

SIVAPRASAD
 v.
 NARASIMHA-
 MURTHY.
 —
 KRISHNASWAMI
 AYYANGAR J.

no less than on the language of the statute. It is difficult to support a view of the law which attributes to the decision of a survey authority a higher efficacy than that which is annexed to the decision of a civil Court of competent jurisdiction as per *Subbaiya Pandaram v. Mahammad Mustapha Marcaray*(1). To have this consequence, language must be much more clear than what we have. I may add that my former inclination towards the opposite construction was in a large measure the outcome of the limitation imposed on me as a member of a Division Bench, bound by the opinions expressed by other Benches and the legal consequences which might be regarded as flowing out of them. I now feel no doubt that the correct decision is the one now given expression to by my Lord, and I have no hesitation in preferring it to the other.

G.R.

APPELLATE CRIMINAL.

Before Mr. Justice Burn and Mr. Justice Mockett.

1939,
 December 15.

IN RE ANNAMALAI MUDALI (PRISONER), ACCUSED.*

Code of Criminal Procedure (Act V of 1898), ss. 342 and 537—Duty of Court to put questions to accused under section 342—Omission to comply strictly with the provisions of that section—If illegal under section 537 of the Code.

It is the duty of the Court under section 342, Criminal Procedure Code, to be satisfied either by the statements of the accused or by his answers to questions or by both, that he explains or has an opportunity to explain circumstances from which hostile inferences may be drawn against him. When

(1) (1923) I.L.R. 46 Mad. 751 (P.C.).

* Referred Trial No. 140 of 1959.

an accused person in answer to a general question, or even one or two questions, gives a reply or replies which show that he is well aware of all the circumstances appearing in evidence against him and their implications, and attempts to explain them, the Sessions Judge may be going beyond his province if he questions him further in detail. He may be open to the criticism of cross-examining the accused and attempting to elicit contradictory answers. This is more particularly the case when the accused is represented by his own Counsel.

No omission to comply strictly with section 342 of the Code can render a conviction liable to be set aside, unless it has in fact occasioned a failure of justice (Section 537, Criminal Procedure Code).

In re Sangama Naicker(1) and *Dwarkanath Varma v. The King-Emperor*(2) distinguished.

TRIAL referred by the Court of Sessions of the South Arcot Division for confirmation of the sentence of death passed upon the said prisoner in Case No. 34 of the Calendar for 1939 on 9th October 1939.

Nugent Grant for *K. S. Jayarama Ayyar* and *G. Gopalaswami* for accused.

Public Prosecutor (V. L. Ethiraj) for the Crown.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by BURN J.—The accused, Annamalai Mudali, has been convicted of murder by the learned Sessions Judge of South Arcot, and has been sentenced to death. The case against him was that he murdered his wife Dhanabagiam on 12th February 1939.

With the exception of an extra-judicial confession which the accused is said to have made to his father-in-law's brother (P.W. 20) the evidence against the accused was entirely circumstantial. The body of Dhanabagiam (wife of the accused) was found on the morning of 13th February in a field within the

ANNAMALAI
In re.

BURN J.

(1) (1936) I.L.R. 59 Mad. 622.

(2) (1933) 64 M.L.J. 466 (P.C.).

ANNAMALAI,
In re.
 ———
 BURN J.

limits of the village of Eriyur in Kallakurichi Taluk. It was about one mile from the railway station of Pukkirivari on the Salem-Vridhachalam line. Information was given at first to the village munsif of Ulagianallur who was dead before the trial took place. He apparently discovered that the corpse was not lying within the limits of the village, and therefore he sent a yadast (Exhibit F) to P.W. 19 the village munsif of Eriyur. P.W. 19 received Exhibit F at about 2-30 p.m. and sent reports Exhibits G and G-1 to the police at Varanjaram and the Sub-Magistrate of Kallakurichi. The Inspector of Police (P.W. 22) heard of this case when he went to the police station at Varanjaram at 8 p.m. The Inspector went to Kallakurichi the same night and next morning proceeded partly by road and partly by rail to Pukkiravari taking with him the Assistant Surgeon from the hospital at Kallakurichi and also a photographer. The Inspector reached Pukkiravari at 9-45 and proceeded on foot to the place where the body lay one mile south of the railway station. He held an inquest during the forenoon and it was concluded by 2 p.m. The body was photographed, and then the Assistant Surgeon made the post mortem examination. This disclosed that the woman had been strangled to death. There is no dispute about the manner of her death, and the case is clearly one of murder.

At the inquest it was not known who the deceased was. Enquiries were set on foot and the accused was arrested at Sattanur at 2-30 a.m. on 18th February. After he had been arrested he made a statement to the police and produced from the house of one Periaswami Mudali, where he was staying, three jewels (M.O's 1, 2 and 4) which according to the prosecution belonged to the deceased Dhanabagiam

and which she was wearing when she was last seen alive.

ANNAMALAI,
In re.
— —
BURN J.

A large number of witnesses were examined to prove that the accused was with his wife on the 12th February from about morning meal time until shortly before sunset. P.W. 4 who was a farm servant in the house of the father of the accused at Naduvalur, said that on the morning of 12th February the accused took his wife away from his father's house. Naduvalur is to the south of the Salem-Vridhachalam railway line and according to the prosecution the accused took his wife to Kattukottai the nearest railway station. He was seen at the station at 1 p.m. on 12th February in company with a woman. The station master (P.W. 5) said that the accused bought two tickets for himself and the woman from Kattukottai to Pukkiravari, and got into the 2-30 p.m. train with the woman. That he got into the train was spoken to by three other witnesses, P.Ws. 6, 7 and 8, and they also said that at Pukkiravari the accused and the woman alighted. This was the evidence also of the station master of Pukkiravari (P.W. 9) and the pointsman (P.W.10). P.W. 11 is a man who keeps a little shop for light refreshments just outside the railway station at Pukkiravari. He said that on the afternoon of 12th February the accused and a woman passed near his shop, and that the woman sat down under a tamarind tree quite close to his house while the accused went into the toddy shop also close by. P.W. 12 was a witness who said that he saw the accused in the toddy shop. Finally P.W. 13, a man of Ulagaiyanallur, said that at about two nalgais before sunset he saw the accused and a woman sitting close to each other very near to the place where the body of Dhanabagiam was found

ANNAMALAI,
In re.
 ———
 BURN J.

strangled next morning. The evidence of P.Ws. 9, 10, 11 and 13 is important because they were all examined at the inquest on 14th February. They saw the body of Dhanabagiam and they say that that was the body of the woman with whom they had seen the accused on the afternoon of the 12th.

Finally there was the evidence of P.W. 20, a brother of Dhanabagiam's father. He said that on Friday, 17th February, when he met the accused at 11 a.m. the accused made a statement as follows:—

“I got on the train with her at Kattukottai on Sunday. We got down at Pukkiravari. I took her beyond the river and told her to go to her aunt's house at Ammanathur, which is half a mile from Olagainallur. I went back on Wednesday. There was a crowd there and a corpse. I got afraid and ran away. On Wednesday night I came to Mangalur. On Thursday morning with a companion I went to Ariyalur and caught a bus and went to Athur. I took a bullock cart that night at Athur and have now come here to Sathanur.”

P.W. 20 then says that he confronted the accused with some information which he had received from his own sister, and accused him of having murdered his wife, and he says the accused then confessed in these words:

“It is true. I did it. If you are going to inform the police, I and my son will go now and die.”

P.W. 20 says that he was moved by this appeal and this threat, and that he said that he would not give information to the authorities about the murder. Later on he alleges that he did go to the police lines at Perambalur and told a constable about it, but the constable directed him to make a complaint at the Chinnasalem police station. Curiously enough the Inspector of Police says that he did not attempt to check this statement of P.W. 20. P.W. 20 however addressed a letter to the police at Chinnasalem which he says is Exhibit K. Exhibit K-1 is the

envelope in which it was sent. He says he posted this letter on the morning of the eighteenth in the railway train at Ariyalur. His statement appears to be to some extent confirmed by the fact that the postal cover bears a stamp indicating that it was held back because late fee had not been paid.

All this evidence has been criticised on behalf of the appellant, but after carefully examining it we find ourselves in agreement with the assessors and the learned Sessions Judge that it must be accepted. The story of P.W. 4 was confirmed by an item of circumstantial evidence. He said that when the accused took his wife away from his mother's house the mother of the accused told him (P.W. 4) to run after them with their child aged 4, and a bundle of sarees which Dhanabagiam has left behind. P.W. 4 says that he did so and caught up with the accused and his wife and gave them the mother's message. Thereupon he says that Dhanabagiam told her husband to tear up and burn these old clothes, and the accused accordingly set fire to the clothes with a match and burnt them. He says that they also told him to take the little boy back and he did so. In confirmation of this story the Sub-Inspector of Athur (P.W. 18) says that P.W. 4 took him to the place where he said the cloths had been burnt, and the Sub-Inspector picked up there some ashes (M.O. 10) which are clearly the ashes of burnt clothing. The evidence of the witnesses who say that they saw the accused on the railway between Kattukottai and Pukkiravari and from the railway station at Pukkiravari to the place where the body was found, it was suggested, was not evidence that the Court could rely upon. The witnesses admitted that they had never seen the accused before, and the suggestion was that it would be very unsafe

ANNAMALAI,
In re.
BURN J.

in such circumstances to rely upon their identification of him. Reference was made to the case of *Adolf Beck**. It is however to be borne in mind that all these witnesses picked out the accused at identification parades held by the Sub-Magistrate at Kallakurichi on 19th February and subsequent dates. It has not been suggested that any of them has any motive to give false evidence against the accused.

Mr. Nugent Grant in criticising the evidence of P.W. 4 laid special stress upon that part of his evidence in which he describes the jewels of the deceased woman. The witness said :

“The sari in Court (M.O. 8) is the one which Dhana-bagiam was wearing when she left home. She wore gold bangles on her hand (M.O. 4), silver bangles on her feet (M.O. 3), an addigai or saradu (M.O. 2). These are the jewels now in Court. I did not notice M.O. 1 the ruby ear ornaments nor the nose screw (M.O. 5).”

From the difference in tense which the learned Judge has used in referring to wearing of the saree and the wearing of the jewels, learned Counsel wishes us to say that this boy was not testifying that Dhana-bagiam on the morning of the 12th February was wearing the gold bangles (M.O. 4) or the saradu (M.O. 2) which her husband produced from Periaswami Mudali's cow shed on 18th February. We do not think there is any justification for this distinction. We think the boy in his reference to the jewels was referring as far as he could remember to the jewels which she was wearing at that time. P.Ws. 9, 10, 11 and 13 were examined, as already mentioned at the inquest ; P.Ws. 6, 7 and 8 were examined by the Inspector on 15th February and P.Ws. 7 and 8 identified the accused on 19th February the day after he

* Notable British Trials Series : Trial of Adolf Beck, Edited by Eric R. Watson.

had been arrested. If this evidence of identification stood alone, it might be difficult to rely upon it but it does not stand alone. Taken in conjunction with the other evidence we think that it is reliable evidence.

Learned Counsel for the accused is not able to contend that if this evidence is accepted as true the conviction of the accused is wrong. There was some evidence with regard to motive but we do not think it necessary to discuss it any further than to say that Dhanabagiam was not looked upon with favour by the accused's mother, and that her presence in the family as his wife was inconvenient. That, we think, is clearly established, to say the least. But evidence regarding the motive is not important. When it is shown that the accused took his wife away from his home on the morning of 12th February, that he took her by train from Kattukottai to Pukkiravari and afterwards was seen with her near the time of sunset on the 12th at the place where her strangled body was found next morning, when it is proved that the accused on being questioned about his dead wife's jewels produced M.Os. 1, 2 and 4, which Dhanabagiam was wearing according to the evidence of P.W. 4 when she left Naduvalur with the accused, the only possible inference that can be drawn is that the accused is responsible for the murder of his wife.

Learned Counsel had addressed to us a legal argument suggesting that the case must be sent back for re-trial. Learned Counsel points out that practically the whole of the evidence is circumstantial and that the learned Sessions Judge did not explicitly put to the accused, when questioning him under section 342, Criminal Procedure Code, all the items of evidence leading up to the inference that he murdered his wife, and did not ask him to explain them. Learned

ANNAMALAI,
In re.
—
BURN J.

ANNAMALAI,
In re.
—
BURN J.

Counsel has drawn our attention to the case of *In re Sangama Naicker*(1) and the Privy Council case of *Dwarkanath Varma v. The King Emperor*(2). In the case in *In re Sangama Naicker*(1) reference was made to three other cases in which re-trial was ordered because the Sessions Judge had not put to the accused under section 342, Criminal Procedure Code, the items of the circumstantial evidence from which he had drawn the inference that the accused was guilty of murder. We think it is necessary to say that their Lordships of the Privy Council in the case of *Dwarkanath Varma v. The King Emperor*(2) were dealing with very exceptional facts. The passage in the judgment of Lord ATKIN in which section 342, Criminal Procedure Code, is referred to is as follows :—

“The learned Chief Justice told the jury that the absence of blood in the body cavity was a vital point. If so, it is plain that under section 342 of the Code it was the duty of the examining Judge to call the accused’s attention to this point and ask for an explanation.”

There was no reference in the statement of the accused to the absence of blood in the abdominal cavity and Lord ATKIN was pointing out that section 342 of the Code ought to be observed not only in the letter but also in the spirit. It is clearly very unfair to draw an inference of guilt from a fact which an accused person has not had an opportunity of explaining. There is however nothing in the judgment of their Lordships of the Privy Council to indicate that every failure to comply strictly with the letter of section 342 renders the conviction of an accused person illegal. Section 537, Criminal Procedure Code, has a bearing upon this point. No omission to comply strictly with section 342 can render a conviction

(1) (1936) I.L.R. 59 Mad. 622.

(2) (1933) 64 M.L.J. 466 (P.C.).

liable to be set aside, unless it has in fact occasioned a failure of justice. In the present case learned Counsel for the appellant has not attempted to suggest that the omission of the learned Sessions Judge to put every point to the accused in the form of questions has led, in this case, to a failure of justice. He has not for instance suggested that the accused, if he had been questioned specifically on every point, would have been able to offer a satisfactory explanation, and the reason why learned Counsel has not been able to make any suggestion of this kind is found in the statements made by the accused in answer to questions put to him by the learned Sessions Judge. In the Magistrate's Court he was simply asked the question "You now heard it said that you murdered your wife Dhanabagiam. What do you say?" and his reply was "I have not committed any crime." When asked by the learned Sessions Judge "Have you anything further to say?", he replied with a very long and detailed statement in which he denied the facts alleged on behalf of the prosecution that were supposed to show his motive for murdering Dhanabagiam. With regard to the jewels he said that when the police asked him for his wife's jewels, he thought that they were referring to jewels belonging to a second wife from whom he had been divorced. He went on to say:

"Kolandavelu (P.W. 20) is enjoying my father-in-law's property. I asked him for a share on behalf of my wife. Hence his enmity to me. I did not meet him, nor did he come to Sathanur. I did not tell him anything."

He continued:

"I did not see Doraswami Padayachi (P.W. 4). On my father's instigation he is giving evidence against me. I was in Sathanur on Sunday. I did not come here. I did not burn the saree".

The learned Sessions Judge then questioned him about Exhibit J, a letter which he had written to

ANNAMALAI,
In re.
—
BURN J.

P.W. 20 and which the learned Judge thought indicated that he was displeased with or had some grievance against his wife. He answered that by saying that he had no dissatisfaction with his wife. The learned Judge then questioned him about the jewels of his first wife (M.Os. 1, 2 and 4) and he again said :

“ I thought that they were referring to my second wife’s jewels, and informed them it was with Periaswami Mudali. I did not produce it myself. Periaswami Mudali produced it.”

And finally, when the learned Judge asked him “ Do you want to say anything more ? ” the accused said :

“ The witnesses had opportunities of observing me at Kallakurichi jail. My younger brother resembles me much. Possibly they saw him and are mistaking me for him.”

It is clear therefore that either in answer to the general question put by the learned Judge, or in answer to specific questions, the accused has dealt in his statement with all the points appearing in evidence against him and has offered such explanation as he had to offer. This case therefore has no resemblance to the case of *Dwaraknath Varma v. The King-Emperor*(1) or the case reported as *In re Sangama Naicker*(2) (the record in which we have examined and which reveals that the accused gave no explanation of the circumstances hostile to them, nor were given an opportunity to do so), or the other cases mentioned in that judgment. In the case reported as *In re Sangama Naicker*(2) and in all the cases referred to in that judgment, it was particularly noticed that the facts unexplained by the accused were *vital* facts, i.e., facts from which an inference of guilt almost necessarily followed. We think it is clear that when an accused person in answer to a

(1) (1933) 64 M.L.J. 466 (P.C.).

(2) (1936) I.L.R. 59 Mad. 622.

general question or even one or two questions gives a reply or replies which show that he is well aware of all the circumstances appearing in evidence against him and their implications, and attempts to explain them, the Sessions Judge may be going beyond his province if he questions him further in detail. He may be open to the criticism of cross-examining the accused and attempting to elicit contradictory answers. This is more particularly the case when the accused is represented by his own Counsel; and in this case the accused was represented by two experienced Advocates. It is not possible to lay down a more general rule than that it is the duty of the Court to be satisfied either by his statements or by his answers to questions or by both, that the accused explains or has an opportunity to explain circumstances from which hostile inferences may be drawn against him. We can find no ground whatever for sending back this case for a re-trial. There was no defect of any kind in the proceedings before the learned Sessions Judge.

Agreeing with the assessors and the learned Judge we confirm the conviction of the accused for the murder of his wife. There is no question of the appropriateness of the sentence. We confirm the sentence of death also.

V.V.C.

ANNAMALAI
In re.
BURN J.