I heard the noise of people talking loud.

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Examination -
continued.

(Court: Did you tell the Police you heard a commotion or not? I did not tell the police. I heard a commotion. I did not tell them, "At the time I heard the commotion there was a large number of persons whom I know by sight and not by name standing close by.") I did not go in search of cars but I asked a car driver who was close to the junction and he said he had to go somewhere else. Between the tamarind tree and my boutique there is usually a number of cars plying for hire with private numbers day and night, but at that time there were only two or three and they refused to transport the injured man to hospital.

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Q. Is it not a fact that you are trying to help the V.H. who was looking for cars by saying there were no cars? No.

Q. I put it to you that your story that the man was in a critical condition is entirely false and that what you telephoned was that the man was being assaulted? I deny that.

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Q. When you came back you found him finished? I deny that.

Q. You were seen by some interested persons and the thing was diverted into some other channel? I deny that.

Re-examined. Nil.

To Foreman. Nil.

No. 8.

No. 8.

S.K.Subramaniam.

SUBRAMANIAM KADIRTAMBY SUBRAMANIAM. (Recalled)

11th March 1954.

S.K.Subramaniam, re-affirmed - Recalled.

Recalled.

To Court: That letter is not to be found. I left it in my drawer but it has disappeared. I really wrote that letter and I got it back. I still say that. I recorded Kandappu's statement before the Police came to the scene. If Kandappu says that I recorded it after the Police inspector had questioned him and when he was under detention by the

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Police I deny that. I remember my statement to Hamid. In that statement I said that I found Kandapp's boutique open, but I cannot recollect whether I told him that I recorded Kandappu's statement. (Refers to Diary) I have made no mention of it. After the Inspector left my statement was continued and in that statement I proceeded to give the statement of Kandappu verbatim because I had recorded it in Tamil and the constable may have taken it down verbatim as I translated it.

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Recalled -
continued.

Court: What was the necessity to have given the actual statement made by Kandappu? ... No answer.

Does that not show that Kandappu's statement was made to you after the Police came? No, I recorded it before they came. I know Kottawatti. I made no inquiries there, on instructions from the Police.

Q. Even at a late stage, after the 16th December when the Police came round recording statements you went with them? Yes. At that time you knew that there were allegations being made against you, true or false, that you were suppressing evidence? I did not know that. After that I did not take Thamgammah by car to the Police Station on the day she gave evidence. I took her on the 22nd December as the Sub-Inspector instructed me to.

Court: What for? Her statement had been recorded Yes.

Court: Why was she taken to the Police Station by you in a car? The S.I. Pt. Pedro Inspector Allagiyah had asked me to produce her. At the Police Station no further statement was taken.

Court: Why was this woman put into a car and transported to the Police Station on the 22nd? That visit was not for any useful purpose? When we went there I was asked to produce her the next day. No useful purpose was served by taking her there. She did not get a fit on the way there or back. I cannot remember whether she gave evidence the next day in Court. On the 22nd I remained at the Police Station for 10 or 15 minutes. I cannot remember whether during that time Thamgammah was spoken to. I cannot remember who paid for the car. It was the car of one Thiagarajah,

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Recalled -
continued.

a person of Nelliady. He owned the car but he was doing nothing. I cannot say whether Thangammah was summoned. I sent a serial report to the Police.

Q. At what time was this incident alleged to have taken place? I have no note in my diary as to the time at which the incident is alleged to have taken place. The first information was given to me at 7.30 but that gave me no time of the offence. The first informant did not tell me that he had seen the incident and he could not have given me the time of the alleged incident. As I got the information at 7.30 I put it down to having occurred about half an hour earlier and said 7 p.m. That was a guess. (The serial report is marked X.) I got the information at 7.30 p.m. and got to the spot at 7.30 p.m. I looked at the injured man and made my serial report and dispatched it at 7.40 p.m. At 7.45 p.m. I went to the shop of Sittamparampillai to telephone. 10 20

Q. You could not have sent the message which the police received at 7.22 p.m.? No.

Q. How did your name come to be recorded as the sender of a message at 7.22 p.m. when you were at home? I do not know.

Q. Did you come to know that Kandappu had told the Police Inspector that he was able to identify some of the people who were standing by at the time of the alleged incident? I did not know. Up to date I do not know. If one of the Police Officers has recorded that he asked me to try and trace Sinatchi that is false. If any Police Officer says that I cannot remember it. 30

Court: I have asked you this about five times and for the first time you say you cannot remember it I cannot remember the name of Sinatchi mentioned.

Q. Did you at any time hear from anybody that Sinatchi of Kottawatti had anything to do with this incident? I cannot remember. 40

Q. When did you hear Chellappa's name in connection with this incident for the first time? At the scene that night when Mr. Nadarajah was inquiring into the incident.

Q. Who referred to Chellappah? The boutique keeper, Narayan Nair, the Malayalee, the owner of the boutique adjoining Sahoderam Sinniah's boutique.

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at Jaffna.

My informant Chelliah went to the scene with me. He is a market renter living in Karavetti North near Nelliaddi. From my house one has to go to the west to his house, away from the junction. He lives further away from my house from the junction. Narayan Nair was questioned and immediately we went off, but I cannot say whether his statement was recorded. He was taken away by the Police that night itself to the Police Station.

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10 Narayan Nair was questioned and immediately we went off, but I cannot say whether his statement was recorded. He was taken away by the Police that night itself to the Police Station.

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(To Court: Q. By whom was he taken to the Police?
A. By Inspector Nadarajah.

Recalled -
continued.

Q. It is not that that happened the following morning - the questioning of Narayana Nair?

A. That night itself he was questioned. I booked a telephone call to Police Station, Point Pedro through the Karaveddy Post Office. I did not pay any fee for the call I booked. I know that if a trunk call is booked at the Post Office an entry to that effect is made at the Post Office.

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Q. Do you say that you booked a trunk call on that night - that is you booked two calls, one to Point Pedro Police Station and the other to Civil Hospital Point Pedro? A. Yes.

Q. You had not paid for those two calls? A. No.

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Q. Do you know that Sub-Inspector Perera had made a note that he made inquiries to trace the woman Sinnachi of Kottawatte with the Village Headman of Karaveddy North and could not trace her. The V.H. says that he does not know that person and he says that he was unable to trace her. I asked him to search for her and produce her at the Police Station? Do you say that this is not true? A. I cannot say whether I said so to the Inspector.

(Interval - 11.35 - 11.55)

S.K.Subramaniam: Re-affirmed.

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Examined: On the night of the incident I went to Sithambarapillai's boutique and telephoned to the Police Station and Hospital. I booked the call

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continued.

through the Post Office, Karaveddy. I booked two calls.

Q. You know that during the night time you have got to pay for the calls you book? A. I do not know that. This was the first time that I telephoned in the night. I did not pay any fees for booking the calls. I know that the Police after arriving at the scene made observations and one of them went to the Post Office and phoned up to the Point Pedro Police Station. The Police Officers who first arrived were Sergeant Hameen and P.C. Markandu. That was about 9.30 i.e. sometime after I phoned up.

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Q. Would it be surprising to you to hear that on that day there had been only two calls put through from the Karaveddy Post Office and fees had been paid. Both of the calls are accounted for, one was by Kandappu and the other was the Police Officer's call? Yes, it is surprising - I telephoned to the Police Station and to the hospital that night.

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Q. And that you say that you were not charged the disturbance fee? A. Yes, I know that Maniam or Subramaniam who is referred to by witnesses in this case is a car driver. I know him.

Q. Was his statement ever recorded? A. I cannot say. I had been with the Police right throughout this inquiry.

Q. Even at the time when the Police were inquiring into your conduct in this case? Were you with the Police when petitions to the Police against you were being inquired into? A. At that time I was not with the Police. Subramaniam's statement was never recorded by me. I did not question Subramaniam anything. No one to my knowledge questioned Subramaniam about this incident. I did not question Sahotharam Sinniah. I did not question Narayanan Nair, his boutique was adjoining the boutique of Sahotharam Sinniah. In the presence of Sergeant Hameen Inspector Nadarajah questioned Narayanan. He was the first person whom Inspector Nadarajah questioned.)

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Q. You now know that allegations were made that you were suppressing the evidence in this case? A. Until I began evidence in this Court I do not know that there were allegations against me.

Q. Was your statement recorded in connection with your allegations? A. No. Today is the first day I have heard of it.

(To Court: Mr. Alagiah, Sub-Inspector of Police never told me that there were allegations that I am suppressing evidence. I do not know whether the A.S.P. held an inquiry in this connection.)

10 Q. Are we to assume that petitions were sent against the Police Officers as having suppressed evidence? A. I do not know that. I do not know whether the public of Nelliady are satisfied with the inquiry held by me.

20 Q. Do you not know that there were a large number of petitions in connection with this murder? A. Yes. I came to know that only about a month after the incident. I heard from the people of our village that petitions had been sent in this connection. It was a talk in the village. Hameen did not tell me anything - he did not tell me that there was an inquiry against me. I took Thamgammah to the Point Pedro Police Station on the instructions of Inspector Alagiah. I was informed by P.C. 1252 that Sub-Inspector Alagiah wanted Thamgammah to be produced at the Police Station. I do not know the reason why he wanted her to be produced there. I do not know the reason up to today. I took her to the Police Station in a car. I cannot say whether I paid for the car. When I went to the Police Station with that lady I was 30 asked to go home and to produce her in Court the next day. Alagiah had seen this lady on the 19th December. It is not necessary for him to look at her again. We arrived at the Police Station at 8.30 p.m. I know Sub-Inspector Alagiah. When we went there he was there. (Crown Counsel says that there is an entry in the information book that Sub-Inspector Alagiah had left the Police Station on that day at 8 p.m.)

40 Cross-examined: I do not know whether a summons was served on Thangammah or not. I do not know whether Summons was served on Iyadurai, Kandappu and Subramaniam in the Magistrate's Court inquiry. I know Kanapathy or Kanapathipillai. I know Iyadurai and Vairamuttu alias Subramaniam. They gave evidence for the first time in this case on the 23rd December 1952. I was asked to produce

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Cross-
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Thangammah by Sub-Inspector Alagiah in Court on the 23rd December 1952. I am not sure whether the other people also gave evidence in the Magistrate's Court on that day. I did not attend Court on that day. I asked Thangammah to appear in Court. The other people are from Alvai South and I was not concerned about them. I know a man called Athaan Markandu. I know him as a brother.

(To Court: Kandasamy is a man who takes liberties with women? A. Yes. I had no servant girl in 1952 during the time of the incident. I got a girl as servant about seven or eight months after the incident.)

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My house is about 200 yards away from the Nelliady junction. The message was given to me at 7.30 and within five minutes I arrived at the scene. I saw the injured at the scene lying tied up with a shawl. To my knowledge no one removed the shawl. As a matter of fact from the time I went there the body was guarded. Early on the next day morning the Magistrate came there. When the Magistrate came there the next day he did not find any bandaging, he found the intestines protruding. In the Nelliady junction day and night there are private cars parked with white number. There are about 25 cars daily. Although there were cars, there was no car to take the injured man to the hospital because at that time it was dark and most of the cars had been taken by their drivers to their houses.

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Q. A man at the Nelliady junction cannot carry on their trade if they happened to offend you? No answer. There were no cars at that time I went there. If there was any car I would hire that car and despatched the injured to the hospital.

Q. The suggestion is that you were not prepared to get responsible people in time to the scene? A. No. I know the brother of the deceased Chelliah. He has applied for the post of a headman. He has a car. He lives about $1\frac{1}{2}$ miles away from this junction.

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(To Court: Was it not right for you to send a message to his relations? A. No. I did not send a message to them.

Q. You said the injured man was panting? A. No answer.

Q. You know the difference between panting and breathing?

Q. Is it not that when a man pants he opens his mouth? A. What I meant by panting was quick breathing. He did not open his mouth.

10 Q. I put it to you witness that you did not go there at 7.30. The man was dead at the time you went. Your saying that the man was alive at the time you went is in order to explain the neglect of your duty? It is not so, I deny that. I tried to get a car but could not get a car till the time when Police arrived. I said that I sent a note to the Headman Karaveddy West.

Q. Why did you not send word to him through somebody and why did you send a letter to him? A. He being a superior officer I did not like to send him word. I said that I put that letter in a file and kept it in my drawer.

20 Q. Then when you hear allegations against you, you should have taken special care to preserve this letter? Q. I put it to you that you send the note to the Village Headman Karaveddy West is false? A. I sent that letter. It is true.

Q. Apart from your word there is nothing to support your telephone message? A. I cannot say. I actually telephoned to the Police, Point Pedro and Civil Hospital, Point Pedro. I first recorded the statement of Kandappu.

30 Q. Then you heard the names of Narayanan Nair and Sinnachi, why did you not record their statement? A. Narayanan Nair's boutique was closed at that time. When the Police came to the scene Narayanan came there.

40 Q. Why did you knock at the door before that and call for him. I thought that I had send word for the Police and was searching for a car to despatch the injured to the hospital. I deny the suggestion that Kandappu's statement was first recorded by the Inspector. In the statement made by Kandappu to the Inspector he refers to one Sinnachi but in the statement made by him to you he omits Sinnachi's name. My position is that I do not know Sinnachi of Kottawatte. Kottawatte is

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about two miles away from my house. Chellappan was arrested on the 29th of November. That is two days after the incident.

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(To Court: Inspector Nadarajah wanted to arrest Chellappan and that is why I went with him to arrest.)

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Chellappan was not produced in court; he was produced by me in the Police Station. Thereafter I heard that he was bailed out. Narayanan Nair was questioned in my presence at about 11.30 or 12 the following day of the incident. After that he was taken by the Inspector to the Police Station.

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Cross-
Examination -
continued.

Q. Was Narayanan Nair reluctant to make a statement in your presence? A. No. I do not know the reason why he was taken to the Police Station. In my presence no statement of Narayanan was recorded. Narayanan said something in my presence to the Inspector. Then he was taken by Inspector Nadarajah to the Police Station. At that time Inspector Nadarajah left Sergeant Hameen and another Constable to make inquiry from the people there. Inspector Nadarajah told Sergeant Hameen to get hold of Sinnachi and to record her statement. Sergeant Hameen also left for the Police Station at 2 a.m.

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(To Court: Narayanan Nair was questioned that night itself. I have not got a record of that questioning. I cannot say whether Sergeant Hameen asked me about Sinnachi.)

Crown Counsel (With permission): I sent my serial report to the Police Station through Shanmugam Krishnapillai. I sent the message to the Headman Karaveddy West through another Krishnapillai. I handed over that report to Krishnapillai to be given at the Police Station at 7.40 p.m. There was no other conveyance other than a bicycle and that is why I sent him on a bicycle. He would have gone to the Police Station by bus but he would not have returned by bus because there was no bus after that time.

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Q. Would it be surprising for you to think that the phone message was received at the Police Station at 7.22 p.m. and you said that you sent the message from the scene at 7.45. A. I cannot say.

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(To Court: I am quite sure that I sent that man at 7.40 p.m. with the serial report to the Police Station. He is not against me in any way.

To Jury: Nil.

No. 9.

R. T. NADARAJAH.Court calls:R.T.Nadarajah: Affirmed. Headquarters Inspector, Kankesanturai.

(To Court: In November 1952 I was stationed at Kankesanturai. On 27th November 1952 I was on duty at Valvettutirai. At that time the A.S.P. of that area was on leave. At 9.45 p.m. or 10.07 p.m. I received a message from Point Pedro Police. On receipt of that information I proceeded to Nelliady junction with Sub-Inspector R.N. de Silva. We were at the scene at 10.45 p.m. When we arrived at the scene Hameen was making inquiries. I made inquiries on the spot. As a result of my inquiry I went to Kandappu's boutique. It was closed. It was about fifteen yards away from the place where the deceased was lying. From the boutique anyone can see the spot where the deceased was lying. I went to Kandappu's boutique as a result of information received that he had sent a message to the Point Pedro Police. At that time I was not informed that any other person had sent a telephone message to the Police. There was a Village Committee Clerk named Velupillai Chelliah. He made a statement to me. I questioned the crowd and as a result of that Velupillai Chelliah made a statement, and as a result of that statement I set out to trace the man called Kandappu. I questioned him and recorded his statement. When I first questioned him he denied any knowledge of the incident. He also first denied that he had sent a telephone message to the police. Later, when I questioned him further he admitted that he had sent a telephone message to the Police. In his statement he said that there was a commotion on the road and there was a large crowd of people under the tamarind tree. I saw one woman named Sinnachi of Kottawatte standing within the crowd. He also said that he saw a number of people whom he knew by sight and he does not know their names. I made my observations on this witness at the spot. I searched his boutique and also his back compound, of the boutique. There was a cattle shed and I found a man hiding in the cattle shed. I pulled him out. At first he told me that he was living close by and later I learned that he was the father of Kandappu. I detained him and recorded his statement. At that time I saw the Karaveddy West

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No. 9.

R.T.Nadarajah.

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R.T.Nadarajah.

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Examination -
continued.

Headman. His name is Murugesu. He gave me some information and as a result of which I searched for one Sellappan. At that time I do not know whether the spot where the deceased was lying comes under the jurisdiction of the Karaveddy West Headman or the Karaveddy North Headman. The Headman Karaveddy North was also present at that time. He did not give any assistance to me. I gave directions to P.S. Hameen to record the statements and make inquiries and then I left. Thereafter I did not go there. I thought that Sergeant Hameen was the inquiring officer and he would have initialled the statement made by the headman. Thereafter I had nothing to do with this case. I happened to go there by accident. I was on election duty at Valvettiturai. Nelliady is a busy area. In this junction you can find a number of cars and vans parked till the shows in the theatres are over. Normally if this Chellappan was arrested, within 24 hours he must have been produced before the Magistrate, Sub-Inspector Silva also went along with me. (Shown Village Headman, Karaveddy North- This is the Headman whom I saw. He was the man who gave no assistance to me.) I detained Kandappu and his father to question further. I suspected them and my intention was that they should be questioned very closely.

No question to Crown Counsel.

No questions to Defence Counsel.

No questions to Jury.

No.10.

No.10.

R.S.De Silva.

Court calls:

R. S. DE SILVA

11th March 1954.

R.S. de Silva: Affirmed .

Examination.

Officer-in-Charge, Police Station, Valvettiturai.
(To Court: On the 27th of November night I went with Inspector Nadarajah to Nelliady. Next morning I was present at the magisterial inquiry. I made my own investigations.

I questioned up one Narayanan Nair. I did not record the statement of Narayanan Nair. I questioned him. He was found to be in a reluctant position in that place to tell as to what he knew

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of the incident. In fact he himself expressly desired that he will make a statement at the Police Station. I did not record his statement at the Police Station. I left him with P.S.Hameen and told him to record his statement. I left the scene after having directed P.S. Hameed to take Narayanan Nair to the Police Station and to record his statement. I also directed him to record the statements of Sinnachi, Kandappu and the Post Master to check what Kandappu had said about the telephone message. I also directed that Chellappan be arrested. Then I left the scene. I did not do anything else in connection with this case. There are two Sub-Inspectors, two Sergeants and 14 Police Constables at the Point Pedro Police Station. On that day there were three or four houses on fire. I cannot say how many Police Officers from Point Pedro went to that fire incident.

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No questions to Crown Counsel.

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Cross-examined: When I went to the scene next morning A.S.P., J.A.L. Perera was there. He also came for the Magisterial inquiry. The evidence of Kandappu, Chelliah and the Village Headman, Karaveddy North were recorded. I cannot exactly remember the names of those people. The Magistrate addressed and said to the crowd to come forward and give evidence. The brothers of the deceased were also there. I do not know anything after that.

To Jury: Nil.

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No.11.

R.T. NADARAJAH. (Recalled)

Court recalls Inspector Nadarajah: Re-affirmed.

(To Court: I did not record the statement of any body else. I did not record the statement of boutique keeper Narayanan Nair.

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No.10.

R.S.de Silva.

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Examination -
continued.

Cross-
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No.11.

R.T.Nadarajah.

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No.12.

Court Calls: Z. HAMEEN.

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Evidence.

Z. Hameen: Affirmed. P.S. 1228. Point Pedro
Police.

No.12.

(To Court: I have been Police Sergeant for about
18 years. Before coming to Point Pedro I was
serving at Nuwara Eliya. I was serving there till
about 1948. I was there for three years. I had
been serving in Point Pedro for the last 6 years.

Z. Hameen.

11th March 1954.

Examination.

Q. When did you get first information regarding the assault of Kandasamy? A. I was out for another inquiry at Karanavai North. I was Officer-in-Charge that in charge of the station. One Sub-Inspector was attending Court at Ambalangaoda and the other was on leave. There was no Inspector at that time. Mr. Alagiah was on leave at that time. He was on leave some time prior to the incident. I went for an inquiry in connection with a breach of trust case. I have not got my diary in relation to the notes I made regarding that mischief case. I have two books. It was a case of theft of some bangles. I left for that inquiry at 5 p.m. and returned to the station at 8.40 p.m. A reserve sergeant i.e. P.C. 5002 received that telephone message. A telephone register is kept by the reserve P.C. and as the telephone message comes he must immediately note it. There is only one register for entering telephone messages. Any action to be taken on that message to be written on the margin of that register. When I returned after the inquiry, reserve P.C. told that there was a case of assault at Karaveddy North. I cannot remember the time when the message was sent. It was received at 7.22 p.m. That message is a telephone message from Headman Karaveddy North which starts "a man being assaulted...". There is no telephone message from a man called Kandappu. I was in charge of the investigation in this case. I did not know whether Kandappu had sent a telephone message. Later I learnt that Kandappu had sent a message to the Police. When Inspector questioned Kandappu, he said that he sent a telephone message from the Post Office to the Police Station. That telephone message never got into this book. I was directed by Sub-Inspector Silva to record the statement of Postmaster. I am aware that Kandappu's telephone

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message was earlier than the one sent by Headman. The message sent at 7.45 did not arrive at 7.22 at Police Station.

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Q. Did you not think that there was something wrong fundamentally? A. I thought of it. When I recorded the statement of Kandappu only I knew that there was something wrong with Kandappu's message, that message must have been received and recorded by the reserve P.C. at the Police Station.

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No.12.

Z. Hameen.

10 Q. Did you question the reserve P.C. about this?
A. Yes. I did not record the statement of the reserve P.C. I asked him and he said that was the only message he had received.

11th March 1954.

Examination -
continued.

Q. Subsequently you found on inquiries from the Post Office that a message was sent by one Kandappu and after recording the statement of the Post Master? A. No answer.

20 Q. Why did you not record the statement of that reserve constable? A. Because I thought it was not necessary.

Q. You also knew that a message was sent by the Headman at 7.45 p.m. and that message was received at the Police Station at 7.22 p.m. A. After I came to the Police Station the reserve P.C. said that information had been received at the station at 7.22 p.m. I acted on this message.

30 Q. Did you think when the Inspector directed you to record the statement of the Postmaster the inspector in his mind was suspecting this man Kandappu? A. I was directed by the Inspector to record the statement of Postmaster. I did not record his statement. The Postmaster's statement was recorded by Sub-Inspector Perera. He arrived on the morning following the incident and he apparently saw the directions given by Sub-Inspector Silva and he recorded the Postmaster's statement. It was recorded in my presence.

40 Q. The Postmaster said that he could not tell the name of that man but he can identify him who came and booked the call. A. I cannot remember what he said. (The statement of Postmaster to the Sub-Inspector Perera read.)

Q. Was this man Kandappu shown to the Postmaster?

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No.12.

Z. Hameen.

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Examination -
continued.

A. I do not know. The witness Kandappu was questioned by Inspector Nadarajah in my presence and he (Inspector) realised that he was reluctant to give answers to questions and he was hiding facts. The Inspector had made a note of that fact. I questioned Kandappu further closely. I had recorded his statement, before the headman began recording his statement.

Q. What did you do to the instructions of Inspector to watch this witness closely and record his statement. I closely watched him. I questioned him closely. There is no note of my own that I had questioned him closely. I questioned him closely but I did not make a note of it carefully. I questioned him about one Sinnachi whom he referred to. I went with Sub-Inspector Perera and Headman next morning in search of Sinnachi. Inspector has made a note of it in the information book.

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Q. Where is the note you made when you went to the house of Sinnachi leaving aside the note you made on the crime book? A. I made no note of it in my diary.

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Q. Inspector's note does not mean that it was made by you, did you make a note of it anywhere?

Q. There is only one note in the crime book? I made no separate note of that fact. There is no note in the crime book to show that I went with the Inspector and the V. Headman and looked for Sinnachi. The Village Headman did not point out that woman. Somebody in the house said that there is no one by the name of Sinnachi there. I could not trace her. That is all the effort I made to trace Sinnachi. I did not think of taking Kandappu with me and to search for Sinnachi.

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Q. Did you or did you not think that if Sinnachi was caught it might have been possible to find out who the assailant was? A. No answer - I did not take any further action in this case after Sub-Inspector Alagiah had come there. I had nothing to do with that case after that. After that I did not remember having recorded a number of statements. I was unable to trace Sinnachi. I thought that it would be necessary to get at Sinnachi because she would have helped to clear this

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mystery. The only effort was that I took the village Headman and go to the house of Sinnachi. I did not remember having taken the Village Headman of Karaveddy North. I think I must have taken the village Headman of Karanavai North. I did not record the statement of the village Headman Karanavai North, as there was no woman called Sinnachi, Narayananan Nair statement was recorded by me. I was instructed by Inspector Silva to record the statement of Narayanan Nair. I was asked to take him to the Police Station and record the statement in the morning itself but I recorded his statement in the evening at 4.15 p.m. From the time Narayanan Nair was taken to the Police Station in the early morning that day he was in the Police Station. The delay for recording that statement was that I broke rest the previous night and that day I rested for some time and came and recorded his statement. I realised that Narayanan Nair was reluctant to make a statement at the spot in the presence of some people and he wanted to make a statement at the Police Station. I thought it important of the fact that Narayanan Nair was prepared to make a statement at the Police Station. Narayanan Nair's boutique is just opposite the place where this incident happened. Kandappu and Narayanan Nair were the two best persons to say as to what actually happened.

Adjourned for the day - 1.40 p.m.

12th March 1954

Z.Hameen; Re-affirmed

To Court: I returned from an inquiry that evening when I got a message from the Reserve Sergeant that some unknown people were being assaulted at the Nelliaddi junction. I did not know who it was who were being assaulted. I looked at the message. I did not find out who it was who was being assaulted. Up to the time I went to the scene I did not know who was assaulted. I saw that the telephone message had been sent by the V.H. I went to the scene which was $1\frac{1}{2}$ miles away. When I was returning to the Police Station from my previous inquiry I did not have to pass the tamarind tree. I took another route from Velvetiturai. When I got to the spot I knocked at each of the boutiques and I shouted to the crowd that was there. I did not try to find out the boutique keepers because I did not know whether they lived in their boutiques or outside.

In the
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at Jaffna.

Prosecution
Evidence.

No.12.

Z. Hameen.

11th March 1954.

Examination -
continued.

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Z. Hameen.

11th March 1954.

Examination -
continued.

Q. Why did you not find out where these boutique keepers lived and get their statements? No answer.

These boutiques are not open after 9 p.m. When I got there it was 9.10 p.m. I had no reason to think that the boutique keepers had not been there up to 9 p.m.

Q. Why did you not trace those boutique keepers and question them? The headman was there. Why did you not ask the headman where the boutique keepers lived? There were some rural volunteers at the spot? ... I did not see any of them. Some of them came later when I was guarding the body. Rural volunteers help the Police in getting information. They mix with the people and we ask them quietly to get us information. They are found at various places and once in a way they come to Nelliaddy junction, but nobody at the Nelliaddy junction would give any information.

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Court: If that was your idea you should have applied for a transfer immediately because it was useless for you to have been at such a place? It was very difficult to get information.

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Q. Did you ask the rural volunteers to help? No I did not think that they would help. In small cases they would come forward and give information but not in big cases. They are afraid to give information because of the people of the place.

We have not got these volunteers sacked. When I went to that junction I was absolutely certain that no one would come and give information, long before I even questioned the people.

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Q. Do you understand the importance of the answers of yours? No answer.

Q. What did you go to the junction for? I went to get information. I was not so certain that no one would give information. I made private inquiries. I had no private talks with the headman, but I had talks openly. The Udayar was present. I do not know whether the body was lying within his jurisdiction. I do not know what the boundary is between Karavetti North and West. I know Shanmugan Krishnapulle. He owns a van. I know of only one man by that name. That is the man who is a rural volunteer. I do not know whether he took the serial report to the Police

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Station. (Refers to I.B.) The serial report was taken by one Shanmugam Krishnapulle. He calls himself a V.C. member. His statement was recorded by the Reserve Sgt. The next morning I brought to the notice of S.I. Silva about the woman Sinnachi. I went in search of her with S.I. Perera. We went to the headman of Karanavai North. I did not record the statement of the headman. S.I. Perera did not record it. I did not take Kandappu with us because I thought the headman would be able to point out the woman.

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Q. Having failed to get the headman to point her out why did you not take Kandappu? I left it to S.I. Perera.

Q. Did you record the statement of the first informant, Chelliah? Yes, on the 28th November.

Q. Why did you not record his statement on the 27th evening? He told me he was feeling sleepy so I did not record his statement then. A man called Chellappan was arrested on the 28th. He was produced by the V.H. of Karavetti North and I produced him before S.I. Perera. He was arrested and produced at the Police Station. I went and took charge of him. I took him to S.I. Perera. He ordered me to record his statement and retain him. He was in custody. I do not know what happened to him thereafter. I do not know whether the man was produced before the Magistrate. There is no entry at all about him. There is no entry about his release.

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Court: On the 30th November was he released or not? ... On the 30th there is no entry according to the Grave Crimes I.B. about his release. I find an entry in the Routine I.B. there is an entry. It is at 7.10 p.m. and it is written by P.C. Banda. The man has been ordered to come back to the Police Station at 10 a.m. the following morning. I do not know what he was to come back for.

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Court: Why was not Chellappan produced before the Magistrate? ... I do not know. I merely carried out orders. He has been released at the discretion of the S.I.

Court: Should you not as a sergeant have kept yourself in touch with these things? .. No answer.

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continued.

I do not remember when the name of the accused transpired for the first time. On the 1st December I was still making inquiries myself at Karavetti North. The Sub-Inspector did not meet me on that day and give me any orders. Yes, I find that he had met me and ordered me to record all the statements of the people in the boutiques. That had not been done up to that time. I went and questioned a man at the barber's saloon, V.Sinnetamby. I did not carry out the orders of the S.I. and record all the statements of the boutique keepers. I questioned them and they denied all knowledge of anything and I did not record their statements.

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Court: Have you any explanation to give for not recording their statements? ... They denied all knowledge of it and I did not think it was necessary to record that.

Court: The suggestion is that you have been suppressing evidence. What have you to show in the I.B. to justify any other conclusion about it? In the same way as you were looking for Chellappan you were also trying to find this accused? Yes, My Lord. That was on the 28th. I didn't make the inquiries, the S.I. was doing that. I was not aware of it.

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Court: On what information were these inquiries made about Dharman? Did you have a single statement about him? No, My Lord.

Court: Why did you not give evidence in the Magistrate's Court? ... I was not summoned, I do not know why.

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To Crown Counsel: I was in charge of the Police Station on the 22nd. Both Sub-Inspectors were away on leave and I was in charge. There were 14 constables attached to the station. Between 5 p.m. and 10 p.m. there was only 1 P.C. in the station. The others had gone to put out a fire, and some were on duty. I do not know how many had gone. I left the Pt. Pedro Police station at 5 p.m. with a P.C. Markandu to Karanavai North on bicycles. That is $1\frac{1}{2}$ miles from Nelliaddi junction. We went through the Pt. Pedro Road straight to Velvetithural. Going through the Nelliaddi junction it is half a mile longer. We

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took the usual route, as it goes straight to the spot. Our Diaries are destroyed after one year. If there is any entry in the diary with regard to a case that is pending the diary is not destroyed, but if there is nothing it is destroyed. With regard to this case there was nothing in the diary. All my movements are entered in the I.B. I left according to that entry at 5 p.m. The time I reached the spot is in the diary and that diary is destroyed. The officer in charge would order the diary to be destroyed. I cannot be sure whether this particular diary is destroyed or not, but as a rule a diary is destroyed after one year. I cannot say whether Mr. Allgiyah would be in a position to say whether my diary is destroyed or not. Whatever is in the diary is also in the I.B. and on my return I should have entered the time of my arrival but I find it is not entered. That is something which I should have in the ordinary course of my duties entered.

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Examination -
continued.

(Court: If your diary contained it the I.B. would contain it and you have no entry now by which it can now be found out. You are fairly confident that that diary has now been destroyed.)

(Court: Do you drink hard? I do not drink hard but once in a way I drink.)

I must have made a note of the time I got to Karanavai North but there is no note to that effect in the I.B. There is no note of the time I left the place, but I returned to the station at 8.40 p.m. It took me 30 to 45 minutes to get to the station. I have no record of what I did for the 2 hours at the scene. I recorded two or three statements. No, I recorded no statement at the scene at all. I only went and questioned them.

(To Court: I recorded no statements at all from the time I left the station at 5.30 p.m. up to the time I returned at 8.45 on the 27th. For about half an hour I was questioning the people. I have no record anywhere that I was doing so. I have not recorded a single statement. I must have recorded in my diary. If I did so it would be transferred to the I.B. The I.B.'s. are not destroyed. I did not record statements. Any notes I had in my diary would be transferred to the I.B. I have no notes of what I did between 5.30 p.m. and 8.45 p.m. and there is nothing to show that I did anything in connection with that inquiry.

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Examination -
continued.

Q. I put it to you that you did not go for any such inquiry? I did go, My Lord.

Q. Is it possible that you were one of the first to arrive at the scene where Kandasamy was assaulted? No, My Lord.

Court: There is ample evidence to have you indicted for fabricating evidence in a murder case I did not fabricate any evidence, My Lord.)

To Crown Counsel: I admit that I did not make one single entry in connection with this inquiry of mine. There is no entry anywhere of the time I reached the spot and what I did and what time I left the place. I am sure that I did not get to Nelliaddy junction by 7 p.m. The headman did not push me away and ask me to come later. No Superior police officer can now know what I did on that day between 5.30 p.m. and 8.45 p.m. except the complainant. He will be able to speak about it. There is an entry at 6 p.m. that Sgt. Pulle had returned after an inquiry into a case of drowning. The constable went at 7.15 p.m. to put out the fire and returned at 11.55 p.m. Five constables went out. I find that Sgt. Pulle had gone with them, but that is not entered in the Out Entry, it is only when he returned it is entered. Now I know that there was one constable P.C.Thamotheram at the Police Station. I cannot say that he was out on any duty. Sgt. Pulle came back at 11.50 p.m. I have been at Pt. Pedro 6 years. I know the villages and I know some of the people, a number of people. I know Subramaniam of Karavetti North, the Headman, but I do not know that he is an influential man. I would call him a headman. To my knowledge I do not know that he is an influential man. He might have some influence. I can not say that at any stage I got evidence that the headman was trying to suppress evidence. I heard rumours to that effect. It was just talk to that effect.

Court: Why did you not record the statements of persons who said those things? When people pass one could hear them talking about it, but if one questioned them they would deny it. I have heard lots of rumours in this case. I realised that evidence was difficult to get in this case, but I did not connect it with the rumours I heard.

I did not know that there were rumours about me. I am not aware that a petition was sent against me. I made a statement to A.S.P. Fernando. It was regarding an allegation that certain witnesses were available and that I put them off and did not get their statements. There was no inquiry.

Court: It was a slip shod sort of inquiry. That is why you say there was no inquiry.

Cross-examined

10 The headman and I were in search of one Chellapan without any evidence against him and there was no evidence against Dhamman when we went in search of him. The V.H. was present with us all the time. I do not know what the headman was trying to do. Instructions were given to me to search for one Chellapan. The Magistrate came to the spot at 7.15 a.m. the next day. S.I. Perera was there. Later I went to the spot. The magistrate was at pains to know whether there was anybody who would come forward and give evidence. Nobody brought it to the notice of the Magistrate that we were looking for certain people. The inquiry was adjourned for 8.12.52, then to 16.12.52 again to 31.12.52. On 23.12.52 certain witnesses were produced by Mr. Allagiyah. During that time I was on leave.

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Re-examined. Nil.

To Foreman. Nil.

No.13.

S. MARKANDU.

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S. Markandu: Affirmed. P.C.2024, Pt. Pedro Police Station. I can speak in English. I am now in the sergeants class. I was attached to Pt. Pedro in 1952. On the 27th November 1952 I was at the Police station in the evening. On the 27th at 5.35 p.m. I was at Alvai North alone. I made inquiries for a missing Certificate of Competence. I did not find it. I returned to the station at about 6 p.m. There is no entry to that

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Examination - continued.

Cross-Examination.

No.13.

S. Markandu.

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Examination -
continued.

effect in my diary. After that I went along with Sgt. Hameen. The reason for there being no entry is because as soon as I returned to the station I was told to go by the reserve Sergeant. I have made no entry in my note book to that effect. I went with him to Nelliaddy cycling at about 6.45 p.m. It was the reserve who told me to accompany Sgt. Hameen and I left round about 6.45 p.m. We got to Nelliaddy junction. From there we did not go anywhere else. We went to investigate an alleged murder case. I am certain about this. My diary was not destroyed. (To Court: The headman was there at that time. By the time we reached the spot the deceased was dead. Normally the diary is entered and initialled but in this case owing to the hurry it was not done. I had gone for an inquiry into a criminal breach of trust case of some bangles on the same day earlier. I cannot remember whether any statements were recorded. I remember I went with Sgt. Hameen. I merely accompanied him but I did not enter anything in my diary. Hameen did not ask me not to write anything. We went on bicycles to this inquiry. By the time we got to Nelliaddy junction it was dark. I had also gone to look for a certificate of competence and we were about three hours on that inquiry. We went to Karanavai North and Alvai North. I accompanied Hameen to the Nelliaddy junction. Before that I had gone on an inquiry. I was asked to go with Sgt. Hameen but I did not record anything as he was conducting the inquiry. As soon as we returned to the Station we were asked to go to Nelliaddi. I went on this C.B.T. inquiry and then went to Alvai North.)

To Crown Counsel: On the way back we did not pass the Nelliaddi junction.

(To Court: In connection with the C.B.T.inquiry I was detailed for duty.

Q. Why then was your diary not entered?
No answer.

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No.14.

V.J. PERERA.In the
Supreme Court
at Jaffna.Prosecution
Evidence.

No.14.

V.J.Perera.

12th March 1954.

Examination.

V. J. Perera: Affirmed. Sub-Inspector of Police attached to Colombo Fort. On the 27th November, 1952 I was at Pt. Pedro. That was my station. (To Court: On the 27th I was attending the Supreme Court Galle and I returned on the 28th morning. On the 28th morning I was aware that there was an investigation going on with regard to an alleged murder. The person in charge of it was Sgt.Hameen. I went to the scene on the 28th November. I left the station at 8.20 a.m. The Magistrate's inquiry was over when I went there. From there I went to the Hospital and I found the Doctor holding the Post Mortem. I returned to the scene again and about 10.30 I went to the Post Office, Nelliaddi. I found that the statement of the Postmaster had not been recorded, it should have been done. I found that S.I. Silva had ordered it to be recorded but it had not been recorded. I knew that a man called Kandappu had telephoned from the Post Office and I went to check up on it. According to the telephone book of the Police Station there is no record of it. It did not strike me to check it up at the time. The Sergeant had done nothing to trace Sinatchi. I went with the Sergeant and the Headman of Karanavai but I was not able to trace her. The Headman told me that there was no woman by that name in that village.

(Court: Why was not the witness who mentioned her questioned about her and her whereabouts? ... I was under the impression that the Headman would be able to trace her as he should know all the people of his village.

Court: The Headman would know but there was a person who had referred to Sinatchi of Kattawatti, and assuming that she had been living in that village earlier he was the man who should have been questioned. If that woman had been traced you might have solved this mystery The Headman questioned a number of persons in our presence.

Court: Yes, but what was the value of that? You asked the Headman to make inquiries and produce her at the Police Station. Did he come to you with that information? No, Hameen was sent for further inquiry but not for specific inquiry for the purpose of tracing this woman.

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continued.

Court: Kandappu was not questioned and even the Headman was not asked whether he had succeeded in tracing her. She is one of the most important persons for this case.

Court: You knew that the Sergeant was ordered to record the statement Narayan Nair by S. I. Silva. According to S.I. Silva's note he says that Nair was reluctant to make a statement at the scene but he volunteered to make a statement at the Police Station. That was 8.20 a.m. on the 28th. At that time Silva had ordered that he should be taken to the Police Station and his statement recorded. His statement was not in fact recorded till 4.15 p.m.

Court: Did you look into that matter? That man was taken to the Police Station in the morning and did not make a statement till 4.15 p.m. You must have been feeling very sleepy after your return from Galle. After your long train journey lots of things have happened.

(To Court: I know that the man called Chellappan was arrested on a vague suspicion by the Headman.

Court: He was kept in the Police Station for 36 hours, released and asked to come the following morning? He was arrested on the 29th at 7 p.m. My Lord. The entry looks like p.m. to me and not a.m. He was arrested by Subramaniam at 6 p.m. on the 29th.

(To Court: Sellappan was arrested on the 29th November at 6 p.m. He was in Police custody till 7.10 p.m. the 30th November. He was not produced before the Magistrate because that day was the cyclone day and people were pushed away and I was busy in giving assistance to the people. I was helping them. Number of Police officers were out on that day. There was a Police Sergeant besides the reserve P.C. at the Police station. In the routine information there is no record as to the release of the arrested man. Sellappan was arrested without any evidence.

Sellappan was released after more than 24 hours from the time of arrest and no report was made about him to the Magistrate. There is no note of that fact either in the crime file or in the information book. On the 1st of December 1952, I went to the house of one Arumugam, a brother of the deceased at 5.10 p.m. I went to his house in order to find out whether the deceased had any trouble with any one and whether they suspected

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anyone. I have made a note that they denied having known any information. Immediately after that I made a note that they did not suspect anyone yet. They said they could not give me information at that time.

10 Q. Is it that they were reluctant to tell you or that they had no information to give you? They had no information to give me at that time. Up to that they had no suspects. Immediately below that I have made a note that I met the informant at 5.30 p.m. at Karaveddy. I have also made a note that he heard that some Malayalees had done this crime and it is only a rumour.

20 Q. Why did you not record the statement of the informant? Why did you not take down his name when he gave you the information? What is meant by this rumour which is mentioned all over the information book? A. The informant said that some people were talking about it. I knew that I have got to check up and see whether that rumour was good or bad. If there is a rumour it must be investigated. If I allow these rumours uninvestigated they might become facts. I instructed the informant to find out the people who saw this incident. I did not ask the informant the names of the people who told him about this incident. I did not ask him as to where did he get the information from. Although I had no evidence against him I have made an entry that I went to Karanavai South and searched for one Tharuman. I knew that Tharuman was a person who knows what is happening at Nelliady or who is also at the Nelliady junction. The fact that he could always be seen at Nelliady junction is also a rumour. I say the rumour was that Tharuman knew something about that crime.

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Q. You know that Arumugam's position is that he knew something about the incident before 5.15 p.m. 29th November and the assailants too? No answer.

40 On the 28th November the Police had no information about the assailants. On the 30th November also we had no information about the assailants. I ordered the Sergeant to record the statements of all the boutique keepers and car owners at the scene. I made my order on the 1st of December and not on the 28th December.

Q. Why was there no order up to the 1st December to record the statements of the boutique keepers? No answer.

Q. The suggestion is put that the Police did not

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continued.

want to know who the assailant was? What have you got to say to that? A. No. I made an order on the 1st December 1952 ordering the P.S. Hameen to record the statements of all boutique keepers and car drivers at the scene. I was away up to the 6th of December. After coming back I did not see whether Hameen had recorded the statements of the boutique keepers because Alagiah had come and I thought he would look into it. Alagiah came to the station on the 7th December. I did not have anything to do with this case after the 6th of December. I now know that up to now the boutique keepers statement had not been recorded. Sahotharam Sinniah's statement was not recorded at any stage. At the time I was conducting investigations. I do not know that there was a man called Maniam who is a car driver and found always at the Nelliady junction. I had asked Sergeant Hameed to record the statement of car drivers. Up to now I do not know whether driver Subramaniam's statement was recorded. I had nothing to do with this case after making that order on the 1st of December 1952.

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To Crown Counsel: Nil.

To Mr. Balasundaram: I went to the scene day following the incident. Sellappan's statement was recorded shortly after 7 p.m. on the 29th December. He was under the Police custody after recording his statement. As there was no evidence against him he was not produced before the Magistrate. I went to the house of Arumigan and Sinniah, the brother of the deceased on the 28th November 1952. I met the informant at Karaveddy. The informant's house is about a mile away from the deceased's brothers house. I went to meet the informant. S.P.C.C. and Sergeant Hameen gave me the name. That was in the morning of 28th November. After receiving the information from Sergeant Hameen I went to one Kathirgamar, the informant - his house is at Karaveddy. The informant said that some Malayalees were the assailants. I did not ask him the names of those Malayalees. Sergeant Hameen pointed out to me the house of the informant. I asked the informant the details of the incident and about the assailants. He said that he did not know and what he told was a rumour. He was reluctant to give the names of those people. I cannot say why Arumigan was not further questioned till 29th November 5 p.m. I was not present

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10 at the Magisterial inquiry - I did not know whether Arumugan and his brother were present at the Magisterial inquiry. In fact I did not know that deceased had two brothers. I went to the scene on the 28th at about 9 or 9.30 a.m. Magistrate was not there. Sergeant Hameen was there. I did not see the brothers of the deceased. I did not know that he had any relations. At 5.10 p.m. Sergeant told me and I knew that deceased had brothers living at Nelliady.

Q. Witnesses say that they informed Arumugam on the 28th November? No answer. Those three entries of yours in the information book are highly suspicious.

No.15.

Court Calls: W. P. A. FERNANDO

20 W.P.A.Fernando: Affirmed. A.S.P. Chilaw.
In 1952 I was at Kankesanturai. I led evidence before the Magistrate. I led evidence on the 8th of December before the Magistrate with Mr. Alagiah. Soon after the 6th of December petitions were sent in this connection, to the I.G.P. and they were forwarded to me through the S.P.N.P., and so I took up inquiry. I saw the information book and I noticed in that a telephone message which was sent was not recorded in the telephone register of the Pt. Pedro Police. The Postmaster was able to identify the person but was unable to give the name of the person but later knew that it was one Kandappu. The Headman had sent a telephone message to the Police at 7.45 p.m. and it was received at the Police Station at 7.22 p.m. I noticed that 30 Kandappu in his statement mentioned one Sinnachi. I did not find out why she was not found out because they said they were unable to trace such a person.

40 To Crown Counsel: The A.S.P. in charge of the investigation at the end of it is expected to submit a report to the S.P. I submitted a report to the S.P. I did not investigate the case but I sent the report. I knew that there were a number of petitions in connection with this case. I have a

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continued.

copy of the report I sent to the S.P. in this case. It is dated 29.1.53. In that report I did not mention anything about one Sinnachi. I left Kan-kesanturai in July 1953. That is the time when this case was committed to trial. At the inquiry I did not lead the evidence of P.S.Hameen. I was informed that the evidence of the Headman and some other witnesses are to be led. That is the persons who were mentioned in Arumugam's petition. I did not question any of those witnesses. I thought the Headman might have made his observations.

Q. Why was not Kandappu recalled - he was a man who gave evidence in the original inquiry? A. No answer. I received petitions against Police Officers and against the Headman and inquiries were held in that connection. Some of the petitions were sent to the Sub-Inspector for report. I made a note that I held private inquiries in regard to those petitions. (Marked XI petition sent by Arumugam) On the 6th of December a petition was sent to the Sub-Inspector for report. On the day I led evidence Arumugam and Sinniah were produced to give evidence to the fact that they identified the dead body.

Q. You did not seem to have paid any attention to the phone call of Kandappu? No answer. On the 8th December I led evidence in the Magistrate's Court. That day only evidence led was the evidence of Dr. Vythilingam. Then Police moved for a date on the ground that they had not concluded the inquiries and it was postponed to 16.12.52. On that day Sinniah and Arumugam gave evidence to say that they identified the body of the deceased. They were not asked anything else on that day. Then it was postponed for 31st of December 1952. Then on the 23rd all of a sudden without issuing summons three witnesses were produced on the 23rd and they gave evidence. It being a non-summary proceeding the witnesses were brought by the Police and led evidence. On the 8th of December the other witnesses i.e. Sinniah and Murugesu were not asked anything else except identity. I cannot explain to that. The necessity for producing the witnesses on the 23rd of December whereas the inquiry was fixed for 31st was in order to place evidence as early as possible. I do not know whether they were produced at the Police station before the inquiry. I looked into the information book and all the papers connected with this case.

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Q. Who prepared the I.B. extracts to be sent to the Attorney General and to the Magistrate?

Q. Did you not notice there that attempts had been made to suppress certain statements? A. No answer. A series of petitions went to the I.G.P. and they were forwarded by the I.G.P. to the S.P.N.P. and he forwarded it to A.S.P. Kankasanturai and I forwarded it to Sub-Inspector, Alagiah, Point Pedro for report. Several reminders were sent regarding those petitions by the A.S.P. to the Sub-Inspector Alagiah, and he after delaying them had replied that he looked into the matter and it was all false.

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In the Supreme Court at Jaffna.

Prosecution Evidence.

No.15.

W.P.A.Fernando. 12th March 1954.

Examination - continued.

Court Calls:

No.16.

ELIYATHAMBY ARUMUGAM VELUPILLAI.

No.16.

E.A.Velupillai.

12th March 1954,

Examination.

Eliyathamby Arumugam Velupillai: Affirmed. 45 years. Postmaster, Karaveddy. on the 27th of November I was Postmaster Karaveddy. At about 7 p.m. a person whom I do not know came to the Post Office and wanted to book a call to Point Pedro Police Station. He wanted to telephone the Point Pedro Police. I got No.23 myself and gave it to him. He had a conversation with the Police. It was about 7 p.m. (Shown Kandappu) I cannot definitely say whether he is the man. At that time I was unable to identify him well. I had seen this man before. He is a boutique keeper at Nelliady junction and I was waiting for the bus when I saw him. He paid the full fees for the call. Normally we charge the disturbance if the call is booked after 6 p.m. If any subscriber (anyone from any boutique wants to book a call he has got to book through the Karaveddy Post Office) wants to book a call he has got to pay for it. (Telephone register marked X3). This is the register where the names of people who book a call are entered. That is the calls for which money is paid. There are two books, one for private calls and one for subscribers calls. On the 27th night I have a note that I have recovered disturbance fees for two calls after 7 p.m. For the whole day on the 27th I have recovered fees (disturbance fees) only for two calls. On the 27th here is an entry that is Subscriber No.5 - Sithamparapillai of Nelliady

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In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.16.

E.A.Velupillai.
12th March 1954.
Examination -
continued.

had booked a call at 7.46 p.m. to 23. (The time marked as 7.46). There was another call at 7 p.m. 23 - that is also booked by Sithamparapillai. The call at 7.46 p.m. is booked to 23 - Police Station, Point Pedro.

Q. Was there a message sent from Sithamparapillai's house that night? A. There was one at 7.30 to Chengaladdy, Batticaloa. There is no other call booked that day. We don't charge disturbance fees for calls booked within 15 minutes of the first call. In that case even if there was any other call booked within fifteen minutes it would not have appeared in this register. There is a separate register for it. I cannot say from this book whether there was no other call round about 7.45 p.m.

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We charge disturbance fees for the first disturbance. The earlier disturbance was at 7.30 for a call to No.23 - it was a disturbance by a tamil manto 23 and I charged him for that. I am even new at the Karaveddy Post Office. I think Nelliady is a bad place. (Witness reads the entries made in the register regarding the books of trunk calls) One entry is made at 7.30 p.m. and the other is made later. There are two books for entering trunk call entries. One register is maintained for the subscriber's calls and the other for the private calls.

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Q. Why did you not tell the Clerk of Assize so? A. No answer. Some of the entries made on the subscriber's register are my entries. (Subscriber's register marked X4).

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Q. Why did you tell the Clerk of Assize that you have only X3 and the other records have been destroyed?

Q. Did you tell the Clerk of Assize about the other register? A. I have one register which has entries relating to disturbance fees collected.

Q. This is a subscriber's book, Point Pedro 24 someone else had written below? A. That is the charge for all those calls on that day. First I wrote 23 and later I made it 24. The fees also had to be altered later. I have written 70 cents for that because it was a call made after 19 hours. That is in respect of 45 cents. After 9 o'clock disturbance fee is 50 cents. I made it as 45 cents, that is 25 cents disturbance fee and 20 cents for the call, then I wrote 70 cents. I made that

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alteration immediately. The addition also was wrong. In the summons issued on me I read it as call up register. (Summons issued on Postmaster marked X5) I have also the time of disconnection of the call. The call to 23 was put through at 19.46 i.e. 7.46. I have altered that also, that is the time of disconnection. The figure written was not correct. Instead of writing one figure I wrote another figure. I am unable to account for that. The addition of the day to day collections in respect of the trunk calls is done daily - but there is no hard and fast rule that it should be done day to day. We have a register where we enter the total collections for the month. For the daily collections we have a bill form to enter on it. Each days collections are entered in a loose leave paper. I cannot say whether those papers had been destroyed.

No questions to Defence Counsel.

20 No questions to the Jury.

Adjourned for the day.

15th March, 1954.

No.17.

B.A.M. MUDIYANSE.

B.A.M. Mudiyanse: Affirmed.

To Court: P.C. 5002, Pt. Pedro. I cannot speak in English as I have only studied English up to the 4th standard. On the 27th November 1952 I was attached to the Pt. Pedro Police Station. On that day in the evening I was reserve constable at the Police Station. I assumed duties at 6 p.m. There is a Telephone Register kept at the Police Station. Between 7 p.m. and 8 p.m. that day I was the only officer on duty. Whenever I send out any officer for an inquiry I initial their diaries. I came to the Police Station from the barracks at 6 p.m. I cannot now remember whom I relieved, but it was some other Police constable. I did not send P.C. Markandu on any mission. If any police officer has to be sent out on an investigation it would be done by me. If Sgt. Hameen came in from an inquiry he would make the entry himself as he was the

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Supreme Court
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Prosecution
Evidence.

No.16.

E.A.Velupillai,
12th March 1954.

Examination -
continued.

No.17.

B.A.M.Mudiyanse.

15th March 1954.

Examination.

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Supreme Court
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Evidence.

No.17.
B.A.M.Mudiyanse.
15th March 1954.
Examination -
continued.

Officer-in-Charge. If he went out on an inquiry he would make the entry himself and if he required the assistance of another constable he would make the necessary entry, and he would select the constable he wanted. When he got back he would make the entry to that effect and with regard to the return of the constable he took with him too he would make the entry. If he ordered me to make an entry I would make it but not otherwise. On that day between 7 and 7.30 p.m. I received a telephone call. It was from the Village Headman of Karavetti North. I received no other telephone call. I am unable to say that the V.H. of Karavetti North did not send me a telephone call between 7 and 7.30 p.m. that day.

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Court: We have got the time at which the V.H. telephoned and in your own interests you had better know something about it. According to the time at the Post Office he telephoned at 7.45 p.m. and he himself says he telephoned at that time and not between 7 and 7.30 p.m. According to my Register he telephoned at 7.22 p.m.

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Court: Do you think that the telephone message he sent you at 7.45 p.m. could have reached you at 7.22 p.m.? Impossible.

Q. Do you still say that the V.H.'s message reached you at 7.22 p.m.? According to the time of the clock at the Police Station that was the time. I am unable to say anything with regard to the time, but that was the time of the Police Station clock at the time.

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Q. How is the time of that clock set? When the clock stops we used to inquire for the time from the Post Office and set it. In those days the time was not checked every day but now that is done.

Court: That explanation may wash with some villagers. Assuming that your clock was wrong, tell us did you receive a telephone message sent by one Kandappu? I did not receive a message but the telephone rang and when I took it up there was no reply.

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Court: Were you ever questioned with regard to this telephone message sent by Kandappu? No.

Q. No Police Inspector or Police Officer questioned you about this? A.S.P. Attygalle questioned me about it the day before yesterday. Nobody else questioned me before that.

Court: You know that S.I.Perera had checked with the Postmaster at Karavetti to find out whether Kandappu had sent a telephone message? I do not know that.

10 Court: The V.H. says he arrived at the scene after the man had been assaulted. Can you tell us how you came to record the V.H's. statement in this way. "Man is being assaulted..."? That is how the message was given to me. I can write well.

Court: Do you want us to believe that you have only passed the 4th standard in English? Yes, My Lord. (The witness is asked to mark on the Telephone Register the entries made by him in red pencil and those not made by him in blue pencil.)

20 Q. Who has entered the telephone message in blue on p.45? ...

It is entered by Thamotherampillai. I was on duty till the following morning. It is my duty to enter all telephone messages received while I am on duty. I did not do so in this instance because Thamotheram was senior to me and as I had to inform the A.S.P. about this I asked him to make the entry as my handwriting was not good enough. I say that my hand-writing is not good.

30 (The witness is directed to write down the sentence "Man is being assaulted by some unknown persons" on a piece of paper. Marked X6).

Q. Do you say this hand-writing is not good enough for the A.S.P. for a message sent to him? Sometimes another person may not be able to read my hand-writing. I have not passed the qualifying examination in English. The 2nd blue entry is by Sgt. Hameen.

40 Q. Why did you not enter that? That is the entry made by the officer in charge after checking the telephone register in the morning.

Q. That is the 3rd entry. I am asking you about

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B.A.M.Mudiyanse.
15th March 1954.
Examination -
continued.

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B.A.M.Mudiyanse.

15th March 1954.

Examination -
continued.

the 2nd entry? That entry too is by Thamptherampillai. I got him to make as it was on a matter of murder and thinking that I would make a mistake I asked him to take it down. I cannot remember whether Thamptherampillai was on duty at the Police Station that evening. On the opposite page the message is from the V.H. of Karavetti North to Pt. Pedro. The writing in black ink underneath is mine. I wrote it at the time I received the message. I am unable to say whether there is any mistake in it and I do not have sufficient knowledge to say whether there is any mistake. At the time the Officer-in-Charge was not in the Station. I had no officer to send to the scene of the assault. I knew that the Nel-liaddi junction was a bad place, and that there had been murders there.

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Q. Why did you not inform Velvettithurai Police about it?

I was expecting a few constables who had gone to put out a fire to come back, and in the meantime Sgt. Hameen arrived. It did not strike me to inform Velvettithurai to send someone. I did not know where Sgt. Hameen had gone. Had he got late to return I would have got a senior officer to issue orders. I was aware that Sgt. Hameen was not in the Police Station but I was not aware where he had gone. It was I who detailed the constables to go out and help to put out the fire, and I know that Sgt. Hameen was not one of them. I knew he was not on duty. When I took over duties as reserve I did not have the time to find out from the books where the officers were. When I received the telephone message I was going through the books, to find out where he was, and then he arrived. From 7.22 I was looking into the books to find out his whereabouts. I received the message at 7.22 p.m. and there was no one at the Police Station. I did not know where Sgt. Hameen was. As I was looking through the books he arrived. I had been looking at the Information Book for about 10 minutes, and then Hameen arrived. If the telephone message was at 7.22 and I was looking at the I.B. for 10 minutes it would not be correct to say that he came in at about 7.32. He arrived at 8.30 p.m. I had looked into the Information Book for about 10 minutes and put it away, and after some time he turned up. I said that I was looking at the I.B. when the Sgt.

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arrived. If that statement is correct Sgt. Hameen should have been in the Police Station by 7.32 p.m. The diaries of officers are on their persons. After an officer has used up his diary it is kept in the Strongbox. I am not aware where Sgt. Hammen's diary is now. I did not know that Sgt. Hameen was making any inquiry at Karavetti that evening. I only know that he turned up at the Police Station and I gave him some information and he went to Nelliaddi junction. Against the telephone message from the Village Headman I have entered, "As I have sent all p.c.'s. to the scene of a fire I instruct the V.H. to dispatch the injured man to hospital till I get orders from the O.I.C. to send someone for the inquiry." At the time I made that inquiry I did not know where Hameen was. I did not look into the R.T.B. at the time. I tried to find out but I was not able to do so because it was not possible for me to read the handwriting in the book.

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Court: Which book? In the Routine Information Book. I cannot remember whether there was an entry or not.

Court: Can you state whether after looking into the R.T.B. you could have said where Sgt. Hameen was? I could not find out. I did not look at the Petty Complaints I.B.

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Court: Which statement of yours is correct? That you were looking into the I.B. for ten minutes to find out where Sgt. Hameen was and while you were looking into it he returned.....? It took me about 10 minutes to look into it. Sgt. Hameen was not there at the time and he returned a little later. I cannot say at what time he came.

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To Crown Counsel: In November 1952 there was a Police Constable No.2660 at the Pt. Pedro Police Station. He did not go out in connection with the fire. He was not at the Police Station. He was out and I searched for him everywhere. It was I who sent out the constables to the fire. I sent out all who were in the barracks. I did not send out No.2660. When the telephone message came I looked for any off-duty constables. All who were present in the barracks were sent to the fire. I sent all available constables to the scene of the fire.

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B.A.M.Mudiyanse.
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continued.

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B.A.M.Mudiyanse.

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Examination -
continued.

Cross-
Examination.

Court: Do you know the seriousness of the answers you are giving? I am going to give you an opportunity for your own good. Is it not a fact that you received Kandappu's message first? I received a message only from the V.H.

Cross-examined by Mr. Balasunderam:

I knew it was a message from the V.H. because I inquired from whom it was over the telephone. I informed the headman to take the injured man to hospital. I wrote that immediately after I received the message.

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To Court: I am still attached to Pt. Pedro. The Inspector now is S.I. Marso. I have been a constable for 3½ years. Sgt. Hameen is an experienced officer. If he gave me an order I would carry it out.

Court: Anything that you have done in this connection do you take the responsibility for? No one else guided you in this matter? You are responsible for what you have done? Yes.

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Court: You will go into Fiseal's custody at once.

No.18.

No.18.

M.Arumugam.

M. ARUMUGAM.

15th March 1954.

Examination.

M. Arumugam: Affirmed. 45, goldsmith, Alvai South. I am the brother of the deceased Kandasamy. On the 28th November 1952 I identified the body of my brother at the Post Mortem Examination. I live at Alvai South, 3½ miles from the Nelliaddy junction. My brother the deceased was living at his sister's house at Alvai South. That house was 60 - 70 yards from mine. I was at my place on the evening of the 27th November. I was at home and I did not go out. On the night of the 27th I received no information at all about my brother. (To Court: I did not get any information. I discovered that my brother had been killed at the Nelliaddy junction. That was the following morning about 6 a.m. I proceeded to the spot. I

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found the V.H. of Karavetti North, the Udayar and two Police constables there and a number of other persons. I know Police Sgt. Hameen. He was not one of the officers there. There was no Police Inspector. The Magistrate recorded my statement the following morning. Before the Magistrate I was asked whether the deceased was my brother. The Post Mortem Examination was held by the Doctor at the hospital later.

10 I did not give any evidence before the Magistrate the following morning.

20 To Court: I identified the body of my brother the deceased at the post mortem before the D.M.O. I was able to find out the assailants of my brother on the following day about noon after the body was brought from the hospital. Nobody was arrested in this connection up to that time. On getting the information about my brother's assailants, I went to the Police Station with P.C. Markandu whom I met at his compound on my way to the Police Station. P.C. Markandu spoke to a Police Sergeant (whom we met) on our way to the Police Station. I told P.C. Markandu about the information I got. No statement of mine was recorded on that day. (Shown Police Sergeant Hameen) This is the sergeant to whom P.C. Markandu spoke. After speaking to the sergeant P.C. Markandu spoke to me. My statement was not recorded that day; I went away. A Police Inspector did not come to see me on the day of my brother's funeral. Nobody questioned me on the 29th. My statement was not recorded at any time by any Police Officer.

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40 Cross-examined: I have some experience in court work. I have been to gaol three times: firstly, in a D.C. Criminal case for one year for rioting, unlawful assembly and grievous hurt, about 20 or 22 years ago; secondly, for 2 years, in the Magistrate Court of Point Pedro in 1936 for stabbing; thirdly, in the Supreme Court of Jaffna I was sentenced to five years R.I. for attempted murder, about 5 or 6 years back. My brother the deceased has not been to gaol eight times. On the day following this incident I was present when the Magistrate recorded statements. It is my position that Sub-Inspector Perera did not come to my house on the day of the funeral at about 5 p.m. On the 28th I went to P.C. Markandu's house. I had confidence in P.C. Markandu. No police officer turned

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continued.

Cross-
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15th March 1954.

Cross-
Examination -
continued.

up at my house on the 28th. On the 16th of December, 1952 my evidence was recorded at the Magistrate's Court of Point Pedro. On that day apart from testifying to the identification of my deceased brother I did not say anything else. The Point Pedro Police took the witnesses to the Magistrate's Court on 23rd December from my house. All the witnesses were not first brought to my house and then taken to the Court on 23rd December. All the witnesses were first taken to the Police Station.

Re-examined: Nil.
To the Jury: Nil.

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No.19.

B.V.J.Alagiah.

15th March 1954.
Examination.

No.19.

B.V.J. ALAGIAH

B.V.J. Alagiah, sworn, Sub-Inspector of Police, Kankesanturai.

I was the Sub-Inspector of Police Point Pedro on November 1952. On 27th November I was on leave. I went on leave on 25th November and returned on 7th December 1952. When I returned I had information that investigations were going on into a case of murder on 27th November, at Nelliadi. At that stage I took over investigations, i.e. on 7th December. When I took over investigations I read through all the notes of the inquiry up to that time. I noticed that the first information was received at the Police Station at 7.22 p.m. on 27th November.

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Q. Did you also notice that message attributed to the V.H. of Karaveddy North? Yes.

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To Court: Q. In the Information book itself did you see the statement of the V.H.? ... I read that statement.

Q. That was after 7.45 p.m.? Yes.

Q. Did you also see in the information book a statement recorded of one Kandappu? Yes.

Q. According to Kandappu he sent a telephone message to the Police Station? Yes.

Q. Round about 7 o'clock? Yes.

Q. That was supported by the Postmaster's statement? The postmaster could not say who it was.

Q. Do you know that according to the Postmaster a Tamil man came to him at 7 p.m. and wanted to speak to the Point Pedro Police Station and that the Postmaster got the number, 23, that is the Police Station number, and the man spoke to the Police Station? Yes.

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Q. Did you also know that the Postmaster had said that he might be able to identify the Tamil man? Yes, if he saw him again.

Q. What were you going on to say, the Postmaster did not know who it was who gave the telephone message? He did not mention the name of the man.

Q. Was it difficult to find out who it was who sent the telephone message? There was no mention of his name.

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Q. You knew that Kandappu claimed to be that Tamil man reading Kandappu's statement? Yes.

Q. That was checked up by S.I. Perera? Yes.

Q. You did not take the slightest trouble to find out whether Kandappu in fact sent the telephone message? It was not in the telephone register.

Q. And therefore you did not want to find out whether the telephone register was a fabrication or not? It never struck me that it was a false message.

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Q. Did you know the observations made by Headquarter Inspector about Kandappu's demeanour at the spot when he went to the scene? I cannot remember (then, witness looks at the Information Book and says) Yes.

Q. The Headquarter Inspector Nadarajah went to the scene round about 9 or 10 p.m. and he attempted to trace the man who sent the first telephone call? At 11 p.m.

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Q. You had yourself defended the Police Officers right through by brushing aside every allegation against them. I believe at least by the 16th you knew that there was serious allegations against the Police and the Headman and you were the officer who took charge of the investigation into these allegations. Now, tell me, did you read through

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continued.

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continued.

the information entries? I read through it with a view to finding out what evidence there was, not with a view to finding fault with officers.

Q. You remember you wrote strong reports saying the allegations were false? No one came to give evidence.

Q. Why should anyone come forward? In certain petitions I could not even trace the writer. I did not suspect anything which had happened.

Q. I am only trying to find out what inferences you drew when you saw these facts disclosed in the information book itself? I thought they were genuine entries. 10

Q. You thought that it was a genuine entry that Kandappu was a reluctant witness? Yes.

According to the information book Kandappu had sent a message to the Police Station; I was aware of it. But there was no message in the telephone register.

The Police Station clock is checked up every morning; that is one of the important things to be done at the Police Station. I have been at Point Pedro Police for two years. I know the Nelliaddi junction is one of the busiest junctions in my area; a number of vans, cars and lorries stop there. 20

Q. Do you agree that a telephone message has been suppressed? May be.

Q. Now that it is pointed out? ... I am definite. There is not the slightest doubt about it.

Q. Have you the slightest doubt that Kandappu gave a telephone message giving the assailants' names? In my absence I do not know what had happened. 30

Q. I am not saying you suppressed it. I am only asking you as a senior police officer, you could have seen to these things at least when people were making a noise about it? S.I.Perera was acting for me. It is independent of that that I made inquiries.

Q. Kandappu had mentioned the name of Sinnatchi of Kottawatte? Yes. 40

Q. Did you make any attempt to find out whether

Sinnatchi of Kottawatte was traced or not? Entries were made by S.I.Perera. I did not try to find out. There is an entry made on the 28th, "11.30 a.m. made inquiries for the woman Sinnatchi of Kottawatte with the village headman, could not trace her. V.H. does not know her. I ask him to make further inquiries and produce her at the station."

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15th March 1954.

Examination -
continued.

10 Q. That is the end of the search? Yes. I did not try to find out subsequently whether the V.H. had made inquiries and whether he had traced Sinnatchi.

Q. You were quite satisfied that Sinnatchi could not be traced on that entry? That is what I thought at that time.

Q. Did you know that S.I.Silva had ordered Sergeant Hameen to record the statement of Sinnatchi at 8.20 a.m. on 28th November, 1952? Yes.

20 Q. Did you know Sgt. Hameen had made no efforts to trace Sinnatchi or record her statement? He has not done so.

Q. Do you know a man called Narayanan Nayer who was questioned by Sub-Inspector R.S. de Silva was reluctant to make a statement at the scene but was prepared to make a statement at the Police Station if he was taken there? Yes.

Q. That was at about 8.20 a.m.? Yes.

30 Q. Are you aware that S.I. Silva who had to go to The Courts asked Sergeant Hameen to record Narayanan Nayar's statement at the police station? Yes.

Q. Are you aware that the statement was not recorded till 4.45 p.m. although the man was taken to the police station in the morning? Yes, at 4.15 p.m.

Q. That did not raise any suspicions in your mind? I thought he would have subsequently recorded the statement.

40 Q. He says, "I am leaving station as I have to attend courts"? I thought if there was anything he would have personally recorded the statements.

Q. He had noted the importance of these matters regarding the statement of Narayanan Nayar, the tracing of Sinnatchi and the recording of the

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continued.

statement of the Postmaster - all three vital matters in these investigations? ... I never suspected anything because if there was anything S.I. Silva would have taken action.

Q. It struck you as being something very funny?
..... No. Now it has been pointed out I realise there is something funny.

Q. Have you up to date tried to trace Sinnatchi?
..... Without her father's name I could not find the person as there are so many Sinnatchis.

Q. There would be about 10 or 15; is it too much trouble to question 10 or 15? ... without knowing who the identical person was, I could not.

Q. Did you question Kandappu as to who this Sinnatchi he referred to was? No.

Q. Did you ask Kandappu to show the woman to you?
..... No.

Q. Did you notice that Kandappu, according to the information was never asked to point out the woman?
..... Yes.

Q. Did it not strike you as being very suspicious? I am putting these questions to you as you are a responsible police officer. Certain petitions were sent to you containing allegations and you were asked to check on them. Did you or did you not report that according to the information book and according to the entry these allegations are all false in the light of what is in the information book? There was no evidence.

Q. This is all in the information book. How did you come to say that? Think about it and come back after fifteen minutes.

(Interval from 11.30 to 11.45 p.m.)

B.V.J.Alagiah, re-sworn.

I know a man called Chellappan was arrested. According to the entries he was arrested on suspicion.

Q. You did not think anything wrong in that? Without evidence we should not have arrested him.

Q. Did you notice that Chellappan was detained at the Police Station for more than 24 hours without being produced before the Magistrate? I do not notice that.

Q. Did you know that Chellappan was released and

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no report about his arrest was made to the Magistrate according to the information book? Now I know.

Q. That is a very serious matter, is it not?
Yes.

Q. Do you know when the accused's name transpired for the first time? on a statement to S.I.V.J. Perera on the 28th evening at 5.45 p.m.

10 Q. Before that he has made a note at 5.30, "Met Informant. He has heard that some Malayalees had done this crime and it is only a rumour. I instructed him to find out who were the people who were seen and let me know." Then at 5.45 p.m., "made inquiries for one Dharman hearing a rumour that he knows something about the crime." Do you know what a rumour is? By talk.

20 Q. Don't you think that there is something funny. These entries appear after an entry made on the 28th November 1952 at 5.10 p.m., "At the house of the deceased I met two brothers of the deceased and questioned them." Yes.

30 Their statements were not recorded. I thought there was no material to record their statements. A Police Officer must take a note when he questions a man. S.I.Perera should have recorded the statements of the brothers of the deceased. At no time was Arumugam's statement recorded nor was Sinniah's statement recorded at any time. At no time was the statements of deceased's relations recorded. There was an order made by S.I.Perera asking Police Sergeant 1228 to make inquiries and particularly to record the statement of all the people who were in the boutiques at the scene and questions the car- and van-drivers. I know Sgt. Hameen who was given this order completed disregarded that order. I did not notice it at that time, but now I notice he has not done so. It is something funny. Nelliadi junction is a very busy junction. It is crowded especially after 4 p.m. till about 40 7.30 or 8 p.m. or even sometimes later when people are in the market. There are kerosene and petromax lamps in the boutiques and there is plenty of light. There are many cars there, and cars are parked there almost always.

Q. Did it strike to you that it is most extraordinary that the police and the Headman could not trace the assailants? They had not taken immediate action.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.19.

B.V.J.Alagiah.
15th March 1954.
Examination -
continued.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.19.

B.V.J.Alagiah.

15th March 1954.

Examination -
continued.

Q. They had gone to the scene immediately?
They had not taken immediate action to trace the
assailants.

I questioned the woman Thangamma on 19th De-
cember in her house in consequence of certain
statements made by witnesses. This statement was
recorded by me in pursuance of a petition and in-
formation given by the brother of the deceased.
At that time petitions against the Headman were
received. I took the Headman along with me when
I went to see Thangamma. Thangamma did not want
to make a statement without speaking to the Head-
man. Originally, she wanted to consult a lawyer
and then she wanted to speak to the Headman. I did
not allow her to speak, but I made a note that the
Headman was present. At one stage she refused to
make a statement. I told her there was nothing
in making a statement, when she said she must con-
sult a lawyer. Then I only asked a statement of
what she had seen. Then she wanted to see the
Headman, most probably to speak to the Headman.
The Headman was there. She spoke to the Headman
before she made a statement to me.

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Q. You allowed it? Otherwise she would not
have made that statement.

Q. You thought, let us have some sort of state-
ment? I only wanted to find out whether she
was present near the boutique.

Q. You know what advice the Headman gave her? ...
I do not know.

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The Headman did not bring Thangamma to the
Police Station after I recorded her statement. She
never brought her to the Police Station.

Q. The Headman has given evidence and shown us
his diary where he has made an entry that he took
her to the Police Station on your orders the day
before she gave evidence in the Magistrate's Court
on 22nd December? That is never done when
witnesses are brought to the station.

Q. You suggest that is false? That must be
false. I never gave instructions to that effect
to the Headman.

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Q. What do you suggest is the reason for such a
statement to be made by the Headman? Most
probably he must have anticipated that she might
say something.

Q. He wanted it to appear that she consulted you?
..... Yes.

Q. Because he was aware that he was consulted in your presence? Yes.

Q. You suggest that the Headman wanted to make an entry to meet that eventuality of your disclosing that fact? I do not know whether he anticipated anything like that.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.19.

10 The officer who inquires into the case prepared the crimes file, and it is checked by the officer-in-charge. In this case Sgt. Hameen prepared the crime file and he had signed that extracts as correct. I am now aware that in the crime file the extracts contained are only part of the information book entries. Two copies of these extracts are made out of which one goes to the crimes file and the other is given to the Magistrate. In this case, in my absence it was handed to the Magistrate on the day the plaint was filed.
20 I did not attend courts that day due to an accident. I was on leave till 18th December, and I did not have an opportunity of checking it.

B.V.J.Alagiah.
15th March 1954.
Examination -
continued.

Q. Are you aware that the extracts handed over to the Magistrate and which were forwarded to the Attorney General are only parts of the extracts? ... I did not look into it.

Q. It is the same as the one in the crime file?.. Yes. I did not check the extracts sent to the Magistrate.

30 The alleged murder was said to have taken place opposite the boutique of one Sakotheran Sinniah. The boutique keeper is always in the boutique as he runs it himself. His statement could not be recorded as every time I went to record his statement he avoided me. His statement was recorded on 29th of December. On someone's instructions he was avoiding me. He would have been there. Sometimes when I go there I was informed that he has gone to Chunnakam.

40 Q. Sinniah's statement was recorded on 29th January, 1953? No, 29th December.

Q. No, it is on 29.1.53 at 8.10 p.m. Yes.

Q. Until 29.1.53 you looked for him? Yes, he was not there.

Q. Have you a note? Whenever I made inquiries over this murder case, I go there.

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.19.

B.V.J.Alagiah.

15th March 1954.

Examination -
continued.

Q. Have you no note that you looked for this Sinniah? I put these names as suspects because I did not want to put the name in the I.B. thinking that information also would go out to him.

Q. Suspect of what? Murder.

Q. Did you suspect Sinniah of murder? His name transpired.

Q. Did you suspect him of the murder?... I thought he might be knowing something.

Q. Did you suspect him of the murder of Kandasamy? 10
..... At that time I suspected.

(To Court: Q. You suspected Sahotharam Sinniah also to have had a hand in the murder. A. Yes.

Q. Your suspicions still continue? A. There is no evidence to prove that My Lord.

Q. You started suspecting him and later you dropped him as a suspect? Do you still have suspicions on him? A. After I recorded his statement I did not suspect him. My suspicions ceased on at that place. 20

Q. Sinniah made a statement on alibai?... A. Yes.

Q. Did you check his alibai? A. No.

Q. He was suspected at large all the time?
A. Yes.

Q. Why did you not record his statement earlier in time? A. He was never seen at his boutique and I could not get at him. He was avoiding me.

Q. Did you bring it to the notice of the Magistrate? A. As there was no evidence against him I did not bring it to the notice of the Magistrate. 30

Q. Did you record the statement of the other members of Sinniah's house? A. I did not know where Sinniah's house is. I traced for him but could not get at him. On information I was told that he was not in the village. I had made a note to that effect. I never checked the statement made by Sinniah.

Q. Who is this man called Maniam and Subramaniam? A. I have not seen him after the incident. He is a cleaner in a van. He is not in the village now. He had gone to Vavuniya. I sent a Constable in search of these three accused in December 1953. As I was then leading evidence in 40

Court and as there was nothing against him (Maniam) I did not search for him thereafter.

In the
Supreme Court
at Jaffna.

10 Q. According to the evidence of the other witnesses Maniam carried the body of the injured man and put him on the heap of stone? A. Yes. There was only one witness who said so. I moved for a warrant on Maniam in Court but the Magistrate did not allow it saying he would not allow the warrant unless there was some evidence in record against him. That application is not in record. In the course of the ordinary talk I asked that a warrant be issued on Maniam in Court. I did not make an application.

Prosecution
Evidence.

No.19.

B.V.J.Alagiah.
15th March 1954.

Q. Did you ask the Magistrate for a warrant?
A. Yes. Because there was only one witness I did not press for the warrant.

Examination -
continued.

Q. Why did you drag the Magistrate also into this?
A. What I meant was when I was leading evidence in Court.

20 Q. Why did you say that you wanted a warrant to be issued on Maniam and the Magistrate said No?
A. That is not correct.

Q. Maniam has not been traced so far?
A. Yes. No efforts were made recently to trace him. Now I have gone to Kankesanturai Police Station.

Q. This accused was arrested at Vavuniya?
A. Yes. Vavuniya is a place where people from Jaffna go to work.

30 Q. Did you record the statement of the accused after he had been arrested? Vavuniya Police might have got his statement recorded and that would have been in their information book. I did not look into it any further. I was not aware whether a statement of the accused had been recorded. After I came to Court I saw the Police Constable and he said that a statement of the accused had been recorded by the Vavuniya Police. It was in this Court that I discovered that a statement had been made by the accused to the Vavuniya Police.

40 Q. Why did you not look at it at the station itself, that is at Vavuniya? The accused was arrested on 25.3.53.

Q. At the time this case was pending in the Magistrate do you seriously allege that you were not aware of the statement this accused made? ... A. I

In the
Supreme Court
at Jaffna.

Prosecution
Evidence.

No.19.

B.V.J.Alagiah.
15th March 1954.
Examination -
continued.

was not aware.

Q. You seriously say that you did not take the trouble to find out whether this accused had made a statement or not? A. I did not take the trouble to find out whether this accused had made a statement or not. On last Monday (8.3.54) when I came to Court I knew about it. I wanted to find out the exact date of his arrest.

Q. Why, you could have found out the date of arrest from the crime file? A. There was a mistake in noting the date of arrest and that is why I wanted to verify that.

Q. In fact you seriously wanted to find out on which day he was arrested? A. No answer.

Q. Normally when an accused person is arrested the Police have to record his statement? A. Yes.

Q. Why is it that you were not inclined to look into the matter whether the accused statement had been recorded in this case? A. I thought if that accused's statement was recorded the Police Constable might produce it.

Q. Why was it that you were not inclined to look into the statement of the accused in this case? A. It might be an oversight.

Q. The Police Constable who arrested the accused was present and he gave evidence in the Magistrate's Court, Point Pedro.

A. Yes, a Constable from Vavuniya Police arrested him and he produced him at the Magistrate's Court Point Pedro.

Q. Why did you not ask that Constable about the statement? A. I did not ask him.

Q. You made your report to the Senior Officer about this case after the Magisterial inquiry was over? A. Yes. At the end of the Magisterial inquiry on the 30th of June 1953 I made my report.

Q. Where is the report? A. The case was sent back by the Attorney General.

Q. You have not made a report at the end of the case in the Magistrate's Court to your Senior Officer? A. I have submitted a report that the inquiry was over and the case committed to the Supreme Court. The accused's age and antecedents attached.

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Q. The initial and the date 2/5 written is done by the Clerk? Yes.

Q. The antecedent report form and Birth Certificate of the accused from the Village Headman are sent to the D.I. with a report.

Defence Counsel: No questions.

To Jury: Nil.

In the Supreme Court at Jaffna.

Prosecution Evidence.

No.19.

B.V.J.Alagiah.
15th March 1954.

Examination - continued.

No.20.

S. NADARAJAH

No.20.

S.Nadarajah.

10 Sellappan Nadarajah: Affirmed.

15th March 1954.

P.C.116 attached to Vavuniya Police. On information received I arrested this accused on 25.3.53. I arrested him and recorded his statement. After arresting he was remanded and was produced in the Magistrate's Court later. After arresting him I put him under lock up. Sub-Inspector Vavuniya remanded him to be produced before the Point Pedro Magistrate. Then his statement was recorded. Later a relation of his came and identified him. The person who came and identified him was a relation of his. That identification was done at the Vavuniya Police Station. A Police Constable from Point Pedro brought the relations of the deceased to Vavuniya Police Station. An extract of the statement made by the accused was sent by Vavuniya Police by post to the Police concerned. That was not returned to us by any chance saying that all the Police Officers from Point Pedro were away at that time, or had disappeared.

Examination.

30 Cross-examined: To Defence Counsel: I was not personally aware of the number of people and who they were who came to identify the accused with a Police Officer from Point Pedro. I was not on duty at that time.

Cross-Examination.

To Crown Counsel: Nil.

To Jury: Nil.

In the
Supreme Court
at Jaffna.

No.21.

B. V. J. ALAGIAH (Recalled)

Prosecution
Evidence.

Court re-calls Alagiah:

Q. You heard the evidence of the last witness? ..

A. Yes.

No.21.

Q. Was an extract of the statement made by the
accused sent to the Point Pedro Police or not?

..... A. It could have been sent. In ordinary
course of business it should have arrived at the
Point Pedro Police Station. That statement was
not found in the crime file. I did not look for
it.

B.V.J.Alagiah.

15th March 1954.

Recalled.

Q. Why? No answer. Because it was the
accused statement I did not pay much attention to
that extract. I was in charge of the prosecution.

Q. Who would have got this statement?

A. Some one in the station.

Q. Who opens the letters? A. When I am in
charge of the station I personally open the mail.

Q. During the relevant period who was in charge
of the station? A. Sub-Inspector Perera and
Sergeant Hameen was there.

Q. After meeting that Constable on last Monday
and after hearing that the accused had made a
statement, did you look in that matter?

A. Then I looked for the statement at the crime
file. Then I became suspicious. I thought that
there had been suppression of certain statements
I found that certain other papers were also mis-
sing from the crime file.

Q. Did you bring them to the notice of the Super-
ior officer? A. The Crime file was brought
from Point Pedro Police. I did not bring this
matter to the notice of the superior officer. It
did not strike me.

Crown Counsel: No questions.

Defence Counsel: No questions.

(Court directs the jury that there is no evidence
against the accused and in considering the case as
a whole it is not a case for a full trial. Court
directs the jury to bring in a verdict of not
guilty of any offence against the accused).

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No.22.

VERDICT AND ADDRESS TO ACCUSED

Verdict: Unanimous - not guilty of any offence.

Court to accused: The Gentlemen of the jury did not wish to proceed with this case any further. I have not the slightest doubt that you are the man who killed the deceased along with two others. You did not want the deceased to live in this country. You had with the assistance of the Village Headman and the Police suppressed the evidence. Not even the full facts of the case were brought to the notice of the Attorney General and the fact that you had made a statement had not been brought to the notice of the Attorney General. You are a despicable man. After the deceased had been seriously injured you left him on the road and you left, and you left the Headman to come and suppress evidence. You may escape but this country will be made safe. Every one of the witnesses who helped to suppress the evidence in this case is not going to escape. There were apparently people who wanted to have this man killed. He might have been a bad man. You have a bad record on having in my opinion killed the man. Your name transpired immediately after this incident, when evidence was suppressed. You may go.

In the
Supreme Court
at Jaffna.

No.22.

Verdict and
address to
accused.

15th March 1954.

No.23.

ORDER AGAINST WITNESSES, B.V.J. ALAGIAH and OTHERS

Court: calls Sub-Inspector Alagiah, Police Sergeant Hameen, Police Constable Mudiyanse, S.K. Subramaniam Village Headman, Karaveddy North, Thamgammah wife of Sinnathamby and Ponnambalam Kandappu and orders that Sub-Inspector Alagiah be allowed on personal bail and all the other witnesses be remanded till 9.30 a.m. tomorrow.

Order against
witnesses.
B.V.J. Alagiah
and others.

15th March 1954.

Court informs the Crown Counsel to consult the Attorney General, if he likes and to file indictment against all the witnesses mentioned above.

In the
Supreme Court
at Jaffna.

16th March 1954

The witnesses remanded yesterday are produced in Court.

No.24.

No.24.

COUNSEL FOR S. THANGAMMAH.

Counsel for
S.Thangammah.

The witness Thangammah is called.

16th March 1954.

Mr.Allagu Subramaniam instructed by Mr.K.Alaga-
lingam appears for her.

Court: Are you aware of the evidence she gave in this Court? Yes. Are you aware of the statement she made, denied and admitted later?.... Yes.

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Are you aware of the evidence of the other witnesses? Yes. If you wish I will give you an opportunity to look into her evidence before I deal with the matter. In my opinion her evidence is utterly false. She was one of the persons who was present at the scene of the assault.

Mr. Subramaniam: At the moment I want to claim your Lordship's clemency. She is an ignorant woman and does not know the difference between right and wrong. She has been under the influence of higher officials, and she is genuinely ill. Here she has been in Crown Counsel's chambers and she has been fairly comfortable and her husband has been bringing her food. She is now repentant and I would ask for Your Lordship's clemency.

20

Court: She had ample opportunity to show that in the witness box? She probably did not know that she was doing wrong.

Court: This kind of evidence cannot be treated lightly. The witness is asked whether she has cause to show why she should not be punished for giving false evidence in this Court. She states: "I have no cause to show."

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Court: Are you submitting a medical certificate?

Mr. Subramaniam: Yes, and if necessary I will call a Doctor to speak to her state of health.

Court: Really this is a case where I should deal

with her under the Oaths Ordinance.

Mr. Subramaniam states he will produce a certificate tomorrow and asks for Summons on Dr. Tham-bithurai

Allowed. The witness is remanded till tomorrow.

In the
Supreme Court
at Jaffna.

No.24.
Counsel for
S.Thangammah.
16th March 1954
- continued.

No.25.

COUNSEL FOR P. KANDAPPU

The witness Kandappu is next called before the Court.

10 Mr.T.Ganeshalingam instructed by Mr. C.Subramaniam appears for him.

Court: Are you aware of the evidence, Mr. Ganeshalingam? No, My Lord.

Court: Would you like to have an opportunity of looking into the evidence? Yes, My Lord. I would like to look into the evidence and I would like to have time till tomorrow morning. Time is allowed till tomorrow and the witness is remanded till then.

No.25.

Counsel for
P. Kandappu.

16th March 1954.

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No.26.

COUNSEL FOR B.A.M. MUDIYANSE

The witness Mudiyanse is called before Court.

Mr.Amirthalingam instructed by Mr. Visvanathan appears for him. Mr.Amirthalingam states that he wishes to have time till tomorrow to look into the evidence given by the witness.

Court: Outlines the case against him.

He is given time till tomorrow and remanded till tomorrow morning.

No.26.

Counsel for
B.A.M.Mudiyanse.

16th March 1954.

In the
Supreme Court
at Jaffna.

No. 27.

COUNSEL FOR Z. HAMEEM.

Sgt. Hameem.

No.27.

Mr.Amirthalingam instructed by Messrs. Navaratnam and Visvanathan appear for him.

Counsel for
Z. Hameem.

Mr.Amirthalingam makes the same application as in the case of the previous witness. He further moves for bail in this case.

16th March 1954.

Court: I am very sorry I cannot allow it. With Police Sergeants like this no member of the public is safe. 10

Mr.Amirthalingam: I would like to have an opportunity of looking into his note book which has been produced. I understand that there are certain entries in it which would be relevant to his defence.

Court: I have seen the entries. If you think they will be useful you may have access to it. As at present advised that notebook is another fabrication.

The Sergeant is remanded till tomorrow. 20

No.28.

No.28.

Counsel for
S.K.Subramaniam.

COUNSEL FOR S.K. SUBRAMANIAM.

16th March 1954.

The witness S.K.Subramaniam is brought before the Court.

Dr.Colvin R.de Silva instructed by Mr.Kadirvel appears for the accused.

Dr. de Silva. I have cause to show but before that I would like to know on what precise points Your Lordship has formed Your opinion on that the witness has given false evidence. 30

Court: In my opinion the whole of his evidence is false. If you read the evidence you will find the various points set out.

Dr.de Silva: Your Lordship's Court is both in the position of Prosecutor and Judge, a position which the Code puts upon Your Lordship. I would like to ask what precisely are the matters, and on what footing I have to go. I would like to be clear whether we have to show cause on the footing that our evidence has been in conflict with other evidence or with ourselves.

10 Court: I was only trying to save time, but in the evidence of the witness in Court point by point has been brought out. I am not acting on his evidence as against that of others, I am only taking his evidence into consideration.

20 Dr.de Silva: I would like to press for bail in this case and may I submit my reasons. One of the very material sets of facts which can arise in respect to this Headman's plea is the evidence of Mr. Allagiyah, the Sub-Inspector. He is already out on bail and my submissions are not intended to enter upon that fact, nor do I seek to suggest that he should not be allowed on bail on which he has been enlarged. Especially so in view of the fact that one of the matters which is bound to affect Your Lordship's mind in the estimate which Your Lordship formed of this witness is the conflict which he has got into in respect of the witness Than-gammah.

30 Court: I am not taking that matter into consideration at all. I will get all these matters out of my mind. It was for that reason that yesterday I was wondering whether the best course to adopt in this case was to ask the Attorney General whether he would present an indictment against all these witnesses for suppressing evidence and fabricating false evidence, but that might involve delay, and taking several matters into consideration I thought this would be the best course of action.

40 Dr.de Silva: My client should be sufficiently free to get ready his defence. One of the matters I may have to place before Your Lordship is that once an attack upon the prosecution develops in a certain way early in the case a witness like Mr. Allagiyah and other police witnesses would have had to make a decision themselves, as to the position they would have to take in defence of themselves, because they would have noticed that they were going to face trouble. Therefore, certain matters

In the
Supreme Court
at Jaffna.

No.28.

Counsel for
S.K.Subramaniam.

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- continued.

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Counsel for
S.K.Subramaniam.

16th March 1954

- continued.

that would come before Your Lordship would tend to develop in a certain way early in the case and be placed before Court so that the details of the evidence on which my client is held to be a false witness will necessarily affect Your Lordship's mind. It will be, perhaps, necessary for me to place before Your Lordship a fuller view of certain facts in so far as they appertain to his evidence.

Court: I think there are sufficiently serious matters in his own evidence. For instance the position so far as this witness was concerned was that the injured man was found not in his jurisdiction but in the jurisdiction of another Headman. When he was asked why he did not inform the other Headman he said he had informed him and that he had sent a letter to him. There is evidence that that Headman was on the scene. The witness said that the letter he sent was in his file at one stage, but when he was sent with a Police Officer to bring it, the letter was not forthcoming.

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Dr.de Silva: That is a letter that went to and fro in the month of November 1952.

Court: That is a letter he said he had with him regarding a matter in which he usurped jurisdiction.

Dr.de Silva: That was a letter written by him and signed by him and in his handwriting and if it was his intention to deceive he could have written such a letter and produced it here.

Court: Except for the way in which the matter developed in this Court.

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Dr.de Silva: Continuing his argument submits that what he wished to do was to raise a reasonable doubt in His Lordship's mind as to whether there could not be an alternative view to be taken on the facts. The charge was brought under Sec.440 and it was a criminal charge and the proceeding was not merely summary but summarily summary.

Court: I have formed an opinion. It may be that I have formed that opinion on insufficient material or because I have had some other material before me

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Dr.de Silva: I have the right to submit to Your

Lordship that Your Lordship's view is not the correct view or even the only view, and if I can satisfy Your Lordship that there are two interpretations possible of the evidence one of which leads to his guilt and the other which is consistent with his not having told any untruths then despite the original impression created in Your Lordship's mind when I was not on trial before Your Lordship, once that is done to Your Lordship's satisfaction Your Lordship is in the position to say that there are two reasonable alternatives found possible and a doubt may arise in Your Lordship's mind.

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Court: Here is a case where I have already formed an opinion. I do not agree that it is open to the witness to challenge the opinion I have formed.

Dr.de Silva: Your Lordship's Court never acts where there is a reasonable doubt.

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Court: If it is demonstrated that the view I hold is not necessarily right I will look into it and change my view if necessary. He can only show cause as to why he should not be punished. He cannot be heard to argue that my opinion is wrong. That is an opinion formed in the course of the trial.

30

Dr.de Silva: Submits that there would be no section giving a man the right to show cause unless it was open to him to show that the opinion formed by Court was undeserved by producing fuller material before Court on which the Court might form a different opinion.

Court: I think it rather a case of showing why the man should not be punished.

Dr.de Silva: Quotes the Section 440 that the man shall be called upon to show cause. He submits that the man is free to defend himself.

Court: Free to show why he should not be punished otherwise it places the Court in a very difficult position as the Court would be under trial.

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Dr.de Silva: I do not say that once a man is asked to show cause Your Lordship should start by proving that Your Lordship had the right to form

In the
Supreme Court
at Jaffna.

No.28.

Counsel for
S.K.Subramaniam.

16th March 1954

- continued.

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Counsel for
S.K.Subramaniam.

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- continued.

that opinion, but once I am called upon to show cause I have the right to say this: That the opinion formed by Your Lordship on the basis of which I was called upon to show cause is an opinion which in the fuller consideration of which it may be said to be not valid, invalid or insufficiently valid. It would be meaningless to call upon a man to show cause and then limit his right to show cause.

Court: I am asked to sit in appeal and consider whether my opinion which I have formed is the correct opinion. I am asking you to show cause why he should not be punished. 10

Dr.de Silva: One way of doing that is by showing that the opinion formed by Your Lordship is invalid. I am not asking Your Lordship why Your Lordship has formed that opinion, but I claim the right to know in respect of what evidence I am considered to have been guilty of falsehood.

Court: My opinion may have been formed by watching the demeanour of the man. Suppose a witness is in the witness box and when questioned he keeps turning round and looking at some man who is muttering in a corner of the Courthouse. I may form the opinion that the witness is giving false evidence on that fact coupled with other facts. 20

Dr.de Silva: But the muttering at the back may have had no relationship at all to the evidence given, and therefore the opinion formed by the Court is invalid.

Court: Even in the case of a minor Court they are expected to state their reasons after the conviction and not before conviction. 30

Dr.de Silva: Why? To show that the higher Court may sit in judgment on the validity of its own opinion.

Court: In the Supreme Court that is not done. There is no appeal under this section showing that there is no sitting in judgment on the opinion of a Supreme Court Judge.

Dr.de Silva: I am on the question of procedure and I submit it would not be open in any view of Your Lordship's Court to deprive a man of the right of showing cause in Your Lordship's Court. 40

Court: You are not deprived of any right at all. I am going to give your client full opportunity and I am going to deprive myself of every opportunity of calling evidence to support my opinion.

Dr. de Silva continues his argument on the question of bail on the village Headman. Dr. de Silva submits that he will be handicapped in getting instructions from the Headman if he is kept under remand.

10

Court releases the witness S.K.Subramaniam on bail at Rupees Five hundred (Rs.500/-).

In the
Supreme Court
at Jaffna.

No.28.

Counsel for
S.K.Subramaniam.

16th March 1954

- continued.

No.29.

COUNSEL FOR B.V.J. ALAGIAH.

Court calls Sub-Inspector B.V.J. Alagiah.

Mr. Sambandan instructed by Mr. Alfred Duraiappah, appears for Mr. Alagiah.

Mr.Sambandan makes an application to look through the evidence and all relevant documents before action is taken against Mr. Alagiah.

20

Court allows the application.

(Further proceedings in this matter is to be heard tomorrow. 17.3.54).

No.29.

Counsel for
B.V.J. Alagiah.

16th March 1954.

17th March 1954.

No.30.

PROCEEDINGS.

At this stage the inquiry into the conduct of witnesses under Sec. 440 is taken up. The witnesses on remand are produced. The same Counsel appear for them.

No.30.

Proceedings

17th March 1954.

In the
Supreme Court
at Jaffna.

No.31.

PROCEEDINGS re S. THANGAMMAH

No.31.

Proceedings re
S.Thangammah.

17th March 1954.

The witness Thangammah is produced before Court.

Court: I have very reluctantly come to the opinion in this case that your evidence in this Court has been false. The story about your not seeing the assault on Kandasamy is not true, and in the course of your evidence you have yourself agreed that what you said in this Court about not seeing the assault is not true. I do not believe a word about what you said about getting a fit that day. That was a statement made by you in order to explain as to why you were not present at the scene. What is more you said that you did not recognise the person who said "akka". Your statement made to the Police was put to you and you said that that statement was true, that you turned round and recognised that person as Kandasamy. Have you any cause to show as to why I should not deal with you for contempt of Court?

10

20

Thangammah: I do not know what to say.

Court: You must say something because I must give you every opportunity.

Thangammah: I do not know whether through fear I have said something

Court: Fear of what?

I had not given evidence in a Court of Law before and through fear I might have said something.

Court: I am afraid I cannot accept that explanation. Have you any cause to show why you should not be punished?

I am unable to say anything.

30

Court: Do you still say that the evidence you gave is true that you did not see the assault? ...

I do not say so.

Court: So you have no cause to show?

Yes.

Mr.Subramaniam: I am pleading for clemency for this woman. Your Lordship would be pleased to note that today as well as yesterday and right through the week I have taken the same ground.

Court: One ground taken by you yesterday was that she had acted in this way through the influence of some superior officer, but I am afraid I

40

cannot take that into consideration. I do not think it proper for such a statement to be made, unless she makes it herself.

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Supreme Court
at Jaffna.

10 Mr.Subramaniam: I withdraw that statement. My grounds are that this woman is an illiterate woman and this is the first time she has been to a Court of Law. I say that she is illiterate and I mean that she is a person who is not well read. I would say she is an ignorant woman and she has no civic consciousness. She does not know the difference between right and wrong, truth and falsehood. She has been to Court only in connection with this case and she has been ill for 5 or 6 years. I wish to call Dr.Thambipillai to give evidence on that point.

—
No.31.

Proceedings re
S. Thangammah.

17th March 1954

- continued.

—
No.32.

DR. THAMBIPILLAI

Dr.Thambipillai, Affirmed.

20 I am an L.R.C.P. and S.Edinburgh. I am a private practitioner at Pt. Pedro. I have a dispensary there which I share with my father-in-law Dr.Visvalingam. The Dispensary is called Dr.Visvalingam's Dispensary. I have practised for about 8 years. Before that I was in Government Service. I left Government Service because my father-in-law had a good practice and I always had an idea of joining him. I know this woman Thangammah. She comes to me for treatment for what I think is hysterical epileptic fits.

No.32.

Dr.Thambipillai.

17th March 1954

Examination.

30 Court: You have not diagnosed the case? ... That is my diagnosis. The symptoms were that she used to be brought in a car with violent contortions of her body. She would not be able to speak. We give her injections of pethedin, either myself or my father-in-law, whichever of us was present. The action of pethedin is that it is a sedative. In a few minutes she recovers and is able to speak. Then she drinks a few bottles of soda water and is taken away. If I do not give a sedative the attacks would continue. I have not tried letting it take its course to see what would happen. I usually try to stop the attack.

40 Court: Why? There are several cases in the whole of Vadamaratchi. Harm is done if the fit is

In the
Supreme Court
at Jaffna.

No.32.

Dr.Thambipillai.

17th March 1954.

Examination -
continued.

allowed to continue. She would damage the car by her violent contractions of the body and she would kick on the front seats and turn and twist. On one occasion I was told that they had been waiting for me for half an hour. The last week I discussed the case with Dr.Balsingham. I have never noticed her biting her tongue and the corneal reflexes were present. I have not noticed the presence of corneal reflexes in epileptic fits. It did not strike me that she was totally unconscious. The term I gave the disease was the nearest I could think of and it is a name I have read of in books. It is a form of hysteria.

10

Court: Can it be epileptic hysteria? I would stress the hysteria and that would be a good term for it. Sometimes she is brought daily and sometimes once or twice a week and sometimes once in two or three weeks.

To Mr.Subramaniam: I treated her last two weeks ago from today. I have been treating her for the last 4 or 5 years.

20

Court: A little rest would do her good? Complete rest would help her a lot, away from depressing surroundings.

To Mr.Subramaniam: There is no specific time when the attack occurs. She had come to me sometimes even at midnight. I think that there should be some relations who are good to her with her. She needs care and attention.

To Court: The company of certain relations who have been agreeable to her for a long time, brothers or sisters or even strangers.

30

No.33.

No.33.

Proceedings
(continued)

17th March 1954.

PROCEEDINGS (continued)

Mr.Subramaniam: I only want to submit to Your Lordship that she is in poor health and in view of the fact that she has been on remand and that she is now repentent.

Court: I do not know that she is even now repentant? She said so yesterday, My Lord.

40

Court to Witness: She will undergo imprisonment for two weeks simple. In sentencing her to that I am taking into consideration a great deal that has been said by her Counsel. He has pleaded for you with great determination. Of all the witnesses in this case I expected you to speak the truth. You knew that man Kandasamy, and in fact he met you and called you "akke" that day and he was brutally murdered in a public place within sight of you. If a woman does not show sympathy I do not know who will. In any event you had ample opportunity to speak the truth. There is other evidence in this case which I have not taken into consideration that you had a consultation with the V.H. before you made your statement to the Police.

In the
Supreme Court
at Jaffna.

No.33.

Proceedings
(continued)

Sentence.

10

No.34.

No.34.

PROCEEDINGS re P. KANDAPPU

The next witness brought before Court is Kandappu.

Proceedings re
P.Kandappu.

17th March 1954.

20

Court: You were the first man who went and gave information about the assault on Kandasamy. The very fact that that message was suppressed and you yourself became reluctant to speak, not only at the scene but here in the witness box, clearly shows that you were a false witness. First you denied that you mentioned the name of the woman called Sinatchi of Kottawatti a woman who was present and was at the time of the incident in the Crowd. You admitted it later after a great deal of pressure. You mentioned that you heard the name Sinatchi being mentioned and therefore you gave that name to the Police. Your difficulty was that you mentioned Sinatchi of Kottawatti. People may mention a person by name but they don't mention their address. You denied that there was a cattle shed behind your boutique. In fact a man was hiding in that cattle shed at the time the Police came. It was no other than your father. The worst item of evidence you gave here was that you said you did not know the V.H. of Karavetti North. In my opinion your evidence is false. There is also the other item that you said you went and questioned the crowd and they said they did not know who assaulted the man. Have you any cause to show why you should not be punished for giving false evidence?

30

40

In the
Supreme Court
at Jaffna.

No.34.

Proceedings re
P.Kandappu.

17th March 1954
- continued.

Kandappu: I admit that through forgetfulness I omitted to mention certain facts, because the Police suddenly arrested me and brought me here. Up to now I have acted according to my conscience and have given no false evidence. I had heard that woman by name Sinatchi lived at Kottawatti. I am not showing cause.

Mr.Ganeshalingam appearing for him states: The only fact I can urge is that he was brought suddenly to this Court while he had been very busy in Karavetti and put into the box straight away. He was not one of the witnesses who gave evidence in the Magistrate's Court. 10

Court: His evidence was led, his statement was taken down and later his statement was suppressed.

Mr.Ganeshalingam: He was a person whose boutique was almost opposite where the injured man was lying and he ran up on his own and told the Postmaster what happened and asked the Postmaster to get him a trunk call to the Police Station and paid for it, sent the message and came back. Later the V.H. did not record his statement till the Police came and recorded it. He says when he came back to the spot he found the V.H. there. 20

Court: If he had shown the same enthusiasm after the Police arrived as he showed earlier, he would have been out of the trouble he is in now.

Mr.Ganeshalingam: The reason why he changed his mind is because he found the whole village at Nelliadi keeping silent. He thought "Why should I be made a scapegoat?" He denied having sent any message to the Police when Inspector Nadarajah questioned him. Later when Inspector Nadarajah asked him to wait there sometime he made a statement. In that statement he mentioned the fact that the man was there but disclaimed all knowledge of the assailants. He told the Police that Sinatchi came there and was in the crowd and what is more he told the Police that he saw some people whom he knew by sight but not by name, besides Sinatchi. 30 40

Court: Then he went on to suppress even the name of Sinatchi.

Mr.Ganeshalingam: He did not want to be the only

good man in the company of bad men. As soon as he left the Post Office he became progressively bad. On the point that he said he did not know the headman, he lives $2\frac{1}{2}$ miles away and it is the boutique of his father that is 200 yards from the V.H's. house. He says he comes occasionally to that boutique, we do not know how occasionally. Those are all the facts.

10 Court: I think he had better be kept away from those people a little while. Tell him that his Counsel has said everything that could be urged on his behalf. Counsel has pleaded very hard for him but I cannot possibly treat him leniently. When people who see a murder in broad daylight hide the facts no man is safe. I propose to give him the maximum I can under the section, and that is three months' rigorous imprisonment.

No.35.

PROCEEDINGS re B.A.M. MUDIYANSE

20 The next witness brought before Court is Mudiyanse. Police Constable.

Mr.Amirthalingam appearing for him pleads that his case and that of Sergeant Hameem be taken after the consideration of the case against the V.H.

Court: Why?

30 Mr.Amirthalingam states that the headman comes into the picture before the constable and the sergeant. Further Dr.Colvin R.de Silva would be presenting certain facts for the consideration of the Court with regard to the provisions of the section 440 and whether that section could be invoked in this case. He did not want his clients to suffer from the results of any faulty arguments he made and he pleads that he be given the opportunity of listening to Dr.de Silva's arguments before advancing his own.

40 Court: Dr.de Silva do you agree that all these three matters are on the same footing? ... I would not say that, but if my learned friend wishes, and if Your Lordship is so disposed that my matter should be taken up first I am willing to have it done in that way.

In the Supreme Court at Jaffna.

No.34.

Proceedings re P.Kandappu.

17th March 1954
- continued.

No.35.

Proceedings re B.A.M.Mudiyanse.

17th March 1954.

In the
Supreme Court
at Jaffna.

No.35.

Proceedings re
B.A.M.Mudiyanse.

17th March 1954
- continued.

Court: Who is appearing for Sgt. Hameem?

Mr.Amirthalingam: I am, My Lord.

Dr.de Silva: I don't propose to place arguments on any general footing. My submission will flow from the position I take with regard to the evidence of my client and not that of others. I am entirely in Your Lordship's hands in so far as the application of my learned friend is concerned.

Court: I would rather deal with this matter first. Dr.Colvin de Silva's case is on a different footing. 10

Mr.Amirthalingam: If that is how Your Lordship is disposed I will do so.

Court: The position with regard to this witness is this. There is no doubt that a telephone message was sent to the Police Station between 7 and 7.10 or 7.20 p.m. There is no doubt that the Police headman sent a message at 7.46. The Police headman's message is entered as having been sent at 7.22 p.m. One does not require very much thinking to arrive at what happened. This constable gives a certain explanation in the box. He wants to get over the telephone message sent by Kandappu by saying, "I did not get a message but I remember the telephone bell tinkling. He remembers that after such a long time. 20

Mr.Amirthalingam: He was questioned about it by A.S.P. Attygalle.

Court: Do you think anyone would remember a telephone bell tinkling and not answering it. Do you want the Court to believe that story? 30

Mr.Amirthalingam: Your Lordship saw the person who is said to have sent this message, Kandappu.

Court: Do you deny that there was a message at all?

Mr.Amirthalingam: I do not deny that Kandappu may have said something on the telephone.

Court: Do you say that Kandappu was not the man who sent the message from the Post Office? Do you dispute the fact that he got the telephone from the Postmaster and got a call through on the night of this incident? 40

Mr.Amirthalingam: What happened was that as soon

as a call is through and the bell starts ringing at the other end the Postmaster calls the attention of the caller and he gives him the telephone and naturally a man like Kandappu would give the message and leave the telephone and when the constable came to the telephone and wanted to know what the message was Kandappu would already have finished.

Court: How could the reserve constable get a message sent at 7.46 at 7.22? That is most curious.

10 Mr.Amirthalingam: That in my submission is a clerical error for 7.52 p.m. Your Lordship will notice that the next message sent at 9.23 accordingly to the Postmaster was said to have been received at the Police Station at 9.30 a difference of 7 minutes showing that there was some difference in the two clocks.

Court: Assuming that there is a difference of time between the Police Station clock and the Post Office clock

20 Mr.Amirthalingam: My submission is that it is a clerical error for 7.52 p.m. This constable had been 1½ months at the Police Station and with his faulty knowledge of English and the procedure to be followed and in his excitement he had noted down 7.22.

30 Mr.Amirthalingam on behalf of P.C.Mudiyanse further submits that the Postmaster was more concerned with the collecting of his disturbances fee than entering it in the register of trunk calls. Further, the entry was made on 5th December, 1952, about 7 days after the call was made. He submits that the register cannot be considered as proof of anything at all because it is a copy of a copy. He also submits that the Postmaster's evidence does not show that anyone at the other end answered.

Court: The Postmaster says Kandappu spoke on the telephone and Kandappu's evidence is that he gave a message to the Police.

40 Mr.Amirthalingam: Kandappu is not the type of person who would normally speak on the telephone.

Court: One has to take into consideration the whole background in which this evidence has transpired, and examine that.

Mr.Amirthalingam submits that this witness is

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No.35.

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B.A.M.Mudiyanse.

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Proceedings re
B.A.M.Mudiyanse.

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- continued.

not quite fluent in his language and grammar and has made several spelling mistakes in his entries. This witness had been at this Police Station for only $1\frac{1}{2}$ months and it was not likely that he would enter into any such conspiracy or allow himself to enter into such conspiracy. With regard to the entry of the time as "7.22 p.m." Mr. Amirthalingam submits that it is really a clerical mistake for "7.52 p.m." and though the message was said to have been sent at 7.46 p.m. it could have been sent at 7.52 p.m. according to the Police Station Clock. 10

Court: If I act on that basis, I will not act on any other information in the information book. There is Mr. Alagiah's statement that the police station clock is checked with the post office clock every morning.

Mr. Amirthalingam: This witness stated that at that time it was not being done but it is being done now.

Court: I do not want proof of that matter. 20

In regard to the telephone message, Mr. Amirthalingam submits that Kandappu says that he gave the message to the police but he does not say that anyone answered at the other end.

Court: Supposing I say on such and such a day I gave a message to the police station, do you want me to produce evidence and say someone talked to me at the other end?

Mr. Amirthalingam: Your Lordship will naturally try to find out who is speaking in order to give the message. 30

Court: I have not the slightest doubt that the call was put through.

Further Mr. Amirthalingam submits that the witness gains no benefit by setting out the time as "7.22" when it could be otherwise, for instance, "7.52".

At this stage Court refers to the movements of Sgt. Hameem and his evidence.

Mr. Amirthalingam produces the note-book of Sgt. Hameem to indicate support for his actions. 40

Court to Witness:

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B.A.M.Mudiyanse.

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Q. In my opinion your statement that you did not receive a telephone message from Kandappu is false. There is the statement of Kandappu that he sent the message and there is the evidence of the Postmaster that he took the police station telephone Number 23 at the request of Kandappu and Kandappu spoke on the telephone? I never received a telephone message at that hour.

10 Q. I do not accept your explanation for recording the entry in the telephone register that you received a telephone message from the village headman at 7.22 p.m. whereas in fact no message had been sent by the village headman until 7.46 p.m.? What I have indicated is the time according to the clock in the police station.

20 Q. You still persist in saying the clock was wrong? I am unable to say whether that time was correct or wrong but what I have indicated in the register is the time of the police station clock.

Q. There was a message sent from Karaveddy at 9.23 p.m. and that call is entered in your register at 9.30 p.m. Did you set the clock right between 7 o'clock and 9.30 p.m.? No.

30 Q. How was it that the clock was keeping proper time? Then how did you come to enter a message at 7.22 p.m. which was received at 7.46 p.m.? I am unable to explain. It may be there was a fault in the clock.

Q. You have told us that within 10 minutes of your receiving the message Sgt. Hameem came in? .. When I was going through the information book Sgt. Hameem arrived and I am unable to say after what length of time since recording the message Sgt. Hameem came in.

Q. How long did you go on looking through the book? I am unable to say a definite period of time.

40 At this stage Mr. Amirthalingam submits that this Constable had only $1\frac{1}{2}$ months service in Point Pedro and he is only 2 years in service, and that his faulty knowledge of English and his inexperience in a good deal of official work is consistent with the alleged false statements which are put to him as being bona fide mistakes on his part.

In the
Supreme Court
at Jaffna.

No.35.

Proceedings re
S.A.M.Mudiyanse.

17th March 1954
- continued.

Court informs Mr.Amirthalingam that the witness is not even at this stage prepared to

go back on what he said earlier, and even now the witness takes full responsibility on himself and Court has not the slightest doubt that he is a false witness fabricating evidence and trying to mislead the Court. Mr.Amirthalingam in mitigation of sentence pleads to Court to consider the age of the witness, his position, the consequences that will flow from his being dealt with, the fate of his family, his good record during the last $2\frac{1}{2}$ years and the fact that his stay of $2\frac{1}{2}$ months at Point Pedro makes it impossible for him to enter into any conspiracy.

10.

Court to Witness:

Q. Have you any cause to show why you should not be dealt with for contempt of court? I still maintain that I have not done anything wrong in connection with this case.

20

Court: I have taken everything into consideration. I might have treated you leniently if you had even at this stage admitted that you had been misled by someone. I am taking into consideration everything that has been mentioned on your behalf by your Counsel. I know there might be serious consequences arising from any action taken by me. I am told that you are a young officer. I have gone through the matter very closely. In case there is anything still left which may be said in your favour, I do not wish to in any way prevent these things being said in this case.

30

Witness: Except for the fact of having entered the telephone message in the telephone book I do not know anything about this. I have been $1\frac{1}{2}$ months in the Point Pedro Police and I do not know anything about it.

Court: I entirely agree with you. That is why I am taking a very lenient view of the matter. I have been greatly troubled about your case. I am directing that the proceedings of this case be sent to the I.G.P. and remember it is not because I have any doubt in my mind that your entry in the telephone register is a false and fabricating evidence. I am sending the proceedings to the I.G.P. in the hope that some action will be taken by heads of departments to see that officers working under them would behave not in the way the Point Pedro Police behaved in this case. You may go. You are deprived of your batta.

40

50

No.36.

PROCEEDINGS re Z. HAMEEMIn the
Supreme Court
at Jaffna.Court calls: Sergeant Hameem:

Court: Q. In your evidence you said that your diary has been destroyed? A. Yes. That is false.

Q. Do you admit that evidence was false?

A. That diary was handed over to the reserve. I did not know what he did with that.

10 Q. Do you admit when you said that the diary has been destroyed it was false? A. Now I admit that it is false.

Q. Do you know that the diary was not destroyed when you gave evidence in this Court? A. I do not know about that. It was handed over by me to the reserve..

20 Q. It is my opinion that you were at the Police Station when the telephone message was received at the Police Station. A. I was not present at the Police Station then. That is all I have got to say about that.

Q. You said that you went to Karanavai North for an inquiry along with P.C. Markandu? A. Yes.

Q. Markandu's diary shows that he was out on some other official business somewhere else? A. I went to Karanavai North with P.C. Markandu.

Q. When you went to the scene you were aware that Kandappu had referred to Sinnachi in his statement? A. Yes.

30 Q. You made no attempt to trace Sinnachi?

A. Yes.

Q. You went to the scene and did not question the boutique keepers? Yes.

Q. In my opinion your evidence is false - that you went to the scene and made inquiries from the boutique keepers? A. No. It is true.

Q. In my opinion the evidence that you went and shouted as to whether there was anybody who saw the incident is false? A. No.

40 Q. In my opinion the fact you said that when you went to the scene you were absolutely certain that

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Proceedings re
Z. Hameem.

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at Jaffna.

—————
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Z. Hameem.

17th March 1954
- continued.

no one will come and give evidence long before you questioned them is false? A. It is true my Lord.

Q. In my opinion when you said that you went in search of Sinnachi, the woman whom Kandappu mentioned is false and you made no efforts to trace Sinnachi? ,..... A. I went with Sub-Inspector Perera and he made a note of that fact in his diary.

Q. In my opinion when you said that when you went to Chinniah's house he was sleeping and that was the reason why you did not record his statement is false? A. No. It is not false. 10

Q. You said that you went for inquiry into the criminal breach of trust complaint you entered the time of arrival at that place in your diary? A. Yes. Q. What time? A. 6.20. I said in evidence that I recorded the statement of the complainant.

Q. You said in your evidence that you recorded statements? A. Yes, I said that I recorded 2 or 3 statements. I cannot exactly say as to what I said in my evidence in this Court. I said that up to the time I was about to leave the spot I questioned the people there; that is at the breach of trust inquiry. 20

Q. Did you do so? In my opinion it is false because there is nothing to support that? A. I questioned the people My Lord.

Q. You said in your evidence that you did not know whether the Village Headman, Karaveddy North is an influential man? A. Yes. 30

Q. That is false? A. No answer.

Q. You gave evidence of hearing rumours? Yes..

Q. You said you heard rumours from various people. You did not record the statement of those people who were responsible for the rumours? A. I heard wild rumours.

Q. What is meant by wild rumour? A. People were talking.

Q. People were talking and you did not record their statements as to who and who were talking about this incident. In my opinion what you said is false? A. No, it is true My Lord. 40

Q. Have you any cause to show why you should not be punished for giving false evidence? A. I have said all what I know about the incident. I have nothing more to say.

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(Mr. Amirthalingam, counsel for Sergeant Hameem makes his submissions on behalf of Sergeant Hameem in regard to the charge against him. Counsel also submits his explanations for the causes for which he (witness) is asked to explain. After a lengthy explanation Counsel says that he is a man of 33 years service - he has a wife and children to be looked after and he explains as to the consequences that will flow from this punishment.

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Proceedings re
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Court to Sergeant Hameem: It is true that you have put 33 years of service in the Police Force. One cannot know how you had been discharging your duty. If anyone looks into your entries you made during the course of your duties, it may be he will be able to pull out several skeletons from the cupboard. A man was stabbed to death and everything goes wrong in the course of your investigation in that matter. You did not record the statement of Kandappu although you were aware at that time that Kandappu was the first man who had sent the message to the Police Station, you did not record the statements of those boutique keepers and Simachi. I want to see that the public are protected in these matters. I will sentence you to One (1) month's rigorous imprisonment.

30

No.37.

No.37.

PROCEEDINGS re S. K. SUBRAMANIAM

Court calls S.K.Subramaniam, Village Headman, Karaveddy North.

Proceedings re
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Dr. Colvin R. de Silva, who appears for the Headman makes an application for objection in limine that as the Headman concerned was allowed on remand at the end of the trial in which he was summoned as a witness and as he was not informed of the charge against him on the day when the trial ended witness cannot be punished under Section 440(1) of the Criminal Procedure Code. After a lengthy argument Court ruled out that application. In the course of the argument counsel made certain submissions.

Adjourned for the day.

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The case against Headman Subramaniam is continued.
The same Counsel appearing for him.

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Dr.de Silva: May I be permitted to bring to Your Lordship's view certain aspects of this matter which I believe is my duty to do in regard to two considerations. They are two principles which pertain to this matter. One is the principle that things should be done in such a way that justice is not only done but should appear to be done, and the second matter is that whether in the nature of the allegation which really arises in Your Lordship's mind out of the facts and features of this case the offence really disclosed for being dealt with is not of so serious a nature that to deal with it under the punitive powers of sec.440(1) which is regarded by the authorities as light punishment should not be dealt with on a separate indictment. 10

Court: You say the offence is so serious? The offence which Your Lordship has in view is so serious that it does not deserve to be dealt with under Sec.440(1) but by the Attorney General. 20

Court: I am dealing with him under Sec. 440(1) for giving false evidence. If on the other hand there is evidence to show that there has been a conspiracy to fabricate evidence or suppress evidence action can be taken by the Attorney General.

Dr.de Silva: submits that the Court will not permit the man to be twice punished.

Court: Assuming that there has been a conspiracy to fabricate evidence then the evidence given in this case in my view was for the purpose of suppressing that conspiracy. But I have not judged the matter on the basis of a conspiracy but that he himself has done something wrong and that he was giving evidence to suppress that fact. For instance take the evidence with regard to the letter that the letter was sent is false. I say that the letter was sent is false and that evidence is deliberately given in order to explain why he acted outside his jurisdiction. 30 40

Dr.de Silva: That is the most pertinent aspect of the motive for the conspiracy.

Court: Is it necessary at all that there should be a conspiracy? Dr.de Silva. Yes.

Court: If there was no conspiracy? Then the question would not arise. If there was a prostitution of his official powers that would be even a greater offence, and it would be a matter for the Court to consider whether the Sec.440(1) was the appropriate section to be used and not under subsection (4)?

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Court: Why are you pleading that he should be punished more severely than I can punish him under Sec.440(1)?

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Dr.de Silva submits that the reason is that, that if a graver offence is disclosed the normal processes of the law should come into play and the proper processes adopted, and the man himself be given the opportunity to meet the charges made against him.

Court: This is one of the known processes of the Law, and the Law gives the Judge the discretion to act in the way he thinks best.

Dr.de Silva: The question is in what circumstances does the discretion arise and in what manner should that discretion be exercised. Dr.de Silva further states that there are three fatal and insuperable difficulties in the way of the Court following the procedure indicated by the Court. The opinion the Court has come to had been formed as the result of acting under Sec.165 a section which gives the Judge the power to put questions and there were a series of decisions in regard to it, as the Court was aware by the C.C.A. One point made was that the questioning of the witness or witnesses by the Judge should not amount to a taking over of any material part of the investigation by the Court from the authorities concerned. There was also the principle established that in no circumstances did the power to question under Section 165 amount to a power to cross-examine a party. Those two principles are established by a series of cases.

Court: I should like to examine those matters because they have not been altogether out of my mind. Is the principle not this that there should not be prejudice caused to the accused by such questioning? Entirely.

Dr.de Silva: cites 49 N.L.R. Vol. 49 at p.292.

Court: In this case the accused had the benefit

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of a full and fair trial. In this case it has not prejudiced the accused at all.

Dr.de Silva: The fact that so early in the trial Your Lordship formed an opinion in favour of the accused resulted in an opinion being formed against me.

Court: It was absolutely essential that in this case this matter should have been gone into for the benefit of the accused (Court outlines the way in which the matter arose from the beginning). 10

On looking into the matter it was quite clear to me that someone had been tampering with the course of justice in this case, and the matter had to be laid bare in Court.

Dr.de Silva: Yes, I concede that. From the point of view of the matter as it now is I take it that Your Lordship's view is that there was a conspiracy
.....

Court: No conspiracy. He says he telephoned at 7.45 whereas the telephone message alleged to have been sent by him is recorded at 7.22. 20

Dr.de Silva: Your Lordship is asking him to explain a record made by another.

Court: The questions were to find out which record was correct.

Dr.de Silva: No one can read the record except on the footing that at that stage Your Lordship was questioning this witness on the footing that he was not speaking the truth about the time 7.45.

Court: It does not follow.

Dr.de Silva: My submission is that this inquiry has flowed from an investigation conducted by Your Lordship which took the shape of an investigation for the purpose of confirming Your Lordship's opinion which Your Lordship had formed. The second point is that the investigation took the shape of a questioning of the witness on an undisclosed charge. 30

Court: If it is your argument that people can be permitted to suppress evidence and allow only a part of the case to be presented in this Court and that this Court is helpless to deal with a situation like that, then I am entirely not in sympathy with your argument. 40

Dr.de Silva: I hope no one will argue in that way but I also hope that there will never be wanting Counsel who will be ready to defend a witness who is subjected to an investigation in an undisclosed offence.

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10 Court: There was no inquiry into a conspiracy. I was perfectly entitled to question the witness fully in order to satisfy the Gentleman of the Jury. Can you say that by the use of those powers by me anyone has been prejudiced? I say that my client has been prejudiced. He was already on trial in that Your Lordship was investigating no mere falsehood but the view that the witness was suppressing evidence.

20 Court: The first question asked him was how he came to act in a crime committed in Karavetti West when he was the Headman for Karavetti North. Suppose I purported to be a Police Officer and investigated into an assault and I go to record statements and then it is found that according to me all the witnesses who come forward say "we did not see this". What flows from that?

Dr.de Silva: Your Lordship would have to consider whether the witnesses are not liars.

30 Court: I would immediately suspect the bona fides of the man who is making the inquiries. Let us examine his own conduct. He gets information from a man called Chelliah that a man has been assaulted and is lying under a tamarind tree which is outside his jurisdiction. He says he went up because he was informed. He goes to the spot and immediately within 10 minutes of the information he was at the spot. He found that there was no man there who was prepared to say who assaulted the man. He implied that already there was a conspiracy among the people of that place. He does not record the statement of the man whose boutique is opposite the place where the man was lying. He finds that everything has come to a sudden standstill at the junction. He does not follow up clues that are available to him. It requires a good deal of imagination to credit this Headman with any kind of bona fides.

40 Dr.de Silva: Your Lordship's view that he was not bona fides is correct. If that is so the offence disclosed is of a most grave and serious nature.

Court: Is it incorrect to form that opinion on

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the last few answers given by him in his evidence?

Dr.de Silva: Thereafter Your Lordship was proceeding to examine him for the purpose of what?...

Court: To find out things. It is the only reason why a Judge asks questions.

Dr.de Silva: Your Lordship has used the petition filed by the I.G.P. to question him.

Court: What is there wrong about it?... I submit that an anonymous petition in a Police file is not proper material to examine a man on. 10

Court: It was not placed before the Jury. That is material on which no opinion can be formed.

(Court proceeds to take the evidence of the witness step by step, beginning with the reason why the witness assumed jurisdiction in the case.)

Court: You accuse the Court of acting in a certain way. I give you an opportunity of calling the Karavetti West Headman if you so desire with a view to finding out whether such a letter was ever sent to him. 20

Dr.de Silva: I do not wish to supplement and fill any gaps in the investigation. My submission is that Your Lordship's opinion has been founded on insufficient investigation.

Court: Technicalities have nothing to do with sec.440(1). If you depend on technicalities I will give you every opportunity of calling the Headman for Karavetti West, or other evidence, something which has never been done before. The Court has been very circumspect in this matter and one anxiety I had was that no prejudice should be caused to the accused although the accused in the opinion of the Court was really a guilty man. I am not adopting the usual procedure but I am willing to give your client every opportunity to show cause by leading evidence. 30

Dr.de Silva: These are proceedings which leave no opportunity for appeal.

Court: I am not going to take that into consideration at all, because the Legislation has thought it fit to give me the power to use that power. I will take into consideration that there is no appeal only for the purpose of deciding to give him every opportunity of defending himself. I am 40

willing even at this stage to be convinced but I am not prepared to listen to arguments on technicalities.

Dr.de Silva: I am anxious to persuade Your Lordship. I am anxious also not to waste time. I am seeking to do my best to assist Your Lordship's Court. My client is the channel by which I can come to the assistance of Your Lordship's Court.

(Court refers to the evidence given by the witness.)

10 Court: Do you seriously say that that would not be your reaction to these facts, that a man not only assumes jurisdiction outside his area, but he does not do the obvious thing? What is the inference? That he assumed jurisdiction for the purpose of suppressing evidence.

Dr.de Silva: As soon as Your Lordship drew that inference the evidence discloses a very serious offence.

20 Court: Sec.440 deals with contempt of Court. You are asking me to send him to the Attorney General. Why should not I deal with the matter?

Dr.de Silva: Given certain circumstances it is always more desirable and more just that that procedure should be followed. It is for that purpose that I suggest that the principle should be followed that justice should not only be done but should also appear to be done.

Court: My only fear in this case is that justice will not appear to be done if I let him go.

30 Dr.de Silva: Your Lordship would not only appear to be doing justice but would be doing justice.

Dr.de Silva further submits that there is no need for any delay and that the matter could be speedily dealt with by the Attorney General.

Court: There is another alternative under Sec. 440(4) to send him in custody to the nearest Magistrate for action to be taken.

Dr.de Silva: Yes, that may be done.

40 Court: I think this is a matter that should be dealt with by me rather than by a Magistrate. I have been finding it difficult to resist your persuasiveness but when I come to think of it I cannot see any difference at all between the case of

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your client and that of the Police Sgt.Hameem. If I act wrongly in this matter you can always have recourse to the Governor General.

Dr.de Silva: That is no remedy.

Court: It is, if I am so hopelessly wrong in the matter

Dr.de Silva: I make my submissions on the footing that Your Lordship is entirely right in this matter.

Court: How is it advantageous to the witness to be dealt with by the Attorney General or by a Magistrate and not by me under 440(1)? That he will have a chance of getting off? 10

Dr.de Silva: Your Lordship will not be influenced by the fact of whether in a proper trial he would get off?

Court: You know what a trial is? Your Lordship will not be influenced by the view that trials in any other Court would be different to a trial in Your Lordship's Court. I may be permitted to have the same advantage as the accused had. 20

Court: I am not disposed to give him that advantage. Under the section the Law gives me the right to decide the matter and I have formed an opinion after very great consideration and why should I say that I have doubts about the matter? Just to wash my hands of an unpleasant affair? Why should I not act when I am fully convinced.

Dr.de Silva: I am asking Your Lordship to act in the proper way under the section. 30

Court: After careful consideration I have formed the opinion that this witness has given false evidence in this Court.

Dr.de Silva: That is why Your Lordship is given two courses of action in that section 440 itself. Why is it that there are alternative courses of action given in sec.440? In the opinion of the Court where a grave offence is disclosed the Court may cause proceedings to be initiated which would result in proportionate punishment being meted out which is not available under sec.440(1). 40

Court: In my opinion the punishment under 440(1) is adequate for the purpose.

Dr.de Silva: I ask Your Lordship not to say that.

It is impossible for any Court in my submission to think that a sentence of 3 months is adequate if Your Lordship's view is correct.

Court: If I act under 440(1) it would have far greater effect on the man as well as on the public.

Dr. Colvin R. de Silva submits that to meet the ends of Justice the Court will be pleased to direct that the record be forwarded to the Attorney General with His Lordship's views clearly expressed on the record.

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Court: I fear that it may have exactly the opposite effect on the people who really have to be dealt with. I will hear the Crown Counsel now.

Crown Counsel to Court: Your Lordship will appreciate that in the circumstances I appear as amicus curiae in this matter. As to whether it should be advisable at this stage for your Lordship to direct that proceedings be forwarded to the Attorney General, I submit that my learned friend's argument flowed on the assumption that there was conspiracy amongst the persons who were brought before your Lordship's court at the end of the trial. Four of them have already been disposed of under Section 440(1) in which event no proceedings can be taken under sub-section 4. In respect of the other two persons, one of whom is before Court now and the other is to be brought before Court, your Lordship has assumed jurisdiction against them under Section 440(1) and no proceeding would arise under sub-section 4.

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On this question of conspiracy alone if your Lordship proposes not to divest of the jurisdiction which has already been assumed, then the question arises as to whether these two people can be arraigned on a charge of conspiracy. The Inspector is an officer who came to the scene ten days after.

On this question of justice not being done but appear to be done, it is my humble submission, if all of them are asked to show cause and after four of them have already been dealt with and your Lordship at this stage decides to take different action in respect of the others, I would very seriously urge upon Your Lordship to consider whether having assumed jurisdiction under sub-section 1, Your Lordship is now in a position to divest of that jurisdiction and then proceed to direct proceedings to be sent to the Attorney General which action can be taken only under sub-section 4.

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Dr.Colvin R.de Silva submits that the present proceedings are themselves founded in circumstances which render it expedient and just that Court should deal with the witness if at all under Section 440(4), the reasons being -

(a) the present proceedings are founded on an investigation done by Court itself into the conduct of the witness in relation to the trial of Tharman.

(b) that His Lordship's opinion is founded on evidence elicited in that investigation. 10

(c) that the material contained in two anonymous petitions by the police were utilised by His Lordship to investigate into the conduct of this witness.

(d) that his Lordship's opinion of the falsity of the evidence of this witness is founded in the material elicited in the three previous submissions.

(e) that the offence which in His Lordship's view is disclosed by this witness Kandappu is of so grave a character as to require proceedings in terms of sub-section 4 of section 440. 20

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Dr.de Silva insistently argued that I should not deal with this witness S.K.Subramaniam, the village Headman of Karaveddy North under provisions of section 440(1) but that I should assume jurisdiction to refer the matter to the Attorney General or to take other steps under section 440(4). The argument is based on the expediency of acting under section 440(1). Dr.de Silva relies on the following arguments to support the following grounds which will make it inexpedient in his view for action to be taken under section 440(1).

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(a) the present proceedings are founded on an investigation done by Court itself into the conduct of the witness in relation to the trial.

(b) the opinion is founded on evidence elicited in that investigation.

(c) that the material contained in two anonymous petitions were used to investigate into the conduct of this witness.

(d) the opinion of the falsity of the witness' evidence was founded on the material so elicited.

(e) that the offence which in the view of the Court is disclosed is of a grave character that it requires to be dealt with in terms of the provisions of sub-section 4 of section 440.

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10 I cannot agree with Dr.de Silva that on the
ground of expediency there is anything which has
been urged which would make it inadvisable to deal
with the witness under section 440(1). Witness'
evidence which is in question in these proceedings
was given in the course of the trial into the of-
fence of alleged murder by the accused Tharman. It
was apparent that two eye-witnesses called upon by
the prosecution at an early stage of the proceed-
ings had made their statements to the police only
20 on the 16th of December, 1952 some days after the
day on which the alleged murder took place, which
is 27th November, 1952. It was necessary to ex-
plain the belatedness of this evidence. The wit-
nesses themselves claimed that they were not be-
lated witnesses but were witnesses who were always
available from as early as the 28th of November,
1952 if only the police and the Headman were dis-
posed to record their statements. It was a vital
matter in this case to inquire as to whether these
30 witnesses were belated witnesses or not. The pre-
sent witness, the village headman, was one of the
earliest to get to the scene of the alleged murder.
It also transpired that he had taken series of ac-
tion in relation to the investigation into the al-
leged crime. Questions were addressed to him with
regard to certain features apparent in Court about
the investigation and about the action taken by the
witness immediately after he went to the scene. The
proposed action now is with regard to the evidence
40 given by this witness, the village headman in the
course of his being examined on these vital matters.
There were no anonymous petitions before the Jury
but I had informed Counsel for this witness that
certain questions were addressed to the village
headman (this witness) on the basis of the material
found in two petitions which were with the police.
The answers elicited have nothing to do with the
opinion formed in this case by Court with regard to
certain evidence of this witness nor can it be said

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that any reasonable man can base an opinion on any of the answers so elicited by the questions which were based on material founded in the two petitions.

Dr.de Silva has strongly argued that the evidence disclosed against the witness, if at all any evidence is disclosed, is of a very grave character, namely, to suppress evidence in a murder case and the conspiracy to suppress evidence. I have given very serious consideration to the argument under this head and this matter was in my mind from the time I considered this question as to whether I should deal with this witness myself under section 440(1) or take other steps. While it is my view that in this case there is ample material on which a number of persons would be indicted on a charge of conspiracy to fabricate and suppress evidence in a murder case, still that is my view only. Section 440(1) does not enable me to deal with any such offence. What I am concerned with is the evidence given by the witness or witnesses in this case. In my opinion if that evidence is false, section 440(1) gives me ample power and very wholesome power, to deal with them. And I will be lacking in my duty if I do not in the absence of any cause being shown to my satisfaction shirk that view. I therefore decide to proceed with the matter of calling upon the witness to show cause as to why he should not be dealt with under section 440(1) for having given false evidence.

(1) in relation to the letter which he said he sent to the village headman of Karaveddy West. The circumstances in which the evidence relating to this letter came to be given are these: the witness was questioned as to why he assumed jurisdiction to inquire into a case of alleged murder which had taken place outside his jurisdiction. His answer was that he was the first to be informed and therefore he proceeded to the scene and started investigating, and that it was usual when instances of this nature takes place at the junction of Nelliaddi for another Headman to inquire. He was questioned in some detail with regard to the respective rights of the two headman of Karaveddy North and Karaveddy West, in relation to this investigation. It transpired that in fact the proper person to inquire into an alleged offence which takes place under the tamarind tree under which the deceased was found lying with serious injuries was really the village headman of Karaveddy

West. It was for the purpose of finding out whether the action of the witness was bona fide in investigating into an offence which was alleged to have taken place outside his jurisdiction that he was questioned as to whether he informed Karaveddy West village headman at any time that such an offence was alleged to have taken place within his jurisdiction. He claimed that he sent the letter to the village headman of Karaveddy West who informed him of the matter. Under further examination he took up the position that the information given by him was only for the purpose of getting the car to transport the injured man to the hospital. The letter itself was worded very vaguely - the village headman of Karaveddy West was called upon "to do the needful". When asked why the village headman of Karaveddy West did not come and take over investigations the witness proceeded to say that the letter he sent to the Karaveddy West headman was refused by the Karaveddy West headman and was returned to him, meaning the witness. Asked as to where the letter was, he first stated that the letter was in a file in his office at home. Later he took up the position that the letter was in his drawer and not in any particular file. He was absolutely certain that he had locked up that letter in his drawer. He was asked to produce the letter and a police officer was sent along with him to his house and the letter was not there. In my opinion the evidence given in regard to this letter and the entries with regard to the letter made in the diary is false. The entry in the diary was made in order to explain why the witness assumed jurisdiction in that unusual manner.

(2) Questioned with regard to another matter as to whether he was not aware that allegations were being made against him while investigations were going on, the witness denied that he had any knowledge of these allegations. It is most improbable that he was not aware of these allegations for the following reasons: unlike in most cases where village headman gave over investigations to the police once the police arrived on the scene, in this particular case the witness was at all stages with the police in the course of the investigation and particularly when S.I. Alagiah was investigating into the petition which had been sent by the brother of the deceased.

(3) There is evidence that the witness Thangammah

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made her statement in the presence of the village headman on the 19th of December after having consulted the headman. The two material witnesses in this case would normally have been Kandappu and Narayana Nayar both owning boutiques within a few yards of the place where the alleged incident is supposed to have taken place. Kandappu was the person who telephoned the Police. Kandappu telephoned the police and returned to the boutique and was at the scene where this witness was. Narayana Nayar was never questioned by the witness nor his statement recorded. Kandappu who was so willing to proceed and telephone the police ceased to be communicative after he returned, if the evidence of this witness is true. I cannot conceive of such a state of affairs taking place within such a short time of an alleged murder or incident. In my opinion this witness was fully aware that there were witnesses available who could have disclosed who the assailants were who had caused the injury on the deceased which led to his death, and that his evidence that no persons were forthcoming is false. It is not necessary for me to consider the question as to whether he conspired with any person for the purposes of suppressing statements of persons who were in a position to make material statements. A series of unusual incidents seem to have taken place at Nelliadi junction apart from the incident of killing of Kandasamy, if this witness' evidence is accepted.

(4) In the background of his failure to record the statement of Sakotheran Sinniah, Narayana Nayar and other persons admittedly present at the scene, one finds that at a busy junction like Nelliady where buses and cars are to be found at all times even in the night, on this particular evening not one car was available which could have helped in the removal of the injured man to the hospital for some care or medical aid at the hospital. According to the witness there were sixteen cars at Nelliady owned by various persons all apparently with private numbers. Not one car was available to remove this injured man to hospital. Everything this witness touched in the process of performing his duty into an investigation which he had taken upon himself to conduct at the spot seemed to have gone wrong if the witness' evidence is true. I have not the slightest doubt that the evidence of this witness on these matters is false; the letter sent to the Karaveddy West headman is returned, a

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bus which was stopped refused to carry the injured man, the car which was sent for failed to turn up, cars which normally are to be found at the busy junction like that, that day were not to be found. It is in evidence that junction has on either sides of it two busy theatres to which according to the witness, numerous people came from all over Vadamarachi.

10 These are some of the matters and unusual happenings which had taken place at the Nelliadi Junction on this day.

20 There is another matter which shook my entire confidence in the evidence of this witness. He had in his diary, noted down that on the 22nd March he had taken witness Thangammah to the Police station at the request of S.I.Alagiah and returned with her back to Nelliadi. The question naturally arose as to why Thangammah was taken to the police station on 22nd March; the 23rd of March was the day Thangammah was to give evidence in the Magistrate's Court. The witness wished the Court to believe that Thangammah was just taken for a joy-ride. The witness wished the Court to believe that Thangammah was taken to the Police Station at the request of S.I.Alagiah and when Thangammah was taken there, Mr.Alagiah said "take her back and bring her back tomorrow to Court". I have not the slightest doubt that Thangammah was taken to the Police Station for some purpose which the police
30 could not mention or refer to in their information book. Even her visit to the Police Station is not mentioned in the information book. When the witness says that nothing happened in the police station or in the course of that visit to Point Pedro, witness, in my opinion, was not willing to speak the truth. He was unable to say in whose car he transported Thangammah to the Police Station and whether he paid for it. He was not prepared to give any information whatsoever on this material
40 matter. It depends very legitimately on an attack on the evidence of the village headman and the evidence of the police, of this mysterious visit to the Police Station.

50 These are some of the matters and it is not necessary for me to go into all the other matters in this case and one would rightly see that these matters have nothing to do with the charge of conspiracy nor are they such matters as cannot be adequately dealt with expeditiously and effectively in this Court. I call upon the witness to state whether he has anything to say with regard to the matters which I place before him.

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No.38.

PROCEEDINGS re S.K. SUBRAMANIAM

No.38.

S.K. Subramaniam, Village Headman, Karaveddy North
before Court, continued:

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Court to Witness: Q. Have you any cause to show why you should not be punished for giving false evidence?

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Witness: All the statements made by me in this Court in connection with this case are the actual facts. I have not said anything false. The statement made by Inspector Alagiah that he did not give instructions to me to take the woman Thangammah to the Police Station is false. He gave instructions to P.C.410 and that Constable came and informed me and I took Thangammah to the Police Station on that instruction. 10

Court: I am not saying that you did not take the woman Thangammah to the Police Station but what I say is the fact you said that you took Thangammah to the Police Station, Point Pedro and you further said that nothing happened at the Police Station. That is false. You have not told Court what actually happened at the Police Station when you took Thangammah to the Police Station. 20

Witness: I was not aware as to what happened at the Police Station. Her husband also accompanied me.

Court: Have you anything else to say?

Witness: As regards the letter I actually sent a letter to the acting Headman, Karaveddy West. In that letter I mentioned all what had happened up to the time of writing and requested him to do the needful. I sent that note asking him for the car. That was the only motive for having sent that note. 30

Court: Q. Another statement is that you said in evidence there was nobody to come forward to give evidence at the Nelliady junction that night?

Witness: There were several instances where no one came to give any sort of assistance or to give evidence. 40

Court: What about the woman Sinnachi, she was never questioned about this? Narayanan Nair's statement was not recorded by you?

Witness: When I arrived at the scene all the boutiques were closed. I was busy in search of a car. I tried but could not get a vehicle to transport the injured to the hospital.

Court: You have said in your evidence that you were unable to get at least a transport to despatch the injured to the hospital before he died. It is false?

10 Witness: If there was a vehicle I would have got that vehicle and gone with him to the hospital. There was no vehicle at all available. The evidence I gave in this connection is true. The Police came at 9.10 p.m. and after that I had to assist them. I went with the Police to three houses in Karaveddy North in search of one Sellappan. Inspector Nadarajah questioned Narayanan Nair in my presence and in that questioning Sellappan's name transpired and I went with the Police in search of Markandu. We searched three houses
20 and he was not found there and we were informed that he was not there.

Court: When Inspector Alagiah recorded Thangam-mah's statement she gave her statement after consulting you. Why can't the Inspector himself go and record her statement instead of your accompanying him?

Witness: I went because the Inspector wanted me to go with him. As far as I know I have not spoken a word of lie in my evidence.

30 Witness to Court: In the course of my evidence when I was asked as to the whereabouts of that letter I first said that it might have been in the drawer and then I was asked to be definite about it.

Court: You said that the Headman of Karaveddy West did not accept that letter and he returned it to you.

Witness: A. Yes. (Court reads that portion of the evidence to witness).

40 Court: You said in your evidence that the Sinnachi's name did not transpire in the course of your investigation? It is false?

Witness: No. It is true.

Court: You said that when you recorded the statement of Kandappu Sinnachi's name did not transpire in that statement? It is false?

In the
Supreme Court
at Jaffna.

No.38.

Proceedings re
S.K.Subramaniam.

18th March 1954
- continued:

In the
Supreme Court
at Jaffna.

No.38.

Proceedings re
S.K.Subramaniam.

18th March 1954
- continued.

Witness: Kandappu's statement was recorded later by Inspector Nadarajah and I do not know whether Sinnachi's name transpired in that statement. Sinnachi's name did not transpire in the statement given to me. Now I know about that.

Court: Did you ask the witness Kandappu whether he knew Sinnachi? In your evidence you have said that you recorded the statement of Kandappu and that he did not mention the name of Sinnachi in that? 10

Witness: I inquired from Kandappu about it and he said that he did not know her.

Dr.de Silva submits his explanations as to a number of statements which the witness made in the course of his evidence and which are considered by Court to be false.

Court to witness: Your case is unprecedented for more than one reason. I do not think that in any other case the witness was given such a long time to shew cause. I had very great assistance from your Counsel in testing the view I had formed with regard to your evidence. I had thought seriously even before your Counsel addressed me about adopting some other way of dealing with you. It is very unpleasant duty but I have to do my duty. I cannot say how I can make any distinction between you and Police Sergeant Hameen who had put in about 33 years service. Both of you had suppressed the evidence in this case and given false evidence in Court to explain the absence of evidence in this case as to who the assailants were. I sentence you to one (1) months' rigorous imprisonment. 20 30

No.39.

No.39.

Proceedings re
B.V.J.Alagiah.

PROCEEDINGS re B.V.J. ALAGIAH

18th March 1954.

Court calls Sub-Inspector Alagiah:

Court: To Mr.Sambandhan, Counsel for Mr.Alagiah: In his case I am aware of the fact that he came to the scene some days later but if you look into the investigations and actions he took after he took charge of the case, you will find that he with the consent of others had suppressed evidence and particularly the statement made by the accused at the Vavuniya Police Station. 40

Mr.Sambandhan: He was on leave and he resumed duties on the 8th of December whereas the incident took place on the 27th of December.

In the
Supreme Court
at Jaffna.

—————
No.39.

Proceedings re
B.V.J.Alagiah.

18th March 1954
- continued.

10 Court: In my opinion Mr.Alagiah was fully aware of what had happened and he kept matters going in such a way as to protect the Police Officers and the Headman. When he came into the witness box he was asked and he said that he had not looked into the matter as to what had happened in this case. It is my opinion that he did look into this matter. If he had looked into this matter he would have realised as to what had happened. In this case Mr.Alagiah's actions cannot be supported in any way. The copy of the statement made by the accused was prevented from being looked into by the Magistrate, Attorney General and even this Court. When he was first asked in the witness box about the statement made by the accused he said that he did not know that a statement had been recorded.

20 Later he said that he came to know later that a statement of the accused had been recorded. I am not going to deal with him under Section 440(1) but I am going to send a copy of the full proceedings of this to the Inspector General of Police and another to the Attorney General to take necessary action. There is no doubt that Thangammah was taken to the Police Station on the 22nd of December and she gave evidence in the Magistrate's Court on the 23rd December.

30 Court to Witness: I am aware that you looked into the information book and you were aware that Sinnachi's name was mentioned in one of the statements. There are a series of matters which clearly show that you were out to suppress evidence. I know that it is a common thing that senior officers when they find a junior officer in difficulty they help to save him from trouble. Even when the witnesses came forward you did not ask them to come forward and tell who the assailants were. You are

40 a custodian of the peace and rights of the people. I have very carefully considered your matter and since any action against you under Section 440(1) of Criminal Procedure Code will involve serious consequences to you I am sending a copy of the complete proceedings of this case to the Attorney General and another to the Inspector General of Police for necessary action. I also order that all papers in connection with this case be made available to the Attorney General and to the

146.

In the
Supreme Court
at Jaffna.

Inspector General of Police. You may go.

Stamp.

True copy

No.39.

??

Proceedings re
B.V.J.Alagiah.

Registrar, Supreme Court.
Ceylon.

18th March 1954
- continued.

13th April, 1955.

Seal.

In the Privy
Council.

No.40.

No.40.

PETITION FOR SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

10

Petition for
Special Leave
to Appeal.

4th March, 1955.

4th March 1955.

(NOT PRINTED)

No.41.

In the Privy
Council.

ORDER GRANTING SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL.

No.41.

AT THE COURT AT BUCKINGHAM PALACE

The 7th day of April, 1955

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Order granting
special leave
to Appeal to
Her Majesty in
Council.

LORD PRESIDENT

MR. HEATHCOAT AMORY

MR. SECRETARY LENNOX-BOYD

MR. BOYD-CARPENTER

7th April 1955.

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 15th day of March, 1955 in the
words following, viz:-

20 "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 S.K.Subra-
maniam in the matter of an Appeal from the Su-
preme Court of Ceylon between the Petitioner and
Your Majesty Respondent setting forth (amongst
other matters) that the Petitioner prays for
special leave to appeal to Your Majesty in Coun-
cil against the Order of the Commissioner of
Assize (Mr. Commissioner Barr Kumarakulasinghe)
1st Northern Circuit 1954 Supreme Court of Cey-
lon dated the 18th March 1954 whereby on the
conclusion of the Trial before the said Commis-
sioner of the case of The Queen v. Veerakathey
Tharuman alias Tharmalingam and the acquittal
30 of the Accused in that case on a charge of mur-
der the Petitioner a prosecution witness was
sentenced to one month's rigorous imprisonment
for having suppressed evidence during the course
of the Trial the learned Commissioner purporting
to exercise summary powers under Section 440(1)
of the Criminal Procedure Code: that in the
aforementioned case of The Queen v. Veerakathey
Tharuman alias Tharmalingam the Accused was
40 charged under Section 296 of the Penal Code
with the murder of one Kandasamy on the 27th
November 1952 at or near a place known as Nelli-
adi Junction: that the Petitioner was on all
material dates the Village Headman of Karaveti
North a village close to Nelliadi Junction the
scene of the alleged offence and he gave evidence

In the Privy
Council.

No.41.

Order granting
special leave
to appeal to
Her Majesty in
Council.

7th April 1955

- continued.

for the prosecution at the Trial: that the learned Trial Judge came to the opinion that there was no evidence against the Accused and directed the Jury to bring in a verdict of not guilty of any offence which the Jury accordingly did: that on the 15th March 1954 the Court called the Petitioner and other witnesses and remanded them until the following day the official record stating:- "Court informs the Crown Counsel to consult the Attorney-General if he likes and to file indictment against all the witnesses mentioned above": that the Petitioner was brought before the Judge on the 16th March 1954 and on the next day the Petitioner was released on bail and on the 18th March 1954 after a further hearing the Court made an Order sentencing the Petitioner to one month's rigorous imprisonment: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Order of the Commissioner of Assize Supreme Court of Ceylon dated the 18th March 1954 or for further or other relief: 10

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent 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 the Order of the Commissioner of Assize 1st Northern Circuit 1954 Supreme Court of Ceylon dated the 18th day of March 1954: 30

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court 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." 40

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her 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. 50

W. G. AGNEW.

E X H I B I T S



E X H I B I T SExhibits.X - HEADMAN'S SERIAL REPORT
(To be retained by the Headman)

X.

No. 4

Headman's
Serial Report
dated 27th
November 1952.Date & Time Information: 27.11.52 at 7.30 p.m.Nature of Offence: V.C.G.Hurt with knife.Place of Offence: Karaveddy North.Date & Time of Offence: 27.11.52 at about 7 p.m.Name of Victim: One Kandasamy of Alvay.10 Name of Offender: Not known.Names of Witnesses: -----Name of Informant: Velupillai Selliah.Date & Time of Information: 27.11.52 at 7.30 p.m.Details: If the complainant) I spoke to the in-
had received serious injuries) jured and found
immediately make an entry of) him senseless.
all what he states:)Date & time of despatch of) 27.11.52 at
this report:) 7.40 p.m.

20 Signature - Sgd. Illegibly.

Date & time of receipt of) V.H.132.
this report by Police:) -----Translation of P1.

P.1.

P.1. - COMPLAINT MADE TO VILLAGE HEADMAN NO.132
KARAVEDDY NORTH.Certified copy of the statement of Velupillai
Selliah of Karaveddy North.Complaint made
to Village
Headman No.132
Karaveddy North
dated 28th
November 1952.30 About 7.30 p.m. Velupillai Selliah of Karaveddy
North appears at my office and states: When I was
on my way to the Nelliady market from my house, I
saw Kandasamy, a goldsmith from Alvai with bleeding
injuries.

Sgd. V.SELLIAH (in Tamil)

Sgd. S.K.Subramaniam
V.H.132.Karaveddy North.
28.11.52.Translated by me
Sgd. T.Sachithanathan.
Interpreter.

Exhibits.

P.2.

Post Mortem
Report dated
28th November
1952.

P.2. - POST MORTEM REPORT.

P.2.

Intd. D.W.
Magistrate. 3.12.52.

Serial No.64.POST-MORTEM EXAMINATIONSREPORT

Inquest No. 16525

Date: 28th November, 1952.

Place: Mortuary, Civil Hospital, Pt. Pedro.

Courts: Pt. Pedro. 10

Name of Deceased Person: Murugesu Kandasamy.

Date and time of Death, if known: 27th November,
1952 at about 8 p.m.

REPORT of a Post-mortem Examination made by Dr.S. Vaithilingam, D.M.O. Point Pedro on the body of M.Kandasamy at the request of the Magistrate, Point Pedro. Examination commenced at 9 o'clock a.m. about 13 hours after death and terminated at 11.15 o'clock a.m. on the 28th day of November, 1952.

I. 1. Name of District: Vadamaradchi. 20

2. Place of Examination: Mortuary, Civil Hospital, Point Pedro.

II. Person or Persons who identified the Body: (1) Murugesu Sinniah
) 1st brother of Deceased
(2) Murugesu Arumugam
) 2nd brother of Deceased

III. External Inspection:

1. General condition of the body:

Body of a well-nourished adult male deceased in a blood stained white verty cloth and banian, was seen lying on the post mortem table in the hospital Mortuary. There were injuries on the body. 30

General colour:

Brownish-black.

Marks, scars and deformities

Nil.

Products of disease ulcers, hernia, &c. Nil.

Injuries (inflicted before or after death)

(1) Incised wound on the left cheek 1" long & $\frac{3}{4}$ " deep, 2" in front of the left ear directed from the above downwards. 40

Exhibits.

P.2.

Post Mortem
Report dated
28th November
1952 -
continued.

(2) Incised wound $\frac{1}{2}$ "
long $\frac{1}{4}$ " deep just below
outer margin of left
eyebrow directed from
above downwards.

(3) Diffused contusion
on the left side of face

(4) Fracture of left
humerus in the upper
third.

(5) Incised wound $1\frac{1}{2}$ "
long, $\frac{1}{4}$ " deep at the
base of the 1st phalanx
of the right little fin-
ger on the palmer aspect
extending to the cleft
between the ring and
little fingers on the
right side.

(6) Contused wound on
the inner aspect of
right hand $\frac{1}{2}$ " long $\frac{1}{4}$ "
deep.

(7) Incised wound 4"
long on the right side
of abdomen $\frac{1}{2}$ " above the
umbilicus to the right
mid line penetrating in-
to the right side of ab-
domen and situated
transversely. The large
and small intestines and
omentum were seen pro-
truding out of the wound.

2. Height (as deter-
mined by measure-
ment. Five feet and seven
inches.
3. Age: About 35 years.
4. Sex: Male.
5. Colour of the eyes: Pale blue.
6. Length, colour
and condition of
hair: Seven inches, black and
dishevelled.
7. Position and con-
dition of tongue: Inside buccal cavity
and slightly coated.
8. Condition and
number of teeth: Upper jaw - 7
Lower jaw - 5
Complete: No.
Incomplete: Yes.
Any peculiarity: Coated with tartar.

10

20

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Exhibits

P.2.

Post Mortem
Report dated
28th November
1952 -
continued.

9. Signs of death -		
(a) Primary flaccidity:	$\frac{1}{4}$ -	
(b) Rigor mortis:	Present	
(c) Putrefaction:	Absent	
10. Condition and contents of hands and nails:	Hands half clenched and nails filled with dirt.	
11. Condition of natural openings -		10
Nose:	Normal.	
(Especially with reference to presence of foreign substances, corrosive poisons, presence or absence of the signs of virginity or of recent injury about the parts)	Normal.	20
Mouth:	Fracture of the left upper jaw.	
Ears:	Normal.	
Urinary and sexual:	Normal.	
Anus:	Normal.	
12. Conditions of the neck:		
Presence of marks of strangulation:	Nil.	30
Condition of the cervical vertebrae:	Normal and Intact.	
IV.- Internal Inspection:		
1. Cranial cavity:		
Condition of the soft parts covering it:	Normal.	
Condition of the bones of the skull:	Normal and intact.	40
Condition of the membranes and sinuses of the brain:	Normal.	
Condition and appearance of the brain substance:	Normal.	
Contents of the lateral ventricles:	Slight fluid present.	
Condition of the vessels of the brain:	Normal.	

	2. Thoracic cavity:	Filled with fluid blood.	<u>Exhibits</u>
	Condition of the soft parts covering it:	Stained with blood.	P.2.
		Fracture of the sternum at the junction of upper and middle third. Fracture of the 3rd, 4th and 6th ribs on the right side. Fractures of the 4th, 5th, 6th, 7th & 8th ribs on the left side on the anterior aspect.	Post Mortem Report dated 28th November 1952 - continued.
10	Position of organs on opening the chest:	Normal.	
	Condition of pericardium:	Normal.	
	Right side -		
	(a) Valves:	Normal.	
	(b) Contents:	Empty	
	Left side -		
20	(a) Valves:	Normal.	
	(b) Contents:	Empty.	
	Coronary vessels:	Normal.	
	Condition of the large blood vessels:	Normal.	
	Condition of the lungs:	There were lacerations on the anterior aspect of both lungs and they were blood-stained. Cut surface was pale.	
	Larynx:	Pale.	
30	Trachea:	Pale.	
	Gullet:	Normal.	
	3. Abdominal cavity:	Presence of fluid blood. The large and small intestines and omentum were protruding out of the wound on the right side of abdomen.	
	Condition of diaphragm:	Normal.	
40	Condition of vertebrae:	Normal and intact.	
	Condition of liver:	Normal size, cut surface (pale) was pale in colour.	
	Gall bladder:	Wall thick and sticky fluid bile was present.	
	Spleen:	Normal size. Surface shrunken. Cut surface brownish black.	

Exhibits

P.2.

Post Mortem
Report dated
28th November
1952 -
continued.

Condition of the stomach:	Distended.	
Contents:	Fluid Semi-digested food matter. Smell of toddy in the stomach contents.	
Duodenum:	Normal.	
Contents:	Yellowish fluid matter.	
Jejunum:	Partly congested in some spots.	
Contents:	Fluid faecal matter.	10
Ileum:	Partly congested in some spots.	
Contents:	Fluid faecal matter.	
Large intestines:	Normal.	
Contents:	Faecal matter.	
Kidneys:	Normal size. Capsule easily stripped. Cut surface was pale in colour.	
Suprarenal capsules:	Normal.	20
Bladder:	Normal.	
(a) Contents:	About two ounces of urine.	
Condition of blood vessels:	Normal.	
Generative organs:	Normal.	
V.- The opinion and the reasons on which it is grounded:	From the post mortem appearances described viz: Fractures of the left humerus, left upper jaw, sternum, ribs and right and left sides incised wound of abdomen penetrating the abdominal cavity with protrusion of intestines and omentum. I am of opinion that was due to shock and haemorrhage following multiple fractures and penetrating incised wound of abdomen with protrusion of intestines and omentum.	30 40
	Sgd.S.Vaithilingam, D.M.O. Pt. Pedro.	
VI.- Verdict of the Coroner's Jury:	Homicide.	
Affirmed to before me at Point Pedro on this 8th day of December 1952		
	Sgd. D.Wimalaratna Magistrate.	

X.2.- PETITION DATED 24th DECEMBER 1952.

Exhibits

Karuneddy, 24.12.52. X2.

X.2.

The A.S.P., K.K.S.

Petition dated
24th December,
1952.

Sir,

10 The murder of Kandasamy, the goldsmith chap
at the Neelliady junction is not a mystery, it is a
broadlight and hot blood murder. Kandasamy had a
quarrel with Sandiralekam a nephew of Kadyarasa
Kandappa the present V.C. Chairman Kaddaively.

20 Some two days prior to the murder, Kandasamy slap-
ped Sandiralekam in the presence of several people.
Kandasamy was also the cause of the murder of one
Chelliah at the Neelliady junction a year or two
ago. Chelliah is also a relation of the Chairman
Kandappa. Kandappa, Sandiralekam and two Malayali
chaps murdered Kandasamy inside the shop of Sinniah
while he was drinking arrack. Sinniah sells arrack
illicitly. The murder took place at 5.30 p.m. in-
side the shop and after dark the corpse was thrown
30 under the tamarind tree. Kandappa is a well known
thug, and dope dealer and people are afraid to come
forward as witnesses. The Udaiyar of Kaddaively
who was then acting V.H. should now be aware of all
these things and he will be able to help the Police
to arrest the mystery. This is a clue to get at
the people. If the Point Pedro Police is vigilant
they can easily tackle these people and find out
the truth. Lot of C.I.D. work is necessary. If
these people are taken into custody the mystery can
be easily solved.

Interested.

C 764/52.

P.P.

For comments re this petition in 2 weeks' time.

Sgd.....

A.S.P.K.K.S.

26.12.52.

Calx. 16/12/52.

S.I.A.

40

For you please.

Intd.....

28/2.

A.S.P., K.K.S.

The facts mentioned in this petition are not
correct according to the evidence already recorded
by the Magistrate. I have sent the C.F. in this
connection to you. This may be attached to the C.F.

Sgd.....

Point Pedro.

Exhibits

X.1. - PETITION DATED 24th JANUARY 1953.

X.1.

Karaveddy North,
Karaveddy, 24.1.53.

Petition dated
24th January,
1953.

The Magistrate of Police Court,
Point Pedro.

Honoured Sir,

Y I beg to bring to your kind notice that the
murderers of Murugesu Kandasamy are living still
at large. One Veeragathy Tharman is living at Kil-
inochy and its suburbs. Maniam is in his own vil-
lage. Sahotheram Sinniah too is at his own home. 10

X One treat was held to the Police Inspector
of Point Pedro by Sahotheram Sinniah, Ponnuthurai
and the Village Headman of Karaveddy North at K.C.
Nadarajah's (Advocate) house on 12.1.53. As the
result of that treat these culprits are living
freely. I am perfectly sure that the Police In-
spector might have been bribed.

In the name of Justice and fair play I appeal
to your noble self to arrest the culprits and to 20
proceed with the matter.

I beg to remain Sir,
I am, Yours most sincerely,
Sgd. N.VALLIPURAM
(in Tamil)

CONFIDENTIAL:

A.S.P., K.K.S.

Copy forwarded for your information and in-
vestigation.

Sgd.....
Magistrate, Pt. Pedro. 30

- i. I have made private inquiry - X is not true.
- ii. S.C. Alagiah.

H.C.3/53
I.R. re Y by 25.2.53
Sgd.....
11.2.53.

Colombo. 25/2.

P.12/55
25/2. 40

Inquiries were made practically every day to trace
the accused, but his present place of abode is not
known. There is a rumour to say that he is either
at Kilinochy or Mulativu, but there is no definite
information as to his whereabouts. I am detailing
P.C.410 to go in civil clothes and verify as to his
present place of residence.

Sgd.....
Pt. Pedro. 24.2.53.

O/ Attach to Crime CE.

Intd.....
1/3.

STATEMENT OF ACCUSED BEFORE MAGISTRATE POINT PEDROExhibits

Name of Accused: V.Thamman a Tharmalingam.

Statement of
Accused before
Magistrate
Point Pedro
dated 21st
April 1953.

Charge: That on or about the 27th day of November, 1952 at Nelliady Junction in the District of Point Pedro, within the jurisdiction of this Court, you did commit murder by causing the death of Murugesu Kandasamy of Alavai South; and that you have thereby committed an offence punishable under Sec.296 of the Ceylon Penal Code.

10

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

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 :-

20

"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:-

"I am not guilty"

Sgd. in Tamil

30

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.

Sgd. illegibly,
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.

40

The accused states:- "I am not giving evidence or calling evidence on my behalf".

Sgd. in Tamil

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.

Date:
21st April 1953.

Sgd. Illegibly,
Magistrate.

Exhibits

X.4. - LOOSE LEAF REGISTER - KARAVEDDY POST OFFICE.

X.4.
Loose Leaf
Register -
Karaveddy
Post Office.

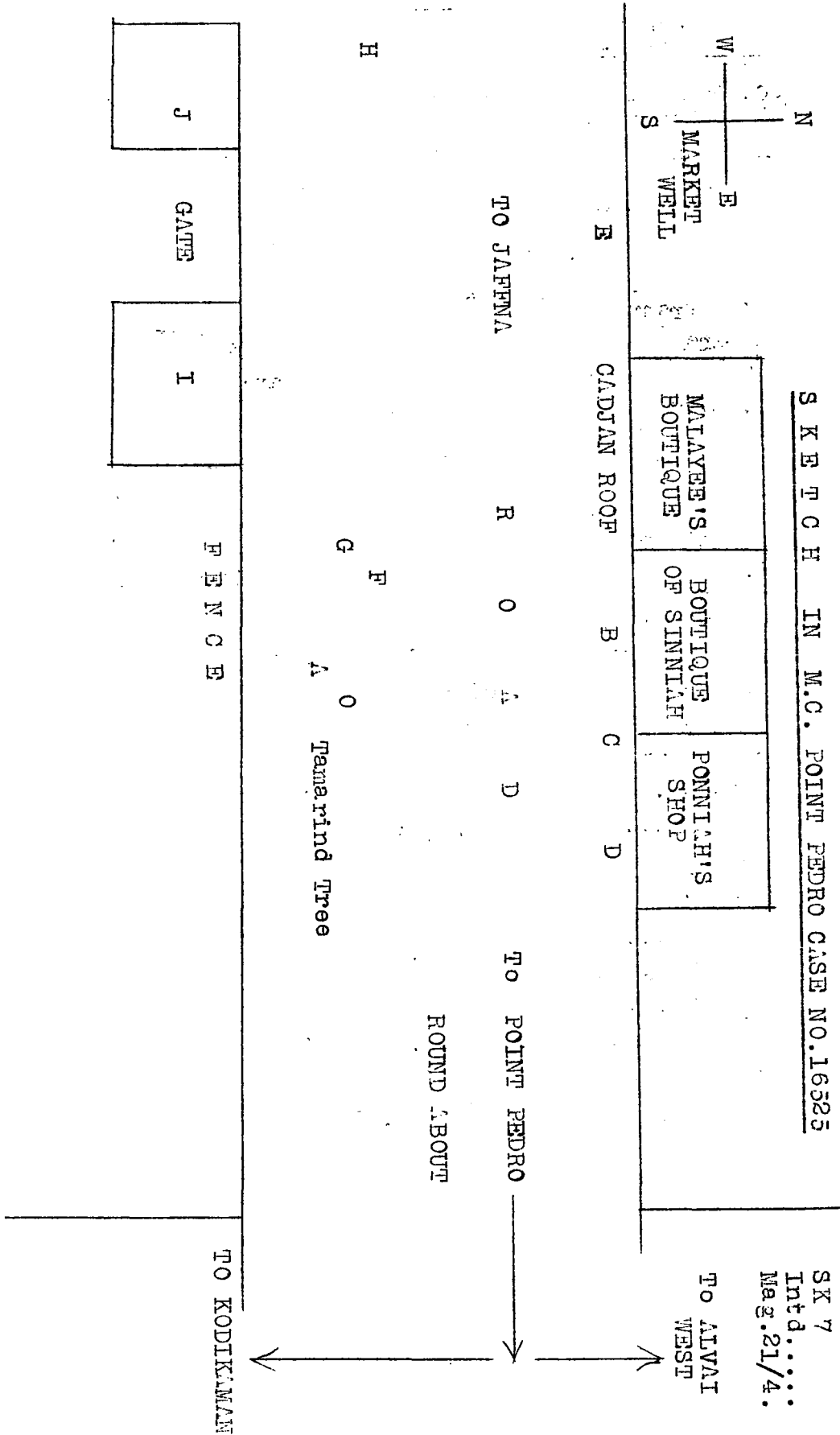
Originating Subscriber	Distant Ex-change and Subscriber	Time call booked	Time of connection	Time of Dis-connection	Fee Rs. cts.	Remarks	Initials of Tele-phonist
JA 67	KVD 4	13.40	<u>23.11</u>			D F	Intd.....
JA 171	KVD. 2	13.40	<u>24.11</u>			D F	Intd.....
4	CO 5685	1.15	D	M	R -	12.2.52	Intd.....
2	JA 111	11.50	11.52	11.55	70		Intd.....
4	G 4952	12.40	14.05	14.11	6 00		Intd.....
					6 70		
4	CO 5685	12.30	<u>25.11.52</u>	4.33	3 00		Intd.....
2	SQ 23	22.40	4.30	22.43	70		Intd.....
			22.41		3 70		
4	J 261	14.40	<u>26.11.52</u>	14.45	70		Intd.....
			14.42				
4	W 3124	11.00	<u>27.11.52</u>	12.34	3 00		
4	JA 54	12.10	12.31	12.15	70		
			12.12		3 70		
CNCB	KVD 10	18.30				D F	Intd.....
CNCB	KVD 5	19				D F	Intd.....
5	CNPO	19.30	19.40	19.43	3 35	D F	Intd.....
5	PO 23	19.46	19.46	19.49	45	D F	Intd.....
5	PQ 24	19.49	19.50	19.51	20	D F	Intd.....
					4 00		

S.K.7. - SKETCH

Exhibits

S.K.7.

Sketch.



Exhibits

S.K.7. - SKETCH KEY.

S.K.7.

REFERENCES.

Sketch Key.

- O. Tamarind tree under which the deceased was found dead.
- A. Where the deceased's body was found.
- B. Spot assault took place when witness Tharmar Iyathurai first saw.
- C. From where the witness Tharmar saw the assault at B.
- D. Spot from where the witness Tharmar Iyathurai saw the stabbing. 10
- E. Spot from where the witness Chelliah Subramaniam alias Vairamuther saw the assault on B.
- F. Spot where witness Thangamah wife of Sinnatamby was called by deceased.
- G. The spot where witness Sinavan Kanapathipillai saw the deceased being carried across the road and placed under Tamarind tree and the second stabbing.
- H. The spot where witness Sinavan Kanapathipillai saw the car halted and the accused went up to the tail light wiped the blood from the knife. 20
- I. The boutique of Ponniah Kandappan.
- J. The shop of Sinniah of

DISTANCES

A to B	36'9"	
A to C	34'	
A to D	38'	
A to E	90'	
A to F	12'9"	30
A to G	15'	
A to H	58'	
A to I	32'	
From A to the fence	15'	
From A to the round about.	125'	

IN THE PRIVY COUNCIL

No. 20 of 1955

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN:

S. K. SUBRAMANIAM Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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