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8,1951

In the Privy Council.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,

ON APPEAL FROM THE COURT OF
CRIMINAL APPEAL OF CEYLON

BETWEEN

LATHUWA HANDI EBERT SILVA APPELLANT

AND

THE KING RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—The Appellant was indicted in successive counts of the one indictment of the murder on the 17th October, 1946, of three persons: Perumal Muttusamy (hereinafter called "Muttusamy"); Gardia Welligamage Babu Nona (hereinafter called "Baby Nona"), and Gardia Welligamage Hemalatha (hereinafter called "Hema"). On the 8th October, 1948, the jury convicted the Appellant of the three murders and he was sentenced to death. By Decree dated the 25th November, 1948, the Court of Criminal Appeal allowed the Appellant's appeal against his conviction for the murder of Muttusamy, but dismissed his appeal in regard to the murder of Baby Nona and Hema. The present appeal is against that portion of the Judgment of the Court of Criminal Appeal by which the Appellant's appeal against conviction was dismissed.

2.—At the trial, before the Appellant pleaded to the indictment his Counsel asked the Court to direct that each charge should be tried separately. The learned Commissioner of Assize in the exercise of his discretion refused so to direct, and on the appeal to the Court of Criminal Appeal no complaint was made of his refusal.

3.—Muttusamy and Baby Nona were labourers living together in a hut on a small rubber estate of only 50 acres of which 30 acres were planted. The Appellant was the manager or conductor of this estate. Baby Nona was also the Appellant's mistress and he said that at the time of her death she was carrying a child by him. Hema was Baby Nona's

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RECORD

p. 203, l. 31—p. 204
l. 26

small daughter. She and Hema were murdered on the 17th October, 1946, but the first information was not given to the police until the 1st February, 1947. The Crown alleged that at the same time the Appellant had murdered Muttusamy, Baby Nona and Hema.

p. 219, ll. 24-38 ;
p. 221, l. 36—p. 222,
l. 25

p. 205, l. 42

p. 170, l. 37—p. 171,
l. 17

4.—Admittedly the Appellant, with help from other people, disposed of dead bodies so successfully that after thorough search the police were not able to recover anything but pieces of charred human bones of which the only pieces which could be identified were a piece of head bone, a right knee cap bone, a portion of right rib, a piece of bone from between eye and nose, an upper cervical vertebræ (all adult bones none of which enabled sex to be established) and a child's milk tooth, the first molar of the right upper jaw. 10

p. 216, l. 31—p. 220,
l. 10

5.—The story of the Appellant was that on the night of the 17th October, 1946, at about 10.30 he left his house with a gun and cartridges (which he did not fire) to do a watcher's round of the estate, and that at about 11 o'clock he saw the door of Muttusamy's hut open. Inside he found the bodies of Baby Nona and Hema, each with many stab wounds. Muttusamy was not to be seen. Frightened, the Appellant ran back to his house calling for Jayaratne (a youth, cousin of the Appellant) who with a boy cook, Wilfred, was in the house. They came out and the Appellant told them he had found Baby Nona and Hema murdered and Muttusamy gone. Jayaratne suggested they might become involved, so it was decided to send for Wilfred's father, Banda, for advice. Banda came in the morning and with the Appellant and Jayaratne went in and saw the bodies of Baby Nona and Hema. At Banda's suggestion they agreed to hide the whole affair. Accordingly they buried the bodies and disposed of the articles in the hut. 20

p. 220, l. 38—p. 222,
l. 22

6.—The Appellant also gave evidence that after Banda's daughter Jane Nona had spent a night with him in his house he, on the 17th December, 1946, arranged for Jayaratne to take her as his mistress and to live in Muttusamy's hut. This angered Banda, and, in fear, the Appellant had firewood collected and between Christmas and New Year with Jayaratne's help dug up and burned the bodies. What remained, with clothes and other articles from the hut, were again burned the next day. The fragments left after the fire were put into a gunny bag and thrown into a stream. 30

p. 64, l. 35—p. 65,
l. 20

7.—This story was quite inconsistent with the account of what happened on the night of the 17th October, 1946, and the following morning, given by witnesses for the Crown. According to Wilfred, the Appellant went out after dinner on the 17th October with a torch, gun and cartridges, and about 8 p.m. there was the sound of a shot from the direction of Muttusamy's hut. When Wilfred got up before dawn the Appellant had not returned, but returned, sweating, just before dawn. The Appellant 40

- said that he shot at but did not fell a bandicoot. The Appellant had tea and then left with his gun and dog. Samathapala then came for tapping tools and went with Wilfred to find the Appellant. They came to Muttusamy's hut where inside they saw ash and blood and signs of something having been dragged out. At the back, the dog was swallowing a small piece of black darkened flesh. As they went towards the jungle, the Appellant, wearing a sarong, approached with soot all over his body and chest—the result (so the Appellant said) of falling over burnt logs when tracking a wild boar ; while a smell noticed by Samathapala, was, he said, caused by his crushing bad smelling insects in his fall. Wilfred returned to the Appellant's house but the Appellant did not come in for his midday meal and about 2 p.m. Wilfred went to find him. He found Muttusamy's hut locked with a padlock, and he saw the Appellant down below digging a large hole in the bed of a drain at the edge of which were dismembered blackened parts of human bodies including a child's head and a larger head. The Appellant rushed to assault Wilfred, who ran off to his father's house. Banda, his father, came back with Wilfred and asked the Appellant if it were true he was burying dead people. The Appellant said "What lies Banda, go away." The Appellant returned to his house about 4 p.m.
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- 8.—Jayaratne gave evidence of seeing the Appellant some time later burning something in the jungle. The Appellant asked Jayaratne to cut wood. The Appellant brought from the jungle a gunny bag which contained Muttusamy's blue shorts, Muttusamy's waistcoat and Muttusamy's raincoat, and burnt bones. The Appellant burned the bag and its contents.
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- 9.—The other evidence for the Crown also tended to show the falsity of the Appellant's story.
- 10.—When arrested the Appellant, on the 4th February, 1947, made a statement alleging that on the morning of the 18th October, 1946, Banda informed him that "Muttusamy and others have bolted away," and that the Appellant had then visited Muttusamy's hut and found that everything inside had been removed.
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- 11.—After a summing-up which, in the Respondent's submission, was accurate and adequate, the jury unanimously found the Appellant guilty on each of the three counts.
- 12.—The Appellant appealed to the Court of Criminal Appeal which for reasons given by Howard, C.J., held that there was not sufficient proof that Muttusamy was dead in view of the caution laid down by Hale that a man should not be convicted of murder on circumstantial evidence alone unless the body has been found, and of the other authorities on the point. Howard, C.J. referred to "the deceased Muttusamy" and to "the three deceased," but though he thus appears to have had little doubt that
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p. 65, l. 23—p. 66,
l. 14

p. 66, l. 15—p. 67,
l. 40

p. 111, l. 41—p. 112
l. 18 ; p. 113,
ll. 43-45

p. 239, ll. 12-30

pp. 241-259
p. 260

pp. 265-273
p. 270, l. 17—p.272,
l. 18

p. 265, l. 23 ; p.266,
l. 9

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Muttusamy was dead, he thought there was a possibility of his having escaped and being in hiding through fear.

13.—Section 3 of the Evidence Ordinance (Legislative Enactments of Ceylon, 1938 Revision, Chapter 11), provides :

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

14.—The Respondent submits that the evidence entitled the jury to find that the death of Muttusamy was proved beyond any reasonable doubt. The Court of Criminal Appeal held that although the death of Muttusamy was not so proved, the evidence pointed in one direction and one direction alone, establishing beyond reasonable doubt that the Appellant murdered Baby Nona and Hema.

p. 272, l. 19—p. 273,
l. 38

15.—The Respondent therefore submits that this appeal should be dismissed for the following amongst other

REASONS

1. BECAUSE the conduct of the Appellant was consistent only with his guilt. 20
2. BECAUSE there was ample evidence to support the findings of the jury.
3. BECAUSE if by reason of a rule of law the jury could not properly find the death of Muttusamy to have been proved, such rule of law did not debar the jury from finding that it was the Appellant who murdered Baby Nona and Hema.
4. BECAUSE the matter depends solely on the weight of evidence, and there has been no grave miscarriage of justice.
5. BECAUSE if the convictions are quashed, in the interests of justice a new trial should be ordered. 30

FRANK GAHAN.

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No. 2 of 1951.

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