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In Re: Subbaratnam and ors.

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Court : Chennai

Decided On : Aug-18-1948

Reported in : 1949CriLJ950

Judge : Govindarajachari and; Mack, JJ.

Appellant : In Re: Subbaratnam and ors.

Judgement :

Mack, J.

1. We have heard several batches of appeals which arise out of grave riota in Karuc on 20th July 1946 in the course of which arson was committed in several buildings, and the movables therein including two motor oars, jutkas, bales of yarn, bandloom goods, iron safes etc., were burnt by a frenzied mob composed mainly of weavers who got completely out of hand. We are particularly concerned in these appeals with the family of Maiiappa Mudaliar who had a handloom weaving factory in the Coimbatore road in which he had no looms worked by we avers for wages. In the by-pass road which takes off to the south almost opposite his factory building, in a portion of which he also resided with his family, there were three other buildings occupied by his brother's sons, Arumugam and Subramaniam and his brother-in-law Manikka Mudaliar. Mariappa Mudaliar had a garage and stable adjoining these buildings in which he kept his ford oar, three jutkas and two horses. his factory and all thecae buildings including two motor cars, one

belonging to Arumugba Mudaliar, were set fire to by a mob in the course of the day.

2. There were three separate sessions cases out of which all these appeals arise in which several accused were separately tried on charges of rioting, arson and kindred offences in respect of the buildings of Mariappa Mudaliar, Aru-mugha Mudaliar and Manicka Mudaliar. Separate trials were found necessary in view of the personnel of the accused not being the same though several were common to all cases. There were in addition two other sessions oases arising out of arson in two other buildings, in addition to a number of cases said to have been tried by Magistrates.

3. There can be no doubt-and this i3 not disputed by the appellants - that there was rioting and arson on a very grave Bcale that day in Karur, Some photographs filed bear eloquent testimony to the damage done.

4. Earur is an important weaving centre with about 000 handloom weavers and 76 hand-loom factories, About 90% of the weaving population merely work for wages on the looms of capitalist weavers whose factories were supplied with yarn issued to them on ration cards by the Textile Yarn Control officer on the basis of the number of active looms in their respective factories, in September 1944. Until September 1946, it appears to have been open to a cooly weaver in the employ of a factory to buy his own loom and become eligible for a ration card, entitling him to the supply of yarn direot, a corresponding reduction being then made in the factory owner's ration card. But this and other privileges appear to have been severely curtailed mainly because of the insufficiency of yarn available for distribution. It would appear also that no person who was not a weaver in 1914 could, except with the special permission of the Textile Commissioner, buy a loom and obtain independent supplies of yarn on an individual ration card.

5. There were two weavers' associations in Karur, the Karur Taluk Handloom Weavers' Association of which one Narkirar alias Arumugham was the secretary and the United Weavers' Association of which one Subbaratnam, a muni, oipal councillor, was the general secretary. They are be to incidentally appellants, found guilty of rioting and arson, and each sentenced to five years' rigorous

imprisonment in each of those three cases. These associations supported an agitation for the issue of individual ration cards to weavers instead of to the factories. Representa-tions were made to the Government departments concerned with no result and, on 21st June 1946, the Secretary in a letter threatened the Textile Officer with direct action if the weavers' demands were not conceded before 7th July 1946. On 33rd June 1946, a general meeting of the weavers was held to concert measures, and a committee of action of seven persons was formed, all of whom figured amongst the appellants.

6. 11th July 1946 was fixed by the authorities for the distribution of yarn from the retail dealers to handloom factory owners. On 10th July, 2000 weavers marched in procession to the house of the Sub-Divisional Magistrate demanding a postponement till they made representations in Madras. The distribution was accordingly postponed till 14th and again to 15th. On 10th July the Sub-Divisional Magistrate took the presautionary measure of prohisiting meetings or processions, except under a police licence by an order under Section 144, Criminal P. C. The District Superintendent of Police came to Karur on 13th July 1916 and an attempt to distribute yam on 15th July from the retail shop of one Rajagopala Aiyar 'in Kassim Sahis'a Lane very near the Police Station was rendered abortive by a general hartal and a sympathetic strike by coolies and handcart pullers. On 16th the weavers all went on strike with well organised picketing. The District Magistrate came to Earur on 17th July but all attempts at settlement were unsuccessful, and the decision was taken on 19th July 1946 that yarn would be distributed the next day with the aid of police bundobust to the factory owners. The Association of factory owners on this assurance decided to meet the following morning at the police station and procure their supplies of yarn under cover of police assistance.

7. Accordingly between 10 and 11 a. m. on 20th July the day of these riots, about So factory owners gathered at the police station with motor lorries andhand carts. The District Magistrate and the District Superintendent of Police were also camping there; but they found a crowd of weavers led by agitators already gathered in Kassim Sahis's lane and around Rajagopala Aiyar's shop. Satyagraha technique was first tried by men and women pioketers who were found lying

across the steps leading into Rajagopala Aiyar's shops to prevent any yarn being taken outside, The District Superintendent of Police himself and the Deputy Superintendent of Police, using the graphic language of the learn-ed Assistant Sessions Judge 'lifted the women by their arms and removed them'. The police succeeded in pushing the crowd back and in loading a lorry with bales of yarn. Finally in order to clear the crowd to make way for the lorry a lathi charge was made. It was after these happenings in the neighbourhood of the police station that matters took a very ugly turn and Satyagcaha or passive resistance suddenly turn-ed into violent dastruotion. This shortly is the background oat of which the evidence against these appellants has to be appreciated. ;We are not concerned with the merits of the grievances of the weavers which appear to have generated some public sympathy. There are, however, ample indications from leaflets and pamphlets and the utterances of the leaders that strong political propaganda had sedulously capitalised a grievance the weavers undoubtedly had and sought to turn it to advantage in a war on capitalists in general. The weavers were held out to be oppressed by the officials of the textile and other departments of Government who were working for the benefit of the factory owners and so on.

8. Before dealing with the evidence relating to the individual cages of rioting tried, it may be well to set out the general sequence of the riots that day. It would appear that suddenly and without any warning when there were no police at all in the locality, a mob at about midday bent on incendarism burnt the car of Mariappa Mudaliar in its garage in the by pass road and simultaneously attacked Manicka Mudliar's house next to it. They then burnt the car of Arumugam Mudliar and set fire to the thatched verandah of Mariappa Mudliar's house and factory in the Coimbatore road. All this took place between 13 and 1 p. m. The District Superintendent of Police arrived with a reserve party at this stage and with some difficulty the crowd was dispersed, after the District Superintendent of Police and a constable each fired one round, one Malayappan, an acquitted accused, wasshot in the knee and there was also a lathi charge. The police then appear to have proceeded to another troubled area, when the mob returned with redoubled fury and, after looting and burning Arumugham's house in the bypass road, finally sacked Mariappa Mudaliar's factory and Bet fire to its entire contents.

9. This is roughly the proseoufcion sequence, not seriously disputed by the learned Advocates for the appellants, of the events that day in what was undoubtedly a scene of great confusion and disorder.

10. Beference No. 1 of 1948, Crl. App. Nos. 66, 67 and 131 of 1948 and Grown Appeal, Crl. App. No. 163 of 1948: - These appeals arise out of Sessions Oases nos. 28 and 60 of 1917 in which 36 persons were charged in connection with rioting, arson and so on, in connection with the factory and house of Mariappa Mudaliar, who was P. W. 16, and the burning of his oar. Eaoh batch of appeals arises out of two Sessions cases because some accused in each discharged by the committing Magistrate were in revision directed to be retried by the District Magistrate, The learned Assistant Sessions Judge who tried all these oases in succession and simultaneously delivered judgment on 8th January this year found accused l to 11, is to 15,18,19, 34, 25 and SO guilty of rioting, arson and in fact on a variety of counts. He sentenced accused l to l, 9 any 10 in all to five years rigorous imprisonment and the other accused to two years, rigorous imprisonment in all, Accused l and 10 were in addition fined Bs. SOOjand accused 6 and 19 each B9, 250 as he found they were possessed' of property. They have all appealed. The Crown has also filed an appeal, Cri, App. no. 163 of 1948 against the acquittal of accused 12,16, 17, 20, 2a and 81 to 86.

11. Beference No. 1 of 1948 made by the learned Assistant Sessions Judge had a very curious origin. He framed a variety of charges in all these oases, in all 14 counts. They included two separate counts 9 and 10 of house-breaking which he proceeded to try by a jury who found all the accused so charged not guilty. As assessors also the same jury found all the acoiased not. guilty on any count. In addition to these house, breaking counts there were charges under Section 188, Penal Code, for disobedience of an order under Section 144, Criminal P. C, which was wholly unnecessary. Another charge framed was one of abetment against accused 1,10,16 and 17 under Sections 436 and 114, Penal Code. As all the accused were charged quite rightly under Section 147, Penal Code, with forming themselves into an unlawful assembly with the common object of committing arson, a separate charge of abetment was wholly unnecessary and does not in fact arise. The pro-sedition in these cases was conducted by the learned Assistant

Public Prosecutor of Madras who explains that it was only in the first case that the trial Judge tried the house: breaking offences by the adoption of a mixed juror and assessor trial, and that this was abandoned in the subsequent oases. There was no justification whatsoever for the trial of the minor house-breaking charges by a jury and unnecessarily adding complications to these already complicated oases. As it appears to us only four simple charges were necessary in each of these cases, namely, rioting under 8.147, Penal Code, mischief by fire under B. 436, Penal Code, and mischief by fire with intent to destroy a house under 8, 436, Penal Code, and finally an offence imposing on all the accused constructive liability for these offences read with Section 149, Penal Code. These simple charges should have been quite sufficient, There is no necessity for a sessions trial to be cumbered by a medley of minor charges, particularly in a rioting case in which the overt acts constitute evidence of participation in the riot. Section 147, Penal Code., is quite sufficient in its punitive scope adequately to punish these minor overt acts committed. The learned Public Prosecutor explained that his assistant at the commencement of the trial suggested simpler draft charges to the learned Assistant Sessions Judge, who however, felt himself be und by the charges framed in the committing Court. A trial Judge at Sessions is not be und by the charges framed in the committing Court and he has ample power to revise and alter them not only at the commencement of the trial under Section 226, Criminal P. C., but under Section 227, Criminal P. C., at any stage of the trial before the verdict of the jury is returned or the opinions of the assessors are recorded. When he came to record his findings as regards the offence committed by each accused, the learned Judge recorded his conviction of each appellant under several counts. For instance he convicted accused l to 10 under counts 1,2, 5, 6, 8 and 12 of the cbarge and sentenced each of them to rigorous imprisonment respectively for 2 years, 6 years, 5 years, 5 years, 6 years and 5 years. To find out what offences they were guilty of, it has been necessary to have the counts before us; and in preparing the warrants, his office must have been put to wholly unnecessary scriptory labour and strain with the possibility of mistakes creeping in as regards sections of law. We would impress on trial Judges the necessity of clearly recording in their findings the offence of which they find a person guilty and also the section of the Penal Code. The learned trial Judge really created for himself a

great deal of unnecessary trouble by framing so many unnecessary charges.

12. The first information report in the case (ex.p. 23) purports to have been made by Mariappa Mudaliar (p. w. 16) himself at the Karur police station at a-30 p. m. on 20th July itself. According to the Inspector of Police, Sri K. Hainan (p. w, 17), this long complaint was made to him and at his request a Sub-Inspector, Venkatachalam (p. w. 5) took down what p. W. 16 told him in his presence. Ex. p. 23 contains a brief description of the happenings that morning up to the lathi charge at about 11 a. m. In Ex. P-23 P.W. 16 said that he was on his way to the police station to take delivery of the yarn when the lathi charge was made, and that some time later Kaliappan (p. w. is) the servant in his factory came running with the news about the mob in front of Manioka Mudaliar's house. He gave this information to the Collector and on his way to his house saw Manicka Mudaliar's House on fire, and he then says he witnessed the crowd led by accused l to 11, all mentioned by name, who set fire to everything in his house while his women folk took refuge on the terrace. The estimate of the damage done was Rs. 1,38,00. In an appendix to Ex. P-23 the names of 26. other accused appear as persons who assisted in the arson. In Ex. p-28 there appears the names of seven witnesses said to have been present, of whom only the servant Kaliappan (P.w. 13) and one Subbarayar (p. 'W. 16) have been examined. One witness mentioned in Ex. p. 23 is Vaiyapuri MuSaliar, whose brother, Nagarajan has been examined instead as p. w. 14. It is clear from the non-examination of these five witnesses cited in Ex. P 23 that the investigating police did not, as sometimes happens, confine their attention to the first information report but examined independent witnesses (P. W. 11,12 and 14) instead.

13. Mr. N. Somasundaram for most of the appellants has sought to undermine ex. p. 23 as a belated document, and therefore wholly un-reliable on the ground that it does not bear the initials of the Sub-Magistrate or the date stamp of his office. There is indeed no indication on its face as to when it was received; but we are unable to follow precisely what adverse inference is sought to be drawn from this obvious omission, in view of the clear evidence that these eye-witnesses excluding the five mentioned in Ex. P-28 were examined in the investigation on alb July. There were a number of other fiat information reports received in the Sub-

Magistrate's Court that day and the following day in connection with numerous cases of arson. No such omission admittedly appears in the first information reports in the other cases which are before us. We are unable to draw any other inference than that there was an accidental omission to initial and date seal this first information report in the Magistrate's office.

14. It was next urged that Mariappa Mud liar, p. W. 16, took sanctuary all that day at the police station and never came near his house at all after the mob proceeded to violence and incendiarism there, This line of defence is baaed on the. evidence of three defence witnesses. D. Ws, 18,19 and 20, all substantial residents of Earur to the effect that they were all in the police station from 11 a, m. to 6 or 7 p. m. that day and that P. w. 16 was there all the time, D. w. 18 would even go to the length of saying that v, w. 16's servant Kaliappan also stayed in the station till 6 p. m. It is salient to say that D. w. 18 admitted that his father and accused 16 were partners in the Pasupathi Textiles, an institution which strongly supported the cause of the weavers. The natural conduct of a man who hears that a mob is about to loot his house is to go and see for himself what was happening and to arrange for the safety of his women folk. We may even presume that precautions were taken to put them in a place of safety in anticipation of trouble that day. There is, however, nothing to indicate that such a violent outburst of mob fury was anticipated in that locality that day, as when it started there did not appear to have been any constables in the neighbourhood on foundobust duty. We are unable to agree that P, W. 16 would have behaved more naturally had he remained in the station all that day without going near his house which was being looted and burnt. We have no doubt that P. w. 16 did see something of the attack on his house but we have good reason to doubt whether everything embodied in Ex. P-23 is the result of his own personal observations, This certainly could not have been the case in view of a long list of 26 other accused named in an appendix to Ex. P. 23. The learned trial Judge was fully alive to the possibilities of Mariappa Mudaliar not being able to resist the temptation to include as accused be ma of his enemies in Karur and indeed he has quite rightly given more than one accused the benefit of the doubt on this ground and acquitted them. (His Lordship discussed the evidence and .proceeded.)

15. There are no grounds for any suspicion that the eye witnesses who appear to us to be natural were not present at the rioting at all. The main difficulty which the learned Judge has fully appreciated and in our opinion on the whole soundly and correctly surmounted was the danger of innocent persons being implicated as accused. He has not convicted any appellant on the uncorroborated testimony of p. w. 16 and p. w. a alone and used what we consider to be a reasonable and appropriate test of requiring ample corroboration from other witnesses of the presence and specific acts attributed to each of the accused before convicting him.

16. The learned Judge has sentenced accused 1 to 4, 9 and 10 each to rigorous imprisonment for five years. There can be no reasonable doubt that they were the ringleaders not only in the whole agitation but also in the direct incitement of the mob to senseless violence and destruction. Accused l was the Secretary of the United Weavers' Association and accused 3 the Secretary of the Karur Taluk Handloom Weavers .Association. A-9 was president of the committee of action elected on 33-6-1946 with A-1 as secretary and accused l, 3 and 10 as members. As regards A. 2, there was material to show, that he was one of the leaders in the ration card agitation. There is the evidence of the Deputy Superintendent of Police (p. W, 8) that acoused 2 and 3, the only two he named specifically, actively obstructed the movement of the yarn from Bajagopala Aiyar's retail shop before the lathi charge that morning. P. Wa. 2,11,1C and 16 all give him a prominent part in the actual incendiarism. There is abundant cumulative testimony clearly proving the guilt of these six persons as ring leaders in rioting and arson.

17. It is urged by Mr. Somasundaram that violenoe and destruction was more probably the work of hooligans, who oapitalised an opportunity for loot, but it is significant that no valuable property was taken away and that even currency notes were found half charred. This was all clearly not the work of hooligans out to loot but a carefully organised plan of direct violence held in reserve in the event of the first line of passive resistance or Satyagraha failing. The failure of the Satyagraha led the ringleaders to bring into operation a plan of organised arson and incendiarism for which they appear to have been fully prepared in the last resort. Indignities to passive resistance endured, with men and women being removed be dily from lying postures, doubtless exasperated them into more violent excesses

than they had contemplated.

18. A separate appeal, Cri. Appeal No. 131 of 1948 has been filed on behalf of Sambasiva Aiyer (A-10) who is not a weaver but is described as a Mirasdar the on of a lawyer and the brother of a lawyer now in practice. He endeavoured to establish an alibi which the learned Judge rightly rejected to the effect that he took two persons injured in the lathi charge to Dr. Menon, D.W/8, and was with him all that morning. The doctor's evidence is merely to the effect that A-10 brought these persona to him some time between 10 and IS and that he stayed chatting with him for half an hour, D. W. 8 is A-10's family doctor and he has gone as far as he could to assist him, The times he has given cannot be regarded as in the remotest degree conclusive. P. Ws, 2,11, lfi and 16 have all given A-10 a most active part all through amongst those who led the crowd. The convictions of accused, 1 to 4,9 and 10 under S3.147,435 and 436, Penal Code, are confirmed. We find rather curiously no direct count of arson against the first accused and only constructive counter though in para. 132 of his judgment the learned trial Judge finds rightly that he was one of the persons who set fire to the thatched verandah. In view of the number of protracted trials in the lower Court which these appellants have under gone and the fact that they have been in remand also throughout we reduoe the sentences on these ringleaders to one year's rigorous imprisonment under Section 147, Penal Code, and to three years' rigorous imprisonment under each of the arson counts, the sentences to ran concurrently.

19. As regards the other appellants, the learned trial Judge has carefully considered each case separately. We are in agreement with his finding that they are all guilty of rioting and arson with the exception of accused 13,13, 24, 28 and SO. In their cases we think that the learned trial Judge deviated from the strict test of evidence he adopted in requiring corroborative testimony. (His Lordship after disoussing the evidence continued.) We think on the evidence that accused 13,18,24,35 and SO are be order line cases entitled to the benefit of a reasonable doubt. We there fore acquit them on all counts and set them at liberty. The convictions of the other appellants are confirmed under S3.147, 438 and under 436 read with Section 149,1. P. 0. The findings on other counts are unnecessary and set aside.

20. As regards the sentences we observe that accused 3, 6 and 11 whose convictions we are confirming are young men aged 21,19, and 23 respectively. We have considered the possibility of applying to them the provisions of the Proba-tion of Offenders Act and placing these misguided youths under 8. 6 under the care of the District Probation Officer. We are, however, unable to do so as the Act cannot be applied to grave offences such as arson under Section 436, I. P. 0. which is punishable with transportation for life. It is regrettable that A-3 though only 21 Should have been so conclusively proved to have been a prominent ringleader in violent orimo of this description, The sentences on the other appellants (except A-6) namely A-5,7,8,11,14, 15, 19 are reduced to six months' rigorous imprisonment under 8. 147 and to one year's rigorous imprisonment under S3. 435 and 486 read with Section 149, I. P. 0. the sentences to run concurrently. In view of the age of Gopal (A. 6) and his being a misguided youth we reduce his sentence to six months rigorous imprisonment under Section 147i I. P. 0. and to the period already undergone (more than 8 months) on the other counts, the sentences to run concurrently. The fines imposed on accused 1, 5,10 and 19 are confirmed as it is just and appropriate that malefactors who are possessed of property and means should make a contribution to the costs of their prosecution which in these oases has been a heavy charge on the tax payer.

21. I come now to the Crown Appeal, criminal Appeal No. 163 of 1948 filed against the acquittal of accused 12,16,17, 20, 28 and 31 to 86, (After going through the .evidence, his Lord ship dismissed the Grown Appeal in toto and proceeded):

22. Before leaving this case we feel called upon to deal with two points of police procedure in investigations which Mr. Somasundaram for the appellants has canvassed at length presumably in a belated attempt in this Court for the first time to question the be a fides of the entire police investigation. be to points he raised are based on replies given by the Inspector Sri Earn (p. w. 17) to questions put in cross examination in the trial Court by the learned advocate who it is said was once a Deputy Super intendent of Police. He seems to have used his knowledge of police procedure to heckle, not very seriously the police investigating officer. The Inspector said in the cross-examination 'I cannot say whether it is my duty to record the names of the accused in the general diary.' From this Mr.

Somasundaram has argued that no names of the accused at all were noted in the general diary entry about this case. The general diary entry itaelf has not been exhisited for the defence. It is sufficient to say that under Section 154, Criminal P, C, the substance of a first information has to be entered in a be ok in such form as the Provincial Government may prescribe and that under Madras Police Standing Order No. 638 the be ok prescribed by s, 154, Criminal P. C, is the first information be ok in form no. 78 in which the present F, I. R. (Ex. P. 28) was admittedly recorded. The Q. D. entry need not give, as the learned Public Prosecutor points out, all the names of the accused in cognizable offences and police standing order no. 696 specifically says that details of complaints already given in the F. I. be ok and the case diary need not be recorded in the general diary.

23. The second point is based on the Inspector's frank and straightforward admission that he made notes as he examined each witness with the aid of which he later typed his diary, and that his notes which were 'soribblings' were not preserved. There is no suggestion that the substance of the examination of each witness was not separately recorded in the case Diary. Mr. Somasundaram contended, as we understood his argument, that there was an obligation on p. w. 17 to preserve, keep and produce when required all the rough notes he made of the examination of witnesses. He relied on a Nagpur case Baliram V. King-Emperor, I. L. R. (1945) Nag. 151 A.I.R. 1946 Nag. 1: (1946) cri. L. J. 448, in which the scope of B. 162, Criminal P. 0., was considered and some strictures passed on the police prooedure in supressing records of statements from the witnesses during investigation. In that case some witnesses said their statements were reduced to writing. The investigating officer said he had made notes of their statements but had destroyed them, The case diary did not contain the substance of the statement made by each witness examined and there was a clear breach of Section 162, Criminal P. 0. It is not imperative for an investigating officer to make any written record at all of the statement every witness he examines under Section 161, Criminal F. C. makes to him. This is made quite clear by Section 161 (3) adde4 by Act II [2] of 1945 which reads as follows:

A police folioed may reduce to writing any statement made to him in the course of an examination under this section. If be does be , he shall make a separate record

of the statement of each such person whose statement he records.

If such a separate record appears in the case diary there is a sufficient compliance with the statutory requirements of Section 162, Criminal P. C. which only entitles an accused to a copy of the record of euch statement 'whether in a police diary or otherwise'. We are unable to find any authority for the position that B. 162 imposes a statutory obligation on an investigating officer to produce all his rough notes and jottings out of which he writes up his case diary for the day. We have been referred in this connection to a recent Bench decision of this Court in Subba. reddi v. Emperor, 1947 M. w. N. 37 : A. I. R. 1948 Mad. 23:(1948) Cri L. 3 973. In that case an investigating Inspeotor said in the be x that he could not say from his case diary what each witness bad stated, that he made rough notes and did not prepare individual statements, and that he had the rough notes with him but he was not asked even to produce them. Our attention has been drawn to the following observation by Bell J.:

It is no doubt desirable as wag pointed out by Baliram v. King-Emperor, I. L. B. (1945) Nag. 151 : A.I.R. 1945 Nag. 1: (1945) Cri L, J. 448 that notes, however and whenever taken by the police officer, should be preserved.

We do not after a careful perusal of that decision consider that the scope of that observation extended to casting on a police officer any duty of preserving and producing all his rough notes made in an investigation. Horwill J. in the same decision made the following observation:

Although no irregularity was committed by the taking of notes for the preparation of the case diary instead of recording statements, it seems desirable that statements should be recorded where reasons of urgency do not preclude this course.

With respect we are in complete agreement with this observation, the law as it stands, not making it imperative on a police officer to make any record at all of a statement made to him in the course of an investigation. All that an accused is entitled to demand is that when a written record is kept of the statement of the witness to an investigating officer be shall be entitled to a copy of that record, and if the case diary contains as it should the substances recorded separately of the

statement by each witness to the police officer, the latter is under no obligation to preserve or produce any other record, rough or otherwise of such a statement. It has been urged before us that the production of the rough notes or rough statements recorded may disclose some - accidental slip or clerioal error which when com-pared with the case diary entry may be material to the defence. But Section 162, Crimmal P. C. has made no provision for such a remote contingency. be ugh notes unlike the case diary may easily be brought into existence and any such material slip or error can easily be corrected to accord with the case diary before the rough notes are produced for Court's inspection. To permit an accused person to enforce the production of all the rough notes made by a police officer in his investigation and to re-quire a police officer to preserve them would be-to bring into Court an untidy mass of scribbled matter which will serve little purpose and we Shall have police officers laboriously making fair copies of their scribbled investigation notes for judicial assimilation and consideration. It is only when a police investigating officer makes a written record of a statement of a witness, and is shown not to have incorporated it as a separate statement in his case diary that he can be said to be guilty of a breach of a statutory obligation.

* * *

24. Govindarajaohari, J.-I am in substantial agreement with my learned brother, but I desire to add a few observations. One is, with regard to the evidence of p. Ws. 12 and 13 in S. c. no. 28 of 1947. The learned Public Prosecutor with his usual fairness intimated that he would hesitate to ask us to rely on that evidence in view of the fact that the Assistant Sessions Judge was not himself prepared to act on it. Though,, as my learned brother has observed there may be room for doubting whether the rejection of their evidence by the Court below is altogether justified, it is in my opinion, safer that the case is judged apart from and excluding the evidence of these witnesses. I would only emphasise that that is how we have judged.

25. There has been some discussion as to whether in 8, 0. No. 28 of 1947 the defence had to exhisit the general diary and whether and to what extent they obtained an admission in regard to its contents from the Inspeotor of Police, p. w.

17. It seetms to me that P. w. 17 admitted that the names of all the accused were not recorded in the general diary and if this is all the defence desired to rely on, there is no need to exhisit the general diary. But this, however, does not exclude the possibility of the name of the first accused having been entered with the rest of the accused being indicated by an etc. of the total number of the accused having bean given. If the defence desired to exclude these possibilities also, they should either have had a General diary included in the evidence or cross-examined p. w. 17 further. However in view of Police Standing Order no. 698 there is no need to enter in the General diary details of complaints already given in the P. I. B. be ok.

26. The following answer were elicited from the investigating officer, P. W. 17.

The case diary is typed. As I examined the witnesses, I took notes. Later I had the matter typed in the diary. The notes were not preserved. They were sorlb-tilings.

Relying on this evidence Mr. Somasundaram the learned advocate for the appellants argued that there was a serious irregularity by way of non-compliance with the requirements of Criminal P. C.

27. Section 161 of the Code deals with examination of witnesses by the police. Under 8.161 (3):

A police officer may reduce to writing any statement made to him in the course of an examination under this section. If he does so, he shall make a separate teoord of the statement of each soup person whoa statement he recorda.

When such statement is recorded whether in the Police diary or otherwise Section 162 requires the Court, on the request of the accused, to grant a copy of such statement, in order that any part of it, if duly proved, may be used to contradict the witnesses making it in the manner provided by Section 145, Evidence Act. It is no doubt not imperative on the investigating officer to record the statement of a person examined by him under Section 161, But if he records the statement, it is clear that it must be preserved. This is implicit in the right accorded to the accused of obtaining a copy of it. The statement need not be taken down verbatim. The investigating officer need do no more than record a girt of the statements made to

him (Sea In re Guruva Vannan, 1944 M.W.N. Cr. 61 ; A.I.R. 1914 Mad. 886, But on the clear language of Section 161 (3) itself the statement of each person must be separately recorded, The reason is obvious. For the pur-pose of contradicting a witness by a previous statement of his, a condensation of what he and others said will be of little practical value. It is also extremely doubtful whether such an abstract can be described as a previous statement of the witness reduced to writing within the language of 3. 145, Evidence Act.

28. That Section 162 confers on the accused protectors and privileges of a substantial nature can hardly be doubted. Destruction of the record be as to make it unavailable or a refusal to supply the accused with a copy of it will have effect of depriving him of a very valuable right and will, therefore, be regarded with gravity. In Baliram v. King-Emperor, I. L. B. (1915) Nag. 151 : A, I. R. 1945 Nag. 1: 1945 cri. L.J. 448 the investigating officer destroyed the notes he made of the statements of the persons whom he examined during the investigation after incorporating them in the case diary. Prom the facts set out at page 164 of the report it would, however, appear that what was entered in the case diary was a fusion of the several statements into a compact narrative which afforded no scope to the accused for confronting the witnesses with their statements originally noted down but destroyed. It was held that in the result the accused was denied the benefit of the statements recorded under Section 162 for cross-examination of the witnesses concerned and that this constituted a serious departure from the mode of trial prescribed by law and occasioned failure of justice rendering the conviction liable to be quashed. In Kottayya v. King-Emperor, I. L. R. 1948 Mad. 1 : A I.R. 1947 P. C. 67 the irregu. larity lay in not making available to the accus. ed till a late stage of the trial, the note be ok of the police Sub-Inspeotor containing statements of the witnesses he had examined at the inquest. It was held that such a failure was undoubtedly a breach of the proviso to S, 162 of the Code which had, however, in the peculiar circumstances of the case, not occasioned any prejudice to the accused, that the case consequently fell under Section 537 and the trial was valid notwithstanding the breach of Section 162.

29. Neither of these oases, however, directly bears upon what happened in the present case. In the course of the discussion whether the rough notes or

soribblings made by an investigating officer should be preserved, the learned Public Prosecutor drew our attention to a decision of Horwill and Bell JJ. in Subba Beddy v. Emperor, 1947 M.W.N. 37 : A.I.R. 1918 Mad. 23:(1918) CrI. L. J. 978. In that case Bell J. observed as follows:

It is no doubt desirable as was pointed out in Baliram Tikaram v. Emperor, I. L. R 1945 Nag. 151 : A.I.R. 1945 Nag. 1: (1945) Cri, L. J. 448 that notes however and whenever taken by the police officer should be preserved.

With great respect, this observation judging from its wide language derives no support from Baliram's case I.L.B. (1946) Nag. 151 : A.I.R. 1915 Nag. 1: (1915) cri, L. J.143 the exact scope of which I have already discussed. It seems to me, however, on a close examination of the rest of the judgment of Bell J. that he did not intend to lay down any general rule such as the observation just quoted may seem to suggest. I note in particular that the learned Judge stated that

nothing is more natural than that he (the investigating officer) should make rough notes of information which later he would Bet out in proper form in the case diary for the be runity of his superior officers.

The rough notes were available in that case and on their being inspected it was found that the case diary was an amplification of those notes. Hor will J. pointed out that although no irregularity can be said to have been committed by the taking of notes for the preparation of the case diary instead of recording statements, it is desirable that such statements should be recorded where reasons for urgency do not preclude that course. The learned Judge drew a distinction between notes which are in the form of summaries of statements made by individual witnesses and notes which give a very brief summary of the narrative found in the case diary and do not take the form of summaries of individual statements made by the various witnesses. In the former case according to the learned Judge the notes should be made available to the defence. In the latter the police officer would be justified in objecting to the production of his notes. In the case of Subbareddi v. Emperor, 1947 m. w. n. 37 : A.I.R. 1948 Mad. 28: 1948 cri. l. J. 978 however, the police officer did not so object.

30. In view of the judgment in the case of Subba Beddi v. Emperor, 1947 M. W. n, 87 : A.I.R. 1948 Mad. 23: 1948 cri. L. J. 973 the ob-Borvatiocs in which I have set out at some length, it seems to the that it cannot be maintained that there was anything irregular in what p. W, 17 did in the present case. I may add that Mr. Somasundaram did not suggest anything against the be no fides of the officer who seems to have impressed the Assistant Sessions Judge by the straightforward manner in which he deposed. Having had the benefit of a full discussion by the Bar I have thought it desirable to indioate my opinion bb to whether the existing practice which evidently P. W. 17 followed is irregular. In my opinion, for the reasons stated, it is not.

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