Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of Vaithinatha Pillai v. *The King-Emperor, from the High Court of Judicature at Madras (Privy Council Appeal No.* 18 *of* 1913); *delivered the 24th July* 1913.

PRESENT AT THE HEARING:

LORD ATKINSON.

LORD PARKER OF WADDINGTON.

SIR SAMUEL GRIFFITH.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD ATKINSON.]

The Appellant in this case was, by the Additional Sessions Judge of Tanjore, convicted on the 1st of April 1912 of the abetment of the murder of his daughter-in-law named Dhanam, wife of his son Aiyasami, and was sentenced to death. By two orders of the High Court of Judicature at Madras, dated respectively the 19th of June and 5th of August 1912, this conviction and sentence was confirmed. The two Judges of the High Court before whom the conviction came for confirmation, namely, Bakewell and Sadasiva Aiyar, JJ., differed in opinion. The case was then, under the 378th section of the Code of Criminal Procedure, referred to a third Judge, Sankaran Nair, J., and these orders are practically the orders of Bakewell, J., and the last-named Judge. This

Appeal has been taken from these latter orders. In the view which their Lordships take of the case it will be quite unnecessary to deal with many of the topics discussed at great length both in the Court of the Sessions Judge and the High Court. For instance, many witnesses were examined to prove that the Appellant had some motive to procure the murder of his daughter-in-law which, however inadequate to tempt ordinary human beings to commit such a crime, was quite sufficient to tempt a person such as the Appellant, with his views, opinions and passions, to commit it. The motive suggested was in the main this, that the son was greatly under the influence of his wife, the stronger character of the two, and was by her instigated to insist on her husband's right to the partition of certain lands between the members of the family, on the ground that they were the property of a joint Hindu family, while the Appellant insisted that he had himself acquired them.

A minor and subsidiary motive was also suggested, which consisted in this, that the father gave an asylum in his house to a daughter named Thanga Babu—a child widow as she was styled, that is, a girl who had married when she was only ten years old and lost her husband by death before they had ever lived together as man and wife. Unfortunately this woman had lapsed, or was alleged to have lapsed, from virtue, and the deceased woman, considering apparently that the reputation of the family would be compromised by the presence of the erring one in her father's home, refused to live there unless the sinner was compelled to leave. In order to satisfy these scruples the Appellant had sent this woman away, but permitted her to return to him. It was proved that this action caused, as was but natural, feelings

of hostility and illwill to be entertained towards the deceased by Thanga Babu. Both the Sessions Judge and the Judges of the High Court appear to have thought that these facts might well have furnished the Appellant with a motive not only strong enough to lead him to procure the murder of his daughter-in-law, but of such overmastering force as to embolden him to run the risk of killing her in the open reckless manner suggested in the case, in the presence, and with the aid, of four or five accessories, in whose power he would thus absolutely put himself. These learned Judges, it was urged, are well acquainted with, and are the best judges of, the habits, opinions, and feelings of the race and class to which the Appellant and his family belong, as well as of those in the midst of whom they lived. However this may be, their Lordships think it safer, on the whole, to accept, for the purposes of this Appeal, the conclusion at which they have arrived on this point. If, however, motive impels so irresistibly persons such as these to the commission of serious crime, it is difficult to see why the enmity existing between Thanga Babu and the deceased, caused as it was, might not also have moved this insulted woman to procure, or aid in, the removal of her enemy by foul means. But however these things may be, and however strong and convincing the evidence of an adequate motive may be, that evidence can never counteract the harm done by the reception of inadmissible evidence, or the injustice its use may lead to, nor by itself supply the want of all reliable evidence, direct or circumstantial, of the commission of the crime with which an accused person may be charged.

Their Lordships desire to abstain, as far as possible, from expressing any opinion upon either

the guilt or innocence of any of the persons who have been accused of aiding in this murder, or upon the credibility of any witness who was not a witness against the Appellant. Their task is to determine whether in the prosecution of the Appellant—to use the words of Lord Watson when delivering the Judgment of this Board in Dillet's Case, 12 A.C. 459, "by some dis-" regard of the forms of legal process, or by " some violation of the principles of natural " justice or otherwise, some substantial and " grave injustice has been done." If they come to the conclusion that injustice of that kind has been done, then whatever doubts they may have of the Appellant's innocence, or whatever suspicions they may entertain of his guilt, or however great may be their reluctance to interfere with, or overrule the decisions of the Indian Courts in criminal matters, they think they are bound humbly to advise His Majesty that the conviction should not be allowed to stand.

Their Lordships have come to the conclusion that injustice of the kind mentioned has in this case been done, mainly owing to this, that a vast body of wholly inadmissible evidence, hearsay and other, has been admitted; that when admitted it has been used to the grave prejudice of the accused; and that at the end of the hearing before the Judge of First Instance there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. The fact that their Lordships found their Judgment on these points relieves them from the necessity of examining in detail any portions of the voluminous evidence not directly bearing upon them.

The Appellant is a wealthy and apparently respectable landholder of good position, living at the village of Pandi, in the Tanjore District of Madras. Aiyasami is the son of his third

wife. He was brought up by his paternal uncle, one Sami Thevan, a village Munsif, and was at the time of the trial about 25 or 26 years of age. He is described by the Sessions Judge as dull and weak-minded, and an effort was made to show that from his temperament and character, as well as from some past exhibitions of unprovoked and unreasoning violence, he was a man likely to have an attack of homicidal mania. His wife, the deceased woman, was also a member of a respectable family. She was apparently a resolute and clever woman, about 22 years of age, and had acquired considerable ascendancy over her husband. There were two children of the marriage, both alive, and aged respectively about four and one and a half years. For six or seven years previous to the year 1911 he and she had been living with her relatives in a village in the neighbourhood of Pondi. The father and the son were upon bad terms. At length, by the intervention of friends, a reconciliation was to some extent effected, and Aiyasami, his wife, and two children went on the 13th of September 1911 to reside in the Appellant's house, to see, it was stated, whether they would get on together; one of the terms, however, insisted upon by them was that Tanga Babu should not be permitted to reside in her father's house. It is not disputed that Aiyasami and his wife retired together to rest on the night of the 22nd of October in their father's house, and that she was, during the night and before dawn, murdered with the most brutal and savage ferocity. Thirteen wounds were found to have been inflicted upon her body, all upon the left side, some few slight, but most of them very severe, and many such as could only have been inflicted with some sharp instrument used with very great force. For instance,

wound No. 2 was an incised wound an inch long, half an inch wide, and half an inch deep over the left temple. Another, No. 3, a quarter of an inch long, one-eighth inch wide, one-eighth deep just behind the left ear, the lobe of the ear being cut off. No. 4, a cut three inches long, half an inch wide, and half an inch deep on the up part of the neck on the left side, dividing the local blood-vessels in its course. No. 6, a transverse cut three inches long and half an inch wide, extending down to the bone on the left side of the lower jaw, and five or six other wounds of almost equal severity. Such a wound as No. 4 would, according to the evidence of Colonel Hasell Wright, an Army medical officer, examined as a witness, have probably rendered the woman unconscious and unable to talk or walk, as also probably would have wound No. 9. Wound No. 1 would, he thought, probably have stunned her if caused by the weapon called an aruval, or bill hook then shown to him, and the fact that the wounds were all transverse would point, in his opinion, to their having been inflicted by one man in the light, not by two men in the dark, while the absence of wounds on the hands of the deceased would indicate that the woman was murdered in her sleep rather than while struggling to protect herself.

On the 23rd of October 1911, the day after the murder, an inquest was held upon her body and a verdict returned by the jury that Aiyasami Pillai, her husband, had murdered her with a blood-stained aruval then produced to them. This weapon had been found in the place where the deceased woman had slept, had been taken possession of by the police, and was produced at the inquest. On the 22nd of November 1911, Aiyasami Pillai was brought before the Second Class Magistrate at Tiru-

turaipandi in the Tanjore district, charged with the murder of his wife, with the view apparently of his being returned for trial for the crime. The depositions of several witnesses, including that of an old woman, Mutachi, his grandmother, then an inmate of the house, were taken. She deposed that during the night she heard a noise like a thud, got up, went to where Aiyasami was sleeping, found him sitting on a cot on the right side of the bed and cutting his wife with an aruval; that she said to him "Boy, what do you cut?" and cried out, "He has killed, he has killed," that the baby then sleeping in the cot woke up, and that there was blood but no wounds upon it. The magistrate, instead of returning the accused for trial, stated he disbelieved the evidence against him, admitted him to bail, and next day, the 28th, discharged him from custody. In delivering judgment he said, "The defence theory is not "completely before me. It goes to show that "the deceased was obnoxious to the accused "Tanga Babu, and she, Thanga Babu, decoyed "her into the cattle shed, or back yard, and "gave her into the hands of the accused's "father and satellites, who brutally killed her, "and laid her out in her bed and forcibly "put a bloody cloth on the accused and "accused him of murder." According to the defence the murder took place about midnight. The Magistrate wound up by saying that "All "these circumstances point the suspicion "against the accused's father, step-sister, step-"brother Kalyanam, the servant Kathiresan, "and others. This will be further investi-"gated." Aiyasami was the only person who "had been charged. There is no proof that the defence to which the Magistrate refers as put forward on his behalf was not put forward at

his instigation or with his concurrence. It differs in every particular from the account subsequently deposed to by him. This Magistrate had no doubt jurisdiction to take the course he actually took, but the discharge is not an acquittal. Aiyasami might have been tried again; he, to use the words of the Sessional Judge, "was not safe," at the time of the subsequent trial, and one of the results of his discharge under the circumstances was necessarily this, that he was subjected up to and during the trial to a tremendous temptation to endeavour to put the halter round his father's neck in order to save his own. That circumstance can never be lost sight of in estimating the value to be attached to the evidence he subsequently gave.

On 27th November, the day previous to the delivery of this pronouncement, this same Magistrate had ordered the arrest of Tanga Babu, Kathiresan, the Appellant's servant, and Kalyanam, his son.

On the 2nd of December the Appellant's wife, Kanthimati Achi, and Avani Konan were also arrested. Ultimately every inmate of the Appellant's house was arrested, with the consequence that their mouths were closed, since, though accused persons may make a statement, and the Judge or Magistrate may put questions to them, they cannot be examined as witnesses on their own behalf. On the 27th October the Second Class Magistrate of Tituraipandi took from Aiyasami a statement, not on oath, which was ultimately put in evidence by the prosecuting counsel at the trial in corroboration, it was said, of the former's evidence, although it is in many respects inconsistent with it. It is printed at page 115 of the Record. In it he states that he, his son (the baby), and his wife,

the deceased, had gone to bed, that his wife lay with her head northwards, the child in the middle, and he on the eastern side; that Kanthimati Achi, the wife of the accused, Thanga Babu, his sister, and Kalyanam, his brother, were pressing down his wife; that his father, the Appellant, cut her with one stroke; that he went near his father and said "Don't cut, leave off," and that the blood spurted on a red cloth he was wearing at the time, and stained it; that his father and brother Kalyanam said: "You catch hold of that fellow, and keep him," that thereupon the two servants Kathiresan and Avani, and one Somu, the son of an employé or agent of the Appellant, caught hold of him and kept him; that ten or fifteen minutes after he was caught hold of and thus kept, they all came out to where he was; that while he was kept under restraint the noise continued to be heard, and that at dawn he went and saw that other cuts had been inflicted on his wife. This, having regard to what followed, is in many respects a most important statement. First, it was proved in the case and was admitted in argument before their Lordships that the statement that at the time his wife was murdered he was wearing this red loincloth was untrue. It was proved to be his cloth, but it was also proved that the cloth he wore the night his wife was murdered was a white cloth. Secondly, he does not state that a man Thiagan was present on the occasion of the murder or took any part in the proceedings. Thirdly, he made no suggestion that his wife was removed from the room where she lay before she was killed. On the contrary, the fair meaning of his words would rather appear to be that she was murdered where she lay. Well, on the 6th of December 1911, this

Thiagan was arrested by, as appears from exhibit "G," p. 143, Detective-Inspector D. S. Krishnasami Ayar, and next day brought before this same Magistrate. He was kept in custody, and on the 28th of that month the Magistrate writes to his superior officer I. T. Gillespie, exhibit 23, p. 170, to announce that Thiagan had made a full confession implicating the Appellant and the other prisoners, corroborating the evidence given by Saminatha Pillai in the previous enquiry, and implicating the informant himself. On the 14th of December following a statement was taken from this man by V. S. Narayam Row, a Second Class Magistrate, and he was subsequently, on the 18th of March 1912, examined as a witness at the trial. The story told in the confession is strange and revolting. He brings upon the scene his brother Somu as well as himself, all or almost all of the inmates of the Appellant's household, and two unnamed strangers unknown to him. He represents that he himself, his brother Somu, Kathiresan, and Avani, the two servants, by the orders of the Appellant took away Aiyasami to a second compartment and tied him there, Avani being left in charge with directions, given by the Appellant, to hack him if he talked. That Somu, Kathiresan, and himself then returned to where deceased was, that the Appellant's wife Kanthemati pressed down the shoulders of the deceased, that Kalyanam, the son, closed her mouth, that by the Appellant's directions Kalyanam and Kathiresan lifted the woman by the head side, he and Somu by the feet, and, conducted by the Appellant, and followed, with a light, by Thanga Babu, carried her into the cow-shed, and laid her down at the foot of an orange tree; that the two unknown men were standing there; that the

Appellant then said to these men "Do your business," that thereupon one of them, coming to the right side, cut the deceased between the ear and the right shoulder with an aruval, that the Appellant then addressed these nameless men, saying, "You men despatch the business soon," and thereupon the men proceeded to hack the deceased to death, that subsequently the Appellant said to him, "There is a dyed " cloth; take it. Aiyasami is now wearing on " his waist a white cloth; take it off and dress " him with this dyed cloth," and that he, Thiagan, subsequently did so. This last statement, it will be observed, is in direct contradiction to the statement made by Aiyasami on the 27th of October, already referred to, who, when asked to explain how bloodstains had got on the red dyed loincloth taken from him, replied that when his father (the Appellant) cut the deceased with one stroke her blood spurted out upon it.

This man was on the 18th of March examined as a witness. He stated he did not see the Appellant the night of the murder, that he did not go to his house that night, that Mutachi had told him Aiyasami had cut his wife, and that he did not see anyone cutting her. He was thereupon, by the permission of the Court, cross-examined by the Public Prosecutor.

The cross-examination ran as follows:—

(By permission of Court, cross-examined by Public Prosecutor).

Q. Were you examined by the Nidamangalam sub-magistrate?

A. Yes.

Q. Did he record what you said?

A. I deposed before him as I was tutored by the police.

Q. Did you tell him that?

A. I was asked by the police not to say so.

Q. Did you tell the magistrate the truth?

A. I told him what the police told me.

Q. Was it the truth?

A. The only truth is what I have said Muthachi told.

Q. Did you tell the sub-magistrate what Muthachi told you?

A. I did not, as I was asked by the police not to say so.

Q. Everything that you told the sub-magistrate was false?

A. I told him what I was asked to say. I was asked to speak falsely and I spoke falsely.

These being his replies, his confession (Exhibit "O") was read over and filed as evidence. Next day, on being brought into Court, still in custody, he volunteered that on the day before, when he saw the Court and people, he was afraid, and that he now wished to speak the truth. But he was never asked, either by the Court or Counsel on either side, to name the officer or officers of the police who asked him to give false evidence. The officer who arrested him was not produced, nor was any witness produced by whose cross-examination the defence would have had an opportunity of ascertaining at whose instance he was arrested, or how this confession came to be made, or what inducements, if any, were held out to him to make it. Everything connected with it was, as far as the Appellant was concerned, done in the dark. And Sir Robert Finlay, who opened this Appeal, complained bitterly, and, in their Lordships' view, not without reason, of the great injustice done to the accused by the adoption of such a course of procedure. The Sessions Judge most naturally and rightly came to the conclusion (p. 188) that it would be unsafe to accept any portion of the approver's story without inde-

pendent corroboration. Mr. Justice Bakewell thought that no reliance could be placed upon it. And the third learned Judge who heard the case said (p. 233) that the informer's evidence was not relied upon before him. Sir Erle Richards, quite rightly, in their Lordships' view, early in the argument, stated he did not intend to rely upon it. This evidence may therefore be taken as struck out of the Record, but though struck out, it leaves its taint behind it, and reflects back upon the evidence of Aiyasami, the only other witness who gives direct testimony as to the commission of the crime by the Appellant, for this, amongst other reasons, that on the 18th of January 1912, three weeks after the informer's confession had been taken, Aiyasami had himself made a deposition, evidently designed and intended to corroborate the informer's story. In it he brings upon the scene the informer, whom before that he had never mentioned as having been present.

The statement that the informer had tied the red cloth round him after all was over conforms with latter's story though it is in conflict with his own previous account, and the further statement that he had been tied to a pillar, never made before, was obviously introduced for the same purpose. The stories told by both these men are thus designedly made to harmonize and fit into each other. When one story is rejected as incredible the reliability of the other is necessarily affected. He (Aiyasami) was examined as a witness at the trial on the 21st March 1912. He then stated that his statement given to the Magistrate G. S. Vaikhinathar Ayar on the 27th of October 1911 was not true; that the Inspector Krishna Ayar "troubled" him to make it, that he saw this inspector in the gaol seven or eight times before he made it. In

cross-examination he said that he told the magistrate he lay with his head to the North, because the sub-inspector told him to say so; that the sub-inspector said it would be a good thing for him to say that, but that he did not mention why, that it was not true that he was lying on the east side of his wife. He further said it was false that his father cut his wife with one stroke, that the inspector told him to say so, that he told the sub-magistrate that he had omitted the name of the informer in his statement made on the 27th of October 1911 (Exhibit S.) because the sub-inspector had asked him to do so, that he had told the magistrate that the sub-inspector had told him to suppress Thiagan's name, but did not ask him to suppress Somu's name. He further stated that it was the sub-inspector who told him to say that he saw his father cut his wife, and also to say that the murder was on the cot in the room. He admitted that he had denied to the sub-magistrate the statement that the sub-inspector had told him to mention the name of the person who killed his wife, but that he did this at the dictation of the sub-inspector. Several charges of less importance were made by the witness against this sub-inspector and this sub-magistrate. These latter were examined as witnesses and denied them all. If true they show that these officials or at least the sub-inspector induced the witness to forswear himself, and found in him a pliant instrument ready to give false evidence upon oath to secure the conviction of his own father, and, if false, they show that the witness was ready to commit, and did commit deliberate perjury whenever he was confronted with the inconsistencies in his former statements.

There is no alternative. Forgetfulness is, their Lordships think, out of the question, and no confusion produced by the most skilful cross-examination can account for statements which must either be the witness's own inventions, or the inventions of others repeated by him with knowledge of their character. In either event their Lordships are clearly of opinion that this witness's evidence is wholly unreliable, and should be disregarded as completely as that of the informer.

The learned Sessions Judge appears himself to have taken a similar view of this man's evidence, at least to a large extent. When referring to it, at page 188, he said:—"But though I do "not wish to apply a meticulous standard to "his evidence, I do not think it will bear the "test of examination." And so fully does he appear to have been convinced of this that he acquitted and ordered to be discharged three of the persons whom Aiyasami had expressly charged with being active aiders and abettors in the murder.

Sir Erle Richards urged upon their Lordships the danger of disturbing the verdicts of judges in criminal courts in India, who, having seen and heard the witnesses, had believed them, and founded their decision upon their testimony. Their Lordships are fully alive to those considerations. But this is emphatically not a case of that character. It is precisely the reverse of that. Here the judge who heard and saw the witness did not think his evidence so reliable that he could act upon it alone.

If he had thought it reliable he could not have ordered the discharge of the three prisoners implicated by it. His statement is very explicit (page 200): "I do not think that there is "sufficient evidence to establish beyond doubt "how or where the murder was actually com-

" mitted, or that either Kathiresan or Avani
" or Thanga Babu assisted in it, though it is
" highly probable that the former were amongst
" the agents employed by the first accused. I
" therefore acquit them and discharge them."

The learned Sessions Judge based his conviction of the Appellant on five specific findings, as he styles them. These are all stated by him at bottom of page 199, and top of page 200 of the Record, and are as follows: 1. That the murder must have been committed by some of the inmates of the Appellant's house that night. 2. That the clothes, *i.e.*, the two loin cloths which were spotted with blood, afforded conclusive proof that more than one man assisted in the murder. 3. That the account given by the Appellant and his mother-in-law (*i.e.*, Mutachi) were demonstrably inconsistent with facts. 4. That the Appellant's conduct after the murder indicated a guilty conscience. 5. That he was the only one of the inmates of the house who is proved to have had any motive to murder Dhanam.

Their Lordships do not think that this last conclusion necessarily follows from the evidence. As to the first, if the learned Sessions Judge had said that the murder must have been com mitted either by or with the connivance or assistance of some of the inmates of the Appellant's house, their Lordships would be inclined to concur with him. The second finding is, they think, a *non-sequitur*. It assumes that the two cloths, both of which belonged to Aiyasami, could not have been worn by him at two different stages in this outrage, and must at the time of the murder have been worn by two different men. But Aiyasami never said so; on the contrary he first stated he had worn the red one at the time of the murder, and

that his wife's blood spurted on to it when his father cut her with one stroke. Then he swore that he wore the white cloth on that night, and that the red one was put on him by the approver by his father's directions. This theory is in direct variance with every one of Aiyasami's statements. If the cloth not worn at the time the murder was committed was in the compartment where the deceased and her husband slept it may well have got her blood upon it, much of which must have been shed. If he changed his clothes after the murder the second might well have got stained in this room. There is no evidence where the clothes not in use were kept. If in the room where the murder was committed they might well have been stained with spots of blood as they have been found to be, and, besides, spots of blood might have got on one of them from other sources. Moreover the proof, as is usual in such cases, only established that the blood was mammalian blood.

As to the third finding their Lordships would quite concur with the Sessions Judge if it is to be assumed that the story told by the informer and Aiysiami is true, but they fail to find anything in these accounts to show they are demonstrably inconsistent with the facts on any other assumption. The fourth finding opens up a wide field. A large body of inadmissible evidence, hearsay and other, was admitted, some unimportant in bearing and effect, some very prejudicial to the accused. Statements made in the absence of all the accused, such as the conversation between Sami Tevan and Aiyasami, in which the latter was urged to say nothing about the murder and to compromise with his father, and statements made in the absence of some of the accused but in the presence of others

were lumped together and used, *in globo*, apparently, against all. But this finding is based in the main upon a piece of evidence which was utterly inadmissible, and which, when admitted, was pressed home by the prosecution against the accused with great effect, and, as is evident from the judgments, wrought the greatest injustice. It is this, messengers were sent not by the accused, but by a friend, to announce the death of the deceased to some friends and acquaintances of the family in another village. These messengers told some persons to whom they spoke that the deceased woman had died of Cholera. The rumour spread. The person who sent the messengers was sworn and examined. He denied that he had ever instructed them to make such a statement. Not a particle of evidence was adduced to show that the Appellant had himself instructed these messengers to make this statement, or directly or indirectly ever authorised anyone to make it for him or on his behalf or that he knew anything about it. Yet, without the foundation for admitting these statements ever having been laid, they were admitted in evidence, and because the bodies of persons who die of Cholera in India are almost immediately cremated to avoid the spread of infection, were relied upon by the prosecution and accepted by some of the judges who considered this case, as clear and convincing proofs of the Appellant's consciousness of guilt, and of his desire (in one instance it is styled an attempt) to destroy the evidence of his crime.

It appears to their Lordships that a grave and substantial injustice was done to the Appellant in admitting and thus using this piece of inadmissible evidence. The two other matters relied upon as proofs of the accused's guilty

conscience are first a conversation about the cremation of the remains, the ordinary way of disposing of the bodies of dead Hindus in India, which was perfectly innocent on its face, and may well have had reference to nothing more than the funeral which was to take place in due course. The rumour of the death by Cholera was permitted to reflect back, however, on this simple incident, and in the eyes of the Sessions Judge gave to it a guilty complexion. In their Lordships' view this piece of evidence gives no support whatever to the fourth finding. The other incident relied upon to support the finding is this: Sami Thevan, the village Munsif, who entertained no friendly feeling towards the Appellant, was sent for before 6 o'clock in the morning. He arrived at the Appellant's house about 6 a.m. He was shown the body of the deceased, saw Aiyasami and took a statement from the Appellant, and gave it to the police five or six days later, but the police were not communicated with for some hours, and did not arrive on the scene till about 11 o'clock. It was contended that the room in which the deceased slept had by that time been arranged, and the body of the deceased placed in a position it could not have occupied at the time of the murder. This may well be, but many people had access to the room as well as the Appellant.

There is no evidence that he himself did, or procured to be done to the body any of these things. The matter specially pressed against him is the tardiness of the communication with the police. Their Lordships think that in this case that is rather a negative circumstance. Whether the father himself committed the murder or the son committed it, eagerness to communicate with the police could not well be expected from him. The following passage from the judgment of the Sessions

Judge deserves attention. It runs thus (p. 200) : " On these findings (the five preceding) I convict " first accused (*i.e.*, the Appellant), Vaithinatha " Pillai, of abetment of murder punishable " under Section 302 read with either 109 or " 114 I.P.C. since he is said to be physically " incapable of having inflicted the injuries with " his own hand." Lieut.-Colonel Wright had deposed that wound No. 4 would probably have rendered the woman unconscious, that it might have been inflicted with a weapon such as the aruval shown to him, but that he had examined the Appellant, that he had a badly united fracture of the bone of the right fore-arm, and that his hand was more or less deformed, and that, considering the state of his right arm, he could not have inflicted this wound.

What their Lordships presume the learned Sessions Judge meant by this paragraph is this, that the Appellant did not himself inflict the blows, but of course if the case against him has any truth in it, he was a principal.

The facts so found by the Sessions Judge furnish in his view the corroboration of the evidence of Aiyasami which rendered it reliable as against his father, though unreliable against the other three persons accused. In their Lordships' view, the inferences which the Sessions Judge has drawn from the evidence and embodied in these findings cannot reasonably be drawn from it. They think that the evidence reasonably interpreted affords no corroboration at all of Aiyasami's story. The so-called circumstantial evidence in their opinion in no way strengthens the direct evidence, which, as already stated, cannot be relied upon, and for these with the other reasons already mentioned, they think that the conviction of the accused should not be allowed to stand. And they have humbly advised his Majesty accordingly.

In the Privy Council.

VAITHINATHA PILLAI

v.

THE KING-EMPEROR.

DELIVERED BY LORD ATKINSON.

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