

~~PC.~~
~~GLI G-I~~

Judgment
35, 1964

IN THE PRIVY COUNCIL

No. 24 of 1963

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL, CEYLON

B E T W E E N :

THE QUEEN

APPELLANT

- and -

MURUGAN RAMASAMY alias
BABUN RAMASAMY

RESPONDENT

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78636

T.L. WILSON & CO.
6, Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellant.

HATCHETT JONES & CO.,
90 Fenchurch Street,
London E.C.3.

Solicitors for the Respondent.

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL,
CEYLON

B E T W E E N :

THE QUEEN

Appellant

-and-

MURUGAN RAMASAMY alias
BABUN RAMASAMY

Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>In the Supreme Court</u>		
1.	Indictment	13th September 1961	1 - 2
2.	Plea of Accused	18th December 1961	2 - 4
3.	Proceedings	18th December 1961	4 - 5
	<u>Prosecution Evidence</u>		
4.	Dr. S.R. Gunaratne	18th December 1961	5 - 8
5.	K. Piyadasa	18th December 1961	8 - 36
6.	N. Jayatunge	19th December 1961	36 - 42
7.	K.M. Heen Banda	19th December 1961	42 - 62
8.	U.G. Juwasis	19th December 1961	63 - 85
9.	A.M.F. Mathathmaya	19th December 1961	85 - 92

No.	Description of Document	Date	Page
10.	V.D. Jayawardene	19th December 1961	92 - 96
11.	M.A.W. Perera	19th December 1961	96 - 105
12.	D. Senaratne	19th December 1961	105 - 107
13.	W.D. Jayawardene (Recalled)	20th December 1961	108 - 131
14.	Proceedings <u>Defence Evidence</u>	20th December 1961	131
15.	M.Z.M. Nizam	20th December 1961	131 - 133
16.	Summing Up	21st December 1961	133 - 158
17.	Verdict and Sentence <u>In the Court of Criminal Appeal</u>	21st December 1961	159 - 159
18.	Notice and Grounds of Appeal	1st January 1962	159 - 163
19.	Judgment <u>In the Privy Council</u>	17th December 1962	163 - 186
20.	Order granting Special Leave to Appeal	11th April 1963.	186 - 188

DOCUMENTS TRANSMITTED
BUT NOT REPRODUCED.

Description of document	Date
Extracts from the Information Book of Gampola Police <u>In the Magistrate's Court</u>	1st September 1960 to 15th September 1960
Journal Entries	17th October 1960 to 30th March 1961
Proceedings	17th October 1960 to 16th February 1961
Statutory Statement made by the Accused	16th February 1961

E X H I B I T S

Exhibit Mark	Description of Document	Date
	<u>Prosecution Exhibits</u>	
P7.	Extract from the Information Book of Gampola Police	1st September 1960
P8.	Report of Government Analyst	25th October 1960
SK.4.	Sketch Plan	
	<u>Defence Exhibits</u>	
D1.	Extract from Deposition of H.M. Heen Banda in Magistrates Court	28th November 1960
D2.	Extract from Deposition of U.G. Juwanis in Magistrate's Court	28th November 1960

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL, CEYLON

B E T W E E N :

THE QUEEN

Appellant

- and -

MURUGAN RAMASAMY alias
BABUN RAMASAMY

Respondent

10

RECORD OF PROCEEDINGS

No. 1.

In the Supreme
Court

Indictment

No. 1.

S.C.14.

Magistrate's Court
of Gampola
Case No: 3082.

INDICTMENT

Indictment

13th September
1961

20

In the Supreme Court
of the Island of Ceylon
Midland Circuit
District of Kandy

(Criminal
Jurisdiction)

Session,
1961

{ At a Session of the said Supreme
{ Court in its Criminal Jurisdiction
{ for the MIDLAND Circuit, to be
{ holden at Kandy in the year One
{ thousand Nine hundred and Sixty
{ one.

THE QUEEN

Versus

MURUGAN RAMASAMY alias BABUN RAMASAMY

In the Supreme
Court

you are indicted at the instance of The Hon.
Douglas St. Clive Budd Janaze, Q.C.

No. 1.

Her Majesty's Attorney-General, and the charge
against you is -

Indictment
13 SEPT 1961
(continued)

That on or about the 1st of September, 1960.
at Nawalapitiya, in the division of Campola,
within the jurisdiction of this Court, you
did shoot Kammalawattegeders Piyadasa, with
a gun with such intention or knowledge and
under such circumstances that had you by
such act caused the death of the said
Kammalawattegeders Piyadassa you would have
been guilty of murder and you did by such act
cause hurt to the said Kammalwattegeders
Piyadassa and you have thereby committed an
offence punishable under Section 300 of the
Penal Code.

10

This 13th day of September, 1961.

Sgd. R. Abeysuriya.
Crown Counsel.

20

No. 2.
Plea of
Accused
18th December
1961

No. 2.
Plea of Accused

Kandy Monday 18th December, 1961.

To this Indictment the accused Murugan Ramasamy
alias Babun Ramasamy pleads "not guilty".

Sgd. M.S.M. Nisam.
Clerk of Assize, S.C.,
Kandy.

List of
Productions

List of Productions

30

1. Statement made by the accused before the
Magistrate, Campola.
2. Gun -- marked P1.
3. Gunny bag -- marked P2.
4. Oil cloth bag containing 14 cartridges --

marked P3.

In the Supreme
Court

5. Pocket Diary -- marked P4.

6. Shirt -- marked P5.

List of
Productions

7. Banian -- marked P6.

(continued)

8. Government Analyst's Report -- marked P8.

9. Sketches -- marked Sk1 to Sk11.

10. Deposition of E. Wijedses, Police Constable
7326, Campola.

10 11. Deposition of G.E. Jayekuru, Clerk, Magis-
trate's Court, Badulla.

List of Witnesses

List of
Witnesses

1. Dr. S.R. Gunaratne, District Medical Assis-
tant, Civil Hospital, Nawalapitiya.

2. K.G. Piyadasa, Labourer, Monte Christo
Estate, Nawalapitiya, residing at
Udshentonne.

3. U.G. Juwanis, Labourer, Monte Christo Estate,
Nawalapitiya.

20 4. K.M. Heen Banda, Labourer, Monte Christo
Estate, Nawalapitiya.

5. I.G. Appuhamy, Labourer, Monte Christo
Estate, Nawalapitiya.

6. Robert Harley, Superintendent, Monte Christo
Estate, Nawalapitiya.

7. M.B. Money, Chief Clerk, Monte Christo
Estate, Nawalapitiya.

8. K.R. Karunaratne, Labourer, Monte Christo
Estate, Nawalapitiya.

30 9. N.W. Perera, Inspector of Police, Campola.

10. E.G. Wimslasena, Field Supervisor, Monte
Christo Estate, Nawalapitiya.

11. A.W. Podimahatnaye, Labourer, Monte Christo
Estate, Nawalapitiya.

In the Supreme Court

List of
Witnesses
(continued)

12. W.D. Jayawardene, Police Sergeant 4976,
Gampola.
13. E.M. Victor, Labourer, Monte Christo
Estate, Nawalapitiya.
14. G.E.W.M. Ekamayake, Head Quarter Inspector,
Gampola.
15. R.R.M. Thambavita, Police Constable 3043,
Gampola.
16. Daya Senaratne, Police Constable 4358, 10
Gampola.
17. Noel Jayatunge, Assistant Government Analyst,
Colombo.

No. 3.

Proceedings

18th December,
1961.

No. 3.

Proceedings

S.C.14/M.C. Gampola 3082.

Queen

Vs.

Murugan Ramasamy alias Babun
Ramasamy

20

Trial commences on : 18th December, 1961.

Before:- Honourable T.S. Fernando, Puisne
Justice.

Appearances : Mr. A.M. Coomarasamy, Crown
Counsel, for prosecution.

Mr. Adv. K. Siva Subramaniam
instructed by Mr. Jameel with
Mr. Adv. Maharroof (assigned) for
the accused.

Charge :- That on or about the 1st day of 30
September, 1960 at Nawalapitiya,
in the division of Gampola,

within the jurisdiction of this court, you did shoot Kammalawattegedera Piyadasa with a gun with such intention or knowledge and under such circumstances that had you by such act caused the death of the said Kammalawattegedera Piyadasa, you would have been guilty of murder and that you did by such act cause hurt to the said Kammalawattegedera Piyadasa and you have thereby committed an offence punishable under Section 300 of the Penal Code.

In the Supreme
Court

No. 3.

Proceedings

18th December,
1961.

(continued)

10

Plea:- NOT GUILTY.

Jury:- The following English speaking jury is empanelled.

1. J.A.T. Swayne - FOREMAN - sworn.

20

2. D.S.T. Fernando - sworn.

3. R.F. Sewell - sworn.

4. D. Currie - sworn.

5. D.E. Ranasinghe - affirmed.

(R. Suppish challenged by Crown Counsel)

(S.S. Moonesinghe challenged by Defence Counsel)

6. K.B. Kulugammana - affirmed.

7. K.B. Samerakoon - affirmed.

30

Copies of the sketch without the key handed to the jury. (Defence Counsel has no objection). Crown Counsel opens the case for the prosecution, and calls -

PROSECUTION EVIDENCE

No. 4.

Dr. S.R. Gunaratne

Prosecution
Evidence

No. 4.

Dr. S.R.

Gunaratne.

In the Supreme Court

Dr. Senarath Rajendra Gunaratne, affirmed, 37 years, District Medical Officer, Divulapitiya.

No. 4.

Examined

Prosecution Evidence

1. Q. Were you the District Medical Officer at Nawalapitiya in September, 1960?

Dr. S.R. Gunaratne

A. I was the Assistant District Medical Officer.

(continued)

2. Q. On 1st September, 1960 at 2.30 p.m. did you examine one K.G. Piyadasa?

10

Examination

A. Yes.

3. Q. What were the injuries you found on him?

A. (1) A lacerated wound skin deep about 1/4th inch long on the left side of the chest at about the level of the sternum. There was an abrasion 1" long 1/2" wide around it.

4. Q. How long was this patient in hospital?

A. For two days

5. Q. Could that injury have been caused by the pellet from a gun?

20

A. Yes.

6. Q. By a lacerated wound what do you mean?

A. An irregular tearing of the skin.

(The witness K.G. Piyadasa is shown to this witness and he indicates the site of the injury on witness K.G. Piyadasa)

7. Q. On the same day at the same place did you examine one Appuhamy?

A. Yes.

30

8. Q. What were the injuries you found on him?

8a. Court to Crown Counsel:- What is the relevancy of that question? That is not a part of the charge. I rule that out as being irrelevant.

Cross-examinedIn the Supreme
Court

9. Q. The injury was skin deep?

A. Yes.

No. 4.
Prosecution
Evidence

10. Q. It was not an injury which would have resulted in unconsciousness?

A. No.

Dr. S.R.
Gunaratne
Cross
Examination

11. Q. Nor an injury that would have caused a man like Piyadasa to fall down?

(continued)

10 A. No. I do not think.

12. Q. The slug or whatever touched the body had lost all its force?

A. It had grazed the skin.

13. Court to Defence Counsel :- Is your question that it would not have caused an average person to fall down or a man like Piyadasa?Defence Counsel: - A man like Piyadasa.Witness:- I do not think.20 Cross-examination continued.

14. Q. It is a sort of an injury which one can get by coming in contact against a shrub, like a scratch.

A. It was more than a scratch.

15. Q. There was nothing in the injury itself to indicate that it was caused by a slug or pellet?

A. No.

Re-examined

Re-examination

30 16. (Shown P4) Q. If the injury that Piyadasa sustained was caused by a pellet which went through that diary, the impact or shall we say the force of the shot was broken by that?

A. It this was not in the way, probably he would have fallen.

In the Supreme
Court

No. 4.
Prosecution
Evidence

Dr.S.R.Gunaratne

Re-examination
(continued)

Court:-

17. Q. If this was not in the way a man receiving the full force unobstructed by the diary would have fallen down?

A. Yes.

18. Q. Does this question of falling down also depend on the shock caused to the man?

A. Yes.

10

Re-examination continued

19. Q. You do not know whether it sort of glaced off?

A. No.

20. Q. That injury that you just described has left a scar?

A. Yes.

Jury:- No questions.

No. 5.

K.Piyadasa

Examination

No. 5.

K. Piyadasa

20

Kammalawattegedera Piyadasa, affirmed, 25 years, labourer, residing at Uddahentonne.

Examined.

21. Q. Were you working in Monte Christo Estate in September last year?

A. Yes.

22. Q. How long had you been in September last year working as a labourer in that estate?

A. One month and a day.

30

Court:-

In the Supreme
Court

23. Q. You came to work on 1st August ?

No. 5.

A. Yes.

Prosecution
Evidence

Examination continued.

24. Q. Were you aware when you went there to work whether there was a strike or not ?

K. Piyadasa

Examination

A. I came to know.

(continued)

25. Q. When you went to work there where did you live ?

10

A. I was attending to the work in Monte Christo estate while residing in my home at Udahentenne.

26. Q. How far is that ?

A. About three to three and half miles.

27. Q. Were there other people also from your village working with you in that estate ?

A. Yes.

20

28. Q. On 1st September at about 10.30 in the morning where were you ?

A. There is a block of 25 acres above the labour line. I was in that area.

29. Q. Was that close to line set No.5 ?

A. There are some labour lines around there but I do not know whether that is No.5.

30. Q. You know a place called Wadiya ?

30

A. Yes.

31. Q. Was it close to the wadiya ?

A. No.

32. Q. How far was the wadiya from where

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Examination

(continued)

you were ?

A. About 1/8th to 1/4th mile.

33. Q. This place where you were working on that day, was it close to a road ?

A. Yes. There is the Nawalapitiya road.

34. Q. That is the main road ?

A. Yes.

35. Q. You were working above the road ?

A. Yes.

10

36. Q. What sort of work were you doing ?

A. I was weeding.

37. Q. Can you remember who else was with you that day ?

A. Yes.

38. Q. Who ?

A. Heenbanda and Juwanis.

39. Q. Were there other labourers apart from the three of you working on this 25 acre block ?

20

A. About 15 or 20 labourers were working on that block.

Court:-

40. Q. Was Heenbanda also a village labourer recruited like you ?

A. Heenbanda was a resident labourer.

41. Q. Juwanis ?

A. He too was a resident labourer.

42. Q. Neither of them had struck work ?

A. No. They were working along with us.

30

Examination continued.

In the Supreme Court

No. 5.

Prosecution Evidence

K. Piyadasa

Examination

(continued)

10

43. Q. While you were doing this weeding work about 10.30 a.m. did you see anyone in the lower part of the estate ?

A. Below the road I saw Ramasamy, Muthiah and Sinniah.

44. Q. Do you see that Ramasamy today in Court ?

(The witness looks around and says that he is in the dock).

45. Q. You say you saw Ramasamy and two others ?

A. I saw them coming. There is a short cut to get on to the main road. They were coming along that.

46. Q. Where did that short cut lead to ?

A. That is a connection between the place where the lines are and the road.

20

47. Q. You know the Dhoby line ?

A. The dhoby line is the name of the line in which this accused was residing.

48. Q. Did this short cut lead to that from the main road ?

A. Yes.

49. Q. When you saw those three persons coming along that short cut did you see anything in their hands ?

30

A. Yes.

50. Q. What did you see ?

A. Ramasamy had a gun in his hand while the other two had stones.

51. Q. What sort of a gun was it ?

A. It was a steel gun.

In the Supreme
Court

No. 5.

Prosecution
Evidence.

K. Piyadasa

Examination

(continued)

52. Q. Then what happened ?

A. I saw the accused Ramasamy lower himself and take aim.

53. Q. In which direction?

A. The three of us were working separately in one group and in that direction the accused took the aim.

Court:

54. Q. Who were the three ?

10

A. Heenbanda, Juwanis and I.

55. Q. Can you get down from the witness box and demonstrate the way he lowered himself to take the aim ? (The witness demonstrates)

Examination continued

56. Q. You said that the gun was directed in the direction of the three of you ?

A. Yes.

20

57. Q. Then what happened ?

A. There was a shade-tree there called Sabukku and I got behind that tree to shelter myself behind one of the trees and the other two jumped into a drain.

58. Q. Then what happened ?

A. Then the report of a gun was heard but nobody received any injury.

59. Q. Then what happened ?

30

A. Then I tried to shift my position from where I was to take shelter behind another tree a little further up and as I was going to that place I received a gun shot. That was the second firing.

60. Q. Did you see who fired that shot ?

A. Yes.

In the Supreme
Court

61. Q. Who fired ?

No. 5.

A. I was turning back when I moved my position and I received the injury at that time.

Prosecution
Evidence.

Court:

K. Piyadasa

62. Q. Who shot you ?

Examination

10

A. Rasasamy.

(continued)

63. Q. And what happened ?

A. I got a little dazed and I fell down. I do not know what happened after that.

20

64. Q. How far away were you from that first group of trees behind which you took shelter first when you actually received the shot as you were going ? (The witness points out the distance from the witness box up to the door in the Court house - a distance of about 25 ft.)

65. Q. Was the accused at the same spot where he was seen to aim the gun in his first attempt at the time he aimed a second time ?

A. Yes.

2.45 p.m.

Certified correct.

30

Sgd: C.B. Weerasekera.

S.C.14/M.C.Gampola 3082.

18.12.61.

2.45 p.m.

KAMMALAWATTEGEDERA PIYADASA.

Examination (continued).

66. Q. You were wearing a shirt, a banian

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Examination

(continued)

and a sarong at the time ?

A. Yes.

SHOWN P.5 and P.6.

Witness: I was wearing P.5 and P6.

67. Q. Did you have anything in the pocket of that shirt.

A. I had a diary in my shirt pocket.

Shown P.4.

68. Q. Is P.4 the diary ?

10

A. Yes.

69. Court. Q. You had that in your pocket ?

A. Yes.

Court Examines Diary.

Court. (continued).

70. Q. You had your name on it ?

A. I cannot remember.

71. Q. Just look at it ?

A. My name is there.

72. Q. And is that writing in your handwriting ?

20

A. Yes.

73. Q. You can write your name in English.

A. Yes.

74. Q. When were you born ?

A. 1937

75. Q. Any further particulars ?

A. 9th February, 1937.

76. Q. And you have written out your date

of birth in the appropriate line and also the number of your rice ration book ?

In the Supreme Court

No. 5.

A. Yes.

Prosecution Evidence

Examination (continued)

77. Q. You were hurt on your chest ?

K. Piyadasa

A. Yes.

(continued)

10

Court: Mr. Coomarasamy, is there a pocket in that shirt P.5.

Crown Counsel: Yes, My Lord.

Court: Let the Jury see that.

SHIRT SHOWN TO JURY.

Examination (continued)

78. Q. Can you remember being taken to the rice store close by ?

A. Yes.

79. Q. Were you taken from there subsequently in the morning in the estate lorry to the Nawalapitiya hospital ?

20

A. The same evening.

80. Q. There did you hand your shirt and banian and diary to Inspector Perera of the Gampola police ?

A. Yes.

Cross-Examined

Cross-Examination

81. Q. Before the 1st August you had never come to this estate ?

30

A. I had been through that estate to Nawalapitiya on foot, on the road which runs through the estate.

82. Q. You have not worked on this estate ?

A. I have not worked on this estate, but I have worked in other estates.

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Cross-
Examination

(continued)

83. Q. Nor did you have any occasion to come into contact with the labour in that estate ?

A. No.

84. Q. When you came on the 1st August the Ceylon Workers' Congress workers were on strike ?

A. Yes.

85. Court: Q. You know there is an organisation called the Ceylon Workers' Congress? 10

A. I know Congress labourers were on strike.

Cross-Examination (continued)

86. Q. The workers who were on strike included Sinhalese people as well ?

A. I do not know that.

87. Q. During the one month that you were on the estate you did not come to know that there were Sinhalese workers also on strike ? 20

A. No.

88. Q. Did you come to know how many workers were on strike ?

Court: Aren't you asking him a lot of things he can only speak to from hearsay. It does not matter how many were on strike in this case.

Cross-Examination (continued)

89. Q. During the one month that you were there did any one interfere with your work ? 30

A. No.

90. Q. You have worked on that estate with a number of other workers ?

A. Yes, I have been doing only weeding work on that estate.

91. Q. On this day there were 21 other

workers along with you ?

A. Yes.

In the Supreme
Court

No. 5.

92. Q. This group of labourers were never interfered with on any day ?

Prosecution
Evidence

93. Court: Did he see what was happening to the labourers on other parts of the estate.

K. Piyadasa

Cross-Examination (continued)

Cross-
Examination

10

94. Q. Various workers must have worked with you during that one month when only the Sinhalese labourers were working with you ?

(continued)

95. Court: Q. Juwanis and Heenbands were working with you ?

A. Yes.

96. Q. They were regular workers on this estate ?

A. Yes.

20

97. Q. They were not people who had struck work ?

A. That is so.

98. Q. On this day, at any rate, you were working with 2 others who were regular workers on this estate ?

A. Yes.

99. Q. Heenbanda and Juwanis I take it are Sinhalese ?

30

A. Yes.

Cross-Examination (continued)

100. Q. Have you seen any labourers being interfered with when you worked in the month of August ?

A. I did not see.

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Cross-
Examination

(continued)

101. Q. During this one month you did not
reside on the estate ?

A. No.

102. Q. By what time did you come to work ?

A. At 6.30 a.m.

103. Q. And leave the estate ?

A. Sometimes I leave at 1 o'clock,
sometimes at 2 o'clock, and still
at other times at 3 p.m.

10

104. Q. During this period then you had no
occasion to come into contact with
the tamil labourers on that estate ?

A. No.

105. Q. Because these workers were on strike
and never came to work ?

A. I do not know anything about that.

106. Q. You had no occasion to come across
a man called Muttiah ?

A. No. It was only on the day of the
shooting that I saw him.

20

107. Q. Was the first time you saw Muttiah
the day of the shooting ?

A. I had seen him earlier.

108. Q. What did you come to know for the
first time on that day ?

A. I had seen Muttiah going to the
market, going towards the office.

109. Q. You said a little while earlier
that you came to know Muttiah for
the first time that day on the day
of the shooting.

30

A. I had not known Muttiah, but I had
seen him earlier.

110. Q. What did you come to know that day?

111. Court: Is it really some distinction in idiom ?

In the Supreme Court

He said he had no occasion to meet Muttiah.

No. 5.

It was only on the day of the shooting.

Prosecution Evidence

He had no occasion to associate with him or to come to know, but he had seen him going towards the office and market.

K. Piyadasa

Cross-Examination

(continued)

10

Cross-Examination (continued)

112. Q. Is that the position in regard to Sinniah ?

A. I referred to all the three of them I had seen earlier long before the month during which I was employed on that estate.

113. Q. Had you any dealings with them ?

20

A. I had no personal dealings. I had seen them coming into the boutique where I was employed.

114. Court: Q. Where was that ?

A. At Udahentenne.

115. Q. What was the employment you had at the Udahentenne boutique ?

A. The man who prepares the tea at the boutique.

30

116. Q. And you had seen these 3 persons - Ramasamy, Muttiah and Sinnish where you were employed ?

A. Yes.

Cross-Examination (continued)

117. Q. Have you seen any other labourers on the estate ?

A. I have seen a number of Tamil

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadassa

Cross-
Examination

(continued)

labourers.

118. Q. Had you any occasion to know what the names of these labourers are?

A. I had no occasion.

119. Q. Apart from having seen them, did you know their names ?

A. I came to know their names after the shooting incident, because I heard from the other labourers.

10

120. Q. At the time you saw the 3 people coming you did not know their names ?

A. I know their names at the time I saw them.

121. Q. When did you come to know the 1st accused as Ramasamy ?

A. About a week after I was first employed there.

122. Court: Q. That is about a week after the 1st August?

20

A. When I was on the estate for about 2 weeks or so, certain other people used to show me this accused when he went for his baths.

123. Q. And point out to him by name ?

A. Yes.

Cross-Examination (continued)

124. Q. Can you mention the name of one person who pointed out this man out and said it was Ramasamy ?

30

A. I cannot remember.

125. Q. Could you give the reason why this man was pointed out to you as Ramasamy ?

A. The reason was that they were the

strikers, and as they were going
others used to show them.

In the Supreme
Court

126. Q. All the tamil labour on the estate
were on strike ?

No. 5.

A. I do not know that.

Prosecution
Evidence

127. Q. Sinniah, when did you come to know
his name ?

K. Piyadassa

A. I came to know the names of Sinniah
and the other men in the same way
as I came to know the accused's name.
People used to show them. I got the
names from the other labourers.

Cross-
Examination

10

(continued)

3.10 p.m. -- Mr. Opanayake takes over.

Certified Correct.

Sgd. M.D.E. Perera.
(Stenographer).

S.C.14 (continued)

18. 12. 61.
3.10 p.m.

20

Kammalwattegedera Piyadassa

Court -

128. Q. What the Counsel wants to know is
this; how long after you had gone to
work on this estate did you come to
know Sinniah's name ?

A. I knew these 3 people as well as a
few others on the estate as individuals
on the estate, but I did not know their
names.

30

129. Q. When did you come to know Sinniah's
name for the first time ?

A. In the same circumstances as I came
to know the name of Ramasamy.

130. Q. Would it be correct to say that it was
about two weeks after 1st August ?

A. That would be correct. That is how
I came to know their names.

Cross-Examination (continued)

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadassa

Cross-
Examination

(continued)

131. Q. Was it on the same occasion that you were given Ramasamy's name that you came to know Sinniah's name ?

A. I saw Sinniah, Muttiah and Ramasamy going to a boutique one day. I knew them personally but not their names. Then I asked somebody who was there for their names and I got their names.

10

132. Q. That is all three were together when you asked for their names ?

A. Yes, they were going in the direction of the boutique.

133. Q. Was it your practice, when you saw tamillabourers, to ask for their names ?

A. This was a particular case where I knew the men but not their names, therefore, I asked for their names.

20

134. Q. Any other labourers whose names you ascertained that way ?

A. No.

135. Q. Of all the tamil labourers on this estate you knew the names of three men ?

A. And 3 or 4 others as well.

136. Q. Just now you were asked the question whether you came to know the names of any other tamil labourers and you said "No" ?

30

A. There were other tamil labourers known to me on the estate and whose names I did not know.

137. Q. Did you know what Ramasamy was this man and whether there were any other Ramasamy's on that estate ?

A. I did not know of any other names except for Ramasamy.

I knew him well and because he was

40

the person who was taking the gun on the occasion of the shooting I knew him as Ramasamy.

In the Supreme Court

No. 5.

Prosecution Evidence

K. Piyadassa

Cross-Examination

(continued)

138. Q. Will you please tell His Lordship and the gentlemen of the jury why in answer to my first question you said "I came to know the names of these persons after the shooting?"
- 10 A. I did not say that.
139. Q. You did not say that in this Court ?
- A. I cannot remember whether I said so.
140. Q. Can you remember being taken in the estate lorry to the hospital ?
- A. Yes.
141. Q. Were you conscious at that time ?
- A. At the rice store I had been given some water and I was conscious at the time I was transported in the lorry.
- 20 142. Q. And I suppose you must have got into the lorry yourself ?
- A. I was raised and put into the lorry.
143. Q. You were unable to move about ?
- A. Yes.
144. Q. What time did you reach hospital, can you remember ?
- A. I cannot remember that.
145. Q. You made your statement to the Police about 7 p.m. that night ?
- 30 A. Yes.
146. Q. Before you made your statement to the police did you mention to anyone the names of those three people ?
- A. No.

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadassa

Cross-
Examination

(continued)

147. Q. No one questioned you as to who shot at you ?
- A. No.
148. Q. When you were at the rice store did Mr. Harvie, Superintendent of the estate, come there ?
- A. I did not see him. I understood from others that he did come there.
149. Q. You did not see him at all there ? 10
- A. I did not see him.
150. Q. Did you see Police Constables at the rice store ?
- A. No.
151. Q. When you were being put into the lorry did you see any Police Constables round about the place ?
- A. I remember that there were two or so at that time.
152. Q. Did those Constables ask you as to who shot you ? 20
- A. No.
153. Q. You remember the name of the driver of the lorry, Jainnudeen ?
- A. Yes.
154. Q. Did he ask you at any time as to who shot you ?
- A. No.
155. Q. When you reached the hospital were you conscious ? 30
- A. Yes.
156. Q. Did villagers come to the hospital to see you ?
- A. The following day they came.

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadassa

Cross-
Examination

(continued)

157. Q. That day itself ?

A. Not on that day.

158. Q. Did Mr. Harvie come to the hospital?

A. I cannot remember.

159. Q. Did you discuss this with anyone ?

A. No.

160. Q. You kept the names to yourself till
7 p.m. when your statement was
recorded ?

A. Nobody questioned me.

If anybody questioned me as to who
the persons were I would have given
the names.

161. Q. Did Juwanis accompany you in that
lorry ?

A. I cannot remember.

162. Q. I suggest to you that you involun-
tarily spoke the truth when you
said that you came to know the names
of Ramasamy, Muttiah and Sinniah
after the shooting ?

A. I deny that.

163. Q. Are you aware that there was a
commission sitting over the incid-
ents at Monte-Christo Estate ?

A. I came to know that there was a
commission sitting but I had no
personal knowledge about that.

30 164. Q. Did you send a letter or a memoran-
dum to the commission ?

A. No.

165. Q. Do you know one Jayasena who was
working on that estate ?

A. I understand that there is a person

10

20

In the Supreme Court

- No. 5. 166. Q. Do you know a man called Mendis ?
- Prosecution Evidence A. I have heard of him but I have not seen him at all.
- K. Piyadassa 167. Q. You have never seen them ?
- Cross-Examination A. I have heard of them as people on the estate but I have not seen them.
- (continued) 168. Q. Up to date you have not seen them ? 10
- A. No.
169. Q. You know that shortly afterwards a man called William died of gun shot wounds?
- A. There were four persons altogether in the lorry with me and William was one of them.
170. Q. There was an inquiry held in the Magistrate's Court in regard to that incident ?
- A. Yes. 20
171. Q. You are Kamathawattegedera Piyadasa?
- A. Kammalawattegedera Piyadasa.
172. Q. Did you give evidence at that Magisterial inquiry ?
- A. I remember giving evidence with regard to the incident in which I got injured. I gave evidence several times and I cannot remember in connection with what case I was called up each time. 30
173. Q. On how many occasion did you give evidence in the Magistrate's Court, Gampola ?
- A. I can remember having gone there to give evidence about twice or thrice.
174. Q. On any occasion when you gave evidence did you see Jayasena and Mendis in Court ?

A. I cannot remember and also I was not anxious to know those people.

In the Supreme Court

175. Q. Did you see them standing with Ramasamy in the dock ?

No. 5.

A. I was rather excited on the occasion I went to give evidence. I did not pay much attention to the people who were in the dock.

Prosecution Evidence

K. Piyadassa

Cross-Examination

(continued)

10

176. Q. Out of curiosity you did not try to ascertain who Jayasena and Mendis are?

A. When I was in the witness shed I was expecting at any moment for my name to be called and I was in a tense moment to run to Court to give evidence. I was not interested in looking round.

177. Q. You did not see Jayasena and Mendis in the dock ?

20

Court - His position is, up to date, he does not know the identity of Jayasena. That is his evidence.

Cross-Examination (continued)

178. Q. In what connection did you hear the names of Jayasena and Mendis ?

30

A. On the occasion when I saw this accused and two others going to the boutique and I happened to question the man who was standing by with regard to the names of those three people. And on the same occasion I heard from some people that there were two people called Jayasena and Mendis who were absconding.

179. Defence Counsel - My Lord, may I show his diary ?

Court - Yes.

Cross Examination (continued)

40

180. Q. (Shown a page in diary P4 under the date 1.9.60) Is that your hand-

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadassa

Cross-
Examination

(continued)

writing ?

A. Yes.

181. Q. Will you please read that out ?

A. I have written down three names
"Ramasamy, Piyasena and Mendis."

182. Q. Piyasena or Jayasena ?

A. Jayasena.

183. Q. You handed over this diary to the
Police at 7 p.m. when the Police
came to the hospital ?

10

A. Yes.

184. Q. After that you did not get the diary
to your hand ?

A. Not after I handed it over to the
Police.

185. Q. So that you must have written this
before you handed over the diary to
the Police ?

A. I wrote these three names in the diary
at the hospital while seated on the
bed.

20

186. Q. Why did you write the names of
Jayasena and Mendis ?

A. I wrote down the names of Jayasena
and Mendis on the diary because
another person who was next bed to me
told me that out of the three persons
whom I saw two people, except for
Ramasamy, must be Jayasena and Mendis
and not Muttiah and Sinniah.

30

187. Q. Therefore, there was a discussion at
the hospital with regard to the
identity of the people who had fired
this gun ?

A. At the time I was in the hospital
there was a man injured by gun shots
in the next bed. At the time Ramasamy
shot me Muttiah and Sinniah were with

him. Then the man who was in the next bed said that he including others were shot by Jayasena and Mendis and then I thought that I must be making a mistake.

In the Supreme Court
No. 5.
 Prosecution Evidence

188. Court to Interpreter - Did he say that the man who was on the next bed said that he was shot by Jayasena and Mendis ?

K. Piyadassa
 Cross-Examination

(3.35 p.m. - Mr. A.D.E. Gunasekera continues)

(continued)

Certified Correct.

Sgd. H.G. Opanayake.
 Stenographer, S.C.

18th December, 1961.

3.35 p.m.

Kammalwattegedera Piyadasa

(To Court:

189. Q. Who did that man in the next bed say shot him ?

A. Jayasena and Mendis.

190. Q. Only those two ?

A. He gave the names of the persons who shot him. They were Jayasena, Mendis and Ramasamy.

191. Q. Is that what you wrote in the diary?

A. Yes.
 I wrote the names.

192. Q. What does that represent, the entry of the 1st Sept, 1960 ?

A. It represents the persons who shot.

193. Q. Shot whom ?

10

20

30

In the Supreme Court

No. 5.

Prosecution Evidence

K. Piyadasa

Cross-Examination

(continued)

A. The persons who shot them according to the man who was in the next bed).

Cross-examined by Mr. Sivasubramaniam
(continued)

194. Q. What is the name of that man?

A. I do not know the name of the person who told me. No was the person who had come inside the estate.

195. (To Court:

10

Q. Where is that man now ?

A. I do not know his whereabouts.

196. Q. He is not the man who died ?

A. No not the man who died.)

197. Cross-examination (continued)

Q. Have you seen that man after that ?

A. Yes, I worked with him.

198. Q. You know his name ?

A. I do not know his name.

199. (To Court:

20

Q. Did you know the dead man ?

A. That also I did not know).

Cross-examination (continued)

199a. Q. You have not seen him in the witness shed.

A. No.

200. Q. Never seen him in the court house. That is the man who was by your side and who gave you those names ?

A. That man who gave those three names I met in the lower court.

30

201. To Court:

Q. Who is that man ?

A. I cannot remember his name. I do not know his name. I met him.

No. 5.

202. Q. Is that man in the witness shed ?

Prosecution
Evidence

A. No.

K. Piyadasa

203. Cross-examination (continued)

Cross-
Examination

Q. Up to date you have not tried to find out his name ?

(continued)

10

A. Now I have understood that his name is Karunaratne or so.

204. Q. You have met him in the witness shed today ?

A. No.

205. Q. Do you say that that man is in the witness shed now ?

A. No.

206. Q. As a result of what that man stated you became doubtful as to the correctness of your identification of Muttiah and Sinniah ?

20

A. No, I did not doubt because I saw them with my own eyes.

207. Q. Did you not say earlier that there was a suggestion that your identification may be wrong ?

His Lordship: I am not sure whether he said that.

208. (To Court:

30

Q. Why did you record what that man in the next bed said in your book ?

A. The other person who was in the next bed had no paper to write down the three names. He wanted me to write down the names of the three persons in the diary I had.

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Cross-
Examination

(continued)

209. Q. Now you began to perform the functions of a Police Officer. Was there any discussion as to the correctness or otherwise of your identification of Muttiah and Sinniah ?

A. There was no discussion. He asked me who shot at me. Then I referred to those three persons.

210. Q. Who were those three persons ?

10

A. Ramasamy, Muttiah and Sinniah).

211. Q. Then he mentioned ?

A. Then he said that he saw the persons who shot at them were Ramasamy, Jayasena and Mendis.

212. Q. You did not think it necessary to write down the three names yourself ?

A. Because I knew I did not want to record.

213. Q. But you wanted to record what the other man said ?

20

A. That is because he did not have the necessary paper to write.

214. Q. Did you show that to the Police ?

A. I did not tell the Police nor did I show it. I also did not think that they would take over my diary.

215. Q. Did you mention in your statement to the Police that this had happened and that this man had given you three names ?

30

A. I did not mention anything about that. The diary was taken and they examined it. I did not say anything about it.

216. Q. When the man mentioned Ramasamy he did not say which Ramasamy ?

A. No further description of this man Ramasamy was given.

217. Q. Did you give the Police only the name Ramasamy ?

A. No further description about Ramasamy. I said Ramasamy Muttiah and Sinniah.

218. Q. On this day in the morning did you at any time hear of a threat to attach the wadiya in which the Sinhalese labourers were living.

His Lordship: Isn't this hearsay. Did he hear people threatening to attack Sinhalese labourers.

219. Q. Did you come to know.

His Lordship: That is not permissible whether he questioned witnesses.

220. Q. Did you go to the wadiya that day ?

A. I did not.

221. Q. Did you cross the wadiya and go to your place of work ?

A. No, I did not.

222. Q. From where you were working can you see the "Wadiya" ?

A. No, I cannot see.

223. Q. Before the shooting did you hear any noise ?

A. No, I did not.

224. Q. Any shouts ?

A. No.

225. Q. The first thing that happened that morning is the firing of the shots ?

A. Yes.

226. Q. Apart from Juwanis and Heenbanda working in the vicinity was there anyone else working there, within the sight of you ?

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Cross-
Examination

(continued)

- A. Within sight about 20 to 30 ft. away.
(shown a distance of about 100 ft.)
I saw other people working and weeding
the plots in batches.
227. Q. When you went to work that day did
you have any fear of any attack on
you ?
- A. No. I did not. I went there willingly.
228. Q. I am suggesting to you that there was
a big clash that day between the
strikers and non strikers and the
recruited labour ? 10
- A. I do not know that.
229. Q. And in the course of that both sides
exchanged gun shots ?
- A. I do not know that.
230. Q. You and the others were injured in
in the course of that clash ?
- A. No. 20
231. Q. During that one month you did not
know of any clashes between strikers
and non strikers ?
- A. I had no such information.
232. Q. As far as the identification of the
person or persons who fired you
have no doubt ?
- A. I am definite about the persons who
fired.
233. Q. You were given the names after the
shooting ? 30
- A. About two weeks after I had gone
there for work. That is about 2
weeks after the 1st August, I was
given the names.
234. Q. You were given those names at the
hospital ?
- A. I deny that suggestion.

- | | | |
|----|--|-------------------------|
| | 235. (To Court: | In the Supreme
Court |
| | Q. You said you had a conversation
with the man on the bed next to
you ? | No. 5. |
| | A. Yes. | Prosecution
Evidence |
| | 236. Q. That is on the 1st Sept. itself ? | K. Piyadasa |
| | A. Yes. | Cross-
Examination |
| 10 | 237. Q. You told us in the course of your
cross-examination that you told
the man that the persons who shot
you were Remasamy, Muttiah and
Sinniah ? | (continued) |
| | A. Yes. | |
| | 238. Q. Did Muttiah and Sinniah also shoot
you ? | |
| | A. No, it was Ramasamy who shot. | |
| | 239. Q. Therefore why did you mention
Muttiah and Sinniah's name also ? | |
| 20 | A. They also accompanied Ramasamy
with some stones in their hands. | |
| | 240. Q. So far as the gun was concerned
was the gun at any time in the hands
of Muttiah and Sinniah ? | |
| | A. It was with Ramasamy always. | |
| | 241. Q. At what time did this shooting
incident take place ? | |
| | A. At about 10.30 or 11 a.m.). | |
| | 242. <u>Re-examined:</u> | Re-examination |
| 30 | Q. This man who was in the next bed
to you was he one of the persons
who travelled with you in the
lorry ? | |
| | A. Yes, one of the four who travelled
in the lorry. | |
| | 243. (To Court: | |

In the Supreme
Court

No. 5.

Prosecution
Evidence

K. Piyadasa

Re-
Examination

(continued)

Q. At the time this accused shot at you when you were sheltering behind a "sabukku" tree or trees how far away was the accused from that "sabukku" tree or trees ?

A. The person who was aiming at the time was below the road about 3 or 4 fathoms away from the road.

244. Q. About how far away from you was he then ? 10

A. About 6 or 7 fathoms.)

To Jury: Nil.

4 p.m. Adjourned for the day.

Sgd. A.D.E. Gunasekera.

Stenographer, S.C.

S.C. 14/M.C.Gampola 3082 (contd) 11 a.m.

19.12.61

Trial Resumed.

Accused present. 20

Mr. A.M. Coomarasamy, Crown Counsel, for the prosecution.

Mr. Advocate Sivasubramaniam, instructed by Mr. A.H.M. Jameel with Mr. Advocate Maharooof (assigned), for the accused.

Mr. Sivasubramaniam: My Lord, Mr. Vernon Gunasekera also instructs me today.

No. 6.

No. 6.

Noel
Jayatunge

N. Jayatunge

Examination

NOEL JAYATUNGE, sworn, 46 years, Assistant Government Analyst, Colombo. 30

245. Q. Have you for 22 years been a member of the Government Analyst's Depart-

- | | | |
|----|---|-------------------------|
| | ment ? | In the Supreme
Court |
| | A. Yes. | |
| | | <u>No. 6.</u> |
| | 246. Q. Have you received special training in firearms identification and ballistics ? | Prosecution
Evidence |
| | A. Yes. | Noel Jayatunge |
| | 247. Q. You also received this training in Scotland Yard ? | Examination |
| 10 | A. Yes. | (continued) |
| | 248. Q. Have you given evidence in a number of cases, expert evidence on ballistics and firearms identification ? | |
| | A. Yes. | |
| | 249. Q. During the course of your 22 years in the Government Analyst's Department ? | |
| | A. Yes. | |
| | 250. <u>Court:</u> | |
| 20 | Q. Ballistics and firearms identification, is that your line ? | |
| | A. Yes. | |
| | <u>Examination</u> (continued) | |
| | 251. Q. You are also a Graduate in Chemistry? | |
| | A. Yes. | |
| | 252. Q. Did you on the 8th September, 1960, receive from Police Constable Wijedasa a sealed parcel with the seals of the Magistrate's Court, Gampola, intact - marked X ? | |
| 30 | A. Yes. | |
| | 253. Q. Amongst the contents of that parcel was there a shirt, a banian and a diary marked P.10, P11 and P12. | |
| | A. Yes. | |

In the Supreme
Court

No. 6.

Prosecution
Evidence

Noel Jayatunge

Examination

(continued)

SHOWN P.4, P5 and P.6.

Witness: P.10 is the diary that I received.

P.11 is the shirt that I received.

P.12 is the banian that I received.

Crown Counsel to Witness: Look at the
banian and the shirt.

WITNESS LOOKS AT BANIAN AND SHIRT.

254. Q. Did you examine the holes in this
banian and shirt ? 10

A. Yes. In P.5 and P.6 the holes are
marked in red.

255. Q. Could they have been caused by a gun
shot ?

A. Yes, if a large slug, such as a
special S.G. or S.G. Slug had been
used.

SHOWN THE HOLE IN P.4 - the diary.

Witness: That hole also has been marked
in red - the entrance. 20

256. Q. Could that also have been caused by
a S.G. slug ?

A. A large slug.

257. Q. If the slug came out of a factory
loaded 12 bore cartridge how many
such slugs would you expect to find
in the cartridge ?

A. A factory loaded 12 bore 2½" cartridge
has 9 S.G. slugs.

258. Court: 30

Q. What about special S.G. ?

A. 12 slugs.

Examination (continued)

259. Q. You also found human blood on the

banian P.6 ?

A. On the banian and the shirt.

WITNESS CORRECTS HIMSELF AND SAYS -
Blood was found only on the banian P.6.
There was no blood on the shirt.

In the Supreme
Court

No. 6.

Prosecution
Evidence

Noel Jayatunge

Examination

(continued)

10 260. Q. Could the damage you found on P.4,
P.5 and P.6 have been caused by a
shot fired from a gun similar to
P.1.

A. Yes.

261. Court:

Q. What would you call P1 ?

A. P1 is a breach loading single barrel
shot gun - 12 bore.

Examination (continued)

262. Q. Did you also examine the gun P.1 ?

A. Yes.

263. Court:

20 Q. Did this parcel which you received
marked X also contain this gun P.1 ?

A. Yes.

Examination (continued)

264. Q. Was P.1 in working order when you
examined it ?

A. Yes.

30 265. Q. If an S.G. cartridge is fired from
a gun like P.1 from a distance of
say 87 feet and it hits a man who
has a diary similar to P.4 in his
shirt pocket would the shot pene-
trate that diary ?

A. Yes.

266. Q. Would it cause fatal injuries at
that distance ?

In the Supreme
Court

No. 6.

Prosecution
Evidence

Noel Jayatunge

Examination

(continued)

Cross-
Examination

A. It could, if it did not strike the diary and struck a vital spot.

Cross-Examined

267. Q. What sort of slug would have caused that hole in that diary ?

A. By a large slug such as a S.G. slug or special S.G. Slug.

268. Q. Has this slug penetrated the diary ?

A. Yes.

10

269. Q. Has it gone through the diary ?

A. Yes.

270. Q. S.G. slugs travel with greater force than for instance No. 4 pellets ?

A. Yes, there is greater momentum and kinetic energy.

271. Q. Is it possible to assess the distance from which the shot could have been fired ?

A. I cannot give an accurate estimate of the range.

20

272. Q. This gun P.1 - does it automatically eject a spent cartridge ?

A. It does not eject a spent cartridge, but it extracts a cartridge from the chamber at the time I examined the gun.

273. Q. It comes out - then you will have to remove it with the hand to reload ?

A. Yes.

274. Q. The slug which caused those markings on the shirt, banian and diary, could come from a gun of a different bore too ?

30

A. If it is a S.G. slug it could come only from a 12 bore gun, because 16 bore cartridges are not loaded with

S.G. slugs. If it was caused by a S.G. slug it could not have come from a 16 bore gun, because 16 bore cartridges are not loaded with S.G. slugs.

In the Supreme Court

No. 6.

Prosecution Evidence

Noel Jayatunge

Cross-Examination

(continued)

275. Q. If it is a special S.G. slug it could come from a 12 bore or 16 bore gun ?

10 A. Yes.

276. Q. It is not possible for you to say whether it is a slug from a S.G. or special S.G. that caused that ?

A. I cannot say with any certainty.

277. Q. How many slugs do you find in a 12 bore S.G. cartridge.

A. 12 bore 2½" you find 9 slugs.

278. Q. And in a special S.G. ?

A. 12 S.G. slugs.

20 279. Q. And when the gun is fired the slugs spread out ?

A. Yes.

Crown Counsel:

280. May I have Your Lordship's permission to ask one more question in regard to a production.

Court:

If the defence has no objection I will allow it.

30 Crown Counsel:

Defence Counsel has no objection, My Lord.

Application allowed.

SHOWN P.3.

281. Q. Was P.3 also a production sent to

In the Supreme
Court

No. 6.

Prosecution
Evidence

Noel Jayatunge

Cross-
Examination

(continued)

No. 7.

K.M. Heen
Banda

Examination

you in that parcel marked X.

282. Court:

Q. What is P.3 ?

Crown Counsel: An oil cloth bag con-
taining 14 cartridges.

Witness: I have not received the pro-
duction marked P.3.

No. 7.

K.M. HEEN BANDA

10

KEKULANGAIA MUDIYANSELAGE HEEN BANDA, affirmed,
25 years, Labourer, Monte Cristo Estate,
Nawalapitiya.

283. Q. How long have you worked on Monte
Cristo Estate ?

A. 9 years.

284. Q. You have been working there con-
tinuously for 9 years ?

A. Yes.

285. Q. Do you know the witness Juwanis ?

A. Yes.

286. Q. Witness Piyadasa ?

20

A. I came to know Piyadasa recently.

After the incident connected in
this case.

287. Court:

Q. What do you mean incident ?

After the shooting you came to
know him ?

A. Yes, at the time of the shooting

Examination (continued)

288. Q. When did you come to know Piyadasa ?

30

A. After the strik at Monte Cristo labourers were recruited locally and when Piyadasa and others came to work I came to know them.

In the Supreme
Court

No. 7.

289. Court:

Prosecution
Evidence

Q. Piyadasa was one of the locally recruited labourers ?

K.M. Heen
Banda

A. Yes.

Examination

10

Court (continued)

(continued)

290. Q. Piyadasa told us that he came to work on this estate on 1st August ?

A. Even before that I have been working with him for about 2 days in the same estate.

Examination (continued)

291. Q. Do you know this accused ?

A. I know Ramasamy.

292. Q. How long have you known him ?

20

A. For about 3 or 4 years.

293. Q. Was he also working in Monte Cristo Estate ?

A. Yes.

294. Q. Do you remember the 1st day of September, 1960 ?

A. Yes.

295. Q. Were you working on that day ?

A. Yes.

30

296. Q. Was that in the Upper Division of Monte Cristo Estate that you were working ?

A. Yes.

297. Q. Was that close to the road, the main

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda.

Examination

(continued)

Nawalapitiya road ?

A. Yes.

298. Q. What was the work that you were doing ?

A. Weeding.

299. Q. Was the witness Piyadasa with you at the time ?

A. Yes.

300. Q. And Juwanis ?

10

A. Yes.

301. Q. Were there others present apart from these two ?

A. There were others who were working a little distance away from us, and they were also weeding.

302. Q. At about 10.30 in the morning did anything happen ?

A. At about 10.30 a.m. that day a commotion was heard from the direction of the labour lines ?

20

303. Q. What sort of a commotion ?

A. It appeared to be like "Aiyo, Aiyo".

304. Q. Were there people living in the wadiya ?

A. I cannot remember.

305. Q. These lines you spoke of, were they close to the wadiya ?

A. Yes.

306. Q. When you heard these cries tell us what happened ?

30

307. A. We were bending our heads while we were working, and on hearing a commotion we raised our heads and looked to see what it was.

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Examination

(continued)

308. Q. What did you see ?

A. Then I saw Ramasamy, Muttiah and Sinniah coming from below.

309. Q. What do you mean by below ?

A. We were working on the upper side of the road. These people came from the other side, from the lower side.

310. Q. Was there a footpath there ?

A. Yes, a short cut.

311. Q. Did you see anything in any one of their hands ?

A. Muttiah and Sinniah had something like round stones, but Ramasamy had a gun.

312. Court: Who is Ramasamy ?

WITNESS POINTS OUT THE ACCUSED IN THE DOCK.

Examination (continued)

313. Q. Then what happened ?

A. Then I heard the report of a gun.

314. Q. From which direction ?

A. In front of us and from where Ramasamy was.

315. Q. When you saw Ramasamy first with that gun, how was he holding that gun ?

A. At first when I saw Ramasamy carrying the gun in his hands he was carrying it at the trail. Immediately he saw us he aimed it at us. (aiming position).

316. Court:

Q. Then you saw Ramasamy fire ?

A. I did not see him pulling the trigger

10

20

30

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Examination
(continued)

Immediately he saw, we ducked into the drain and an explosion was heard.
Report of the gun was heard immediately.

Examination (continued)

317. Q. You said that Ramasamy was below you?

A. Yes.

318. Q. What happened thereafter ?

10

A. It was followed by another gun shot.

319. Q. From the same direction ?

A. Yes.

320. Court:

Q. Did you see who fired that shot ?

A. It was Ramasamy who had the gun.

321. Q. At the time you heard the shot ?

A. Yes. The second shot struck Piyadasa.

Examination(continued)

20

322. Q. Where was Juwanis at that time ?

A. Juwanis was a little further away from me.

323. Court:

Q. How far away ?

A. About 5 or 6 feet away from me.

324. Q. Where was Piyasasa when the second shot struck him ?

A. About 8 feet away from me.

WITNESS SHOWS DISTANCE OF ABOUT 12 feet.

30

Examination (continued)

325. Q. You said the second shot hit Piyadasa ?

In the Supreme Court

A. Yes.

No. 7.

326. Q. How do you know that it hit Piyadasa ?

Prosecution Evidence

A. Piyadasa shouted out saying "Ammo" holding his side and lowering himself.

K.M. Heen Banda

10

327. Q. What happened thereafter ?

Examination

(continued)

A. It was followed by a third shot. Then Ramasamy, Sinniah and Muttiah went down, then I looked at them.

328. Q. You saw them going ?

A. Yes.

329. Q. Was that along the footpath that you saw them going.

A. Yes, on the road.

330. Court:

20

Q. At that time did you see anything in anybody's hand ?

A. Even at that time I saw a gun in Ramasamy's hand.

Examination (continued)

331. Q. Did you do anything about Piyadasa?

A. Having seen these 3 people going away, we went up to Piyadasa. Then we carried him on to the road and went to the old rice store.

30

332. Q. You said you saw Ramasamy going along this footpath with the gun in his hand ?

A. Yes.

333. Q. Did you see anything thereafter ?

A. I saw Ramasamy going direct to the

In the Supreme
Court

place called the wadiya with
Muttiah and Sinniah.

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Examination
(continued)

334. Q. Could you see the wadiya from where
you were ?

A. Yes.

335. Q. Was that wadiya near the main road ?

A. Yes.

336. Q. At a lower level from you ?

A. Yes.

10

337. Q. You said you saw Ramasamy, Muttiah
and Sinniah whereabouts ?

A. I saw them going in the direction
of the wadiya.

338. Court:

Q. Did you see that before you went to
the old rice store.

A. Yes, these 3 persons when they went
down they directly went in the
direction of the wadiya.

20

Examination (continued)

339. Q. Then what happened ?

A. Having gone there I saw Ramasamy
bend, then I heard another report
of a gun.

340. Q. Where was he bending himself ?

A. While on the estate footpath below
the main road he bent himself and
I heard the explosion.

341. Q. You said you and Juwanis carried
Piyadasa down to the old rice store?

30

A. Yes.

342. Q. Did you remain there with Piyadasa ?

A. Yes.

- | | | |
|------|---|---------------------------------------|
| 343. | Q. Subsequently was a lorry brought and Piyadasa taken away ? | In the Supreme
<u>Court</u> |
| | A. About half an hour afterwards the lorry came and with two police officers Piyadasa was taken in that lorry. | No. 7.

Prosecution
Evidence |
| 344. | Q. Did Juwanis also remain there in the rice store after you carried Piyadasa ? | K.M. Heen
Banda |
| | A. Piyadasa appeared to be unconscious at the time, so Juwanis and I went and brought some water, gave him the water and we were fanning him. | Examination

(continued) |

10

11.40 a.m. --- Mr. Opanayake takes over.

Certified Correct.

Sgd. M.D.E. Perera.

Stenographer.

20

S.C. 14 (continued)

19. 12. 61.

11.40 a.m.

Kakulangala Mudivanselage Heenbanda.

Examination (continued)

345. Q. Did you accompany Piyadasa in the lorry ?

A. No.

346. Q. Were you there at Monte-Cristo Estate when the Police came to the scene - apart from those two Police Constables ?

A. By that time I had gone home and had my meals and come back.

347. Q. Did you make a statement to the Police ?

A. Yes.

30

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Examination

(continued)

348. Q. Can you remember the Police Officer who drew the sketch when you were there ?

A. I cannot remember.

349. Q. Did you show the Police party who came for inquiry the spot where you were when you saw Ramasamy with the gun ?

A. Yes.

10

350. Q. And the spot where Ramasamy was when he fired the shot ?

A. Yes.

Court:

Q. And where Piyadasa was when he received the shot; did you show that spot to the Police ?

A. Yes.

Cross-
Examination

Cross-Examination

352. Q. You were weeding at that spot ?

20

A. Yes.

353. Q. What was the instrument you had in your hands ?

A. That is called "Karani" (weeding scraper).

354. Q. Piyadasa and Juwanis also had similar instruments ?

A. Yes.

355. Q. How many others were working round about that spot ?

30

A. A little distance away from where I was there were 23 to 24 persons working. I did not count the number of persons.

356. Q. When you heard the shots did you try to hide ?

A. Through fear of life we tried to hide ourselves. There was a drain close by and I dug myself in that.

In the Supreme
Court

No. 7.

357. Court:

Q. You dug into that drain ?

Prosecution
Evidence

A. Yes.

K.M. Heen
Banda

Cross Examination (continued)

Cross-
Examination

10

358. Q. Of course you must have dropped your weeding scraper when you rushed to hide ?

(continued)

A. Yes.

359. Q. After the people had gone off you were more interested in carrying Piyadasa to the store ?

A. Yes.

360. Q. You were not interested in the instruments at all at that stage ?

A. Yes.

20

361. Q. Then from the rice store you went home ?

A. Yes.

362. Q. Never again you saw that weeding scraper ?

A. I did not come across that even up to now.

363. Q. When you went towards the rice store was Juwanis there with his scraper - when you were carrying Piyadasa ?

30

A. He did not have a scraper with him.

364. Q. Nor did Piyadasa have a scraper with him ?

A. At the time Piyadasa was being carried he had no scraper.

365. Q. The first thing that attracted your

In the Supreme Court

No. 7.

Prosecution Evidence

K.M. Heen Banda

Cross-Examination

(continued)

attention was the shouts from the direction of the lines ?

A. Yes.

366. Q. You know the lines occupied by tamil labourers ?

A. Right round there are lines occupied by tamil labourers.

367. Q. When you looked up you were positive that Ramasamy came along the foot-path ?

10

A. Yes.

368. Q. How far away from you was he when you first saw him ?

A. About 40 yards away.

369. Q. With the gun by the side ?

A. Yes.

370. Q. Then you saw him stop and raise the gun in your direction ?

A. Yes. Having come a little distance up.

20

371. Q. Having come a little distance up he stopped and raised the gun in your direction ?

A. Yes.

372. Court:

Q. Can you get down from the witness box and demonstrate that ?

(Witness demonstrates the way how the man came along with the gun on his side).

30

Cross Examination (continued)

373. Q. As he stood like that with the gun aimed in your direction you heard the sound of a gun shot ?

A. Yes.

374. Q. That noise also came from the direction where Ramasamy was ? In the Supreme Court
- A. Yes. No. 7.
375. Q. So, as far as you were concerned, you presumed that Ramasamy fired that shot ? Prosecution Evidence
- A. Yes. K.M. Heen Banda
- 10 376. Q. You gave evidence in the Magistrate's Court ? Cross-Examination
- A. Yes. (continued)
377. Q. Both in regard to this charge as well as the charge against Ramasamy, Jayasena and Mendis ?
- A. I have not given evidence in respect of the other charge.
378. Q. You have given evidence ?
- Court: - Is it the suggestion of the defence that he gave evidence in the other case ?
- Defence Counsel - Yes, My Lord. In the murder inquiry, at folio page 45 of case No. 2636.
- Court: -
- Q. In the Magistrate's Court of Gampola did you give evidence ?
- A. I gave evidence in respect of this case.
- Cross Examination (continued)
- 30 381. Q. Did you also give evidence when Ramasamy, Jayasena and Mendis stood in the dock ?
382. Court:
- Q. Did you give evidence in the Magistrate's Court in a case in which Jayasena and Mendis were in the dock along with this accused.

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Cross-
Examination

(continued)

A. Yes.

Cross Examination (continued)

383. Q. On that occasion did you tell the Magistrate this "I did not see the 1st accused and others approaching the place where we were weeding"?

A. I did not say so. What I said was that I saw.

384. Q. "I saw them only after the first shot?" 10

A. No, I did not say so.

Defence Counsel - I mark that as D1.

385. Q. After the first shot you say you hid yourself in the drain ?

A. At the very first shot itself I lowered myself into the drain.

386. Q. Thereafter did you see Ramasamy aim the gun in your direction ?

A. No. 20

387. Q. You did not see any action on the part of Ramasamy when you heard the second shot ?

A. No.

388. Q. As a matter of fact, now that you were hiding, you did not know from where the third shot came ?

A. Though I was hiding like that I heard the sound from the same direction.

389. Q. But as far as the third shot was concerned you did not see any action on the part of Ramasamy ? 30

A. No.

390. Q. At what stage did you then get up to see these people going in the direction of the lines ?

10

A. After the third shot I peeped through the tea bushes to see whether they were going and I noticed that they were going down.

391. Q. You saw Piyadasa when the first shot was fired ?

A. Yes.

392. Q. Was he standing ?

A. As the first shot was fired he jumped into the drain by the side of a "Sabukku" tree.

393. Q. And he was inside the drain ?

A. That drain was a shallow thing - not very deep - and there was nothing to obstruct his view on the lower side.

394. Q. How tall was the "Sabukku" tree ?

A. It was a tall tree.

20

395. Q. No tea bushes near that ?

A. About 3 to 4 feet away there were tea bushes.

396. Q. That is on the lower side ?

A. Yes.

397. Q. On the upper side ?

A. You find the bank of the drain.

398. Q. On the upper side there were no tea bushes ?

A. All along there are tea bushes.

30

399. Q. Thereafter, you say, you saw these people Muttiah, Sinniah and Ramasamy going in the direction of the Wadiya ?

A. Yes.

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Cross-
Examination

(continued)

400. Q. And you saw Ramasamy crouching and aiming the gun ?

A. The aim was not taken at me.

401. Court:

Q. What the Defence Counsel wants to know is after the firing, which he says was at the three of them, was over did you see the three of them going some distance and crouching and taking an aim ?

10

A. I saw the accused going towards the wadiya and from a point in front of the wadiya taking the aim.

Cross Examination (continued)

402. Q. At that point Ramasamy was crouching?

A. Yes.

403. Q. And as he raised the gun you heard the sound of a shot ?

A. Yes.

20

404. Q. At that point of time were Muttiah and Sinniah by the side of Ramasamy ?

A. Yes.

405. Q. You know Jayasena ?

A. I knew him as a co-worker.

406. Q. When the accused fired the shot towards the Wadiya did you see Jayasena by his side with a gun ?

A. No.

407. Q. You have already told us that you heard a shot in the direction of the Wadiya; after that did you hear any shots ?

30

A. No.

408. Q. How long after the firing of that

shot in the direction of the Wadiya by Ramasamy did you leave to carry Piyadasa to the rice store ?

In the Supreme Court

No. 7.

A. Immediately I heard that shot, thinking that Ramasamy would come again towards us we took Piyadasa and rushed to the rice store.

Prosecution Evidence

K.M. Heen Banda

10

409. Q. How far is the rice store from the place where you were working ?

A. About 3 or 4 chains.

Cross-Examination

410. Q. When you were at the rice store did Mr. Harvie, the Superintendent of the Estate, come there ?

(continued)

A. After I had given some water to Piyadasa the Superintendent came there with two Police officers.

411. Q. Did he question Piyadasa ?

20

A. I did not see. Piyadasa was leaning at the time.

412. Q. Did you see the Police questioning him ?

A. I did not see.

413. Q. Did they question you ?

A. No.

414. Q. How many people were there at the rice store when the Police and Mr. Harvie came there ?

A. Only Piyadasa, Juwanis and myself.

30

415. Q. No one questioned any one of you ?

A. No.

416. Q. You yourself did not mention anything to anyone ?

A. No.

417. Q. You did not tell the Police or Mr. Harvie "I saw Ramasamy shooting this man?"

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Cross-
Examination

(continued)

A. No.

418. Q. Was it at that time that Piyadasa was removed from the store ?

A. I went home for my lunch while Piyadasa was there at the rice store.

419. Court:

Q. Did you come back to the rice store ?

A. Later I came and looked but Piyadasa was not there.

10

Cross Examination (continued)

420. Q. Have you left for lunch before Mr. Harvie and the Police officers came there ?

A. It was after that.

421. Q. You went home and had your rice and curry.

A. Yes.

422. Q. What time did you come back ?

A. It was about 2.30 or 3 p.m.

20

423. Q. Did you tell anyone in the household or anyone else that you saw this incident ?

A. At the time I went home my father and mother had both gone out for work. There were only two little sisters at home and I served them with the noon meal and I had the meal myself and came back.

424. Q. Till the Police questioned you you did not convey this information to anyone else ?

30

A. Yes.

425. Q. Even when you went back to the rice store did you meet anyone worth while telling this ?

A. I did not meet anyone when I went back to the rice store because all the people had come and assembled near the Wadiya where there were Police officers.

426. Q. Did you go up to the Wadiya ?

A. Yes.

427. Q. And maintained your silence till the Police questioned ?

A. Yes.

428. Q. The Police called you out by name.

A. Not by the name.

429. Q. At the time you went up to the Wadiya was Ramasamy in the custody of the Police ? , , ,

430. Court:

Q. What time did you go to the wadiya?

A. It was about 3 p.m.

Cross Examination (continued)

431. Q. At that time Ramasamy was already there in the custody of the Police ?

A. I did not see Ramasamy at that time.

432. Q. How long after you went to the Wadiya did you see Ramasamy ?

A. I did not see Ramasamy after I went to the Wadiya.

433. Q. At all that day near the Police Officers ?

A. I did not see.

434. Q. Who recorded your statement ?

A. The Inspector of Police.

435. Q. This strike had been going on in this estate for some time ?

10

20

30

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Cross-
Examination

(continued)

- A. Yes.
436. Q. And there had been constant troubles during the month of August ?
- A. Yes.
437. Q. To your knowledge did you know that tamil labourers had been intimidated by Sinhalese people ?
- A. No personal knowledge about that.
438. Q. Were you a resident labourer on that estate ? 10
- A. Yes.
439. Q. Which line room were you occupying ?
- A. There are three lines close to the nursery and I was occupying one of those rooms.
440. Q. Are you aware of any incident that took place the previous night ?
- A. No.
441. Q. You are not aware of the Police coming to the estate the previous night ? 20
- A. No.
442. Q. As far as you were concerned were you at any time intimidated by any worker ?
- A. No.
443. Q. You know the Ceylon Workers' Congress?
- A. After that congress came into existence on that estate I knew that there was something like that. 30
444. Q. And a number of labourers were members of that union ?
- A. I have no personal knowledge about that; they say so.
445. Q. No one ever approached you and asked

you to join any trade union ?

A. At the very outset somebody tried to come and canvass me to be a member.

446. Q. But you did not join ?

A. No.

447. Q. I suggest to you that you were not working with Piyadasa as you allege?

A. I deny that.

448. Q. I suggest to you that there was a clash between two factions in the course of which guns were fired ?

A. I deny.

449. Q. Between strikers and non strikers ?

A. I personally suffered no harm by any party.

450. Q. My suggestion to you as to what happened on that day is different to what you state ?

A. I can only say about what I saw.

451. Q. Do you know whether some sinhalese workers were also on strike at this time ?

A. There were some.

452. Q. And they were members of the Workers' congress ?

A. I do not know that.

(12.20 p.m. - Mr. Weerasekera continues)

Certified Correct.

Sgd. H.G. Opanayake.

Stenographer, S.C.

In the Supreme
Court

No. 7.

Prosecution
Evidence

K.M. Heen
Banda

Cross-
Examination

(continued)

10

20

30

In the Supreme Court

S.C.14 continued.

12.20 p.m.

No. 7.

19.12.61.

Kakulangala Mudiyanseelage Heen Banda

Prosecution Evidence

Re-examined

K.M. Heen Banda

453. Q. You told us that after you had your lunch you went to the Wadiya ?

A. Yes.

Re-Examination

454. Q. Did you go there of your own accord or were you sent for ?

10

A. On my own accord. Because there were Police officers there I wanted to see what was happening.

455. Q. And when you went you made a statement?

A. Yes.

456. Q. When you went there did you see Juwanis ?

A. No.

457. Q. Where did you make your statement ?

A. Close to the wadiya.

20

458. Q. You said you did not see the accused at all after you went to the wadiya ?

A. Yes.

459. Q. Had you not seen him till you gave evidence in the Court ?

A. Yes. After the shooting incident I saw him in the Court.

460. Q. Was it after you made your statement that you showed where you were and where Piyadasa was shot ?

30

A. Yes.

Jury: No questions.

63.

No. 8.

U.G. JUWANIS

In the Supreme
Court

No. 8.

Upasake Gedera Juwanis, affirmed, 27 years,
labourer, Monte Cristo estate.

Prosecution
Evidence

U.G. Juwanis
Examination

Examined

461. Q. How long have you been working on
Monte Cristo estate .

A. For about 13 to 14 years.

10 462. Q. Do you know the accused ?

A. Yes.

463. Q. How long have you known him ?

A. They came to the estate subsequent
to my coming there.

464. Q. How long after you went to Monte
Cristo did the accused come to
work in Monte Cristo estate ?

A. I have known him for about 8 or
9 years.

20 Court:

465. Q. So he must have come to the estate
about four or five years after you
went ?

A. I have known him for about 7 or 8
years.

Examination (continued)

466. Q. Was there a strike going on in the
estate in August and September last
year ?

30 A. Yes.

467. Q. Did you go on strike at that time ?

A. No. I worked.

468. Q. On 1st September, 1960 were you
working on the estate ?

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Examination

(continued)

- A. Yes.
469. Q. Were Piyadasa and Heenbanda also working with you on that day ?
- A. Yes.
470. Q. You were working in field No. 25 above the main road ?
- A. Yes.
471. Q. About how many others apart from the three of you were working there ?
- A. Including the three of us there were 21 in all.
472. Q. Did you see the accused on that day?
- A. Yes.
473. Q. Where did you see him first ?
- A. I saw him coming from the direction of the dhoby line.
474. Q. When you saw him was he alone ?
- A. There were three others.

10

Court:

20

475. Q. You saw four in all ?
- A. There were only three in all.

Examination (continued)

476. Q. Do you know the other two ?
- A. They were Muttiah and Sinniah.
477. Q. When you saw the accused with those two others did he have anything with him ?
- A. Yes. I saw a gun with the accused.
478. Q. Did you see anything in the hands of Sinniah and Mutthia ?
- A. Both of them had some things in their hands. I do not know what they were.

30

Court:

In the Supreme
Court

479. Q. Did either of them have anything like a gun ?

No. 8.

A. No.

Prosecution
Evidence

480. Q. Are you quite sure about that ?

U.G. Juwanis

A. Yes.

Examination

481. Q. Whatever they had in their hands was not a gun ?

(continued)

10

A. Yes.

Examination (continued)

482. Q. Tell us what happened after you saw those people ?

A. The three of them came up along a shortcut from the dhoby line and fired.

483. Q. Who fired ?

A. Ramasamy.

484. Q. Fired in which direction ?

20

A. To the upper side.

485. Q. That is the side where you were ?

A. Yes.

486. Q. How do you know that it was fired in your direction ?

A. I saw.

487. Q. What did you see ?

A. I saw the shooting.

Court:

30

488. Q. At whom was the gun levelled when you saw ?

A. It was levelled in the direction of the upper side.

In the Supreme Court

No. 8.

Prosecution Evidence

U.G. Juwanis

Examination

(continued)

489. Q. Who were there in the direction of the gun at the time it was levelled ?

A. Three of us were there in that direction but that shot did not contact anybody.

490. Q. Did you see that shot being fired ?

A. Yes.

491. Q. Who did the firing ?

A. Ramasamy.

10

Examination (continued)

492. Q. When you heard that shot what did you do ?

A. I hid.

493. Q. What happened then ?

A. Another shot was fired after that and that struck Piyadasa.

494. Q. Did you see who fired that shot ?

A. I saw that too.
That was fired by Ramasamy.

20

495. Q. You said you hid. Where did you hide ?

A. I hid behind a Sabukku tree.

Court:

496. Q. What did Piyadasa do after that first shot ?

A. At the first shot all three of us were almost together. Before the second shot was fired Piyadasa wanted to change places and go behind another Sabukku tree and then the second shot struck him.

30

497. Q. Was Heen Banda near you ?

A. He was a little away from me. He was behind the next Sabukku tree.

498. Q. Was there a drain close by ?

A. Yes.

499. Q. Where was the drain ?

A. A little higher up than the place where I was.

500. Q. You said this second shot was fired. What happened after the second shot was fired ?

10

A. Piyadasa fell down. Then I and Heen Banda moved towards Piyadasa through the tea bushes when I heard another shot again.

501. Q. Did you see that shot being fired ?

A. Yes.

502. Q. Who fired that ?

A. Ramasamy.

Examination (continued)

20

503. Q. After you heard the third shot what happened ?

A. Heen Banda and I took Piyadasa and carried him to the rice store.

504. Q. Did you see what happened to Ramasamy and the other two persons who came with him ?

A. After the shooting the three of them went down.

505. Q. Did you see them going down ?

30

A. Yes.

506. Q. Did you see whether Ramasamy had anything with him when he went ?

A. Yes.

507. Q. What did you see ?

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Examination

(continued)

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Examination

(continued)

- A. He had a gun.
508. Q. And you said Heen Banda and you carried Piyadasa to the rice store ?
- A. Yes.
509. Q. Ramasamy is this accused ?
- A. Yes.
510. Q. You said you saw them going down. Did you see where they went ?
- A. They went in the direction of the wadiya through tea bushes. 10
511. Q. All three of them ?
- A. I saw only Ramasamy going.
512. Q. Did you see any others on that foot path leading to the Wadiya ?
- A. There were about six Sinhalese people near the Wadiya.
513. Q. Was there anyone near the accused when he was going towards the Wadiya?
- A. I did not see that. 20
514. Q. You said that Heen Banda and you took Piyadasa to the rice mill ?
- A. Yes.
515. Q. Before you got to the rice mill did you hear any other shots that day ?
- A. I heard two shots.
516. Q. From where did you hear those shots?
- A. From the direction of the Wadiya.
517. Q. After you got to the rice store what did you do with Piyadasa ? 30
- A. We kept him there for some time and revived him after throwing some water on him.

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Examination

(continued)

518. Q. Did a lorry come there ?

A. Later a lorry came there.

519. Q. Were you there when it came ?

A. I was there.

520. Q. What about Heen Banda ?

A. Heen Banda and I were there when the lorry came.

521. Q. Was Piyadasa put in the lorry ?

10

A. Yes.

522. Q. And what did you do thereafter ?

A. The lorry went up to the wadiya and I also went up to the wadiya.

523. Q. In the lorry ?

A. Yes.

524. Q. Did you get out of the lorry ?

A. Yes.

525. Q. And did you remain there for some-time ?

20

A. No. At the wadiya the others who had received gun shot injuries were put into the lorry.

526. Q. And the lorry went away ?

A. Yes.

527. Q. And you remained at the Wadiya ?

A. I went home.

528. Q. Did you come back at all to the wadiya that day ?

A. I came there after the police arrived.

30

529. Q. And did you make a statement there ?

A. Yes.

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Examination

(continued)

Cross-
Examination

530. Q. Did you point out the spot where Piyadasa was when he received this shot ?

A. Yes.

531. Q. And the spot from where you saw Ramasamy firing that shot ?

A. Yes.

Cross-examined

532. Q. You told learned Crown Counsel that after the injured men were removed you went home ?

10

A. Yes.

533. Q. Piyadasa was also taken away in that lorry ?

A. Yes.

534. Q. And I suppose you had lunch at home ?

A. Yes.

535. Q. Then you came back towards the wadiya ?

20

A. Yes.

536. Q. When you came back had the police already arrived ?

A. Yes.

537. Q. Did you meet Heen Banda at the spot?

A. No.

538. Q. You did not see him at all ?

A. They were sent for later and they came.

539. Q. At what time did you arrive at the wadiya, after your lunch ?

30

A. About 2 o'clock.

540. Q. After you arrived about what time was Heen Banda sent for ? In the Supreme Court
- A. About 3.30 or 4 p.m. No. 8.
541. Q. By that time had Ramasamy already been brought into custody ? Prosecution Evidence
- A. It was at about 5 p.m. when he was brought there. U.G. Juwanis
542. Q. Had Heen Banda arrived by that time? Cross-Examination
- 10 A. He had come to make a statement to the police. (continued)
543. Q. Who else went to bring Heen Banda ?
- A. I do not know.
544. Q. You said that he was sent for: who sent for him ?
- A. I had made a statement to the police and the police sent for him.

Court:

- 20 545. Q. You made a statement to the police ?
- A. Yes.
546. Q. And after you had made the statement to the Police Heen Banda was sent for ?
- A. Yes.

Cross-examination (continued)

547. Q. Heen Banda did not come there on his own accord ?
- A. No.
- 30 548. Q. You did not go to the hospital at all that day ?
- A. No.
549. Q. Where was Piyadasa lifted into the lorry ?

In the Supreme
Court

No. 8.

Prosecution
Evidence

U.G. Juwanis

Cross-
Examination

(continued)

- A. At the rice store.
550. Q. Was Heen Banda with you at that time ?
- A. We two were there.
551. Q. And Heen Banda helped you to lift Piyadasa into the lorry ?
- A. Yes.
552. Q. While you were at the rice store did Mr. Harvey or the police arrive there?
- A. Yes. Mr. Harvey and the police arrived in the lorry. 10
553. Q. At that time when Mr. Harvey and the police arrived in the lorry were there any injured people ?
- A. Yes.
554. Q. They got down and looked at Piyadasa?
- A. Yes.
555. Q. No one asked you how this man got those injuries ? 20
- A. No.
556. Q. Neither the police nor Mr. Harvey ?
- A. I was asked.
557. Q. The police asked ?
- A. The Police as well as the Superintendent.
558. Q. That is at the time they came there in the lorry ?
- A. Yes.
559. Q. You and Heen Banda were there at that time ? 30
- A. Yes.
560. Q. And both of you said that you saw this shooting ?

10

A. Yes.

561. Q. Heen Banda also said so ?

A. Heen Banda did not say so.

562. Q. You said that you alone saw or both of you saw ?

A. I said that I saw.

563. Q. You did not mention the presence of Heen Banda at the spot ?

A. No.

564. Q. Heen Banda however remained silent ?

A. I do not know whether he said anything.

565. Q. Why do you not know ?

A. There was a number of people there.

566. Q. How many people were there ?

A. There was a number of Sinhalese labourers who had come to see.

567. Q. How many persons ?

A. There were the pluckers, the women.

20

568. Q. About how many ?

A. 7 or 8 people.

569. Q. And they were there when you told Mr. Harvey that you saw the shooting?

A. Yes.

570. Q. And that is the reason you say you do not know whether Heen Banda said anything or not ?

A. I do not know.

30

571. Q. It is not correct to say that Heen Banda, Piyadasa and you were the only people in the rice store when Mr. Harvey and the police came ?

In the Supreme Court

No. 8.

Prosecution Evidence

U.G. Juwanis

Cross-Examination

(continued)

- A. There were some pluckers.
- 572. Q. Heen Banda has told us that only the three of you were there when Mr. Harvey and the Police came ?
- A. The women who were plucking had come and from a little away from the store they were looking on.
- 573. Q. They were there at the spot ?
- A. They were not in the store. They were on the road. 10
- 574. Q. When you were questioned by Mr. Harvey, you, Heen Banda and Piyadasa were inside the store ?
- A. Yes.
- 575. Q. If Heenbanda said anything you would know, you would have heard it ?
- A. He did not say anything.
- 576. Q. He was by a side.
- A. Yes. 20
- 577. Q. Then your answer that you did not know whether he said anything because there were other people is not correct ?
- A. I do not know whether he said anything or not.
- 578. Q. Is it correct to say that you accompanied Piyadasa to the hospital ?
- A. I did not go.
- 579. Q. That would be entirely false ? 30
- A. I went only up to the wadiya.
- 580. Q. The statement that you accompanied Piyadasa to the hospital is absolutely not correct ?
- A. I did not go.

- | | | |
|----|--|----------------------|
| | 581. Q. Did you say this when you gave evidence in the Magistrate's Court, "Piyadasa was removed to the hospital in the lorry" ? | In the Supreme Court |
| | A. No. | No. 8. |
| | 582. Q. "I too accompanied Piyadasa to the hospital in the lorry" ? | Prosecution Evidence |
| | A. No. (D2). | U.G. Juwanis |
| | 583. Q. It is not correct at all ? | Cross-Examination |
| 10 | A. I came only up to the Wadiya. | (continued) |
| | 584. Q. You never said so in the Magistrate's Court ? | |
| | A. No. | |
| | 585. Q. You saw Ramasamy coming along that foot path with two others ? | |
| | A. Yes. | |
| | 586. Q. How was he holding the gun ? | |
| 20 | (The witness demonstrates by holding the gun with the barrell up behind his body). | |
| | 587. Q. And what did you see him do with the gun ? | |
| | A. He took the aim (demonstrates) and fired. | |
| | 588. Q. You saw him firing all three shots in that position ? | |
| | A. Yes. | |
| | 589. Q. Just as you now demonstrated to the Jury ? | |
| 30 | A. Yes. | |

1 p.m.

Court adjourned for one hour.

Certified correct.

(Sgd) C.B.Weerasekera.
Stenographer, S.C.

In the Supreme
Court

S.C.14/M.C.Gampola 3083 (continued) 2.00 p.m.

19.12.61.

No..8.

UPASAKAGEDERA JUWANIS, REAFFIRMED.

Prosecution
Evidence
U.G.Juwanis
Cross-
Examination

(continued)

590. Q. Were you a member of any of the
trade unions ?

A. I am not a member but my father was
a member.

591. Q. At no time were you a member of the
trade union ?

A. No.

592. Q. You never signed any application form
to become a member of the Ceylon
Workers' Congress ?

A. No.

593. Q. You said your father was a member
of some union. Was he a member of
the Ceylon Workers' Congress ?

A. He was a member of the U.N.P. Trade
Union.

594. Q. You know that a Commission has been
inquiring into the incidents at
Monte Cristo estate ?

595. Court: Why are we interested in that ?
What is the relevancy ?

Defence Counsel: He has given evidence.

Court: I am not interested, and I do
not think the Jury is interested.
Why do you want to know whether he
has given evidence. You must show
relevancy.

Cross-Examination (continued)

596. Q. Did you take part in the strike at
any time ?

A. I did not.

10

20

30

597. Q. Do you remember an incident in December 1959 when the police opened fire on strikers ?

In the Supreme
Court

No. 8.

A. I know that.

598. Q. Did you take part in that incident ?

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

A. No.

599. Q. You know nothing of that incident ?

(continued)

10

A. I was not on the estate on that occasion, I had gone to get the rice rations.

600. Q. You did not throw any stones at the police on that day.

601. Court: Is that to show his bad character.

Defence Counsel: I am trying to show that he was a member of the Ceylon Workers' Congress at one time.

Witness: I threw stones.

20

602. Q. Along with workers on the estate who were on strike ?

A. Yes.

603. Q. And those workers on strike were the workers belonging to the Ceylon Workers' Congress ?

A. Yes.

604. Q. Did you or did you not pay membership fees to the Ceylon Workers' Congress ?

30

A. I have not.

605. Q. Did you give evidence at the Commission which inquired into the incident at Monte Cristo Estate ?

A. No.

606. Q. At any time ?

In the Supreme
Court

No. 8.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

(continued)

A. I had been to Colombo where I had given evidence before a Commission.

607. Q. And you gave evidence in regard to the role you played in Monte Cristo estate ?

A. I was on the side of the Tamils. But there were Sinhalese people who were throwing stones at night and I chose to give evidence.

10

608. Q. Did you give evidence ?

A. Yes.

609. Court: Q. In Colombo ?

A. Yes.

Cross-Examination (continued)

610. Q. Did you admit there that you had been a member of the Ceylon Workers' Congress ?

A. I did not say.

611. Q. Were you a registered labourer in that estate for the 15 years you claim to have been a labourer ?

20

A. Yes.

612. Q. You drew your wages ?

A. Yes.

613. Q. Signed the receipt for the wages ?

A. No.

614. Q. You were paid wages by the Monte Cristo estate without your signing any receipt at all.

30

A. They called out the names from the check roll where the full amount is marked, and the amount is paid to me, and they make a note of it.

615. Q. I put it to you that you were not a labourer of the estate ?

A. I was employed, but I say that I was for about 4 months with one of my uncles.

In the Supreme
Court

No. 8.

616. Court:

Q. Which year was that ?

A. In 1957.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

Cross-Examination (continued)

(continued)

10

617. Q. You were registered as a labourer for the first time in 1960 after the Monte Cristo strike ?

A. I deny that.

618. Q. Have you ever been called a "pandan Karaya" ?

A. For fun, the Tamil labourers called me a "pandan karaya".

619. Q. That is after the strike had commenced ?

A. Even before that.

20

620. Q. Pandan karaya of whom ?

A. Not of any particular person, but just as a nickname.

621. Q. Have you been called a pandan karaya of persons in authority ?

A. Yes.

622. Q. You associate with the labourers ?

A. Yes.

30

623. Q. And all the 15 years there has been no trouble between the Tamil labour and the Sinhalese labour on the estate ?

A. No.

624. Q. They got on very well ?

A. Yes.

In the Supreme
Court

No. 8.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

(continued)

625. Q. And you also got on very well with the labourers ?

A. Yes.

626. Q. Even though at that time they were calling you pandan karaya ?

A. That is so, these boys used to call me.

627. Q. And thereafter the Ceylon Workers' Congress came into the Estate in 1959 ?

10

A. Yes.

628. Court:

Q. Before 1959 there was no Ceylon Workers' Congress ? That is installed in your estate.

A. No.

Cross-Examination (continued)

629. Q. Both Sinhalese and Tamil labourer resident on the estate joined that Congress ?

20

A. Yes, later in 1959.

630. Q. Do you know that man Mendis who was accused in that murder case ?

A. Yes.

631. Q. He was a Thalavar ?

A. He was also called Captain. Thondar Captain.

632. Court:

Q. Was he called Thalavar, or Captain or by any other name ?

30

A. Thondar Captain.

633. Q. What do you mean by Thondar Captain?

A. There are 12 Thondars and for the

12 Thondars there was one chief.

In the Supreme
Court

Cross-Examination (continued)

No. 8.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

(continued)

634. Q. But he was the head of a section ?
A. Yes.
635. Q. After this union came into existence in 1955 there was this friction between the workers and Mr. Harvie.
A. No.
- 10 636. Q. You deny that ?
A. Yes.
637. Q. Nothing happened at all ?
A. Yes.
638. Q. Yet a strike took place in spite of the perfectly peaceful relations ?
A. Yes.
639. Q. Do you know a man called Chelliah who was shot ?
A. On the day of the incident I was not on the estate. I had gone to my sister's place.
- 20 640. Q. Did you know of the fact ?
A. Yes.
641. Q. Was there a strike after that ?
A. The Tamil labourers had struck work.
642. Q. No Sinhalese labourers struck work ?
A. One section of the Sinhalese labourers struck work, while the others went for work.
- 30 643. Q. Along with the Tamils ?
A. Yes.

In the Supreme
Court

No. 8.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

(continued)

644. Q. There was no question of communalism on the estate at that time ?

A. No.

645. Q. Thereafter that strike was settled and the workers came back to work ?

A. Yes.

646. Q. Then came the incident where the police opened fire ?

A. Yes.

10

647. Q. Before the incident had any of the workers been stopped from work ?

A. No.

648. Q. Was the strike on at the time the police fired ?

A. There was no strike at the time.

649. Q. After the police shooting was any one suspended from work ?

A. No.

650. Q. Not to your knowledge ?

20

A. No.

651. Q. Is it not the fact that the strike that was going on at the time of the incident was due to the suspension of work of 20 labourers including this accused, Jayasena and Mendis ?

652. Court:

Q. Is it or is it not that the shooting of Piyadasa took place at a time when the strike was on ?

30

A. There was no strike of the Sinhalese people.

653. Q. What about the Tamil people ?

A. They were on strike.

In the Supreme
Court

654. Q. And among the Sinhalese were there some who had struck work ?

No. 8.

A. No.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

Court: (continued)

10 655. Q. Was this strike that was going on at this time in August and September due to the suspension of work of Ramasamy, Mendis and Jayasena ? And some 17 others ?

(continued)

A. I do not know.

Cross-Examination (continued)

656. Q. Is it your position that on the 1st September when Piyadasa was shot only the Tamil workers of the estate were on strike ?

A. Yes.

20 657. Q. Jayasena and Mendis were not on strike ?

A. Jayasena and Mendis were with the Tamil labourers.

658. Court:

Q. They had struck work ?

A. Yes.

659. Q. Jayasena and Mendis are Sinhalese ?

A. Yes.

660. Q. Apart from Jayasena and Mendis were there others who had struck work ?

30 A. A man called John.

Cross-Examination (continued)

661. Q. What about Podi Mahataya ?

A. He was not even on the estate.

In the Supreme
Court

No. 8.

Prosecution
Evidence
U.G. Juwanis
Cross-
Examination

(continued)

662. Q. Do you know any worker by the name of Podi Mahataya ?

A. I know.

663. Q. Who is the Podi Mahataya you are referring to when I asked you about Podi Mahataya.

A. Podi Mahataya of the Congress.

664. Q. Was there a Podi Mahataya - a worker who was on strike ?

10

A. Yes. There was also a Podi Mahataya of the Congress. He is the person I am referring to.

665. Q. He was on strike ?

A. Yes.

666. Q. Your answer that only the Tamil workers were on strike is not correct ?

A. The Tamil labourers had intimidated the Sinhalese labourers and stopped them from coming to the estate.

20

667. Q. I put it to you, you never witnessed this incident ?

A. I say that I saw with my own eyes.

668. Q. You did not witness the shooting of Chelliah ?

Court: I won't allow this. Chelliah was not in this case.

Re-examina-
tion.

669. Re-examined Q. This Podi Mahataya - Congress Podi Mahataya is he a witness in this case ?

30

A. Yes.

3.40 p.m. --- Mr. Opanayaka takes over.
Certified correct.
Sgd. M.D.E. Perera.
Stenographer.

S.C. 14 (continued)19.12.61.In the Supreme
Court

2.40 p.m.

No. 8.

Upasakagedera Juwanis.Re-Examination (continued)Prosecution
Evidence
U.G. Juwanis
Re-Examination
(continued)

670. Q. You told my learned friend that you were not working for four months ?

A. Yes.

671. Q. At the time this Piyadasa, you said, was shot by Ramasamy - was it at that time that you were not working or during some other time ?

A. That was during a different time.

672. Q. That is in 1957 ?

A. Yes.

To Foreman - (No questions)No. 9.

No. 9.

A.M.F. MAHATHMAYA

A.M.F. Mahathmaya

Abeysinghe Mudiyanseelage Podi Mahathmaya -
Affirmed - 32 years - Labourer on Monte Cristo Estate, Nawalapitiya.

Examination

Examination

673. Q. In 1960 were you working on Monte-Cristo Estate ?

A. Yes.

Mr. Sivasubramaniam - My Lord, may I make certain submissions in the absence of the jury in regard to the testimony of this witness ?674. Court: Will you kindly retire, gentlemen of the jury, for a short while.
(Jury retired)

In the Supreme
Court

No. 9.

Prosecution
Evidence

A.M.F.
Mahathmaya

Examination

(continued)

Mr. Sivasubramaniam - This witness refers to in his evidence that some people tried to purchase a gun and that he overheard some conversation when he went to meet Samynadan and some people who had not at all involved in this case - Muttiah, the second accused and Selvanu - and then he went on. He says that the 1st accused showed him a gun similar to P1. 10

Court - As far as I see when he said "Podi Mahathmaya" I was just going to ask him what the relevancy is of this evidence.

Crown Counsel - only to show that the accused had a gun with him just prior to the shooting.

Court - That is on that day ?

Crown Counsel - Two or three days before.

Court - Did he say what day it was ? 20

Crown Counsel - He was questioned specifically about this by the Police. In the Lower Court he does not say anything about a particular date. My submission is the fact that the accused had a gun just prior to that is a relevant fact.

Court - Of course that is right if you are going to limit yourself to that. 30

Crown Counsel - Yes, My Lord.

Court - What do you say to the evidence he intends to lead.

Mr. Sivasubramaniam - In regard to that, as far as the evidence goes, it does not say when.

Court - But he says that he is able to establish that it is at the relevant time. I cannot prevent that - that the 1st accused had a gun, which is a weapon or a kind of weapon which has been used in this case, is a relevant fact. 40

Mr. Sivasubramaniam - If he can establish that it was this.

In the Supreme Court

Court - The question of time has to be ascertained when the witness is questioned.

No. 9.

Prosecution Evidence

(Jury returned)

A.M.F.
Mahathmaya

Examination (continued)

Examination

(continued)

- 10 675. Q. You had gone on strike during that year ?
- A. Yes.
676. Q. And in August and September last year were you on strike ?
- A. I cannot remember the months but I remember that I was on strike.
677. Q. Were you on the estate on the morning of 1st September, 1960 ?
- A. That day at about 8.30 a.m. I went to Nawalapitiya.
- 20 678. Q. Do you know the accused in this case ?
- A. Yes.
679. Q. How long had you known him ?
- A. Five years since I came to reside on the estate I had known him.
680. Q. You told us that you went to Nawalapitiya at 8.30 a.m. on 1st September; did you come back that day ?
- 30 A. I did not return to the estate.
681. Q. You stayed at Nawalapitiya ?
- A. I went to a place called Kadiellene where there is an elder brother of mine.
682. Q. Did you on the 9th September make

In the Supreme
Court

No. 9.

Prosecution
Evidence

A.M.F.
Mahathmaya

Examination

(continued)

a statement to the Police ?

A. Yes.

683. Q. Before that had you returned to Monte-Cristo Estate ?

A. No.

684. Q. Prior to the date of your going to Nawalapitiya that is prior to 1st September - did anyone working on the estate show you anything like a gun ?

10

A. Yes.

685. Q. Who showed you that ?

A. A person called Ramasamy.

686. Q. Is that person here in Court today ?

A. Yes.

Court - Q. Where is he ?

A. (Witness points out the accused in the dock).

Examination (continued)

20

688. Q. Was it a gun like P1 ?

A. Yes, it was a breach loading gun.

689. Court :

Q. How many days prior to 1st September was that; can you tell us ?

A. Two weeks prior to 1st September.

690. Q. Was the strike on at that time ?

A. Yes.

691. Q. And you say you were a striker too ?

A. Yes.

30

692. Q. Was the accused a striker too ?

A. Yes.

Cross ExaminationIn the Supreme
Court

No. 9.

693. Q. You were arrested on the 9th by the
Police ?A. From Kadiellene I came to the Con-
gress Office at Nawalapitiya. Then
while I was at the Congress Office a
Police Constable wanted me to go to
the Police Station to make a state-
ment.Prosecution
EvidenceA.M.F.
Mahathmaya

10

694. Q. Did he tell you why ?

A. He said that there was some complaint
against me.Cross-
Examination695. Q. Did he tell you what complaint
was ?Crown Counsel - I must object to that.
This is hearsay.Court - I think I will permit it not as
evidence of truth of what the Con-
stable said but as what this man
heard the Constable said. I will
allow the question.

20

Cross Examination (continued)696. Q. Did he tell you what the complaint
was ?A. I was told that I was one who was
to be questioned regarding the
shooting of one William.

30

697. Q. In other words you were told that
you were a suspect in William's
shooting case ?

A. Yes.

698. Q. Which Police Station were you taken
to ?A. First I was taken to the Nawalapitiya
Police Station.699. Q. What time were you taken to the Police
Station ?

A. I cannot remember.

In the Supreme
Court

No. 9.

Prosecution
Evidence

A.M.F.
Mahathmaya

Cross-
Examination

(continued)

700. Q. How long were you at the Nawalapitiya Police Station ?

A. That also I cannot remember.

701. Q. How many hours ?

A. About an hour or one and half hours.

702. Q. About what time were you arrested ?

A. I cannot remember the time.

703. Court:

Q. Were you arrested ?

10

A. I was not arrested.

Cross Examination (continued)

704. Q. At what time did the Constable meet you at that Congress Office ?

A. At about 4.30 p.m.

705. Q. Then you were taken to the Nawalapitiya Police Station ?

A. Yes.

706. Q. Did you make any statement at the Nawalapitiya Police Station ?

20

A. No.

707. Q. Were you put in the lock up at the Nawalapitiya Police Station ?

A. Yes.

708. Q. Did they tell you why they were putting you in the lock up ?

A. No.

709. Q. By that time you were afraid that you were now going to be involved in the shooting of William ?

30

A. Yes.

710. Q. How long were you inside the cell of

the Nawalapitiya Police Station ?

A. About 15 minutes.

711. Q. From there where were you taken to ?

A. I was brought to the Gampola Police Station.

712. Q. Were you put inside the lock up at the Gampola Police Station ?

A. Yes.

10 713. Q. How long were you inside that lock up ?

A. Till the following morning.

714. Q. And your statement was recorded the next morning ?

A. Yes.

715. Q. At that time were you told that Ramasamy was the accused in the case regarding William ?

20 A. I was not told so.
I made a statement to the Police to that effect.

716. Q. Till the next morning Police did not record your statement.

A. Yes.

717. Q. They did not tell you "Look here, you are a suspect in this case - what have you to say?"

A. I was asked whether I knew these matters.

30 718. Q. Was anything recorded ?

A. It was on the following morning that my statement was recorded.

719. Q. By the 9th had you known that some people had been arrested in connection with the shooting of William ?

In the Supreme
Court

No. 9.

Prosecution
Evidence

A.M.F.
Mahathmaya

Cross-
Examination

(continued)

A. Yes.

720. Q. And you knew that Ramasamy was one of those arrested ?

A. Yes.

721. Q. After you made your statement were you released from the Police Station?

A. Yes.

Re-Examination - (No questions)

To Foreman - (No questions)

10

No.10.

V.D.Jayawardene

Examination

No. 10.

V.D. JAYAWARDENE

Vidanagamage Dharmadasa Jayawardene - Affirmed - 40 years - Police Sergeant 4976 of Gampola Police Station.

Crown Counsel - May I make certain submissions to Your Lordship in the absence of the jury.

Court - I am sorry you have to walk out again for a few minutes if you do not mind.

(Jury retired)

20

Crown Counsel - My Lord the submission I wish to make is that I propose, with Your Lordship's permission to lead in certain portions of the statement made by the accused in consequence of which the gun was discovered.

Court - Have you got Justice Gratien's judgment - in regard to the manner in which that evidence should be led.

Crown Counsel - The statement I wish to lead is "I picked up the parts of the gun wrapped up in a gunny sack and a bag of cartridges buried in the garden opposite line No.6".

30

Court - What led him to find the gun. "I

am prepared to point out the place where the gun and the cartridges were buried." You have to limit yourself to that.

In the Supreme Court

No.10.

Crown Counsel - I shall be leading evidence of the conduct, namely that the accused went with the Police Officer and pointed this out voluntarily.

Prosecution Evidence

V.D.Jayawardene

10 Court - I do not know why Crown Counsel always want maximum evidence in their cases creating difficulties for everybody. There is eye witnesses' evidence. I am not saying that you should not put this statement. Any way you have opened on that.

Examination

(continued)

"I am prepared to point out the place where the gun and the cartridges were buried." That is all that you can lead.

Crown Counsel - Yes, My Lord.

20 Court - I am afraid I have to go on my recollection of the judgment. My recollection of the judgment is that so much of the statement, as relates distinctly to the fact thereby discovered, must be led in evidence while in the evidence of the Police officer who recorded his statement he will be entitled to refresh his memory from the note of the accused's statement that he has made. Is that witness in attendance ?

30 Crown Counsel - Yes, he is a witness. Might I ask a question from this witness before the jury comes in.

Court - Is that a satisfactory thing ?

Mr. Sivasubramaniam - The statement that my learned friend proposes to put in is

Court - I have asked him to limit himself to ascertain this much "I am prepared to point out the place where the gun and the cartridges are buried."

40 Mr. Sivasubramaniam - Certainly that would look admissible.

Court - The question is for you to say whether you are objecting to that or not.

In the Supreme Court

No.10.

Prosecution Evidence

V.D.Jayawardene Examination

(continued)

Mr. Sivasubramaniam - I am not objecting to that. I object to the other part of the statement going in.

Court - I am not going to allow that. You must admit as little as need be admitted in this sort of thing.

Crown Counsel - Might I ask the Police Officer this question here. I do not want any extra things to come in.

10

Court- These are the risks. Is there anything like trial for a witness to be questioned in the absence of the jury.

I am sorry I cannot allow it.

Crown Counsel - Then Your Lordship may permit me to put a leading question ?

Court - Certainly I will do that. You can put it this way - "Did he in the course of his statement to you say this" - you can say "You can refresh your memory from the statement you recorded and answer the question yes or no".

20

(Jury returned)

Examination (continued)

722. Q. On the 1st September, 1960 were you attached to the Gampola Police Station ?

A. Yes.

723. Q. Did you at about 1.30 p.m. in consequence of information received go to Monte-Cristo Estate with an armed party ?

30

A. Yes.

724. Q. Was Inspector Perera also with you ?

A. Inspector Ekanayake was with me.

725. Q. You got to the Wadiya in the estate near the main road ?

A. Yes.

- | | | |
|----|---|--------------------------------|
| | 726. Q. Thereafter were you sent to the Nawalapitiya town ? | In the Supreme Court |
| | A. On orders of the Head Quarter Inspector of Police Ekanayake I proceeded to Nawalapitiya. | No.10.
Prosecution Evidence |
| | 727. Q. You got to Nawalapitiya at about 2.10 p.m. ? | V.D.Jayawardene |
| | A. Yes. | Examination |
| 10 | 728. Q. Did you arrest this accused Ramasamy? | (continued) |
| | A. Near the Midland Theatre at Nawalapitiya. | |
| | 729. Q. What time did you arrest him ? | |
| | A. At 2.10 p.m. on 1.9.60. | |
| | 730. Q. Thereafter you also went to the Congress Office at Nawalapitiya ? | |
| | A. Yes. | |
| | 731. Q. You took the accused into custody ? | |
| | A. Yes. | |
| 20 | 732. Q. Did he tell you that he was prepared to | |
| | 733. <u>Court</u> - Q. Did you record his statement ? | |
| | A. I recorded the statement of the accused who volunteered to make the statement. | |

(3.20 p.m. Mr. Weerasekera continues)

Certified Correct.

30

Sgd. H.G. Opanayake.

Stenographer, S.C.

In the Supreme
Court

S.C. 14 continued.

2.40 p.m.

19.12.61.

No.10.

Vidanagamage Dharmadasa Jayawardene

Prosecution
Evidence

Examination (continued)

V.D.Jayawardene

734. Q. Have you got that statement ?

Examination

A. It is in my note book.

(continued)

735. Q. Where is your note book ?

A. I have not brought it. It is at the
Gampola police station.

10

736. Q. Can you bring it tomorrow ?

A. Yes.

Court:

737. Q. You better come tomorrow at 11 a.m.
with your note book ?

A. Yes.

Court - We will let this witness stand
down and you can call another witness
in the meantime.

No.11.

No. 11.

20

M.A.W.Perera

M.A.W. PERERA

Examination

Mallawa Aratchige Walter Perera, sworn, 34 years,
Inspector of Police, Peradeniya.

Examined

738. Q. Were you attached to Gampola police
in September last year ?

A. Yes.

739. Q. On 1st September did you in conse-
quence of some information received
at the police station proceed to
Monte Cristo estate ?

30

- | | | |
|------|---|-------------------------|
| | A. Yes. | In the Supreme
Court |
| 740. | Q. Did you get there at about 1.30 p.m.? | <hr/> No. 11. |
| | A. At 1.15 p.m. | |
| 741. | Q. The upper division of Monte Cristo estate ? | Prosecution
Evidence |
| | A. Yes. | M.A.W. Perera |
| 742. | Q. Where did you go ? | Examination |
| | A. I went to the Wadiya first which is by the main road where the shooting was alleged to have taken place. | (continued) |
| 10 | | |
| 743. | Q. When you went there was there a crowd present ? | |
| | A. Yes. | |
| 744. | Q. Was Police constable Tambawita also present ? | |
| | A. Yes. | |
| 745. | Q. There were no injured persons at the time you went ? | |
| | A. Yes. | |
| 20 | | |
| 746. | Q. They had been taken to the Hospital according to your information ? | |
| | A. Yes. | |
| 747. | Q. Did you look around that wadiya ? | |
| | A. Yes. | |
| 748. | Q. Thereafter you commenced inquiries and recording the statements ? | |
| | A. Yes. | |
| 749. | Q. While you were recording statements was a statement made to you by witness Juwanis ? | |
| 30 | | |
| | A. Yes. | |
| 750. | Q. Thereafter did you send for anyone ? | |

In the Supreme
Court

No.11.

Prosecution
Evidence

M.A.W.Perera

Examination

(continued)

- A. I sent for witness Heenbanda.
751. Q. And he made a statement to you ?
- A. Yes.
752. Q. From the time you went there to the wadiya was the Superintendent with you ?
- A. Yes.
753. Q. That is Mr. Harvey ?
- A. Yes. 10
754. Q. Up to the time you finished recording he was there ?
- A. Up to the time I left for Nawalapi-tiya hospital at about 6.45 p.m.

Court:-

755. Q. What time did you record Juwanis's statement ?
- A. At 4.30 p.m.
756. Q. And Heenbanda's statement ?
- A. At 4.50 p.m. 20

Examination (continued)

757. Q. Before you recorded Juwanis' statement did you address the crowd ?
- A. Yes.
758. Q. What did you say to the crowd ?
- A. I said that if there was anybody who had seen the shooting at the weeding place to come forward and give evidence.
759. Q. Then Juwanis stepped out ? 30
- A. Yes.
760. Q. You said you went to the hospital

at about 6.15 p.m. ?

In the Supreme
Court

A. I reached the hospital at 7.15 p.m.

No.11.

761. Q. There did you record the statement of Piyadasa ?

Prosecution
Evidence

A. Yes.

762. Q. From Piyadasa did you take into your custody a shirt and a banian ?

M.A.W.Perera

Examination

A. Yes.

(continued)

10 763. Q. Did you produce the shirt marked P11 in M.C. Gampola case No. 2636 ?

A. Yes.

764. (Shown P5)

Q. Is this the shirt which you say you produced marked P11 in that case ?

A. Yes.

765. Q. And when it was sent to the Govt. Analyst did it bear the mark P11 ?

A. I have not made a note about it.

20 766. Q. This same shirt was marked P11 in that case and as P5 in this case ?

A. Yes.

767. Q. In connection with that case were they sent to the Govt. Analyst ?

A. Yes.

768. (Shown banian P6)

Q. You produced the banian P6 in that case as P12 ?

A. Yes.

30 769. Q. That too was sent to the Govt. Analyst ?

A. Yes.

In the Supreme
Court

No. 11.

Prosecution
Evidence

M.A.W.Perera

Examination

(continued)

770. Q. Did you also take into your custody the pocket diary from Piyadasa which you produced in this case as P4 and which you produced in the other case as P10 ?

A. Yes.

Court:

771. Q. When you got this diary P4 from Piyadasa was there that tear mark on that ?

10

A. Yes.

Examination (continued)

772. Q. Before you went to the hospital were you present when the sketch of this place was drawn ?

A. Yes.

773. Q. Witnesses Heenbanda and Juwanis were with you at that time ?

A. Yes.

20

Cross-
Examination

Cross-examined

774. Q. At what time did you call out for witnesses who had seen the incident to come forward ?

A. At 4.30 p.m.

775. Q. Till 4.30 p.m. then you had not recorded any statements ?

A. I had recorded many statements.

776. Q. But you called out to witnesses only at 4.30 p.m. ?

30

A. I called out for witnesses who had seen this incident.

Court:

777. Q. Before that were you recording statements about another shooting incident?

A. Yes.

C

Cross-Examination (continued)In the Supreme
Court

No.11.

Prosecution
Evidence

M.A.W.Perera

Cross-
Examination

(continued)

778. Q. And both Juwanis and Heenbanda came forward ?

A. Juwanis came forward.

779. Q. How long did you take to record his statement ?

A. About ten minutes.

780. Q. How did you get Heenbanda ?

10

A. I have recorded the fact that I sent for Heenbanda and recorded his statement.

781. Q. Heenbanda was not there at the time ?

A. Yes.

782. Q. You went to the spot where Piyadasa was alleged to have been working ?

A. Yes.

783. Q. I suppose you looked around the spot ?

20

A. Yes.

784. Q. Were Heenbanda and Juwanis with you at the time ?

A. Yes.

785. Q. They indicated to you the spots where they were working ?

A. Yes.

786. Q. And where they had been hiding ?

A. Yes.

30

787. Q. Did you look for any tools around the place ?

A. I looked for pellet marks.

788. Q. I am asking you about any tools ?

A. No.

In the Supreme
Court

No.11.

Prosecution
Evidence

M.A.W.Perera

Cross-
Examination

(continued)

789. Q. Did you find any about the place ?
A. No.
790. Q. Do you know what a weeding scraper is ?
A. Yes.
791. Q. Did you find any weeding scraper about that place ?
A. No.
792. Q. Either in the drain or near any tea bush ?
A. I did not look for any such tools.
793. Q. There are tea bushes where Piyadasa was alleged to have been ?
A. Yes.
794. Q. Did you examine the tea bushes there ?
A. Yes.
795. Q. As a police officer you know it is important to see whether there are any traces of pellet marks at a scene ?
A. Yes.
796. Q. Did you find any signs on any tea bush or tree indicating that pellet had struck them ?
A. No.
797. Q. Did you go down to this spot where the accused is alleged to have fired at Piyadasa ?
A. Yes.
798. Q. Did you find any empty cartridge or anything like that about the place ?
A. No.
799. Q. At the time Juwanis and Heenbanda made their statements to you this accused had been arrested and produced before you ?

10

20

30

A. Yes. At about that time.

In the Supreme
Court

800. Q. At 3 p.m. according to the sergeant ?

No.11.

A. He was produced later.

Prosecution
Evidence

Court:

801. Q. Was he brought before you to the estate ?

M.A.W.Perera

A. Yes.

Cross-
Examination

10 802. Q. Have you made a note of the time the accused was brought before you ?

(continued)

A. I have made a note of having finished recording the statement of the Superintendent at 5.05 and also mentioned that a little while before that the sergeant had arrested this accused and had recovered certain articles.

20 803. Q. Can you tell us even roughly about what time was it that you saw the accused in custody ?

A. About 5 p.m.

Cross-examination (continued)

804. Q. He was not produced before you before that ?

A. No.

805. Q. He was not produced by the sergeant at any time ?

A. Not before 5 p.m.

30 806. Q. Where was the Head Quarters Inspector Ekanayaka all this time ?

A. He was at the scene.

807. Q. He was supervising the investigations but you were conducting the investigations ?

A. I was conducting the investigations.

In the Supreme
Court

No.11.

Prosecution
Evidence

M.A.W.Perera

Cross-
Examination

(continued)

808. Q. Before 5 p.m. you did not see this accused at the spot near the Wadiya ?

A. It was about 5 p.m. but it can even be a little earlier.

809. Q. Did you see him at any time before you recorded the statement of Juwanis ?

A. No.

810. Q. Did you examine the gun that was produced ?

10

A. Yes.

811. Q. Have you made a note of your examining the gun ?

A. I have made a note that a gun was produced, broken into three parts.

812. Q. Did you examine the barrel of that gun ?

A. No.

813. Q. You never sought to ascertain by examining the gun whether it had been recently fired ?

20

A. No.

814. Q. You know how the barrel of a gun smells if it has been recently fired ?

A. Yes.

Re-Examination

Re-Examined

815. Q. Do you normally examine a gun when you recover a gun in connection with a shooting ?

A. Yes.

30

816. Q. Why did you not examine this gun ?

A. Because the sergeant who had recovered it informed me that he had smelt the gun ?

817. Q. That is Jayawardena ?

A. Yes.

Jury:-

No questions.

In the Supreme
Court

No.11.

Prosecution
Evidence

M.A.W.Perera

Re-examination
(continued)

No. 12.

D. SENARATNE

Dayananda Senaratne, affirmed, 27 years,
P.C. 4358, Gampola.

No.12.

D. Senaratne

Examination

Examined.

- 10 818. Q. You were attached to Gampola police
on 1st September last year ?
- A. Yes.
819. Q. On that day did you visit Monte
Cristo estate and take a sketch
of the scene ?
- A. Yes.
820. Q. And did you produce 11 copies of
the sketch in the Magistrate's Court
marked Sk1 to Sk11 ?
- 20 A. Yes.
821. Q. When you went to see this spot were
the witnesses Juwanis and Heenbanda
with you ?
- A. Yes.
- (Shown the sketch)
822. Q. What you have marked as A is the
spot where Piyadasa was weeding
according to witnesses Juwanis and
Heenbanda when he was shot at ?
- 30 A. Yes.

In the Supreme
Court

No.12.

Prosecution
Evidence

D. Senaratne

Examination

(continued)

823. Q. Did those two witnesses also point out the spot where Ramasamy was when he shot at Piyadasa ?

A. Yes.

824. Q. That is the spot shown as B ?

A. Yes.

825. Q. Between A and B is the main road leading to Nawalapitiya ?

A. Yes.

10

826. Q. B is on a higher elevation or a lower elevation than A ?

A. B is on a lower elevation.

827. Q. You were also shown the foot path which leads to a place called the dhoby line ?

A. Yes.

828. Q. And from the dhoby line to another spot in front of the Wadiya ?

A. Yes.

20

829. Q. D is the entrance to that Wadiya ?

A. Yes.

830. Q. And the Wadiya is shown there ?

A. Yes.

831. Q. You have also shown the line set No. 6 ?

A. Yes.

832. Q. On the right hand side of the sketch ?

A. Yes.

30

833. Q. What is the distance from A. to B ?

A. 87 feet and 9 inches.

834. Q. What is the distance from A to C ?

In the Supreme
Court

A. 700 feet.

No.12.

835. Q. C is in front of the wadiya ?

Prosecution
Evidence

A. Yes. From C to A in a straight line
it is 700 feet.

D. Senaratne

836. Q. Around that you have marked line No.
5 and line No.6: were they both on
a higher elevation than the wadiya ?

Examination

(continued)

10

A. Yes.

837. Q. Wadiya was close to the road ?

A. Yes.

Court:

838. Q. Did you measure the distance from
the wadiya to line No.6 ?

A. No.

Cross-examined: No questions.

Jury :- No questions.

Court adjourned for the day.

20

Certified correct.

Sgd. C.B.Weerasekera.

Stenographer, S.C.

S.C.14 (continued)

20.12.61.

11. a.m.

The accused present.

A.M. Coomarasamy, Crown Counsel, for the
prosecution.

Mr. Advocate Sivasubramaniam instructed by

In the Supreme Court

A.H.M. Jameel for the defence present with
S.H.M. Maharooof (assigned).

No.13.

No. 13.

Prosecution
Evidence

W.D. JAYAWARDENE (Recalled)

W.D.Jayawardene
(Recalled)

W.D.Jayawardene - Recalled - re-affirmed.

Examination

Mr. Sivasubramaniam - May I be permitted to
make certain submissions on the law with
regard to this witness's evidence in the
absence of the gentlemen of the Jury ?

10

Court - Will you please retire, gentlemen ?

(Jury retired).

Mr. Sivasubramaniam - The evidence of Inspector
Perera discloses that at the time this
officer went in search of the accused and
took him into custody he could have taken
him into custody only as an accused in
regard to the shooting of William and others
and he could not have been taken into cus-
tody in regard to this offence. My
submission is, in these circumstances, any
statement made by this accused would not
be admissible under Section 27, in this case,
because Your Lordship will be pleased to see
section 27. Section 27 refers to "in
consequence of information received from a
person accused of any offence in the custody
of a Police officer, so much of such
information, whether it amounts to a confes-
sion or not" My submission would
be the words "whether it amounts to a
confession or not" indicate that the offence
referred to in section must be the offence
with which the accused is charged. Otherwise
the words "whether it amounts to a confession
or not" would be irrelevant.

20

30

Court: - May I know your argument again ?

Mr. Sivasubramaniam - The words "Whether it
amounts to a confession or not" would indi-
cate what the words "any offence" means in
that section. These words "Whether it amounts
to a confession or not" can be relevant in
that section only if the words "Any offence"
referred to

40

Court - Am I to understand that your argument

is that if the accused was not charged at the time of his arrest with attempted murder of Piyadasa anything he said to the Police could not be elicited but if he had been charged by the officer who arrested him at Nawalapitiya with the shooting of Piyadasa and he said something that something could be elicited if it is relevant under Section 27 ?

In the Supreme Court

No.13.

Prosecution Evidence

W.D.Jayawardene (recalled)

Examination

(continued)

10

Mr. Sivasubramaniam - If something was discovered. Because there are three elements there. The man must be in custody, the man must be accused of any offence, and the words "Any offence" must necessarily relate to the offence charged.

Court - Charged where ?

20

Mr. Sivasubramaniam - The offence with which he is charged now.

Court - I do not agree.

Mr. Sivasubramaniam - To make it admissible in this case.

Court - I do not agree with that at all.

Mr. Sivasubramaniam - Otherwise, My Lord, my submission is if it is some other offence - supposing he is charged with the theft of a bicycle and he said "I shot so and so and I have hidden the gun somewhere ?

30

Court - Yes, if it is relevant to the case that is being investigated at the trial, I take it, that that statement would be relevant if it is relevant under section 27 notwithstanding that there was no question of shooting at all at the time he was arrested.

Mr. Sivasubramaniam - But instead for the words "Whether it amounts to a confession or not" did not arise

40

Court - It arises because of sections 25 and 26. Ordinarily a confession to a Police Officer cannot be elicited in a trial or in a Criminal Court under

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Examination

(continued)

section 27 and the exceptions are sections 25 and 26. It states notwithstanding that so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered as a result of that confession could be elicited.

Mr. Sivasubramaniam - My submission is the question of confession cannot arise unless it is a confession of the offence with which he is accused. 10

Court - I do not agree with that. And in my opinion "accused of any offence" means, accused of any offence at the time the question arises and not at the time of arrest.

Mr. Sivasubramaniam - My submission is it is inadmissible.

May I also make another submission on that aspect ? The evidence of the Police Officer is that the accused took him along - as recorded in the deposition - and then cleared some rubbish and he saw a gun. As such the statement itself "I am prepared to show the place where the gun is buried" would be inadmissible, because he does not discover anything in consequence of that. The accused himself produced it. His conduct may be relevant but the statement he made, I would submit, would be irrelevant. 20

Court - I think the inference is it was the statement made to the Police Sergeant that led to the discovery of the gun. The fact that the accused went along thereafter with the Police Sergeant and pointed out the spot from where it had to be dug out would not mean anything else than to say that it was the statement that led to the discovery of the gun. 30 40

Mr. Sivasubramaniam - There was no discovery by the Police Officer himself.

Court - Who else but the Police Officer discovered the gun ?

The accused may have discovered it in the sense of the physical act of discovering it - scraping out the earth. I do not think that is what is meant by "discovered". Discovered means "ascertain, find". It is not the etymological meaning - discover - taking off the cover. "Discovered" means "found".

In the Supreme Court

No.13.

Prosecution Evidence

W.D.Jayawardene (Recalled)

Examination

(continued)

10

Mr. Sivasubramaniam - I may quote this passage from Ameer Aly "Similarly in the case of a statement accompanying the production of articles the general rule is that if the prisoner himself produces or delivers the articles said to be connected with the offence and contemporaneously makes declaration as regards them the act of production or delivery itself may be proved as conduct under the 8th section, but as there is no discovery accompanying, the statements are not admissible under the present section".

20

Court - In my opinion the gun was discovered as a result of a statement made by the accused after he had been arrested and as such the evidence is admissible. I may say that I traced one of the cases which we were trying for yesterday. That is in 46 Ceylon Law Weekly at page 52. Incidentally it is a case where you yourself, Mr. Sivasubramaniam, appeared for the appellant. But there is another case reported in the New Law Reports which I have not been able to trace last night. Both Justice Gratisen's judgments. Both indicate that a Police officer's evidence, so much what the accused actually said, is admissible.

30

40

(Jury returned)

Examination (continued)

839. Q. You told us yesterday that you took the accused into custody ?

A. Yes.

840. Q. And you recorded his statement ?

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Examination

(continued)

- A. On his volunteering to make a statement I recorded his statement.
841. Q. Please refresh your memory from the note book; did you bring your note book ?
- A. Yes.
- (Witness refreshes his memory from the note book).
842. Q. Did the accused in the course of his statement tell you "I am prepared to point out the place where the gun and the cartridges are buried ?" 10
- A. Yes.
843. Q. Thereafter did you and the accused go to a spot near line No. 6 ?
- A. Yes.
844. Q. Were the gun and the cartridges discovered ?
- A. Yes. 20
845. Q. Where were they discovered ?
- A. I took the accused to line No.6 and the accused pointed out a spot to me.
- He unearthed some rubbish and I discovered the gun broken into three parts and a cloth bag containing 12 cartridges - 12 bore cartridges.
846. Q. Was the gun wrapped in anything ?
- A. It was wrapped in a gunny sack. 30
847. Q. (Shown P2) Was this the gun bag ?
- A. Yes.
848. Q. It was produced in the Lower Court marked P2 ?
- A. Yes.

- | | | |
|----|--|---------------------------------------|
| | 849. Q. You assembled the gun ? | In the Supreme
<u>Court</u> |
| | A. I did not assemble the gun.
I examined the barrel and there was
fouling and there were signs of
recent firing. | No.13.

Prosecution
Evidence |
| | 850. Q. You smelt the barrel ? | W.D.Jayawardene
(Recalled) |
| | A. Yes. | Examination |
| 10 | 851. Q. It smelt fouling ? | (continued) |
| | A. Yes. | |
| | 852. Q. (Shown P3) Is P3 the cloth bag in
which, you said, you found cartridges? | |
| | A. Yes. | |
| | 853. Q. How many cartridges were inside ? | |
| | A. 12 cartridges. | |
| | 854. Q. Twelve or fourteen ? | |
| | A. 14 cartridges. | |
| | 855. <u>Court:</u> | |
| | Q. Live cartridges ? | |
| 20 | A. Yes. | |
| | <u>Examination</u> (continued) | |
| | 856. Q. Two of those cartridges were S.G.
cartridges ? | |
| | A. Yes. | |
| | <u>Court:</u> | |
| | 857. Q. And others ? | |
| | A. Two S.G., Two No.6, Two No.3, Seven
No.4, and one F. filled 12 bore
cartridges. | |
| 30 | 858. Q. What is F. filled ? | |
| | <u>Examination</u> (continued) | |

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Examination

(continued)

859. Q. A cartridge which has been re-loaded ?

A. Re-filled.

860. Q. Is this the cartridge ?

A. Yes.

861. Court:

Q. The one which you have in your hand now is the one you referred to as F.N. filled cartridge ?

A. Yes.

10

862. Q. This appears to be a re-filled cartridge.

A. Yes.

863. Q. "F.N." are letters on the rim of the cartridge ?

A. Yes.

Examination (continued)

864. Q. All the other cartridges are Ely Kynoch live cartridges ?

A. Yes.

20

865. Q. Were the productions gun, bag and the cartridges and the gunny bag produced in the Lower Court marked P1, P2 and P3 ?

A. Yes.

866. Q. (Shown P1) This is the gun you produced in the Lower Court ?

A. Yes.

867. Q. You said you discovered the gun near line set No.6 ?

A. Opposite line set No.6.

30

Court:

868. Q. Did you at any stage try to re-assemble the gun which was in three

parts ?

A. No.

In the Supreme
Court

No.13.

869. Q. When you produced it in the Magistrate's Court it was in three parts ?

Prosecution
Evidence

A. Yes.

W.D.Jayawardene
(Recalled)

Cross Examination

870. Q. Inspector Perera was conducting investigations into this case ?

Examination
(continued)

10

A. Yes.

871. Q. You left Monte-Cristo Estate in search of Ramasamy ?

A. In search of the suspects.

Cross-
Examination

872. Q. Who were the suspects that you went in search of ?

A. Ramasamy, Mendis and one Puwalingam.

873. Q. Did you know any one of those individuals ?

A. I did not know. I accompanied one David to identify the suspects.

20

874. Q. Who is this David ?

A. A labourer on the estate.

875. Q. Had he made any statement to Inspector Perera before you left the estate ?

A. I am not aware.

876. Q. You went in the Police Jeep ?

A. Yes.

30

877. Q. Along with David and the Police Driver ?

A. And three other Police officers.

878. Q. No other labourer of the estate accompany you ?

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Cross-
Examination

(continued)

A. Except for David no other labourer accompanied me.

879. Q. This accused was pointed out to you by David ?

A. Yes.

880. Q. In front of the Midland Theatre ?

A. Opposite Midland Theatre at a tea kiosk.

881. Q. He was not hiding himself or concealing himself at that time ?

10

A. He was standing in front of the tea kiosk.

Court:

882. Q. What time was this ?

A. About 2.10 p.m.

Cross-Examination (continued)

883. Q. It is in Nawalapitiya bazaar area ?

A. Yes.

884. Q. That is on public high way just in front of a tea kiosk and David said "That is Ramasamy ?"

20

A. Yes.

885. Q. You walked up to him and said "I am arresting you?"

A. I explained the charge against the accused.

886. Q. What is the charge that you explained to him ?

A. That he was wanted in connection with a case of shooting.

30

887. Q. Did you say in connection with the shooting of whom ?

A. No.

In the Supreme
Court

888. Q. What time did you arrive at the estate ?

A. About 1.15 p.m.

No.13.

889. Q. What time did you leave the estate in search of the suspects ?

A. At 1.30 p.m.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

890. Q. During that 15 minutes did you come to know that Piyadasa had been shot?

A. Yes.

Cross-
Examination

(continued)

10

891. Q. Before you left the estate ?

A. Yes.

Court:

892. Q. By 1.30 you had come to know that Piyadasa had been shot ?

A. Yes.

Cross Examination (continued)

893. Q. And you brought this accused back to Monte-Cristo Estate ?

A. Yes.

20

894. Q. To what portion of the Monte-Cristo Estate did you take him ?

A. I brought the accused to the scene.

895. Q. That is near the wadiya ?

A. Yes.

896. Q. Inspector Perera was there conducting investigations near the Wadiya ?

A. Yes.

Court:

30 897. Q. What time did you reach the place with the accused ?

A. About 3.10 p.m.

In the Supreme Court

No.13.

Prosecution Evidence

W.D.Jayawardene (Recalled)

Cross-Examination

(continued)

Cross Examination (continued)

898. Q. Did you inform Mr. Perera that you had arrested Ramasamy ?

A. I produced the accused before him.

899. Q. Before Inspector Perera ?

A. Before Mr. Ekanayake.

900. Q. I am asking you whether you produced the accused before Inspector Perera ?

A. Not before Inspector Perera. I produced the accused before Inspector Ekanayake.

10

901. Q. When you came near the wadiya of the estate, you have just told me, that Inspector Perera was there ?

A. Inspector Perera was conducting inquiries.

902. Q. He was physically present in front of the wadiya ?

A. He was present near the wadiya.

20

903. Q. He was present when you came up with the accused in the Police jeep ?

A. Yes.

904. Q. Did you inform Inspector Perera that you had arrested Ramasamy ?

A. No, I informed Inspector Ekanayake, the Head Quarter Inspector of Police.

Court:

905. Q. Did you tell Mr. Perera that you had arrested the accused ?

30

A. No.

Cross Examination (continued)

906. Q. Is there any reason why you should not have told him ?

A. The Head Quarter Inspector of Police was there and I produced the accused before him.

In the Supreme Court

No.13.

Court:

Prosecution Evidence

907. Q. Was Ekanayake a superior officer to Mr. Perera ?

W.D.Jayawardene (Recalled)

A. Yes.

Cross Examination (continued)

Cross-Examination

10 908. Q. He was there along with Mr. Perera ?

(continued)

A. I am not aware.

909. Q. Did you see Mr. Perera close to Mr. Ekanayake ?

A. Mr. Perera was present conducting the investigation.

910. Q. Did you see him near Mr. Ekanayake ?

Court:

20 911. Q. What the Counsel wants to know is how far away from Ekanayake was Perera at the time you produced the accused before Ekanayake ?

A. Mr. Perera was near the Wadiya.

912. Q. How far away ?

A. Close by. About 10 to 15 yards away.

Cross Examination (continued)

913. Q. There was a crowd of villagers there?

A. There were some people present.

914. Q. How many people were present ?

30 A. There were about 10 to 15 people.

915. Q. That jeep was an open jeep ?

A. Open means ?

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Cross-
Examination

(continued)

916. Q. With the hood off ?

A. I cannot remember that.

917. Q. Was that the jeep of the Gampola
Police Station ?

A. Yes.

(11.35 a.m. - Mr.A.D.A.Gunasekera
continues)

Certified Correct.

Sgd. H.G. Opanayake

10

Stenographer, S.C.

11.30.

W.D. Jayawardene

Cross-examined

918. Q. And you cannot remember whether the
hood was off or not.

A. I cannot remember.

919. Q. You asked the accused to get down
from the jeep ?

A. The accused was inside the jeep.

20

920. Q. Did you get him down from the jeep ?

A. No.

921. Q. How did you produce him before
Inspector Ekanayake ?

A. I went up to Mr. Ekanayake and told
him that I had brought the accused.

922. Q. Apart from that you did not take
the accused before Inspector
Ekanayake ?

A. I did not take the accused from the
Jeep.

30

923. Q. You did not take the accused in front of Mr. Ekanayake and tell him that this is the accused I have arrested?

In the Supreme
Court

No.13.

A. I told him that this is the accused I have arrested.

Prosecution
Evidence

924. Q. Did Mr. Ekanayake see Ramasamy ?

W.D.Jayawardene
(Recalled)

A. Yes.

925. Q. From where did he see him ?

Cross-
Examination

10 A. From where he was on the road.

(continued)

926. Q. When he saw Ramasamy he was in the jeep ?

A. Inside the jeep.

927. Q. There was no question of the jeep preventing Mr. Ekanayake seeing Ramasamy ?

A. He could very well have seen.

928. Q. Did you at any stage hand him over to Inspector Ekanayake ?

20 A. The accused was right throughout in my custody.

929. Q. Did you hand him over to Inspector Ekanayake ?

A. No.

930. Q. Did you tell the Mag. in case No. 2636, "I brought the accused to the estate and handed him over to Inspector Ekanayake ?

30 A. I produced the accused before Inspector Ekanayake.

931. Q. I suggest to you that you deny having informed Inspector Perera because the statement of Piyadasa was recorded only at 4.30 ?

A. I am not aware.

932. Q. You are not aware at what time his

In the Supreme
Court

No. 13.

Prosecution
Evidence

W.D. Jayawardene
(Recalled)

Cross-
Examination

(continued)

statement was recorded ?

A. I am not aware.

933. Q. Are you even now aware at what time his statement was recorded ?

A. No.

934. Q. At what time did you commence to record the accused's statement ?

A. After the discovery of the gun and cartridges.

10

935. Q. At what time did you record it ?

A. At 3.10 immediately on arrival at the estate.

936. Q. That is before or after the discovery of the gun ?

A. Before the discovery of the gun.

937. Q. You know now that it was after the discovery of the gun ?

A. That was a mistake when I said that.

938. Q. I make a further allegation against you. I say that the accused never produced this gun to you ?

20

A. No.

939. Q. He never pointed it out to you ?

A. He did.

940. Q. He never made a statement to that effect to you ?

A. He did.

941. Q. In what language did he make a statement to you ?

30

A. In Tamil.

942. Q. Do you understand Tamil ?

A. Yes.

943. Q. You understand it well ?

A. Fairly well.

(To Court :

944. Q. You have told us this morning that the accused said, "I am prepared to point out the place where the gun and cartridges were buried.

Now how did he say that in Tamil ?

10

A. (Witness gives the Tamil words and Mudaliya translates it as follows:

I could point out the place where the gun and cartridges were buried").

945. Q. What was the word he used for cartridges ?

A. "Patheram".

946. Q. What was the word he used for buried ?

A. "Podithce".)

20

947. Q. The people who were near the wadiya at the time you arrived could have seen the accused ?

A. They may have seen.

948. Q. There was nothing to obstruct your view ?

A. No.

949. Q. Anybody who was there by the jeep could have seen the accused ?

A. Yes.

30

950. Q. At the Nawalapitiya Bazaar you stopped your jeep near the botique ?

A. Yes.

951. Q. The accused was standing there ?

A. Yes.

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Cross-
Examination

(continued)

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Cross-
Examination

(continued)

952. Q. He made no attempt to run away ?
A. No, he had no time to run away.
953. Q. And he signed that statement ?
A. Yes.
954. Q. In what language ?
A. In Tamil.
955. Q. Apart from you were there any other
Police Officers present at the time
you took the gun ?
A. Yes, three other Police officers.
956. Q. Apart from you did anyone else
examine the gun ?
A. No.
957. Q. And you produced him before your
superior officer ?
No one examined the barrel of the
gun ?
A. I examined it and made my notes.
958. Q. What is your experience of firearms?
A. About 14 years in the Police Force.
959. Q. Of using firearms ?
A. Of using firearms I have got 20
years experience.
960. Q. Of shooting ?
A. Yes.
961. Q. Apart from that any special know-
ledge of firearms ?
A. Yes, I am a qualified armourer in
small arms.

10

20

30

(To Court:

962. Q. What is your description of small

arms ?

In the Supreme
Court

A. All types of weapons.

No.13.

963. Q. What do you mean by small arms ?

Prosecution
Evidence

A. Guns and the like).

964. Q. Do you know how long the fouling of a gun will last ?

W.D.Jayawardene
(Recalled)

A. It will last for over one month.

Cross-
Examination

10

965. Q. Are you in a position to differentiate between smokeless cartridges used in a gun and home made cartridges with black powder being used in a gun ?

(continued)

A. I am not in a position to differentiate.

966. Q. When you examined this gun were you able to say whether smokeless cartridges had been used or cartridges with black powder had been used ?

20

A. I can only say that there was residue inside the barrel.

967. Q. Apart from that you cannot say anything further ?

A. No.

968. Q. Are there any other senior officers more experienced than you on the question of powder ?

A. I am not aware.

30

Re-examined

Re-Examination

969. Q. You told us that when you left the estate at about 1.30 you left on some Inspector's orders ?

A. Yes.

970. Q. Which Inspector gave you that order ?

A. Inspector Ekanayake.

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Re-
Examination

(continued)

971. Q. The same Inspector before whom you produced the accused ?

A. Yes.

972. Q. You said you took a labourer called David ?

A. Yes. I took him to identify the suspects -

973. Q. You did not know Ramasamy yourself ?

A. No.

10

974. Q. You took someone to identify him ?

A. Yes.

(To Court:

975. Q. Because you did not know the person whose name had been mentioned ?

A. Yes.)

976. Q. You said you brought the accused back to Monte Cristo and produced the firearm before Inspector Ekanayake ?

20

A. Yes.

977. Q. The accused was in a jeep ?

A. Yes.

978. Q. Thereafter you went to the spot where you found the gun ?

A. Yes.

(To Court:

979. Q. Is it correct that at Nawalapitiya you did not record any statement of the accused ?

30

A. At the estate)..

980. Q. You told us also in cross-examination that the accused was right throughout in your custody ?

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Re-Examination

(continued)

10

A. Yes.

981. Q. After the gun and the cartridges were discovered did you hand over the accused to anyone ?

A. I produced him before Inspector Perera.

982. Q. When you returned from the lines at No. 6 ?

A. Yes.

983. Q. At about what time was that ?

A. At about 4.30 p.m.

984. Q. Was there a crowd present when you came back ?

A. There was.

985. Q. Was Inspector Perera still continuing his investigations ?

A. Yes.

20

986. Q. About how many persons were present when you came on the second occasion ?

A. There were about 25 to 30 persons present.

987. Q. In fact Ekanayake had gone back to the Station or was he still there ?

A. He was there.

988. Q. When you brought the gun back did you cover the gun. That is both ends of the barrel ?

30

A. Yes.

989. Q. That was because there was fouling ?

A. Yes.

990. Q. What do you mean by fouling ?

A. The barrel inside was corroded like

In the Supreme
Court

and there was also the smell of gun powder inside the barrel.

No.13.

(To Court:

Prosecution
Evidence

991. Q. Have you made an entry in regard to the finding of the gun by you ?

W.D.Jayawardene
(Recalled)

A. Yes.

Re-Examination

992. Q. Before that have you made an entry in regard to any statement made to you by the accused ?

(continued)

A. Yes.).

10

993. Q. Can you refresh your memory from what you have recorded and say whether it was after the accused had told you that he could point out the place where the gun and cartridges were buried or before he told you that he could point out the place where the gun and cartridges were buried that you went to a certain place near lines No.6?

20

A. Before the discovery of the gun and cartridges.

994. Q. After the discovery of the gun I take it that you made a record of that fact in your diary ?

A. Yes.

995. Q. After that was done did you take a statement of the accused ?

A. No.

30

996. Q. After making a record of the finding of the gun did you settle down to recording a statement of the accused?

A. Not after the discovery.

(The Sergeant's diary is marked C by Court).

997. Q. At page 144 of your diary did you begin making a statement in regard

to the circumstances in which the gun was discovered by you ?

In the Supreme Court

A. Yes.

No.13.

998. Q. And does that entry in regard to the discovery of the gun run into page 145 as well ?

Prosecution Evidence

A. Yes.

W.D.Jayawardene
(Recalled)

10 999. Q. And after that entry has been concluded did you record the statement of the accused as well ?

Re-Examination
(continued)

A. Yes.

1000. Q. Before the discovery of the gun had you questioned the accused ?

A. I have.

1001. Q. And have you recorded that fact before you began making statement in regard to the discovery of the gun ?

20 A. Yes.

His Lordship to Counsel: Would you like to examine the relevant parts of that statement.

Mr. Sivasubramaniam : Yes, My Lord.

(The diary is handed over to Mr. Sivasubramaniam).

To Jury:

30 1002. Q. Could you estimate how recently the gun had been fired from the smell of the barrel ?

A. There were signs of recent firing.

(To Court:

1003. Q. What the Foreman of the Jury wants to know is how recent ?

A. May be one day or two days.

In the Supreme
Court

No.13.

Prosecution
Evidence

W.D.Jayawardene
(Recalled)

Re-Examination

(continued)

1004. Q. It appeared to be fresh ?

A. Very fresh.

1005. Q. Was the gun licensed ?

His Lordship: I do not know whether
the witness can say that. The Govern-
ment Agent probably can say that.

Certified correct.

Sgd. A.D.E.Gunasekera.

Stenographer S.C.

10

S.C. 14 continued

12 Noon.

20.12.61.

W.D.Jayawardene.

Court:-

1006. Q. Is there any record in your
diary as to the time you reached
the estate with the accused from
Nawalapitiya ?

A. At 3.10 p.m.

1007. Q. Have you a record of the time at
which you produced the accused before
Inspector Ekanayake ?

20

A. At 3.10 p.m. I returned from Nawala-
pitiya and produced the accused.

1008. Q. Was the accused produced before
Inspector Ekanayake before the dis-
covery of the gun or after ?

A. Before the discovery of the gun.

1009. Q. The first thing you did was to
bring the accused into the estate
and produce him before Ekanayake ?

30

A. Yes. Then on his orders I pro-
ceeded on further investigations.

131.

1010. Q. Was it after you produced the accused before Ekanayake that you questioned the accused ?

A. Yes.

1011. Q. At what time was it that you went towards line set No.6 ?

A. At about 3.25 p.m.

10 1012. Q. Can you tell me roughly about what time was it that the gun was discovered by you ?

A. About 3.30 p.m.

In the Supreme Court

No.13.

Prosecution Evidence

W.D.Jayawardene (Recalled)

Re-examination (continued)

No. 14.

Proceedings.

Crown Counsel:- I move to read in evidence the depositions of Wijedasa and Jayakuru and the statement of the accused before the Magistrate. (They are read).

No.14.

Proceedings

20th December, 1961.

DEFENCE EVIDENCE

20 Court:- I will call upon the accused for his defence.

Mr. Siva Subramaniam:- I will call the Clerk of Assize.

No. 15.

M.Z.M. Nizam

Mohamed.Zainudeen Mohamed Mizam, affirmed, 32 years, Clerk of Assize, Supreme Court, Kandy.

Examined

No.15.

Defence Evidence

M.Z.M.Nizam

Examination

30 1013. Q. You hold in your hand the original of the record in M.C. Gampola 2636 ?

In the Supreme
Court

No.15.

Defence
Evidence

M.Z.M.Nizam

Examination

(continued)

- A. Yes.
1014. Q. That is also a case on the current trial roll ?
- A. Yes.
1015. Q. At page 47 of your record you find the evidence of Kekulandala Mudiyan-selage Heenbanda ?
- A. Yes.
1016. Q. In the course of his evidence given in the Magistrate's Court on 5th December 1960 has he said "I did not see the 1st accused and others approaching the place where we were. I saw them only after the first shot ?
- 10
- A. Yes.
1017. Q. You produce that marked D1 ?
- A. Yes.
1018. Q. At page 34 in the same record witness K.G. Piyadasa has given evidence ?
- 20
- A. Yes.
1019. Q. According to the record in case No. 2636, it was a case where non summary inquiry was conducted in respect of an offence against three people, Ramasamy, Jayasena and Mendis ?
- A. Yes.
1020. Q. You also hold in your hand the record in M.C. 3082 ?
- 30
- A. Yes.
1021. Q. That is the case in respect of which this trial is being held ?
- A. Yes.
1022. Q. At page 12 of that record you have the evidence of Upasaka Gedera Juwanis ?
- A. Yes.

1023. Q. In the course of that evidence has he stated, "Piyadasa was removed to the hospital in the lorry. I too accompanied Piyadasa to the hospital in the lorry" ?

A. Yes.

1024. Q. You produce that marked D2 ?

A. Yes.

In the Supreme Court

No.15.

Defence Evidence

M.Z.M.Nizam

Examination

(continued)

10

Cross-examined

1025. Q. You told us in case No. 2636 the non summary proceedings were against Ramasamy, Jayasena and Mendis ?

A. Yes.

1026. Q. What does case No. 3082 purport to be in the Magistrate's Court ?

A. Case of attempted murder and the inquiry is against M. Ramasamy alias Babun Ramasamy, P.K. Muthiah alias Kariya Dorsi and K. Sinniah.

20

Re-examined:- No questions.

Defence Counsel:- I close my case reading in evidence D1 & D2.

Certified correct.

Sgd. C.B.Weerasekera.

No. 16.

Summing Up

Summing Up in S.C.14/M.C.Gampola 3082.

Present : The Honourable T.S.Fernando J. Q.C.

21st December, 1961.

No.16.

Summing Up.

21st December, 1961.

In the Supreme
Court

Gentlemen of the Jury,

No.16.

Summing Up.

21st December,
1961.

(continued)

Yesterday in the course of his very able address Counsel for the Defence brought to your minds that kind of tension that existed in this country at the moment. He said he was drawing attention to that fact because according to the Prosecution this shooting incident, which is the subject of this trial also took place at a time of tension on this estate, Monte Cristo Estate. These may be facts Gentlemen, but really are we concerned with all that here. I am sure and I agree with Counsel for the Defence that in the discharge of your functions you will not be weighed down either by reason of the existence of tension now or by the existence of tension then on the estate. If I may adapt for the occasion the words of a very distinguished Judge, one of the most distinguished judges that ever graced the Bench in England Lord Atkin, when he said, "Whether we live in times of strife or whether we live in times of industrial peace, the law speaks the same language". Whether it be in times of distress or whether it be in times of comparative peace what the prosecution has to prove in a criminal Court remains unchanged. Then as now the rules of law must prevail. What then has the Prosecution to prove in this case? The Prosecution has laid a charge of attempt to murder against this accused. The Prosecution must prove to you that it was this accused who shot at Piyadasa. The Prosecution must also in addition prove that at the time this accused shot Piyadasa the accused had a murderous intention. To what degree those two matters must be proved by the Prosecution I shall discuss with you very shortly. In a sense what a trial by Jury means is the finding of facts by the Jury by applying the law as laid down by the Judge.

In this Court you and I have different functions to perform. In a sense you and I are all judges. I am the judge of the law. You are the judges of the facts. What is meant by saying, "I am the judge of the law"? It simply means this Gentlemen, that on certain matters of law on which you require some guidance you will be guided by me and by me alone. Being human, I may like most human beings err on occasions, but the

law has taken care of that and has provided
 another Tribunal which can upon examination
 set my errors on the law aright. You need
 not worry yourselves about that tribunal
 because in this Court I am the Judge. As is
 said popularly the Judge lays down the law
 and the Jury will accept the law as correct.
 Just as much as I am the judge of the law
 in this Court, so in this Court are you the
 judges of the facts, the sole judges of the
 facts. That is your principal function in
 this Court. The law has given me the right
 to express to you my views, if I so choose,
 not only on questions of law, but also on
 questions of fact. There is however this
 difference between my opinion on questions
 of law and my opinion on questions of fact.
 Whereas you are bound by my opinions on a
 question of law, and you shall not question
 it, on an opinion of fact my view is not
 entitled to prevail at all. It is just
 another view in the case, a view which could
 be submitted by Counsel as well. So in the
 course of this case I may or may not express
 any opinion on a question of fact. If should
 so to speak trespass upon your province please
 understand your right to reject any opinion
 of mine on a question of fact if it does not
 coincide with yours. Sometimes Gentlemen
 it is expected that the judge should express
 his opinion on every question of law and on
 every question of fact that may arise in a
 case. If that is expected to be a correct
 proposition of the law, that a judge should
 express his opinion on every question of
 fact, I beg respectfully to differ. A
 judge is not expected to be some kind of
 vacuum cleaner drawing in everything that
 is there in the case, in the course of his
 charge to the Jury. A judge is not some
 kind of mechanical apparatus. Who knows
 Gentlemen in time to come we may have the
 mechanical judge, the penny in the slot -
 judge as I would call it, but thank good-
 ness we still live in the age of human judges
 capable of erring. Please remember Gentle-
 men that any opinion that I may happen to
 express in this case on a question of fact
 is not binding on you at all. Being res-
 ponsible men judging the facts of the case,
 I have no doubt you will consider any
 opinion I may express in the same way as you

In the Supreme
 Court

No.16.

Summing Up.

21st December,
 1961.

(continued)

In the Supreme
Court

No.16.

Summing Up.

21st December,
1961.

(continued)

will consider the opinion or submissions, I would say on the facts, which has been advanced by Counsel on either side. Counsel have already indicated to you one of the cardinal principles that govern the administration of justice in this country. The cardinal principle is sometimes loosely referred to as a presumption of innocence of an accused person. I shall instruct you on that matter. That it means is this that when a criminal trial commences in our system of criminal jurisprudence there is a presumption that the man against whom the accusation is laid is innocent. What follows from that presumption? What follows from that presumption is that the man is presumed to be innocent unless and until the Prosecution has rebutted that presumption, has displaced that presumption, has removed that presumption. 10 20

How can the Prosecution displace or remove that presumption? The law says by proof. Why should the Prosecution remove that presumption? The answer is that the Prosecution has laid the charge, therefore the burden of proof in this case at all times is upon the Prosecution. Logically then you must ask, what degree of proof must be attained by the Prosecution to displace the presumption of innocence? The answer simply is in the hackneyed phrase, "proof beyond reasonable doubt". I think Crown Counsel has already told you that in criminal cases the Prosecution cannot attain proof to mathematical perfection. That is recognised. It is proof beyond a reasonable doubt. What is a reasonable doubt? In this context a reasonable doubt is that sort of doubt which if it confronted you in one of the more important affairs of your everyday life you would hesitate to take a decision, which in the absence of such a reasonable doubt, you would otherwise surely have taken. 30 40

A.D.E.Gunasekera.

A reasonable doubt is not any sort of doubt. It is not a sort of doubt which people who like to doubt most things would like to conjure up in order to avoid doing something unpleasant. It is, if I may so express it, a doubt to which you should, if you are so minded, attribute a reason. In order to complete my charge on this point, may I say, may I repeat to you, that the burden of establishing the charge which it has laid against the accused rests throughout in this case upon the prosecution. There is no burden on the accused to establish his innocence.

In the Supreme
Court

No.16.

Summing Up.

21st December,
1961.

(continued)

What has the prosecution to establish? As I indicated at the very outset of my charge, the prosecution has first of all to establish that it was this accused Ramasamy, in the dock, who shot at Piyadasa. If you are not satisfied on that point, you will see, as men of the world that there is no point in trying to find out whether there was a murderous intention in the assailant or not. If you do not think it is this accused there is no use considering the murderous intention or otherwise of an unknown assailant. How does the prosecution seek to prove that it was this accused Ramasamy who caused the injuries or who shot at Piyadasa? The prosecution seeks to do that in this case by calling three witnesses, first Piyadasa the innured man, second Heenbanda a man who was working along with Piyadasa weeding the 25 acre block and thirdly witness Juwanis who was also working along with Heenbanda and Piyadasa. That is the main evidence in the case.

There are two other bits of evidence in the case, gentlemen, as learned counsel for the defence said, of a circumstantial nature, that is the evidence given by witness Podimahatmaya, who said that he had seen some two weeks prior to 1st September, 1960 a gun with the accused Ramasamy, and secondly Sergeant Jayawardene that at about 3.30 or to be exact between 3.30 and 3 in the afternoon of 1st September this accused, after he had been arrested, took Jayawardene along to some place near line set No.6 and there dug up the earth underneath which Jayawardene

In the Supreme
Court

No.16.

Summing Up.

21st December,
1961.

(continued)

found this gun P1, at that time in three parts along with some bag containing 14 live cartridges. Now, these two men, Podimahatmaya and Jayawardene, their evidence fall into the category of what we call circumstantial evidence. Now, I think learned counsel for the defence said that I might give you a direction on that evidence as to how to approach it. I do not think I need bother you with that in this case because this case does not rest on circumstantial evidence alone. As I shall tell you later, if you take the two bits of circumstantial evidence by themselves, apart from the evidence of the eye witnesses, I want to say that those two circumstances by themselves cannot lead you to any inference of guilt of the accused Ramasamy in the shooting of Piyadasa. Therefore the most important bit of so far as the prosecution is concerned in this case is the evidence of the eye witnesses, the direct evidence. Now, Gentlemen, it is not disputed that somewhere on 1st August 1960 on this Monte Cristo estate some strike began. Now, gentlemen, I do not wish to say for a moment that strikes are illegal. There may be illegal strikes, there may be legal strikes. We do not know what sort of a strike this was. We do not care; we are not concerned with the rights or wrongs in this strike at all, we are concerned with it only as providing a background to this incident which constitutes, according to the Crown, a violation or contravention of the criminal law of the land.

Counsel for the defence got out that there was communal amity between the Sinhalese and the Tamil labourers on this estate till a couple of years ago. He said that until such time as a Ceylon Workers Congress movement was started in that estate - I do not know whether it is a case of post hoc or propter-hoc even that we not consider in this case because we are not concerned with the rights or wrongs of the Ceylon Workers Congress or the rights or wrongs of the labourers or their employees - let us not be misdirected into wrong paths by getting involved in

those rights or wrongs in labour disputes. Those are not for this Court. We are here to concentrate in this case and I earnestly ask you to concentrate in this case, who shot Piyadasa? If you are satisfied as to the identity of the man who shot Piyadasa, what intention are you going to attribute, on the facts in this case, to that man?

In the Supreme
Court

No.16.

Summing-Up

21st December,
1961.

(continued)

10 Apparently, from the 1st of August till the end of August, there was no trouble at all. Every witness who was questioned, that is Piyadasa, Heenbanda and Juwanis, who appear to have been working on this estate, despite the strike, which, therefore can be called a partial strike, there was no interference by the strikers with the non-strikers or the newly recruited labour. Piyadasa was a newly recruited labourer. Suddenly something happened for occasion to manifest itself on 1st September, 1960. We do not know what sparked off these things. The evidence is that somewhere that morning, Piyadasa, Heenbanda and Juwanis were put to work in the weeding, on what had been called the 25 acre block on the upper division. Presumably they were weeding with what are called weeding scrapers.

20

30 Shall I now summarise the evidence of Piyadasa on the point. Piyadasa says that he saw Ramasamy this accused, accompanied by two other persons, Muthiah and Sinniah, coming along the footpath which leads from what is called the Dhoby line, which he said was a line in which this accused Ramasamy was residing at that time, to the main road. He saw them some distance away from where he was working and at that time he saw Ramasamy this accused carrying a gun and the other two carrying something like stones in their hands.

40

50 He said that he saw these people advancing and he saw Ramasamy this accused lowering himself and taking aim at them and he himself took shelter behind a "Sembukku" tree, some kind of large shade tree and the other two jumped into a nearby drain. He heard a gun being fired but nobody appeared to be injured by the gun shot. Then if you believe him he did something that was not

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

very wise, and it turned out and of course on these matters, we can all be wise after the event, he thought he would be more protected if he went higher up away from the gun, and he tried to remove his position higher up behind another "Sembukku" tree, and before he could get there he said he was shot. He said he saw it was this accused who had fired the earlier shot who fired at him and hit him with the second shot, and he said he was turning round and looking down at the time he got the shot.

10

Now Gentlemen these are matters for you to consider. It is for you to consider whether a man who was at it were trying to get away from danger would have turned round and looked. It is a matter that could be argued both ways. One would not want to run blindly, not knowing where the assailant is at the moment. On the other hand one may want to run for shelter irrespective of the danger of exposing himself. Those are matters for you to consider. He says he got shot on his body and he fell down. Thereafter he did not know what happened. He does not speak of a third shot or fourth shot. He remembers regaining consciousness as he calls it in the rice store and thereafter he was taken to hospital, and he made a statement to the Police at about 7 o'clock in the night.

20

30

Under cross-examination Piyadasa did say that he did not know the names of the people who were coming up that day. Under further cross-examination he corrected himself and said that he did not know at first but after he came to the estate and before the shooting he had come by their names, and he described the circumstances in which he came by the names of these three persons, Ramasamy, Muttiah and Sinniah. I think the effect of the cross-examination or purpose of it was to show that Piyadasa would not ordinarily have known the names of these Tamil labourers - at any rate as a new labourer who had come there after the strike began. You have heard Piyadasa's answer. He said I believe that after the strike began the strangers were pointed out to him on one occasion on the way to market,

40

50

and then of course he asked what their names were. Is that a likely thing to have happened? It is for you to consider. Piyadasa has admitted that he made an entry in that diary P4 at the hospital and that diary contains the names of three persons, Ramasamy, Jayasena and Mendis. I questioned him as to the circumstances in which he made the entry and he said that there was another man on the bed next to him in the hospital ward and he fell into conversation with him, and he said that he told that man the people who had injured him, and that man told him the names of the people who had injured him, and he said that at that moment he had no diary with him and Piyadasa wrote down the names, and he said that these names which appeared on P9 referred to the names as given by that unknown man who Piyadasa thinks may be Karunaratne whom he did not see here in this case in the witness box and he recorded it because the man had no diary.

Piyadasa also said that when he told the man that the persons who shot him, that is Piyadasa were Ramasamy, Muttiah and Sinniah that may be a mistake because the man who actually shot were Ramasamy, Jayasena, Mendis. Those are matters for you to consider because the credibility of a witness is a question of fact for you Gentlemen to consider and the law is wise, and it places in the hands of the Jurors as judges of facts the question of deciding upon the credibility of a fellow citizen.

He said that the people who shot him were Ramasamy, Muttiah and Sinniah, and because that is a matter that goes down on record I asked him did three people shoot him and he said, no, only Ramasamy shot, and I asked him why he said that Ramasamy, Muttiah and Sinniah shot and he said that is because they had stones in their hands. You see Gentlemen that is a matter of speech. It is not an indication. Did these people shoot him with three guns, or did they all collaborate in the shooting by one man. What he says is that one man came alongside with a gun, and two others came with stones and one man shot and therefore I say that three shot me. Well that is

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

how I understand it. I do not know whether you understand the evidence in the same way. Take it anyway that appeals to you.

Now I think the criticisms levelled by the Defence, if I understand it aright of Piyadasa's evidence is that Piyadasa did not know who had shot him but had been given the names of the persons who had shot him, and he was falsely stating here that he identified the person who had shot him. That is a matter for you to consider. What is the suggestion for the Defence Gentlemen? The suggestion for the Defence is that this was some shooting at the 25 acre block of three isolated labourers who were waiting there by one person, or one person who came in the company of two others. There is no evidence for the defence on the point, but a suggestion has been specifically made that Piyadasa was injured as a result of a shooting that took place between strikers and non strikers on the estate on that day. Well Gentlemen I do not know.

10

20

There is no evidence in this case of any kind of shooting between strikers and non strikers, in the course of which a number of people got injured. Now Gentlemen in deciding on the facts you have to decide upon the evidence in the case. Suggestions cannot take the place of evidence. Suggestions are not a substitute for evidence. My mind goes back to world War No. 2 when there was a scarcity of various articles. Substitutions were made, I think the Germans had a name for that, "earsacts".

30

A.D.E. Gunasekera.

There cannot be Earsacts for evidence, but suggestions have a value. You can of course consider the evidence that has been led in the light of suggestions that have been made in this case and I think the learned Counsel for the defence correctly put his suggestions no higher than that. One might wonder if there was shooting like that between

40

the workers, some kind of miniature war, on the 1st of September, that the resources of the defence were not so meagre that they were unable to produce evidence of that fact. That remains a suggestion and no more. I did not understand and the learned Counsel will correct me if I am wrong that there were any questions directed to the police that there was that kind of shooting between the strikers and the non-strikers that day, in the course of which some people got shot.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

10

20

30

Well, I have just summarised to you Piyadasa's evidence. There may be many matters which I may have omitted and which counsel may have referred to, but whether counsel and I have referred to them or not, you can remember the evidence as much as we can and it is your duty to consider all the evidence that is relevant to the point. I have mentioned what I have thought are the salient features in the evidence of Piyadasa. I will remain it again to you that I do not consider it my duty to bring to your attention every little bit of evidence of Piyadasa's story in this case. That is not my concept of my duty. I will now pass on to the other witnesses, the other two direct witnesses.

40

50

You will see rightly that whatever imperfections Piyadasa may be suffering from as regards the actual name of Ramasamy, Heenbanda and Juwanis were not said to be suffering from that imperfection because Juwanis and Heenbanda were labourers on the estate according to them. I think Juwanis was put the question by Mr. Siva Subramaniam that he was not a resident labourer on this estate at all. Juwanis said he has been a resident labourer on this estate for 13 years or so except for four months. Although it was suggested to him that he came only after this strike or after the stone throwing incident took place, he said that was not true. If you believe their evidence that they were resident labourers on this estate notwithstanding that they were non-strikers, you may be inclined to agree that they at any rate would know all those persons.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

Heenbanda says that he was weeding. He says in this Court that he saw this accused coming along with Sinniah and Muthiah. He said Muthiah and Sinniah had stones in their hands and that this accused carried a gun. He demonstrated how the accused was carrying the gun and he also demonstrated, although he had seen them first some 40 yards away, how, when they had come a little closer, the accused fired in their direction. He said he ran here and there for shelter. He himself jumped into a drain with Juwanis and nobody was hurt for the first shot and it was only by the second shot that Piyadasa was hurt as he attempted to move from one place to another to take shelter. He said that a third shot was also fired by the accused while standing at the same spot, but he said that he does not know whether anyone was injured by that shot. He also said that thereafter the accused, Muthiah and Sinniah were seen going in the direction of the Wadiya which you see depicted in the sketch and that somewhere from the direction of the Wadiya he heard another shot being fired and that even at the time the accused walked in the direction of the Wadiya it was this accused who carried the gun according to Heenbanda. Now, certain criticisms have been levelled against Heenbanda's evidence. You must consider them as you must consider indeed every criticism made by counsel on either side. To Heenbanda, was put the evidence he had given in the Magistrate's Court in what has been described as a connected case. In that Court in giving evidence he is proved to have said, "I did not see the 1st accused and others (1st accused for the purpose of this case being Ramasamy) approaching the place where we were. I saw them only after the first shot". So the defence counsel argues when he says that he saw this accused firing the first shot also, he is not to be believed in this Court. Certainly there is a contradiction where he said in the lower Court that he saw Ramasamy and the others only after the first shot was fired.

Now, gentlemen, I am reminded and I must direct you in law as to how to

approach what is called in this Court contra-
 dictions. According to your oath you judge
 facts according to the evidence given in this
 Court by the witnesses from this witness box,
 where Heenbanda said that he saw all the
 three shots being fired, but contradictions
 are valuable in order to test the truth of
 what he said here. Not very long after the
 shooting he has said, "I saw the 1st accused,
 that is Ramasamy and others only after the
 first shot was fired" and when he says some-
 thing different here you may be inclined to
 doubt the truth of what he says here on that
 point, but he is not proved to have contra-
 dicted himself on the rest of his evidence
 in regard to the shooting. It is not
 proved here that he has said elsewhere that
 he did not see the second and the third shot
 being fired. What is material in this case
 is the second shot. Mr. Coomarasamy for
 the Crown attempted to give an explanation
 for this kind of discrepancy. He said with
 the passage of time recollection by witnesses
 become dimmer. I am also reminded of this
 situation; that the recollection of
 witnesses varies. Some witnesses can re-
 collect facts better than others. Some of
 us are trained to have a recollection of
 facts, but labourers on estates do not have
 the benefit of such training. In this case
 you must consider whether this is due to
 forgetfulness or whether he is a liar. Bear
 that in mind. Then it has been pointed
 out that between Heenbanda on the one hand
 and Juwanis on the other, there are contra-
 dictions as to who carried the man into the
 lorry. Crown Counsel says those are minor
 contradictions. Learned Crown Counsel
 argues that by that time there would have
 been pandemonium in this estate and after
 some years if people cannot remember which
 person carried which person into this and
 that, that does not mean that on more im-
 portant matters they are not to be relied
 upon.

In the Supreme
Court

No.16.

Summing Up

21st December,
 1961.

(continued)

C.B. Weerasekera.

I bring this to your notice because you
 are the judges of these aspects of the case.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

I am not the judge of the facts. Heenbanda has made a statement to the Police at 4.50 in the afternoon. Heen Banda says that after Piyadasa was brought to the rice store and after he recovered his consciousness, he, that is Heen Banda went for his lunch, shall we call it the midday meal, and he said that he came sometime after and he brought down the time to about 2 or 2.30.

10

Again Gentlemen when witnesses of this class speak about the time of the day, you will have to make some allowance for that because they cannot always say the time of the day unless they speak with reference to a watch or a clock.

Now it has been suggested that Heen Banda's statement and Juwanis' statement have been purposely recorded late by the Police because the Police - and that may be the suggestion - wanted to give sufficient time to elapse for witnesses to be coached with the names of the persons responsible for this. Consider that argument as well.

20

Inspector Perera who was conducting the investigation under the supervision of Headquarters Inspector Ekanayake said that till about 4.30 he was conducting investigations about another matter. We did not question him specifically as to what the matter was. We can only guess intelligently. When he got information about this shooting he got there at about 4.30, and he called for persons who knew anything about the shooting of Piyadasa to come forward, and he said Juwanis came forward, and as a result of what Juwanis said he sent for Heen Banda. No one knows whether Heen Banda was sent for to Udugama three miles away or whether Heen Banda was found elsewhere and brought to the place. He could not have been sent for to Udugama between 4.30 and 5.30. There could not have been time to go to Udugama and bring Heen Banda. If you agree that Heen Banda was in the locality with others, probably all discussing the events at Monte Cristo that day, consider the evidence led and the criticisms made by Counsel upon these points.

30

40

50

I will now pass on to a summary of Juwanis' evidence. Before I pass on I might remind you of some points in Heen Banda's evidence on which I might address you. I think Counsel for the Defence brought to your notice that in cross-examination Heen Banda said that he heard the gun shot, that he heard a third shot and that shortly before he heard the two shots the gun was in the hands of Ramasamy, and shortly after the third shot the gun was in the hands of Ramasamy and therefore Defence Counsel argues that what Heen Banda saw was not actually the shooting of the second and third shots, but the gun in the hands of Ramasamy before the second shot and the gun in the hands of Ramasamy after the third shot. Well if that be so then possibly he argues that is to bring these three persons sometime, from the direction from which the shots came, and that the gun was not immediately after the third shot was fired in the hands of Ramasamy - that the gun did not pass or change hands in between the first and third shots. That is in between the second and third shots there was no changing of hands so far as the gun was concerned. In other words that Muttiah and Sinniah could not have done the firing of the shots. That is how Heen Banda's evidence rests.

What does Juwanis say? Juwanis has stated that he saw all three shots being fired. You saw Juwanis in the witness box. What did you think of him as a witness? After all that is your principal function here. It is for you to say whether he tried to play down the part he had played prior to this incident on the estate. He did not give me that impression. I do not know what impression you received. He did not say he did not throw stones on the Police on a previous occasion. He did not deny that he was called a "Pandankaraya" in the village. That expression may be loosely translated by me for the purpose of my charge as a stooge. He said, "Yes, young fellows call me that". The question is whether he is such a stooge, and comes here and says things in Court which had never been seen by him, or speaks to things in Court which had never been seen by him.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

It has not been suggested in this Court Gentlemen that there is any personal reason on the part of anyone of these persons, Piyadasa, Heen Banda and Juwanis to say falsely something which would deprive a fellow citizen of his liberty for some considerable period.

Juwanis claims that he saw the actual firing of the three shots. Now I think you will have to consider for yourselves whether a man who takes shelter would be in a position to see the shooting of the three shots, the firing of the three shots. That is a matter Gentlemen you will have to decide for yourselves Gentlemen, the respective positions of the assailant and the persons who were waiting if in fact, they were waiting that day. The assailant is said to have been down below and the person who was waiting was higher up. According to the distance pointed out by Heen Banda and Juwanis to the Police, the distance between the assailant and Piyadasa, would have been about 88 ft, just near 30 yards. 10 20

You will have to consider whether Juwanis at that distance could have seen and recognised the person who was firing and on that of course, you will have to bear in mind Juwanis' claim that he had been on the estate for a long time, even longer than this accused Ramasamy, and he claims to have known Ramasamy quite well. 30

He demonstrated how the gun was brought when he first saw it. That was a different position from the other witnesses. On that point you will have to consider whether the three witnesses saw for the first time at the same time. That is a matter of fact for you Gentlemen. 40

Then he said that when the first shot was fired they ran for shelter and he took shelter very close to Piyadasa and nobody was shot. Then Piyadasa attempted to move his position and he was injured. But for the shot which Juwanis says was fired by Ramasamy this accused, Piyadasa fell and Heen Banda and he went to the rescue of Piyadasa and another shot was

fired, according to Juwanis by Ramasamy this accused. Juwanis claims to have seen this accused go away in the direction of the "Wadiya" carrying the gun.

A.D.E.Gunasekera.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

10 Near the wadiya there was some other person. He says he heard one or two shots from the direction of the wadiya; we are not concerned with those shots at all. In respect of Juwanis also a contradiction was proved and that also, you will approach in the same way as I have asked you to approach the other contradictions, that is to test the truth of what Juwanis says here. That contradiction relates to Juwanis travelling to the hospital in the lorry. Juwanis is recorded to have said in this case in the

20 Magistrate's Court, "Piyadasa was removed to hospital in the lorry. I too accompanied Piyadasa to the hospital in the lorry". We must assume for the purpose of this case that there were no mistakes in the Magistrate's Court record, but possibly mistakes can occur, but it is better to go on the assumption that mistakes did not occur. Well, he is recorded as having said that. Juwanis says that he never said that.

30 Juwanis says, "I was right through on the estate that day except for the time when I went up for my midday meal". Does that contradiction shake Juwanis' credibility in your minds? It is a matter for you. I think the suggestion behind this contradiction in this, that Juwanis, if Juwanis did go to the hospital, he also might have been coached in the same way it is suggested Piyadasa might have been coached. It was

40 directly put to him that he never saw this incident for he was nowhere there, that there was an incident between the strikers and the non-strikers, shooting at each other.

I have summarised to you all the main features in the evidence of the eye witnesses. Your verdict must surely rest in this case upon your belief or disbelief of the witnesses, Piyadasa, Heenbanda or Juwanis. I may say to you that the law

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

does not require that any fact must be proved by a specific number of witnesses. The law, in laying down the matter in that way has actually given expression to common sense. If you believe a witness when he says he saw a thing happen, then logically you find that fact happened, you find it proved that that fact happened. Of course, two witnesses speaking to the same fact, if you believe both witnesses, may convince you all the more and say, "Well, we believe not only one witness but both of them" and it is open to you to give effect to that belief of the witnesses and find that that fact proved.

10

What is the other evidence that the Crown relies on as supporting the inference that it was the accused who shot ? They say that the accused had a gun. How do they prove that ? They say that Podimahatmaya's evidence proves that. Podimahatmaya says that some two weeks prior to 1st September the accused had shown him a gun. He does not identify this gun, of course. Well, gentlemen, the defence had elicited that Podimahatmaya said this to the police on 9th September, eight days after the incident. Police appear to have got hold of Podimahatmaya who was also a Workers' Congress man and put him in the Nawalapitiya lock up and brought him to Gampola and placed him in the lock-up there and the defence says, well, Podimahatmaya, in order to escape the clutches of the police, was willing to say anything against the accused. Well, gentlemen, I do not know - speaking for myself I do not like that evidence at all and I do not blame you if you think, whatever verdict you bring in this case you would bring on evidence other than on Podimahatmaya's evidence. It may of course possibly be true, but it is safer for us to leave out any evidence that has been elicited in that way. Podimahatmaya, a Congress man, is arrested for no reason at all, but having been taken to Gampola lock-up overnight he makes a statement which tends to go against this accused. As Supreme Judges of fact, you can say, "I do not care what the Judge says, I will believe it". Well, if you believe, give effect to that, but at the same time I think that kind of

20

30

40

50

evidence should be left out. That would be a prudent course to take, but you are the Judges of fact and I leave it to you.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

10 What is the other evidence
relied upon by the prosecution? Well,
that is that this accused was arrested at
2.10 p.m. in the Nawalapitiya bazaar and
then brought to the estate at 3 o'clock
and produced before the Head Quarters In-
specter. There was cross-examination as
to whether he should not have been brought
before Perera but Jayawardene says "Head
Quarters Inspector is the superior officer
and I produced him before him". Perera
himself did not see the accused till 5
o'clock. Shortly after 3 o'clock after
the accused was produced before Ekenayake
by Jayawardene, Jayawardene took the
20 accused away and according to Jayawardene,
the accused made a certain statement to
him in the course of which, the accused
told him that he could point out the
place where the gun and cartridges were
buried. If you believe Jayawardene, that
is a question of fact, you can understand
the police not wasting any time thereafter.
Jayawardene says he at once took him to
30 line No.6 and at a certain spot which was
indicated by the police, the accused him-
self dug up the earth and underneath that
there was this gun in a gunny bag in three
parts and there was another bag containing
14 live cartridges which are production
in this case. Now, the prosecution says
that if the accused did point out that
gun, which according to the Analyst could
possibly have caused the injuries (with
this gun you can fire SG slugs) the accused
40 has pointed out that because he knew where
that gun was.

50 Well, the defence has challen-
ged Jayawardene and said he is nothing more
than a liar in uniform. That is the
suggestion. The defence alternatively
argues, even if that suggestion of the
defence is not accepted, but Jayawardene
is believed when he says that the accused
pointed out the gun, the statement of the
accused is that he could point out a place
where a gun and cartridges are buried. The

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

The defence therefore argues, that means nothing more than that the accused was aware of where a gun and cartridges were buried, not necessarily buried by him. I did not understand the prosecution as placing the case any higher than placed by the defence counsel himself. The prosecution does not say that it proves anything more than showing a place where a gun and 14 cartridges were buried, and this was about 3.25 or 3.30 that the cartridges were unearthed. Well, gentlemen, that is the evidence in this case. 10

Now what does the defence say in regard to that? They have attacked the credibility of Piyadasa, Heen Banda and Juwanis, all three Prosecution witnesses of the actual shooting. I do not want to recapitulate all the criticisms but some suggestion was made that they were not witnesses of this shooting in the circumstances that they alleged in this Court. 20

The Defence maintains that they did not see the shooting in this way at all but that the shooting took place in other circumstances and that the assailant is unknown, and therefore a false case had been cooked up against Ramasamy this accused. The Defence invited your attention to the lack of weeding scrapers at or about the place where these three persons were said to have been working and Piyadasa says, "I do not know what happened to them. I have not seen the weeding scrapers after that". Juwanis and Heen Banda also do not say that they took away the weeding scrapers from there, but by the time the Police came, the time appears to have been between 3 and 5 o'clock or 2 and 5 o'clock, the Police did not see any weeding scrapers. Mr. Perera the Inspector did say that what he was looking for was the pellet marks, but certainly he did admit that he did not see the weeding scrapers. Well, what happened to the weeding scrapers if they were brought there by these three witnesses. There is no evidence. Does the absence of the 30 40 50

weeding scrapers from the scene by the time the Police got there indicate that there were no weeding scrapers at all brought by these three persons. Is this a fabrication on their part. It is for you to consider.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

10 Counsel for the Defence says that it is not a credible story about the place where the accused is said to have fired from. In regard to the spent cartridge case, in regard to that part of the evidence Mr. Jayatunge the Ballistics expert said that the gun P1, if indeed that is the gun that fired the shot which injured Piyadasa, was a gun from which a spent cartridge had to be ejected out by hand. It would not otherwise be ejected. Well of course a man firing more than one shot would have to take out the spent
20 cartridges and drop them on the ground, or whether he put them in his pocket one does not know, but the defence says that it is likely that a man in a hurry would drop these cartridge cases on the ground. It is a matter for you to consider. Why were there no cartridge cases? The Defence says that that is an indication that there was no firing from that place. The Defence argues that there were no pellet marks on the
30 sembukku tree or on the ground. Crown Counsel addressed an argument for the Crown on that point. He invited you to consider the terrain at this point, and he said that if this firing took place there, he said it would be like looking for a needle in a haystack to look for a pellet mark on this tea estate. Those are questions for you to consider, and there is an additional fact which Mr. Sivasubramaniam for the
40 Defence brought out and that was this, that the accused when he was arrested was in the thick of the bazaar at 2.10 in the afternoon. He made no attempt to run away. If in fact he had attempted to run away the Prosecution would have seized upon that and said that he is running away because of a consciousness of guilt. Would it do any good to the accused to have run away at that stage? Counsel says that his demeanour in
50 the presence of the Police would be an indication of his innocence, of any complicity in this shooting at all.

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

Then one last word in order to complete what I have to say about suggestions of Counsel for the Defence. Learned Counsel for the Defence said that when Ekanayake and Jayawardene arrived there in search of certain persons who were suspected of the shooting on the estate, they were accompanied by a man called David, and he asked why David was not a witness in this case. He said that so far as the evidence in this case was concerned all that the Police Officer would have known is that a man called Ramasamy was accused and that this Ramasamy was not to be found in this Nawalapitiya or Gampola Bazaars. We do not know Gentlemen what were the other details they had of Ramasamy whom they were out to arrest that day, but the Prosecution says that David was taken as being nothing more than a man who was able if he saw Ramasamy to point him out. 10 20

Then Jayawardene says this accused was pointed out by David and he was arrested. Counsel says that this was a wrong Ramasamy who had been arrested. If the Defence suggestion is to be accepted, then Piyadasa, Heen Banda and Juwanis have all consented to come and perjure themselves in this Court, and that when they did not see who fired, they were out to get hold of the first Ramasamy who was produced although they did not see any such thing, and to say that it was no other than the produced Ramasamy who shot. 30

I do not know Gentlemen that there is really anything more on the facts in regard to the first important question namely the identity of the person who shot at Piyadasa. You should consider all the facts deposed to in the evidence, and the criticisms levelled at the evidence and come to a conclusion as to whether you are satisfied beyond a reasonable doubt that it was no other than the Ramasamy who is in the dock here who shot at Piyadasa in the circumstances alleged by Piyadasa in the witness box. If you are not satisfied beyond a reasonable doubt that it was this accused Ramasamy who shot at Piyadasa, why then you have not to consider any other matters in this case. The charge must fail. If on the other hand you are 40 50

10 satisfied beyond reasonable doubt that it was this accused and no other who shot at Piyadasa in the circumstances alleged by Piyadasa and Heen Banda and Juwanis, then you will go on to consider what was the state of mind of the accused at the time of the shooting of Piyadasa, at the time he discharged the gun in the direction of Piyadasa. The charge against him is one of attempt to commit murder. I do not want to weary you with the definition of murder etc. The Prosecution must satisfy you beyond a reasonable doubt that at the time he discharged the gun in the direction of Piyadasa and his companions he intended to shoot and kill him.

20 Now Gentlement I must say to you as a matter of law, that it is not necessary that you must be satisfied that he intended to shoot and kill Piyadasa. If he intended to shoot at anyone of the three, and if it alighted only on Piyadasa, it would be quite sufficient, and if at the time he intended to kill anyone of the three and he did in fact shoot at one or only injured one.

A.D.E. Gunasekera.

30 In other words, if you shoot at X intending to kill him, but your aim is not too good and you shoot at Y whom you did not intend to kill, but in fact your shot alights on Y and kills him, then you are guilty of murder because you had the intention to kill a human being. Now, the hurt actually caused to Piyadasa is simple hurt. The doctor said there was a tearing of the skin and no more. The Crown argues that it does not matter that there was only a tear of the skin on that account. In fact I take it it would have been correct that the Crown did say that it did not matter at all if you are satisfied that when he shot he intended to kill one of the three persons. According to the evidence the shot has pierced the shirt, the banian underneath and grazed the skin with a lacerated wound, that is really the one injury of the skin, but the doctor says

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

that an inanimate object which is produced in the case has received that shot. In other words the diary received a good part of the impact. You can examine that diary if you like and the doctor's evidence was that if there was no diary to intercept that slug and struck a vital organ in that part of the body, the man would have died. Do you want medical evidence to judge that? 10
We know the location of a shirt pocket and a small diary goes into it. The Crown argues whatever the part the diary played, that circumstance does not occur to the benefit of the accused in this case because what you have to consider is, what was his intention at the time he discharged the gun? How do you judge the intention. Intention is the state of a man's mind. You judge it from the weapon used, what part of the body was aimed at, what was the injury caused in fact? In this case what was the weapon used, a gun. The Analyst says that having regard to the nature of the pierce on the diary, the shirt and the banian it is a slug has opposed to a small thing called a pellet, that has pierced. He thinks it could have come from a factory made S.G.slug cartridge or a factory made cartridge which contains special S.G.slugs. 20
The slugs are bigger than pellets. The gun is a weapon which is designed only for one purpose. It is not a weapon designed for constructive purposes. It is a weapon designed for destructive purposes. That is the intention of the manufacturers and what intention would be attributed to a man who fires a weapon like that. The Crown argues that you must attribute to the man an intention to kill. We know that it alighted in the region of the chest and would have caused more damage undoubtedly if not for the diary and the Crown says that you can have no reasonable doubt that he either intended to kill Piyadasa or anyone of the two others by that shot. Of course, in considering that gentlemen, you will bear in mind the distance. The distance is some 88 feet, a considerable distance. The Analyst did not say that a special S.G. 30
cartridge could not carry a lethal shot at that distance. He did say that it could carry, but if you are in a reasonable 40
50

doubt in your minds that the distance at which the firing took place indicates that there need not have been present an intention to kill, but only to cause lesser injury, well, you have to give the benefit of the doubt to the accused. If you have no doubt that at the time he fired he intended to kill Piyadasa or any of the other two, but in fact only struck at Piyadasa, that is he had a murderous intention at the time, well, then the offence would be one of attempting to commit murder.

10

20

30

40

50

If you give him the benefit of doubt in regard to the absence of a murderous intention, then you have to consider what is in fact the hurt caused by him. Before I come to that, if you give the benefit of the doubt, it will be that no murderous intention has been established and then you go on to consider whether he by shooting at these three persons, had the knowledge that by his act he was likely to cause death, not that he intended to cause death but that he had the knowledge. If he had no intention to cause death but you are satisfied beyond reasonable doubt that he had the knowledge that by that act he was likely to cause death, then his offence would be attempting to commit culpable homicide not amounting to murder. If you are not satisfied beyond reasonable doubt that he had the intention to kill or that he had the knowledge that death was the likely result of his act of shooting, then he is guilty of the hurt that he caused, that is if you are satisfied that he shot, then he is guilty of voluntarily causing simple hurt with a gun.

The verdicts that are open to you are, if you are not satisfied beyond reasonable doubt that it was this accused who fired the gun which injured Piyadasa, then he is not guilty of any offence. On the other hand if you are satisfied that it was this accused who fired the gun which injured Piyadasa, then his offence would be attempting to commit murder if at the time he fired he had the intention to kill, not necessarily Piyadasa alone, but any one of the three persons who were weeding in close

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

In the Supreme
Court

No.16.

Summing Up

21st December,
1961.

(continued)

proximity to each other. He would be guilty only of attempting to commit culpable homicide not amounting to murder if he only had the knowledge that death was the likely result of his act and he would be guilty only of voluntarily causing simple hurt if he neither had the intention to kill nor had the knowledge that death was the likely result of his act.

10

I think you can now retire and consider your verdict.

(C.B. Weerasekera)

Certificate in Form VIII forwarded to the Registrar, Court of Criminal Appeal.

Chief Stenographer, S.C.

No.17.

Verdict and
Sentence

21st December,
1961.

No. 17.

Verdict and Sentence

S.C.14. (continued)

21.12.61.

20

11 a.m.

The accused present.

A.M. Coomarasamy, Crown Counsel, for the prosecution.

Mr. Advocate Sivasubramaniam instructed by Mr. A.H.M. Jameel and Vernon Gunasekera present with S.H.M. Maharooof (assigned) Crown Counsel continues to address the jury.

Court sums up.

30

Jury retired at 12.25 p.m.

Jury returned at 12.42 p.m.

1027. Clerk of Assize - Are you unanimously agreed upon your verdict ?

In the Supreme Court

Foreman - Yes.

No.17.

Clerk of Assize - By your unanimous verdict do you find the prisoner Murugan Ramasamy alias Bebun Ramasamy guilty of the offence with which he is charged, namely, attempted murder ?

Verdict and Sentence

21st December, 1961.

(continued)

10

Foreman - Yes.

(Foreman signs the verdict)

(Verdict of the jury communicated to the accused)

Court - Mr. Coomarasamy, is there anything against him ?

Crown Counsel - No, My Lord.

Court - Mr. Sivasubramaniam, do you wish to say anything in regard to the sentence ?

20

Mr. Sivasubramaniam - No, My Lord.

Court - Tell the accused that he will undergo rigorous imprisonment for ten years.

Certified correct.

Sgd. H.C. Opanayake.

Stenographer, S.C.

No.18.

In the Court of Criminal Appeal

Notice and Grounds of Appeal

No.18.

IN THE COURT OF CRIMINAL APPEAL

30

Criminal Appeal No. 2 of 1962 with Appln No.2 of 1962

Notice and Grounds of Appeal

REGINA v M. RAMASAMY alias BABUN RAMASAMY

1st January, 1962.

In the Court
of Criminal
Appeal

(Supreme Court 3rd Midland Circuit, 1961
Case No. S.C.14 M.C.Gampola 3082
of 1960)

No.18.

NOTICE OF APPEAL OR APPLICATION FOR
LEAVE TO APPEAL AGAINST CONVICTION
OR SENTENCE

Notice and
Grounds of
Appeal

To the Registrar of the Court of Criminal Appeal

1st January,
1962.

Name of Appellant: M. Ramasamy alias Babun
Ramasamy

10

(continued)

Offence of which convicted: Attempted Murder

Sentence: 10 years rigorous imprisonment

Date when convicted: 21st December, 1961.

Date when sentence passed : 21st December, 1961

Name of Prison: Bogambara.

I the above-named Appellant hereby give
you notice that I desire to appeal to the Court
of Criminal Appeal against my conviction and
against my sentence on the grounds hereinafter
set forth on page 2 of this notice.

20

(Signed) Sgd. Illegibly (In Tamil).
M. Ramasamy.
Appellant.

Pr.No.P 4254.

Signature and address of witness attesting
mark Sgd. Illegibly (In Sinhalese)
O.I.C., Bogambara Prison,
Kandy.

Dated this 1st day of January, 1962.

The Appellant must answer
the following questions :-

30

Question

Answer

1. Did the Judge before whom
you were tried grant you a
Certificate that it was a
fit case for Appeal ?

	<u>Question</u>	<u>Answer.</u>	<u>In the Court of Criminal Appeal</u>
	2. Do you desire the Court of Criminal Appeal to assign you legal aid ?	Yes.	No.18.
	If your answer to this question is "Yes" then answer the following questions:-		Notice and Grounds of Appeal
10	(a) What was your occupation and what wages, salary or income were you receiving before your conviction ?	Estate Labourer .60/- per month	1st January, 1962.
	(b) Have you any means to enable you to obtain legal aid for yourself?	No.	(continued)
20	(c) Is any Proctor now acting for you? If so, give his name and address	No.	
	3. Do you desire to be present when the Court considers your case ?	Yes.	
	4. Do you desire to apply for leave to call any witnesses on your appeal?	No.	
30	If your answer to this question is "Yes" you must obtain Form XXVI, fill it up, and forward it with this notice.	Village - Monte Cristo Estate Police - Gampola.	

Grounds of Appeal or
Application

- | | |
|----|---|
| | 1. The verdict of the jury is unreasonable and cannot be supported having regard to the evidence led for the prosecution. |
| 40 | 2. It is respectfully submitted that the Learned trial Judge misdirected the jury in regard to intention and knowledge. |
| | 3. It is respectfully submitted the Learned |

In the Court
of Criminal
Appeal

No.18.

Notice and
Grounds of
Appeal

1st January,
1962.

(continued)

- trial Judge's direction in regard to intention and knowledge is inadequate and this amounts to a disdirection in law.
4. It is respectfully submitted that the Learned trial Judge's direction in regard to the fact of one David having pointed out the accused and subsequent events and the effect on evidence of identification of accused is wrong and amounts to a misdirection. 10
 5. The Learned trial Judge, it is respectfully submitted misdirected the jury on the evidence regarding the arrest of the accused-appellant and its effect on the evidence of the witnesses whose statements were all recorded subsequent to his arrest".
 6. It is further submitted that the statement made by the accused to Sergeant Jayawardene was made by the accused and recorded by Jayawardene after the discovery of the gun marked Pl. as such this statement is inadmissible. 20
 7. The Learned trial Judge failed to direct the Jury as to how they should use the evidence by the witness Police Sergeant Jayawardene regarding the discovery of the gun Pl. and this failure it is submitted amounts to misdirection causing prejudice to the accused-appellant. 30
 8. It is respectfully submitted that the evidence of Police Sergeant Jayawardene in regard to a statement by the accused to him and the finding of a gun is inadmissible.
 9. It is respectfully submitted that the statement made by the accused to Sergeant Jayawardene and recorded in his note book which was produced and marked by Court was signed by the accused and as such the said statement is illegal and inadmissible in evidence. 40
 10. It is respectfully submitted that the Learned trial Judge's direction in regard to the effect of the absence of shot marks on trees and bushes at the spot

where Piyadasa was alleged to have stood and the absence of implements at the spot is wrong and amounts to a misdirection.

In the Court
of Criminal
Appeal

11. In any event it is respectfully submitted that the sentence is excessive.

No.18.

12. It is respectfully submitted that the evidence relating to another shooting incident in which the accused was involved on the same day is inadmissible.

Notice and
Grounds of
Appeal

1st January,
1962.

Sgd. Illegibly.
(In Tamil)

(continued)

Drawn by me

Sgd. Illegibly.

A.H.M. Jameel
Proctor Kd.

No. 19.

No.19.

Judgment

Judgment

IN THE COURT OF CRIMINAL APPEAL

17th December,
1962.

Appeal No. 2 of 1962 with S.C. No. 14.
Application No.2 of 1962 M.C. Gampola
No.3082.

THE QUEEN

vs.

MURUGAN RAMASAMY alias BABUN
RAMASAMY

Present: Basnayake C.J. (President),
Tambiah J., Herat J.,
Abeyesundere J., and
G.P.A. Silva J.

Counsel: Colvin R. de Silva with

In the Court
of Criminal
Appeal

A.W. Rajaratnam, S.S. Basnayake,
S.C.Crossete-Tambiah, R.Weerakoon,
K.Wignarajah (assigned) for
Accused-Appellant.

No.19.

Judgment

17th December,
1962.

A.C.Alles, Solicitor-General,
with V.S.A.Pullenayegum, Crown
Counsel, H.L. de Silva, Crown
Counsel, and V.C.Gunatillake,
Crown Counsel, for Attorney-
General.

10

(continued)

Argued on: November 1, 2, 5, 6, 7, 8, 19, 20
and 21, 1962.

Decided on: December 17, 1962.

Basnayake, C.J.

The appellant Murugan Ramasamy alias
Babun Ramasamy was indicted on a charge of
attempted murder of one Kammalwattededara
Piyadasa by shooting him with a gun on 1st
September 1960. A unanimous verdict of guilty
was returned by the jury and the appellant was
sentenced to undergo ten years' rigorous im-
prisonment. This appeal is against that
conviction.

20

The main ground of appeal urged by
learned counsel for the appellant is that the
judgment of the Court before which the appellant
was convicted should be set aside on the ground
that a statement made by the appellant to Police
Sergeant Jayawardene had been illegally ad-
mitted in evidence.

30

Briefly the material facts are as
follows: Piyadasa the injured man was shot
on 1st September at Monte Cristo Estate,
Nawalapitiya. The estate had both Sinhala
and Tamil labourers, a section of whom had gone
on strike a few days before the shooting. The
appellant belonged to the group that had gone
on strike while the injured man and the pro-
secution witnesses Heen Banda and Juwanis
belonged to the group that had not. The road
to Nawalapitiya runs through the estate. The
man or men who shot were in a place below the
road which was known as the 'wadiya'. Piyadasa
the injured man was working along with the

40

witnesses Heen Banda, Juwanis and about 24 others in a section of the estate above the road in field No. 25 in extent about 25 acres. The injured man and the witnesses claimed that they were engaged in weeding at the time the firing took place. This claim was challenged by the defence as the witnesses were unable to give a satisfactory account of what happened to their tools. The witnesses say that about 10.30 a.m. the sound of some sort of commotion from the 'wadiya' attracted their attention. When they looked in that direction they saw the appellant and two others named Muttiah and Sinniah. The appellant had a gun and the other two had stones in their hands. As the first shot was fired they took cover. The second shot injured Piyadasa in the region of the chest as he moved from one position to another. A diary in his breast pocket saved Piyadasa's life as the force of the slug which struck him was broken by it. The resulting injury is described by the doctor as "a lacerated wound skin deep about $\frac{1}{4}$ " long on the left side of the chest about the level of the sternum. There was an abrasion 1" long $\frac{1}{2}$ " wide around it." Piyadasa, Heen Banda and Juwanis who were called by the prosecution stated that it was the second shot that caused the injury and that it was the appellant who fired it; but Heen Banda departed from that position in cross-examination. He said that he did not see any action on the part of the appellant when he heard either the second shot or the third shot.

Learned counsel maintained that these witnesses did not see the assailant as they took cover after they heard the first shot, and that they were falsely implicating the appellant. They were all cross-examined at length on the question of identification. In support of his contention that they did not identify the assailant learned counsel pointed to the fact that Piyadasa's pocket diary P4 contained under the date 1st September 1960 not the names of Muttiah and Sinniah, but those of Jayasena and Mendis. He also relied on Piyadasa's evidence which threw doubt on his claim that he identified his assailant. When asked why he wrote the

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

names of Jayasena and Mendis he said: "I wrote down the names of Jayasena and Mendis on the diary because another person who was next bed to me (sic) told me that out of the three persons whom I saw, two people, except for Ramasamy, must be Jayasena and Mendis, and not Muttiah and Sinniah". When asked further whether there was a discussion at the hospital in regard to the identity of those who shot, Piyadasa said:-

10

"At the time I was in the hospital there was a man injured by gun shots in the next bed. At the time Ramasamy shot me Muttiah and Sinniah were with him. Then the man who was in the next bed said that he including others were shot by Jayasena and Mendis and then I thought that I must be making a mistake".

Piyadasa finally sought to get out of the difficulty in which he found himself by saying that because the man in the adjoining bed had no paper he wrote down in his diary the names of the persons who he said were his assailants. But he was unable to give any clue as to who this man in the adjoining bed was. He neither knew his name nor his whereabouts. He was also positive that he was not William the man who died. The other point made against Piyadasa's testimony was that his statement to the Police was not made till 7 p.m. on the night of the shooting. The defence also made a point of the delay in recording the statements of Heen Banda and Juwanis.

20

30

In addition to the evidence of the three eye-witnesses the prosecution sought to prove a statement made by the appellant to Police Sergeant Jayawardene in the course of his inquiry under Chapter XII of the Criminal Procedure Code (hereinafter referred to as the Code), and the learned trial Judge permitted Crown Counsel to elicit the following evidence from Sergeant Jayawardene:

40

"839. Q. You told us yesterday that you took the accused into custody?

A. Yes.

840. Q. And you recorded his statement?
 A. On his volunteering to make a statement I recorded his statement.

In the Court
 of Criminal
Appeal

No.19.

841. Q. Please refresh your memory from the note-book; did you bring your note-book?

Judgment

17th December,
 1962.

- A. Yes.

(Witness refreshes his memory from the note-book).

(continued)

10

842. Q. Did the accused in the course of his statement tell you 'I am prepared to point out the place where the gun and the cartridges are buried'?

- A. Yes.

843. Q. Thereafter did you and the accused go to a spot near line No.6?

- A. Yes.

20

844. Q. Were the gun and the cartridges discovered?

- A. Yes.

845. Q. Where were they discovered?

- A. I took the accused to line No.6. and the accused pointed out a spot to me. He unearthed some rubbish and I discovered the gun broken into three parts and a cloth bag containing 12 cartridges - 12 bore cartridges.

30

846. Q. Was the gun wrapped in anything?

- A. It was wrapped in a gunny sack.

847. Q. (Shown P2). Was this the gunny bag?

- A. Yes.

848. Q. It was produced in the lower Court marked P2?

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

A. Yes.

849. Q. You assembled the gun?

A. I did not assemble the gun. I examined the barrel and there was fouling and there were signs of recent firing.

850. Q. You smelt the barrel?

A. Yes.

851. Q. It smelt fouling?

A. Yes. "

10

It was suggested to Sergeant Jayawardene in cross-examination that the appellant did not volunteer a statement nor say that he was prepared to point out the place where the gun and cartridges were buried. It was also suggested that he did not point out a spot or unearth some rubbish as deposed to by him. The Sergeant repudiated those suggestions.

It was contended on behalf of the appellant that even if the statement: "I am prepared to point out the place where the gun and the cartridges are buried" had been made by him, its reception in evidence was illegal. Learned counsel rested his contention on the following grounds :

20

(a) The statement being a statement made to a police officer in the course of an inquiry under Chapter XII cannot be used otherwise than to prove that a witness made a different statement at a different time, or to refresh the memory of the person recording it.

30

(b) That even where a fact is deposed to as discovered in consequence of information contained in a statement made in the course of an inquiry under Chapter XII, section 27, of the Evidence Ordinance affords no authority for proving that statement.

(c) That statements containing information in consequence of which a fact is deposed to as discovered may not be proved in the following cases :

40

- (i) where the statement is made in the course of an inquiry under Chapter XII, and
- (ii) where the statement, not being one falling under (a) above, is a confession to a police officer.
- (d) That in the instant case no fact was either discovered or deposed to as discovered in consequence of the information received from the appellant and that the statement did not come within the ambit of section 27.

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

Learned Solicitor-General contended that the gun was discovered in consequence of the information. He submitted that although the appellant dug up the heap of rubbish in the place where the gun was, it was Police Sergeant Jayawardene who discovered it. He also contended that section 122(3) did not bar the proof of information, the proof of which was permitted by section 27. He relied on the decision of this Court in Rex v. Jinadasa (51 N.L.R.529), The Queen v. O.A. Jinadasa (59 C.L.W.97) and Regina v. Mapitigama Buddhakkita Thera and 2 others (63 N.L.R.433).

The submissions of learned counsel for the appellant will now be discussed. As they are all interconnected, they will be examined as a whole. The most important of them is that the statement being one made to a police officer in the course of an inquiry under Chapter XII falls within the prohibition in section 122(3) of the Code. We are of opinion that that submission is sound and we hold that the statement "I am prepared to point out the place where the gun and the cartridges are buried" comes within that prohibition and cannot be admitted in evidence. Certain provisions of law are expressly saved from the operation of section 122(3) by the words :

"Nothing in this subsection shall be deemed to apply to any statement falling within the provisions of section 32 (1) of the Evidence Ordinance, or to prevent such statement being used as evidence in a charge under section 180 of the Penal Code."

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

The rules of interpretation will not countenance the reading of section 27 into the exception created by those words. Besides such a course cannot be adopted without violating such well-known maxims applicable to the interpretation of statutes as "expressio unium est exclusio alterius" (the express mention of one thing implies the exclusion of another), "Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad aliud" (when anything is prohibited, everything relating to it is prohibited), and "Quando aliquid prohibetur ex directo prohibetur et per obliquum" (when anything is prohibited directly, it is also prohibited indirectly). Section 27 of the Evidence Ordinance should therefore be read as permitting the proof of only statements that do not fall within the prohibition in section 122 (3). In the case of Buddharakkita (supra) it was held that section 122(3) extends to both oral and written statements made in the course of an inquiry under Chapter XII. The result of the decision in Buddharakkita's case is that the oral statement made to a police officer in the course of an inquiry under Section 122 can no longer be proved under section 27. We are in entire agreement with that decision and we are unable to agree with the decision in Rex v. Jinadasa (supra) that although the written statement falls within the prohibition in section 122(3) the oral statement does not, and may be proved under section 27 of the Evidence Ordinance. The learned Solicitor-General relied on the following passage in the judgment of Buddharakkita's case as approving Rex v. Jinadasa (supra) :

".... no decision of the Supreme Court or of this Court has been cited to us in which it was argued and expressly decided that statements made by an accused person to an officer investigating a cognizable offence under Chapter XII may be proved contrary to the prohibition in section 122(3) except in a case to which section 27 of the Evidence Ordinance applies."

We are unable to agree with his view of that passage. If the language lends itself to

10

20

30

40

50

such an impression, we wish to make it clear that it should not be understood as implying that the Court held that a statement which cannot be used under section 122(3) may be proved under section 27. Our decision in the instant case is in accord with that in Buddharakkita's case, and the decision in Jinadasa's case must not be regarded any longer as binding. It is convenient at this point to dispose of The Queen v. O.A. Jinadasa (supra), the other case on which the learned Solicitor-General relied. The questions that arise for decision here did not arise there, and if any passage in that judgment is in conflict with our decision in the instant case, that case should, to that extent, be regarded as overruled.

The opinion we have formed herein is consistent with the view taken by the Privy Council on the corresponding provisions of the Indian Evidence Act and Criminal Procedure Code. In Narayana Narayana Swami v. Emperor (1939)-A.I.R. (P.C.) 47 at 52) Lord Atkin stated :-

"It is said that to give S.162 of the Code the construction contended for would be to repeal S.27, Evidence Act, for a statement giving rise to a discovery could not then be proved. It is obvious that the two sections can in some circumstances stand together. Section 162 is confined to statements made to a police officer in course of an investigation. S.25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation. S.27 seems to be intended to be a proviso to S.26 which includes any statement made by a person whilst in custody of the police and appears to apply to such statements to whomsoever made, e.g., to a fellow prisoner, a doctor or a visitor. Such statements are not covered by S.162.... The words of S.162 are in their Lordships' view, plainly wide enough to exclude any confession made to a police officer in course of investigation whether a discovery is made or not."

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

In India all controversy on this topic has been silenced by the addition of section 27 to the exceptions in section 162 which is the corresponding section of the Indian Code.

Where proof of statements made in the course of an inquiry under Chapter XII is permitted, they can only be proved by documentary evidence and not by oral evidence for the reasons that contents of documents cannot be proved by oral evidence (s.59 Evidence Ordinance), and that in all cases in which any matter is required by law to be reduced to the form of a document, no evidence may be given in proof of the terms of such matter except the document itself or secondary evidence where secondary evidence is admissible (s.91 Evidence Ordinance).

10

Learned counsel for the appellant sought to place a further limitation on section 27. He argued that it did not apply at all to statements which amount to confessions made to a police officer. His reasoning was as follows :-

20

Section 25 bars proof, as against a person accused of an offence, of all confessions made to a police officer whilst in custody or not. Section 26 bars proof, as against the person making them, of all confessions made by him whilst in the custody of a police officer unless it be made in the immediate presence of a Magistrate. As section 25 bars all confessions made to a police officer whilst in custody or not, the only confessions to which section 26 can apply are confessions made to persons other than police officers. Proof of statements made to a police officer in the course of an inquiry under Chapter XII of the Code, whether they are confessions or not, is barred by section 122(3). Proof of all other confessions to a police officer is barred by section 25 of the Evidence Ordinance. As the effect of section 122(3) of the Code and section 25 of the Evidence Ordinance is to bar the proof of confessions to a police officer regardless of the situation in which they are made, and as section 27 is not among the exceptions to section 122(3), a confession to a police officer cannot be proved thereunder. The

30

40

50

words of section 27 "in the custody of a police officer" are a pointer to the fact that section 26 and not 25 is contemplated therein. The further condition imposed by section 27 is that the person giving the information must not only be in the custody of a police officer but must also be a person accused of an offence. In support of the first part of his contention, that sections 25 and 26 do not overlap in the sense that the former bars all confessions to police officers whether made whilst in their custody or not and that the latter bars all confessions made whilst in their custody, he relied on the decisions of the Indian Courts, the weight of which is in his favour. The learned Solicitor-General conceded that it was so and did not contend that the two sections should be given a different interpretation in Ceylon. He accepted the position that section 25 barred all confessions to a police officer whether made in custody or outside and that section 26 applied to confessions made to others than police officers.

The Indian decisions are referred to in such well-known commentaries on the Indian Evidence Act as Sarkar on Evidence and Monir on Evidence. It is unnecessary to cite them in this judgment. It will be sufficient if reference is made to the recent decision of the Supreme Court of India in State of Uttar Pradesh v. Deoman (1960) A.I.R. (Supreme Court) p.1125). In support of the second part of his contention, that section 27 was a proviso to section 26 alone and not also to section 25, he called in aid passages in the judgments of the Privy Council in cases of Narayana Swami v. Emperor (supra) and Kottaya v. Emperor ((1947) A.I.R. (P.C.) 67) which are cited below in extenso. In the former case Lord Atkin observed at p.51 et seq -

"In this case the words themselves declare the intention of the Legislature. It therefore appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

10

20

30

40

50

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

the prosecution or the accused. It would appear that one of the difficulties that has been felt in some of the Courts in India in giving the words their natural construction has been the supposed effect on Ss. 25, 26 and 27, Evidence Act 1872. S. 25 provides that no confession made to a police officer shall be proved against an accused. S.26 - No confession made by any person whilst he is in the custody of a police officer shall be proved as against such person. S.27 is a proviso that when any fact is discovered in consequence of information received from a person accused of any offence whilst in the custody of a police officer so much of such information whether it amounts to a confession or not may be proved. (Here occur the words quoted earlier in this judgment)

10

20

It only remains to add that any difficulties to which either the prosecution or the defence may be exposed by the construction now placed on S.162 can in nearly every case be avoided by securing that statements and confessions are recorded under S.164"

In the latter case Sir John Beaumont said at p.70 -

"The second question, which involves the construction of S.27, Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms:"

30

(Sections 25, 26 and 27 are omitted as they are the same as our sections).

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much

40

of the information as relates distinctly to the fact thereby discovered may be proved Mr. Megaw, for the Crown, has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. The ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to S. 26, added by S.27, should not be held to nullify the substance of the section

..... The difficulty, however great, of proving that a fact discovered or information supplied by the accused is a relevant fact can afford no justification for reading into S.27 something which is not there, and admitting in evidence a confession barred by S.26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case.

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

10

20

30

40

50

In the Court of
Criminal Appeal

No.19.

Judgment

17th December,
1962.

(continued)

It is only one link in the chain of proof, and the other links must be forced in manner allowed by law."

The learned Solicitor-General maintained that the passages in the judgments of the Privy Council relied on by the appellant's counsel were obiter and not binding on us, and he strenuously argued that section 27 was a proviso to both section 25 and 26 and claimed that on that point the weight of Indian decisions was on his side. He referred us to some of them. Learned Counsel for the appellant did not contend that it was not so. Those decisions too are collected in the Commentaries mentioned above and need not be referred to here. The most recent pronouncement on the subject is in the judgment of the Supreme Court of India in the case of State of Uttar Pradesh v. Deoman (supra). As the question whether in our Evidence Ordinance too section 27 should be read as an exception to section 26 alone or to sections 25 and 26 does not arise for decision in the instant case, we refrain from expressing our opinion on that question although the matter was argued at length on both sides. Before we part with this part of the case it would not be out of place to refer to the decision of the Privy Council in Nazir Ahmad v. King-Emperor ((1936) A.I.R. (Privy Council) 253) which has a bearing on the words in Section 26 "unless it be made in the immediate presence of a Magistrate". There Lord Roche expressed the view that under the Indian Code the only procedure for recording a statement to a Magistrate before the commencement of an inquiry or trial was that prescribed in section 164 (our section 134) and 364 (our section 302). His reasons are illuminating and bear repetition in extenso as they are germane to the matters discussed above. He said:-

".... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to

10

20

30

40

50

Courts Taylor v. Taylor, 1 Ch. D.426 at p.431 - and although the Magistrate acting under this group of sections is not acting as a Court, yet he is a judicial officer and both as a matter of construction and of good sense there are strong reasons for applying the rule in question to S.164.

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

10 On the matter of construction
Ss.164 and 364 must be looked at and
construed together, and it would be
an unnatural construction to hold that
any other procedure was permitted than
that which is laid down by such minute
particularity in the sections themselves.
Upon the construction adopted by the
Crown, the only effect of S.164 is to
allow evidence to be put in a form in
20 which it can prove itself under Ss.74
and 80, Evidence Act. Their Lordships
are satisfied that the scope and extent
of the section is far other than this,
and that it is a section conferring
powers on Magistrates and delimiting
them. It is also to be observed that,
if the construction contended for by
the Crown be correct, all the pre-
cautions and safeguards laid down by
30 Ss.164 and 364 would be of such trifling
value as to be almost idle. Any Magis-
trate of any rank could depose to a
confession made by an accused so long
as it was not induced by a threat or
promise, without affirmatively satisfy-
ing himself that it was made voluntarily
and without showing or reading to the
40 accused any version of what he was
supposed to have said or asking for the
confession to be vouched by any sig-
nature. The range of magisterial
confessions would be so enlarged by
this process that the provisions of
S.164 would almost inevitably be widely
disregarded in the same manner as they
were disregarded in the present case."

50 The next question that arises for decision
is whether the conviction should be set aside
on the ground of the improper admission of
Sergeant Jayawardene's evidence, or whether,
while upholding the point taken by learned

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

counsel, the appeal should be dismissed on the ground that no substantial miscarriage of justice has actually occurred. The onus of satisfying us that no substantial miscarriage of justice has actually occurred in a case in which the point raised in appeal is decided in favour of the appellant is upon the Crown. In the instant case the Crown has failed to satisfy us that no substantial miscarriage of justice has actually occurred. What is more - the material before us discloses that a substantial miscarriage of justice has actually occurred.

10

We now turn to that aspect of the case. In the first place there is no evidence that the parts of a gun dug up from rubbish heap near line No.6 are the parts of the crime gun. Sergeant Jayawardene who says he recovered the gun from the rubbish heap says that he did not at any stage try to re-assemble the gun and that he produced it in the Magistrate's Court in three parts. The analyst's evidence is that P1 which was produced at the trial was received by him in a parcel marked 'X' and was in working order. There is no evidence that the parts of a gun recovered by Sergeant Jayawardene constituted a gun that could be fired. Nor is there any evidence that P1 constitutes a gun formed from the parts recovered from the rubbish heap. In the absence of such evidence there cannot be said to be proof that the gun P1 consists of the parts of a gun recovered from the spot pointed out by the appellant and no inference against him can be drawn from the circumstance of his pointing out and digging up the rubbish heap near line No.6. What is more - Jayawardene's evidence that the appellant said in a statement which he volunteered, "I am prepared to point out the place where the gun and the cartridges are buried", has gone to the jury as containing a reference to the crime gun. - In his summing-up the learned Judge said:-

20

30

40

"... in the afternoon of 1st September this accused, after he had been arrested, took Jayawardene along to some place near line set No.6 and there dug up the earth underneath which Jayawardene found this

50

gun P1, at that time in three parts along with some bag containing 14 live cartridges."

In the Court
of Criminal
Appeal

Again later on in his summing-up he said :-

No.19.

Judgment

17th December,
1962.

(continued)

10

".... Jayawardene took the accused away and according to Jayawardene, the accused made a certain statement to him in the course of which, the accused told him that he could point out the place where the gun and cartridges were buried. If you believe Jayawardene, that is a question of fact, you can understand the police not wasting any time thereafter. Jayawardene says he at once took him to line No.6 and at a certain spot which was indicated by the police, the accused himself dug up the earth and underneath that there was this gun in a gunny bag in three parts and there was another bag containing 14 live cartridges which are productions in this case

20

30

40

Well, the defence has challenged Jayawardene and said he is nothing more than a liar in uniform. That is the suggestion. The defence alternatively argues, even if that suggestion of the defence is not accepted, but Jayawardene is believed when he says that the accused pointed out the gun, the statement of the accused is that he could point out a place where a gun and cartridges are buried. The defence therefore argues, that means nothing more than that the accused was aware of where a gun and cartridges were buried, not necessarily buried by him. I did not understand the prosecution as placing the case any higher than placed by the defence counsel himself. The prosecution does not say that it proves anything more than showing a place where a gun and 14 cartridges were buried, and this was about 3.25 or 3.30 that the cartridges were unearthed."

It was urged by learned counsel that

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

the repeated reference both in the evidence and the summing-up to the gun and this gun was gravely prejudicial to the appellant if Jaywardene's evidence was meant to prove nothing more than that the appellant was aware of where a gun and cartridges were buried, not necessarily buried by him. He further submitted that the way in which the evidence was presented to the jury is likely to have had the effect of influencing the jurors to attach that amount of weight which they might not otherwise have attached to the evidence of Piyadasa, Heen Banda and Juwanis. In our opinion this submission is well-founded.

10

In the course of the argument there emerged a fact which if it received sufficient attention at the trial, is likely to have altered the whole course of events. Sergeant Jaywardene in his examination-in chief, which is reproduced earlier in this judgment in connexion with the discussion of the admissibility of the appellant's statement to him, stated that it was after he had recorded the statement which the appellant volunteered to make that he took him to line No.6, that the appellant pointed out a spot to him and dug up a heap of rubbish in which he discovered a gun broken into three parts and a cloth bag containing twelve 12-bore cartridges. In cross-examination he gave an entirely different version as would appear from the following questions and answers:

20

30

"934. Q. At what time did you commence to record the accused's statement?

A. After the discovery of the gun and cartridges.

40

935. Q. At what time did you record it?

A. At 3.10 immediately on arrival at the estate.

936. Q. That is before or after the discovery of the gun?

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

10

A. Before the discovery of the gun?

937. Q. You know now that it was after the discovery of the gun ?

A. That was a mistake when I said that.

938. Q. I make a further allegation against you. I say that the accused never produced this gun to you?

A. No.

939. Q. He never pointed it out to you?

A. He did.

940. Q. He never made a statement to that effect to you?

A. He did."

20

Later on in answer to the presiding Judge he said:

"991. Q. Have you made an entry in regard to the finding of the gun by you?

A. Yes.

992. Q. Before that have you made an entry in regard to any statement made to you by the accused?

A. Yes.

30

993. Q. Can you refresh your memory from what you have recorded and say whether it was after the accused had told you that he could point out the place where the gun and cartridges were buried or before he told you that he could point out the place where the gun and cartridges were buried that you went to a certain place

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

near line No. 6?

- A. Before the discovery of the gun and cartridges.
994. Q. After the discovery of the gun I take it that you made a record of that in your diary?
- A. Yes.
995. Q. After that was done did you take a statement of the accused? 10
- A. No.
996. Q. After making a record of the finding of the gun did you settle down to recording a statement of the accused?
- A. Not after the discovery.
- (The Sergeant's diary is marked C by Court).
997. Q. At page 144 of your diary did you begin making a statement in regard to the circumstances in which the gun was discovered by you? 20
- A. Yes.
998. Q. And does that entry in regard to the discovery of the gun run into page 145 as well?
- A. Yes.
999. Q. And after that entry has been concluded did you record the statement of the accused as well?
- A. Yes. 30
1000. Q. Before the discovery of the gun had you questioned the accused?
- A. I have.
1001. Q. And have you recorded that fact before you began making statement in regard to the discovery of the gun?
- A. Yes."

Under examination by the learned Judge, Sergeant Jayawardene went back on the position he had stoutly maintained in cross-examination. The repeated reversal of his evidence as to the sequence of events in regard to the finding of the gun and recording of the appellant's statement greatly impaired the value of Sergeant Jayawardene's evidence. What is more - even this final version is contradicted by his own notes of the inquiry which were produced and marked in the proceedings at the instance of the learned trial Judge. The record begins:

10

20

"On Monte Cristo Estate I interrogated the suspect at length and suspect says that he could point out the place where the gun and cartridges used for the shooting are buried and volunteers to make a statement:"

This record contradicts his evidence given in examination-in-chief that the appellant volunteered to make a statement. The record then proceeds:

"I am now leaving with the P.CC.4358, 7326, 5617 and suspect Ramasamy to trace the gun.

30

40

1.9.60 at 3.25 p.m. Monte Cristo Estate, Line No.6. Suspect Ramasamy points out to me a place in the garden opposite Line No.6 and dug out the spot. Here I find a Wembley & Scott S.B.B.L. 12-bore gun barrel No.10973 in three parts wrapped in an old gunny sack and 14 cartridges 12-bore in an oil cloth bag ranging as follows: 2 S.G., 2 No.6, 2 No. 3, 7 No.4 and 1 F.N. filled 12-bore cartridges. I smelt the barrel and there is a smell of gun powder and recent fouling in the barrel. I tied both ends covered with paper. I here take charge of them as productions. Here there is (?) shrub (sic) jungle in the vicinity. I now proceed to record his statement. Ramasamy alias Babun Ramasamy s/o Murugan, age 48 years, labourer of line No. 9 Monte Cristo Estate states: 'This morning about 8 a.m. I was in my line room. At this time I heard the

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

shouts of people towards the upper line where I am residing. I came out and saw about 50 to 100 people collected outside the lines and there was pelting of stones. Just then I heard the report of a gun in the direction of Dhoby's line. I then came running to line No. 6 through fear. As I came running to line No. 6 I again heard the report of a gun towards the line of the mechanic. At the time I saw about 40 to 50 men and women including strikers and non-strikers shouting. As I came to the (verandah) back verandah I found a 12-bore gun broken lying on ground and some cartridges in an oil cloth bag. I broke the gun into three pieces, picked up a gunny sack and wrapped the parts of the gun with the bag of cartridges buried in the garden opposite line No.6. I am prepared to point out the place where the gun and cartridges are buried. I deny having shot at anyone. I am one of the strikers. This is all I have to state. Read over and explained and admitted to be correct.'

10

20

I am now leaving with P.CC 4358, 7326 and 5617 and suspect Ramasamy to trace the gun. 3.25 p.m. Monte Cristo Estate opposite line No. 6. On the statement made by Ramasamy I recovered one S.B.B.L. 12 bore Wembley & Scott gun No.10973 broken in three parts, barrel, butt and hand guard wrapped in an old gunny sack and one oil cloth bag containing 14 cartridges 12 bore ranging as follows: 2 S.G., 2 No.6, 2 No.3, 7 No. 4 and one F.N. filled 12 bore cartridges. I found them buried in the garden where shrub jungle is found. I smelt the barrel. It is smelling of fouling and gun powder. I find the barrel fouled and signs (?) of recent firing. I have (tied) covered and tied both ends and taken charge as productions. At 4.20 p.m. I produced the productions, gun and cartridges, and the suspect Ramasamy before I.P."

30

40

Sergeant Jayawardene's evidence when compared with what is recorded in his notebook discloses a reprehensible attempt on his part at suggestio falsi et suppressio veri. His notes speak of the same gun being discovered twice, once before and a second time after the appellant's statement was recorded. In the first case he says that the appellant pointed out the spot

50

where the gun lay buried and in the second case he purports to have discovered the gun on the information received from him. The two statements are irreconcilable and his evidence on the point far from solving the confusion makes "confusion worse confounded". In examination-in-chief he said that he found the gun after recording the statement of the appellant. In cross-examination he first said that he commenced to record the appellant's statement after the discovery of the gun and cartridges (Q.934). He next said that he recorded the statement before the discovery of the gun (Q.936). He then said that he made a mistake when he said that the statement was recorded after the discovery of the gun (Q.937). In answer to the question (Q.993), whether it was after the appellant had told him that he could point out the place where the gun and cartridges were buried or before he told him that he could point out the place where the gun and cartridges were buried that he went to a certain place near line No.6, he said that it was before the discovery of the gun and cartridges and that after the discovery he made a record of that fact in his diary. Further answering he also said that he did not take a statement of the appellant after he made the record relating to the discovery of the gun (Q.995) and that he did not after making a record of the finding of the gun settle down to recording a statement of the appellant after the discovery of the gun and cartridges (Q.996). In answer to questions 997, 998, 999, 1000 and 1001 he reversed what he had said before. All this shows what an unreliable witness the Sergeant is. He was either deliberately misleading the Court by giving his evidence a complexion which was prejudicial to the appellant or was so confused that he was unable even with the assistance of the written record to give a consistent and unbiased account of what he did that day. Now the learned Judge omitted to warn the jury that they should approach his evidence with caution as he had contradicted himself so many times in the course of his evidence on a vital point in the case. Of the two statements recorded as coming from the appellant in regard to the gun and cartridges, one does not indicate that the

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

In the Court
of Criminal
Appeal

No.19.

Judgment

17th December,
1962.

(continued)

appellant was the person who used the gun while the other carries that implication. The Crown sought to prove the one implying guilt when in the course of that very statement the appellant had stated the circumstances in which he found the gun and denied that he shot anyone.

It is difficult to escape the conclusion that the prosecution has not been conducted in the instant case with that fairness and detachment with which prosecutions by the Crown should be conducted. With the statement of the appellant, in which he had expressly denied that he shot, before him, learned Crown Counsel, despite the learned trial Judge's warning of the perils of the course he was seeking to adopt, insidiously persisted in placing before the jury a statement alleged to be made by the appellant which, when taken out of its context, tended to create the impression that he had confessed to the crime and that he had hidden the crime gun himself after the shooting by him.

10

20

That, officers on whom the court is entitled to rely for assistance in the administration of Justice should consciously seek to mislead it, is deplorable. There is no question that the appeal must be allowed and the conviction quashed, and we accordingly do so and direct a Judgment of acquittal to be entered.

30

President.
Court of Criminal Appeal.

In the Privy
Council

No.20.

Order granting
Special Leave
to Appeal

11th April,
1963.

No.20.

ORDER GRANTING SPECIAL LEAVE
TO APPEAL

L.S.

AT THE COURT AT WINDSOR CASTLE

The 11th day of April, 1963

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. THORNEYCROFT
MR. SECRETARY SANDYS MR. RIPPON

In the Privy
Council

No.20.

Order granting
Special Leave
To Appeal

11th April,
1963.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of April 1963 in the words following viz.:-

10

"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 Petition of Your Majesty in the matter of an Appeal from the Court of Criminal Appeal Ceylon between the Petitioner and Murugan Ramasamy alias Babun Ramasamy Respondent setting forth: that the Petitioner prays for special leave to appeal from the Judgment of the Court of Criminal Appeal dated the 19th January 1963 allowing the Respondent's Appeal against his conviction on the 18th December 1961 in the Supreme Court on a charge of causing hurt to one Kammalawattegedera Piyadasa by shooting him with a gun and thereby committing an offence punishable under Section 300 of the Penal Code: that the Respondent had been convicted by a Jury and sentenced to ten years rigorous imprisonment but the Court of Criminal Appeal allowed the Appeal and quashed the conviction and directed a Judgment of acquittal to be entered: And praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment and Order of the Court of Criminal Appeal of Ceylon dated the 19th January 1963 or for further or other relief.

20

30

40

(continued)

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your

In the Privy
Council

No.20.

Order granting
Special Leave
to Appeal

11th April,
1963.

(continued)

Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal against the Judgment of the Court of Criminal Appeal of Ceylon dated the 19th day of January 1963 upon condition that the costs of the Appellant and the Respondent be paid by the Appellant in any event liberty to apply upon this Order being reserved to the Appellant:

10

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.

20

W. G. AGNEW

IN THE PRIVY COUNCIL

No. 24 of 1963

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL, CEYLON

B E T W E E N :

THE QUEEN

APPELLANT

- and -

MURUGAN RAMASAMY alias
BABUN RAMASAMY

RESPONDENT

RECORD OF PROCEEDINGS

T.L. WILSON & CO.
6, Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellant.

HATCHETT JONES & CO.,
90 Fenchurch Street,
London E.C.3.

Solicitors for the Respondent.
