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the Bench of the Bombay High Court, whilst holding that this procedure adopted was quite legal, expressed the opinion that it was undesirable. We agree that the procedure is not illegal, and it is one which has been very frequently adopted in this Court. At the same time, we wish to say that, we think, that when an appeal comes up for admission by the Appellate Court, it would be desirable in future if, before causing a notice to show cause against enhancement of sentence to be sent, the records of the case were sent for. We think that would be more regular than merely reading the judgment of the learned Sessions Judge and issuing notice, as was done in this case, though, no doubt, sufficient of the facts appear in that judgment.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Krishnan Pandalai.

1929, December 9.

SANKARALINGA THEVAN, PRISONER (ACCUSED), APPELLANT.*

First information report—Statements in—Purposes for which can be used—Variation between statement of witness in first information report and statement in Sessions Court—Effect of.

Statements in the first information report can only be used for the purpose of contradicting or corroborating a witness and for no other purpose.

If a witness in the Sessions trial makes a statement different to that attributed to the witness in the first information report, that discredits the evidence of the witness to that extent in the

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* Referred Trial No. 158 of 1929.

Sessions Court, but does not make the statement in the first information report the evidence upon that matter in the case.

TRIAL referred by the Court of Session of the Tinnevelly Division for confirmation of the sentence of death passed upon the said prisoner in Case No. 67 of the Calendar for 1929.

K. S. Jayarama Ayyar for *J. S. Vedamanikkam* for accused.

K. N. Ganpati for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

The JUDGMENT of the Court was delivered by

BEASLEY, C.J.—The appellant is convicted by the learned Sessions Judge of Tinnevelly of the murder of his father Thandava Tevan and sentenced to death. BEASLEY, C.J.

Thandava Tevan was undoubtedly murdered on the night of the 2nd June last. He was stabbed on the chest and died of that stab. He was aged 55 years. The accused, aged 24, is his only son. The deceased had a second wife, P.W. 2, who is the step-mother of the accused. Both the accused and his father owned a bandy and earned their livelihood by letting it on hire, and the motive for the murder is alleged by the prosecution to have been a quarrel between Thandava Tevan and his son on this night, with regard to the collection of money due from persons who had hired the bandy. As a result of this quarrel, it is alleged that the accused stabbed his father and ran away. He surrendered himself to the Magistrate of Srivaikuntam on the 14th June.

The evidence against the accused is purely circumstantial. There are no eye-witnesses to the occurrence. The evidence against him is that of P.Ws. 2 and 3, coupled with his absconding from the village.

P.W. 2's evidence is that, after she had served the evening meal to the deceased and the accused in the

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house which they all three occupied and the deceased and the accused had gone outside the house on to the pial, she bolted the door and remained inside. Some time later, she heard the father and son quarrelling with each other about the collection of bandy hire. The deceased was accusing the accused of not accounting for the money collected by him from persons, who had hired the bandy, and pointed out the difficulty thus occasioned in his maintaining the family. The accused retorted that he was not bound to account to him for the money, whereupon the deceased said that the accused should not touch the bandy from the next day, that he would have no food at his house and that he must earn his own living. Then, according to her evidence at the Sessions trial, there was a lull lasting about a naligai. At the end of that time she heard the cry of the deceased "I have been stabbed." She lighted a lamp, went outside and there found the deceased lying on the ground, holding his side where the wound was, and she supported him inside the house. Her foot, according to her, struck against a knife and its sheath on the floor. This knife and sheath, however, have not been proved to belong to the accused. Hearing the cries, people came to the spot, amongst them being P.Ws. 3 and 4, and two others who did not give evidence at the Sessions trial, and some women.

P.W. 3 lives in a house just to the south of the deceased only a few feet away, a lane separating the northern side of his house from that of the deceased. His evidence is that he saw the deceased and the accused sitting on the pials outside the house, the deceased sitting on the eastern pial and the accused on the western. He went inside his house, and later on, having occasion to go outside, he heard the discussion spoken to by P.W. 2 going on between the deceased and his

son. He says he recognized their voices. Then he went inside and slept, and after an interval, which he states to be three naligais, he woke up on hearing a cry "My son has stabbed," opened the door, and came out, and there saw the deceased lying wounded on the ground. P.W. 2 carried the deceased inside the house and put him on a cot.

Another witness is P.W. 4 who went to the scene of the occurrence on hearing cries. He immediately went to the Village Magistrate to make a report. He reached the Village Magistrate at about 2 a.m., and the Village Magistrate took a statement from him, Exhibit B, and then proceeded to the house of the deceased, where he took a statement from P.W. 2. The statements of P.Ws. 2 and 4 are incorporated in the first information report.

That is the whole of the evidence in the case, and we have got to consider whether, it being purely circumstantial evidence, it is sufficient to say that it proves the case against the accused beyond all reasonable doubt. The first point to be considered is, is it true that there was this dispute between the deceased and the accused on the pial that night? With regard to this, we have the evidence of P.Ws. 2 and 3, and we are satisfied that the evidence of P.W. 2 on this point is to be accepted and also that of P.W. 3. The next thing to be considered is—and it is the most important matter—whether there was any interval of time between the quarrel and the stabbing, and if so, what that interval was. P.W. 2 puts it at one naligai, and P.W. 3, on the other hand, puts it at three naligais. Even if it was one naligai, it is a sufficiently long interval, and the murder obviously could not have been in the heat of the moment. If the accused was the murderer, then he must have sat for at least a naligai thinking about the

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matter, giving himself time to cool down, or have gone away from the house and returned. But, at the same time, that interval of time does make it possible—we do not say probable—that some one else may have come to the spot and have committed the murder. If, on the other hand, the stabbing had followed the quarrel immediately, that, together with the absence from the village of the accused pointing to flight, would, in our view, establish the case beyond all reasonable doubt. The circumstantial evidence would then be very strong indeed. It has been contended before us that P.W. 2 was trying to lighten the case against the accused at the Sessions trial and was giving incorrect evidence when she put this interval of one naligai between the dispute and the stabbing, and the learned Sessions Judge has taken that view of her evidence. We have been asked to contrast that statement with the statement which was taken from her by the Village Magistrate, Exhibit E. After stating that the deceased told the accused that he should earn his living himself, she stated in Exhibit E that "at that time she heard the cry of 'he has stabbed', that she at once lighted the lamp from inside the house and came out with it—". That statement obviously means that the stabbing immediately followed the quarrel, and, if we are entitled to treat that statement in the first information report as evidence upon this point of P.W. 2, then it is evidence of the very greatest importance. But the question is, are we entitled to make use of that evidence at all as substantive evidence? In our view, statements in the first information report can only be used for the purpose of contradicting or corroborating a witness and for no other purpose. If a witness in the Sessions trial makes a statement different to that attributed to the witness in the first information report, that discredits the evidence

of the witness to that extent in the Sessions Court but does not make the statement in the first information report the evidence upon that matter in the case. We have been referred to three cases upon this point. The first is *Autor Singh* v. *Emperor*(1). On a difference of opinion between two Judges on this precise point, it was decided that the first information, although a document of great importance, which is in practice always and very rightly produced and proved in criminal trials, is not a piece of substantive evidence, and it can be used only as a previous statement admissible to corroborate or contradict the author of it. In *Emperor* v. *Chittar Singh*(2), it was held that a report of the commission of an offence made at a thana or even the deposition of a witness previously made would be admissible for the purpose of corroborating a witness or of throwing doubt on his statement in Court, but would be inadmissible for the purpose of proving that the facts stated in it are correct. In *Azimaddy* v. *Emperor*(3), it was observed that first informations do not prove themselves but have to be tendered under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant, and the first information is to be tendered as corroboration under section 157 of the Evidence Act. In this view, with which we agree, there is no evidence that the stabbing took place immediately after the quarrel ended. On the contrary, the only evidence is that it took place either one naligai afterwards as P.W. 2 says or three naligais afterwards as P.W. 3 says. With regard to the evidence of the latter, we think that his statement that he heard a cry of "My son has stabbed" is not to be accepted, as in

(1) (1913) 17 C.W.N., 1213. (2) (1924) I.L.R., 47 All., 280.
(3) (1926) 44 C.L.J., 253 at 258

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his previous statement he stated the cry to be "I have been stabbed."

The defence set up by the accused, of course, is not a very satisfactory one, because he has pleaded that he was at a place some 40 miles away collecting outstandings, having been sent there by his father. He summoned five witnesses at the Sessions trial, but his pleader did not examine any of them. Previously, these witnesses were summoned to support his defence of *alibi*, but they did not go into the witness-box to do so. He, therefore, set up an *alibi* which has not been supported by any evidence.

This is a case of very grave suspicion, but it still leaves a loophole, and that is the loophole provided by the interval of time between the end of the quarrel and the stabbing. It is during that time that some one else might have murdered the deceased. In cases based only on circumstantial evidence, the circumstantial evidence should be so strong as to point very clearly to the guilt of the accused.

The appeal is allowed, and the conviction and sentence are set aside, and the accused is ordered to be set at liberty.

B.C.S.