

77, 1936

Appeal No. 30 of 1936.

**In the Privy Council.**

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**ON APPEAL**  
*FROM THE SUPREME COURT OF CEYLON.*

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BETWEEN

CHANDRASEKERA alias ALISANDIRI - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

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**Case for the Respondent.**

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RECORD.

10 1. This is an appeal by Special leave against the Judgment and Sentence of the Supreme Court of the Island of Ceylon delivered on the 1st May 1935. p. 42.

2. On the 29th and 30th April and the 1st May 1935 the Appellant was tried before Mr. Commissioner F. J. Soertsz K.C. and an English-speaking jury of seven persons at the Assize Court at Colombo for the murder on the 15th May 1934 of a woman named Salami Nadatchi at Galahitiyawa in the district of Chilaw. He was found guilty by the Jury by a majority verdict of six to one and was sentenced to death. p. 40.

20 3. The Appellant pleaded not guilty to the charge, and at the outset of the trial, the Jury having retired, it was submitted by his Counsel (1) that certain signs made by the deceased woman in answer to questions put to her should not be admitted in evidence as a dying declaration under Section 32 of the Ceylon Evidence Ordinance No. 14 of 1895, upon the ground that they could not be said to amount to a statement written or verbal in the terms of that Section, (2) that in any event the interpretation put upon such signs by the witnesses was inadmissible. p. 6.

RESPONDENTS' CASE.

## 4. Section 32 so far as is material is as follows :—

“ Statements, written or verbal, of relevant facts made by  
 “ a person who is dead . . . are themselves relevant facts in the  
 “ following cases :—

“ (1) When the statement is made by a person as to the  
 “ cause of his death, or as to any of the circumstances of the  
 “ transaction which resulted in his death, in cases in which  
 “ the cause of that person’s death comes into question. Such  
 “ statements are relevant whether the person who made them  
 “ was or was not, at the time when they were made, under 10  
 “ expectation of death, and whatever may be the nature of the  
 “ proceedings in which the cause of his death comes into  
 “ question.”

p. 6.

5. The learned Commissioner ruled on the authority of an Indian case cited to him *Queen-Empress v. Abdullah* I.L.R. 7 Allahabad 385, where the facts were similar to those in the present case, and where the wording of Section 32 of the Indian Evidence Act No. 1 of 1872, which is identical with that of Section 32 of the Ceylon Ordinance came up for consideration, that evidence as to the signs made in answer to questions put to the deceased woman was admissible, but that the statements of 20 witnesses as to what interpretation they put upon such signs was not admissible.

The learned Commissioner further held that it was for the Jury to decide what inference they should draw from the questions put and the signs made in response, if they decided to draw any inference at all.

p. 29, l. 1.

6. The evidence for the prosecution as recorded in the learned Commissioner’s note was that on the 15th May 1934 and for some time prior thereto, the deceased lived in a house on a plot of land at Galahitiyawa in the district of Chilaw. This plot of land adjoined an estate belonging to one S. W. Jayawardena, and the deceased’s house was about fifty yards 30 distant from a house, owned by one Collin Silva, which was then in the occupation of a watcher named Rengam Arumugam and his wife.

p. 19, l. 23.

p. 16, l. 34.

p. 18, l. 20.

p. 18, l. 18.

p. 19, l. 28.

The deceased who was a widow lived alone, and was comparatively well off. She was said to have money and jewellery in her possession, and was in the habit of wearing Indian ear-rings and other ornaments of gold.

p. 17, l. 4.

7. About 2 o’clock on the afternoon of the said 15th May Rengam Arumugam was told by the deceased that a man had been searching for the Kangani, and the deceased asked him to tell the Kangani if he met him. Arumugam searched for the Kangani but was unable to find him, and sometime, which must have been approximately between 4 and 5 40

p. 28, l. 3.

o'clock p.m. when he was returning to his house he was attracted by a cry from his wife and ran to the house where he found the deceased woman lying on the verandah with her face covered with blood so that he was unable to recognise her except by her dress. She was alive. On his asking her what had happened she was unable to reply but indicated by signs that her neck had been cut. p. 17, l. 10.

8. From the evidence of Dr. de Silva the Medical District Officer who saw her at the hospital, to which she was removed some hour and a half later, the injuries sustained by the deceased were of a very terrible nature. p. 6, l. 28.

10 They consisted of :—

(1) A jagged incised wound extending from the left side across the front to the right side of the neck to about  $\frac{1}{2}$  an inch from the middle line. The wound was 4 inches long externally and had severed the muscles on the sides of the neck and the entire larynx of the sound box and two rings of the trachea, exposing the base of the tongue and mouth cavity. p. 6, l. 31.

(2) An incised wound 1 inch long cutting the entire thickness of the right wing of the nose.

20 (3) An incised wound 1 inch long cutting the entire thickness of the right lower eyelid.

(4) An incised wound  $\frac{1}{2}$  an inch long scalp deep on the right side of the forehead.

(5) Two stab wounds severing the ears.

In the opinion of Dr. de Silva the injuries No. 1 could have been inflicted by a katty which was found in the deceased's house with bloodstains on it, though there was no evidence that the blood was human or even mammalian. The other injuries in his opinion could not have been caused by the katty but must have been caused by some sharp-edged instrument. p. 35, l. 24.  
p. 3, l. 3.  
p. 7, ll. 29 and 40.

30 The Deceased died in the hospital a few hours after admission her death being due to asphyxia which resulted from the injury to her throat. p. 50, l. 10.

9. After Arumugam had found the deceased on the verandah he went for assistance and eventually the police arrived.

They endeavoured to question the deceased as to who had injured her, but though she made signs they were unable to ascertain what she meant.

10. By this time a number of people had come on the scene, and after bandages had been applied and she had been propped up against a

car cushion which was placed against a wall she pointed to the said S. W. Jayawardena, who was present, and made signs. From these signs one L. M. Perera who was standing near her thought that perhaps she intended to refer to a former employee of the said S. W. Jayawardena and ask her if it was Alisandiri, a name by which the Appellant was known. To this according to the evidence of the said Perera and four other witnesses, Arumugam, Corea, Police Constable Hussim and Sub-Inspector Gunasekera she nodded her head. She then according to the evidence of L. M. Perera pointed at Police Constable Weerasinghe, who was standing close by, and patted her cheek with the palm of her hand. Upon this Perera said he asked if she was referring to Alisandiri who assaulted the constable, and again she nodded her head. S. W. Jayawardena's recollection differed from that of the other above-named witnesses, and it was in answer to the later question put by Perera that he said she distinctly nodded her head when Alisandiri's name was mentioned.

pp. 16, 23,  
30, 31.

p. 9, l. 46.

p. 29, l. 38.  
p. 29, l. 42.

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p. 29, ll. 3  
and 24.

11. It appeared from the evidence of both Mr. S. W. Jayawardena and Perera that the Appellant had at one time worked with Perera for Mr. S. W. Jayawardena, and that the deceased woman had spoken to him and knew his name.

p. 10, l. 26.  
p. 36, l. 29.  
p. 33, l. 19.

Further it was proved in evidence that on the 1 February 1933 the Appellant had in fact slapped Police Constable Weerasinghe, and had been convicted of the assault.

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p. 9, l. 45.

12. Some confusion seems to have arisen either in the minds of some of the witnesses or upon the note of the learned Commissioner as to the name of the police constable at whom the deceased is said to have pointed.

p. 17, l. 47.  
p. 30, l. 39.  
p. 31, l. 7.  
p. 31, l. 37.  
p. 38, l. 14.

L. M. Perera and Rengam Arumugam both gave the name as Weerasinghe, while Police Constable Hussim and Sub-Inspector Gunasekera and Russel Corea according to the learned Commissioner's note gave the name as Jayawardena. The witness S. W. Jayawardena merely referred in his evidence "to the other constable."

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p. 33, l. 19.  
p. 36, l. 26.

p. 34, l. 6.

No question appears to have been raised by the Court, Jury or Counsel as to which constable was really pointed at by the deceased, and Sub-Inspector Gunasekera gave evidence with respect to the slapping of Police Constable Weerasinghe, and that constable was himself called to speak as to the same fact but he did not say whether he was present when the incident on the verandah is said to have taken place. Police Constable Jayawardena stated he was present when the deceased made the signs, but he did not say whether or not she pointed at him.

It is submitted that the more probable explanation is that the witnesses L. M. Perera and Rengam Arumugam gave the name correctly, and by some error on the part of the witnesses or on the Judge's note the name Jayawardena slipped in and the error was not detected.

13. As regards the deceased's mental condition, Dr. de Silva stated that the deceased was conscious when admitted to hospital, but that she was unable to make a statement on account of her injuries. In his opinion she was conscious and could have made signs to be understood, and judging from the nature of the injury to her neck the deceased could have nodded  
10 her head very slightly.

p. 7, l. 15.  
p. 7, l. 34.  
p. 8, l. 1.

It appeared that though the Appellant was taken to the hospital to be shown to the deceased woman the doctor decided she was not in a fit condition to see him.

p. 33, l. 35.

14. The witness L. M. Perera and another witness J. P. Davith both swore to seeing the Appellant cycling towards the scene of the crime on the same day between 12 noon and 12.30 and 12.30 and 1 p.m. respectively.

p. 9, ll. 9 and 10.  
p. 12, l. 13.

15. About 1 p.m. the Appellant came to a hut (Wadiya) which was about a quarter of a mile from Collin Silva's house and asked of a witness  
20 Sandanam Nadar for the Kangani. Later the same witness said he saw him go in the direction of the deceased's house and enter it, but afterwards when cross-examined admitted that he had not seen him actually enter the house. Another witness P. Kitan Nadar spoke as to seeing the Appellant and deceased engaged in conversation about 1.30 to 2 p.m.

p. 13, l. 29.  
p. 13, ll. 36 to 39.  
p. 14, l. 31.

16. At about 3 p.m. the Appellant was seen by the witness W. T. Fernando coming from the direction of Collin Silva's house, and at about 4 p.m. he was seen by another witness, B. L. Charles, to get off his bicycle and creep through a wire fence and get into a garden where there was a thicket. In the thicket he squatted down and then stood up and repeated  
30 this several times so that B. L. Charles' suspicions as to what he was doing were aroused and he asked him why he was acting in that fashion. The Appellant explained that he was looking at his bicycle so that no one might remove it. According to that witness the Appellant had then two parcels with him, one attached to his bicycle and the other in his hand. The latter he took to the thicket but brought back when he came out of the thicket. The thicket was later searched at night by the witness and police with chulu lights and torchlights, but nothing was found there, nor was there anything to indicate that the Appellant had gone there to answer a call of nature except that the thicket was disturbed.

p. 19, l. 41.  
p. 20.  
p. 22.  
p. 22, l. 31.  
p. 23, ll. 13 and 31.  
p. 22, l. 38.  
p. 23, l. 28.  
p. 33, l. 1.

p. 22, l. 30.

In answer to the Jury this witness who had already stated that the Appellant wore no banian stated that he did not notice any blood stains on the Appellant's sarong.

p. 23, l. 29.

p. 25.

17. Between 4 and 4.30 p.m. a witness K. Charles Fernando saw the Appellant bathing in a stream near a culvert while his bicycle was placed against a plank stool. The witness said he did not see any parcel attached to the bicycle.

pp. 26 &amp; 27.

18. In his statutory statement made at the Police Court and which was afterwards read at the close of the case for the prosecution the Appellant stated he had two witnesses to prove that since the night of the 12 May 10 he was in Abubakkar's boutique. The two brothers who carried on the boutique in partnership gave evidence to the effect that on the day in question the Appellant was not in the boutique between 12 or 12.30 p.m. and 3.30 or 4 p.m. The Appellant's sister who gave evidence stated that her brother was at home between 12 noon and about 2 or 2.30 p.m.

p. 37.

19. All the above-mentioned witnesses gave some evidence as to what the Appellant was wearing when they saw him and as this appeared to be a matter to which the Jury attached some importance the following summary of their evidence on this point may be of some assistance :—

p. 9, l. 10.

L. M. Perera stated, that the Appellant was wearing a red 20 checked sarong and a handkerchief round his neck, no banian or coat.

p. 12, ll. 18 &amp; 25.

J. P. Davith's evidence was to the same effect, but he could not speak as to the absence or otherwise of a banian.

p. 14, l. 17.

Sandanam Nadar : wearing a checked cloth.

p. 15, l. 29.

P. K. Nadar : a red sarong and a shawl round his shoulder.

p. 20, l. 10.

W. T. Fernando : a red sarong but no banian.

p. 21, l. 10.

Another witness not hitherto mentioned, name Julihamy, said he had seen the Appellant about noon riding a bicycle and wearing a red checked sarong with a handkerchief round his neck. 30 This witness stated he noticed blood on the sarong but he was evidently a very unreliable witness and probably little if any weight should be attached to his evidence.

p. 22, l. 29.

B. L. Charles : wearing a red coloured sarong cloth, no banian.

p. 27, l. 36.

A. C. M. K. Seyadu Mohamadu : in the morning the Appellant was clad in sarong and banian, also in the evening but was unable to say if they were the same as he wore in the morning.

K. P. Chandrasekera, the Appellant's sister, in answer to the Jury, stated that when he left home, as she put it between 2 and 2.30 p.m., he was wearing a dark coloured sarong and a white gauze banian. p. 37, l. 28.

When arrested the Appellant was wearing a banian and sarong, but the headman who arrested him was unable to remember whether the sarong was a red-checked one. p. 35, l. 5.

10 When examined by Dr. de Silva at 8 p.m. at the hospital no blood stains were found on the Appellant's clothes. At that time however Dr. de Silva stated he was wearing a clean banian and a clean cloth. p. 8, l. 3.

20 Examination of the deceased's house indicated that she had been attacked whilst inside the house, and that her assailant when he left had locked the front door behind him, and that the deceased woman had probably got out of the window and made her way as best she could to the house of Collin Silva. There were signs also such as pieces of a broken till and the disturbance of clothes in a wooden box which suggested that the motive of the crime was robbery. The cutting off of the lobes of the ears also appears to lead to the supposition that this was done in order to despoil her of her ear-rings. Her jewellery was stated to be missing after this incident. It does not appear from the evidence that the severed lobes were ever found. p. 19, l. 29.

21. At the hearing of the Petition for special leave their Lordships' Board intimated that it would be desirable to have before them on the hearing of the appeal any record or note of the Judge's summing-up to the jury if such existed.

It appears from enquiries made that no record or note of the summing-up was made.

30 It is respectfully submitted however that in the absence of any evidence to the contrary and, indeed, in the absence of any suggestion to the contrary, that it should be assumed that the jury were in this case properly and sufficiently directed by the learned Commissioner.

40 22. The Respondent respectfully submits that the only point proper to be raised and considered on this appeal is as to the admissibility of the evidence under Section 32 of the Ceylon Evidence Ordinance No. 14 of 1895. The Respondent submits that the case of *Queen-Empress v. Abdullah* was rightly decided. The principle laid down in that case has been applied in other cases, for example *Ranga et al v. The Crown* I.L.R. Lahore Series Vol. V p. 305 and *Emperor v. Sadhu Charan Das* I.L.R. Calcutta Series Vol. 49 p. 600.

23. It is submitted that the Appeal should be dismissed and that the Judgment and sentence passed upon the Appellant by the Supreme Court should be affirmed for the following among other

**REASONS.**

- (1) BECAUSE evidence of the questions put to the deceased and the signs made by the deceased in answer thereto were rightly admitted.
- (2) BECAUSE there was no improper reception of evidence at the trial.
- (3) BECAUSE there was sufficient evidence to support the 10 conviction of the Appellant for murder.
- (4) BECAUSE no injustice of a serious or a substantial character has occurred either by a disregard of the proper forms of legal process or by a violation of principle such as amounts to a denial of justice.

D. B. SOMERVELL.

KENELM PREEDY.



