

In Re: Subramania Siva

In Re: Subramania Siva

SooperKanoon Citation : sooperkanoon.com/794540

Court : Chennai

Decided On : Nov-04-1908

Reported in : 1Ind.Cas.22

Judge : Arnold White, C.J. and ;Miller, J.

Appellant : In Re: Subramania Siva

Judgement :

1. This is an appeal by one Subramania Siva against his conviction by the Additional Sessions Judge of Tinnevely for offences under Section 124A, Indian Penal Code and against the sentence of 10 years 'transportation. Subramania Siva was tried together with one V.O. Chidambaram Pillai who was charged with the abetment of the offences charged against Subramania Siva the first accused.

2. Several points of law were taken on behalf of the first accused by his Counsel, Mr. Cowdell in connection with the institution of the criminal proceedings.

3. The first point raised was that the order of Government on which the proceedings were instituted did not satisfy the requirements of Section 196 of the Code of Criminal Procedure. This section enacts:

No court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code (except Section 127), or punishable under Section 108A, or Section 153A., or Section 294A, or Section 505 of the same Code, unless upon complaint made by order of or under authority from, the Governor-General in

Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

4. The order of Government directing the prosecution is dated the 22nd March 1908 (Exhibit A). The substance of this order was telegraphed in cypher by Government to the District Magistrate of Tinnevely on the 23rd March 1908 (Exhibit I).

5. On the morning of the 23rd March 1908, the District Magistrate gave to the Prosecuting Inspector of Police an extract from this telegram and orally instructed him to file a complaint. The complaint against the 1st accused (Exhibit U) was filed the same day along with Exhibit I. Exhibit A is in these terms: ' Under the provisions of Section 196 of the Criminal Procedure Code, the Madras Government authorises the institution of criminal proceedings against Chidambaram Pillai, Subramania Siva and Padmanbha Aiyangar under Sections 124A, 153.A. and 505 of the Indian Penal Code in respect of speeches delivered by them at Tuticorin and, Tinnevely in the months of February and March 1908. The Prosecuting Inspector, Tinnevely, is directed to prefer without delay complaints of offences under the above sections before the District Magistrate, Tinnevely, against the abovesaid three individuals.'

6. What Section 196, Criminal Procedure Code, requires is that the complaint should be made upon authority from the Local Government. The order in this case (Exhibit A) states the sections under which the institution of the criminal proceedings is authorised, and, in general terms, the times when the speeches in respect of which the proceedings were authorised, were delivered. In our opinion, there is nothing in the section to warrant the construction that the actual complaint must be expressly authorised by the Local Government. In *Queen-Empress v. Bal Gangadhar Tilak*, 22 B. 112 the order was more general in its terms than the order in the present case, and Mr. Justice Strachey held that the requirements of Section 196, Criminal Procedure Code, were satisfied. He pointed out that the section did not prescribe any particular form of order and did not even require the order to be in writing; and the same view was taken by the Full Bench of the Bombay High Court on an application for leave to appeal to the Privy Council (see

page 150 of the same case). In *Apurba Krishna Bose v. Emperor* 7 C.L.J. 49; 35 C. 141; 1 Cr. L, J. 10 the authority given by the Government would seem to have been quite as general in its terms as the authority given in the present case, and the Calcutta High Court was of opinion that the authority was sufficient. The only question which the Court has to consider with reference to Section 196, Criminal Procedure Code is--'Is the complaint which I am asked to entertain, a complaint made by order or under authority of Government?' The answer in the present case is necessarily in the affirmative.

7. The next point taken on behalf of the 1st accused was that there had been no legal 'complaint' at all in this case. The complaint, Exhibit U, was put in by the Prosecuting Inspector of Police for the Tinnevely District. 'Complaint' is defined in Section 4(h) of the Code of Criminal Procedure as not including the report of a police officer. Mr. Cowdell's point was that Exhibit II, was a 'police report' and not a 'complaint.' A complaint is none the less a complaint because it is put in by a police-officer. In our opinion the report of a police-officer must be some statement made in connection with, or at least under colour of the duty of the maker as a police-officer. It is not the duty of a Prosecuting Inspector to make reports of offences to Magistrates under Section 124A of the Indian Penal Code. In the present, case the Government directed the Prosecuting Inspector to make a complaint just as in *Queen-Empress v. Bal Gangadhar Tilak* 22 B. 112, it directed the 'Oriental Translator to Government' to make the complaint. His complaint is the statement of the officer of Government obeying the order of Government. In *King-Emperor v. Sada* 26 B. 150, it was held that, where a police-officer files a formal complaint in a non-cognizable case, he cannot be said to make a report and his complaint falls within the definition of 'complaint' in Section 4(h) of the Criminal Procedure Code, 1898.

8. We are also of opinion that there was no informality in the complaint on the ground that it did not set out the speeches or the alleged seditious words which were the subject matter of the subsequent charge. In *Queen-Empress v. Bal Gangadhar Tilak* 22 B. 112, there is a dictum to the effect that the complaint should contain the article complained of to give information to the accused of the charge against him. With great respect to the learned Judges who composed the

Full Bench in that case we think that dictum is too widely expressed and goes beyond what the law requires. We agree with the Additional Sessions Judge that the complaint is not intended to give information to the accused. It is not suggested that the summons or warrant issued to secure the attendance of the accused must set out all the facts on which he is to be charged, and, if not they, why the complaint? Even if the complaint were defective in that it did not set out the dates of the speeches and the nature of the alleged seditious matter, this is at most an irregularity within Section 537(a) of the Code of Criminal Procedure, and, as a Court of Appeal we cannot reverse the conviction on this ground unless the irregularity has in fact occasioned a failure of justice. It is impossible to say it has done so. The accused, before he was committed, knew all the facts on which the prosecution relied and it has not been suggested that he had not time after these facts were all disclosed to prepare his defence.

9. The Magistrate took cognizance of the complaint under Section 200 of the Code of Criminal Procedure. Subsequently he made an order, (Exhibit II in Criminal Appeal No. 492 of 1908 on the file of the High Court) directing the Prosecuting Inspector to investigate the complaint. The Magistrate having duly taken cognizance of the case, the order to the Prosecuting Inspector to investigate the complaint, assuming, for the sake of argument, the Magistrate was not empowered by law to make the order, did not affect the validity of the subsequent proceedings (see Section 529(b) of the Code of Criminal Procedure).

10. The points with which we have so far dealt have reference to the preliminary stages of the case. With reference to the trial in the Sessions Court Mr. Cowdell raised the point that the 'charge' was insufficient on the ground that it did not fulfil the requirements of Section 222 of the Code of Criminal Procedure. The charge is in these terms:

First.--That you, on or about the 23rd day of February 1908, at Tuticorin, in a public speech, did bring or attempt to bring into hatred and contempt or excite or attempt to excite disaffection towards the Government established by law in British India, and thereby committed an offence punishable under section] 24A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Second.--That you, on or about the 25th day of February 1908 at Tuticorin, in a public speech, did bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in British India, and thereby, committed an offence punishable under Section 124A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Third.--That you, on or about the 5th day of March 1908 at Tuticorin, in a public speech, did bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in British India, and thereby committed an offence punishable under Section 124A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

11. The charge, no doubt, contains particulars as to the time when, and the places at which, the alleged seditious speeches were delivered. But we think it was defective in that it did not set out the speeches or the passages in the speeches which the prosecution alleged to be seditious. It is not necessary for us to consider whether, under the law of England, this charge as an indictment would be good. The Indian Legislature, in addition to the general provision contained in Section 537, Criminal Procedure Code, has expressly provided that formal defects shall not in themselves vitiate a charge. Section 225, Criminal Procedure Code, enacts: 'No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.' The principle of illustration (b) to this section seems to us to be applicable to the present case.

12. The first accused was represented by Counsel before the Committing Magistrate, and no objection was taken to the form of the charge as framed by him; and no objection was taken before the Sessions Court until Mr. Cowdell came to sum up the case for the defence. In considering this point, regard must be had to the fact that the objection was not raised till a very late stage in the proceedings. See explanation to Section 537, Criminal Procedure Code. The accused could have stated his objection to the form of the charge when it was read to him in the

Magistrate's Court under Section 210(2) of the Code of Criminal Procedure. He did not do so. He had another opportunity when the Additional Sessions Judge called on him to plead. He did not avail himself of that opportunity. It was not until after he had examined all his witnesses that he complained of the form of the charge. The first accused was fully aware, from the proceedings before the Committing Magistrate, of the passages in the speeches upon which the prosecution relied as being of a seditious character. He called 25 witnesses before the Sessions Court and had full opportunity of meeting the case put forward by the prosecution. A similar objection to a charge was raised in the case of Queen-Empress v. Anant Puranik 25 B, 90. The learned Judges pointed out that the accused in that case was defended by able pleaders who could have no difficulty in finding out from the committal proceedings the offence alleged against the accused and they held that he had not been prejudiced by the irregularity. Notwithstanding the omission of the particulars which, in our opinion, the charge ought to have contained, we are certainly not prepared to say that the first accused was in fact misled by the omission and that the omission has occasioned a failure of justice.

13. Exception was also taken to the way in which the notes of the police-officers of the speeches made by the first accused were dealt with by the Additional Sessions Judge. The notes were 'filed' and marked as exhibits in the case. No one, of course, would suggest that these notes were, in themselves, evidence. What happened at the trial was this. The police-officers using their notes for the purpose of refreshing their memory gave evidence in accordance with their notes. The learned Judge did not record the whole of this evidence but only such portions of it as the prosecution relied on. He then allowed the notes themselves to become part of the record in the case. This, it seems to us, was done quite as much in the interest of the accused as in the interest of the prosecution. The first accused has relied upon the full notes of the speeches, as he is of course, entitled to do, as explaining and qualifying the extracts which are recorded by the Judge; and he has, himself, put in evidence certain notes of speeches, as taken by the police (See Exhibit III (a) and Exhibit IX). At an early stage of the examination-in-chief of the 2nd witness for the prosecution as appears from the learned Judge's notes--see page 6 of the printed evidence--it was agreed by both sides that the witness should read out his notes and the notes themselves should be 'filed' to save the

time and labour in recording them. At page 17 of the printed evidence, we find the following note by the learned Judge: '(Note. At the request of Mr. Sadagopachariar who appeared for the second accused the whole speech of 19th February 1908 is marked Exhibit BI, and not merely the portion translated in the deposition. Similarly with regard to the other speeches exhibited as 15, C, D and B series. The whole of these have already been read out by the witnesses though only such portions were entered in the depositions as P.P. considered material)'

14. The first accused was represented by Counsel at the time it was agreed that this course should be adopted. Mr. Cowdell, who came into the case at a later stage, took objection with reference to the filing of the notes of a speech, made by one Gnanasigamani Mudaliar. When this objection was taken, this speech had not been proved by the oral evidence of any of the witnesses, and it could not of course, be suggested that these notes were evidence. Mr. Cowdell's objection with regard to these particular notes is well founded. There is no note of any other objection by Mr. Cowdell. But in the argument of the appeal he stated to us that he took a general objection to the 'filing' of any of the notes of speeches. But he does not state that he took this objection until he came to sum up the case for the defence. With regard to the speeches which were proved by the oral evidence of the witnesses, we are of opinion that, in the circumstances stated, the learned Judge was right in allowing the notes of the police-officers to become part of the record in the case.

15. A further point raised in the appeal was that evidence which was admitted by the learned Judge of speeches by the first accused, other than the speeches which formed the subject matter of the charge, was not relevant and ought not to have been admitted. We are of opinion that where there is a series of speeches or lectures on one topic, all delivered within a short period of time, one may be considered for the purpose of throwing light on the real meaning and intent of another, and on the state of mind of the speaker with reference to the object matter of the other speeches. This principle is recognised in illustration (e) to Section 14 of the Indian Evidence Act and has been acted on, in cases of prosecutions for sedition in all the other High Courts in India. Such evidence was held admissible in the case of *Queen-Empress v. Jogendra Chunder Bose* 19 C.

35, in the case of Emperor v. Phanendra Nath Mitter 35 C. 945; 8 Cr. L.J. 438, and in the case of Queen-Empress v. Bal Gangadhar Tilak 22 B. 112. In charging the jury in that case--page 139--Mr. Justice Strachey said: 'You will thus see that the whole question is one of the intention of the accused in publishing these articles. Did they intend to excite in the minds of their 'readers, feelings of disaffection or enmity to the Government? Or did they intend merely to excite disapprobation of certain Government measures?' It was also held admissible in the case of Queen-Empress v. Amba Prasad 20 A. 55, by a Full Bench of the Allahabad High Court. In delivering the judgment of the Full Bench, Sir John Edge, on page 69 said: 'The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech., article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions.' We may also refer to the judgment of the majority of the Judges sitting in the Court for the consideration of Crown Cases Reserved in Rex v. Bond (1906) 2 K.B. 389.

16. A further point taken by Mr. Cowdell was with reference to the document marked as Exhibit S. When asked by the Committing Magistrate, if he wished to make any statement, the first accused said that he did not. The following day he made a statement to the Superintendent of the District Jail and asked that it might be placed on record. The Superintendent forwarded the statement to the Magistrate. The Magistrate sent for the first accused and examined him with reference to this statement; and on learning that he wished to 'file' it in the case, the Magistrate filed it. (Exhibit S.).

17. We are of opinion that this statement in the circumstances in which it was made, is admissible as evidence under Section 287 of the Code of Criminal Procedure and is evidence of intention which is relevant to the charge under Section 124A of the Indian Penal Code.

18. Even if we regard the statement, as Mr. Cowdell has invited us to do, as a written statement put in under Section 256 of the Code of Criminal Procedure, it seems to us it is none the less admissible as evidence of intention. The statement is in the following terms:

1. When the Court asked me yesterday if I wished to make any statement, I did not wish to do so and accordingly said the same. To-day I wish to make a statement and accordingly make the following one:

2. I am a Sanyasi. My mission is to propagate the principles of Mukthi and also the ways to attain it. Mukthi for a soul is freedom from all foreign bandages. Mukthi for a nation is freedom from all foreign Control, that is, Absolute Swaraj. Accordingly I preached to my countrymen the gospel of Swaraj and also the ways to attain it, viz., Boycott boycott of all that stands in the way of my nation's attaining Swaraj-- , Passive Resistance and National Education.

3. During the last four years I have travelled through, and propagated my mission in various places in the States of Cochin and Travancore and in the Districts of Tinnevely and Madura. Early in February this year, I went over to Tuticorin and preached my gospel to my countrymen there till the 9th March 1908 and then on the 9th and 11th March I did the same in Tinnevely. It is sheer nonsense to say that anybody induced me to deliver lectures at Tuticorin or Tinnevely.

4. The so-called notes of my speeches filed by the prosecution are not true and correct but garbled and distorted. They contain many passages which I never spoke. It is absurd to say that my speeches have caused discontent, disloyalty and ill feeling towards the Government and the Europeans. Unless a man really suffers from a disease, he cannot be made by others to feel the pain of that disease. Similarly, unless there are real causes for discontent, &c;, among the people, it is foolish to say that such can be spread through a man's speech.

5. From, the time when the English got the administration of the country in their hands, the people of India felt discontented and dissatisfied, since the former acquired the country not as a direct conquest nor as a donation but as the result of many tricks and treacheries played by them, such as alienating Commanders from Rulers, executing false documents, committing forgeries, cheating simple-hearted men, etc. This discontent grew more and more in the hearts of the people till at last it burst into volcano in 1857. At that crisis, Queen Victoria came to the front of the stage, covered the eyes of the people with the magical veil of Magna Charta and hypnotised them. Viceroys after Viceroys came to India and held out delusive

hopes to the people by words, but acted otherwise.

6. The most atrocious Arms Act was passed which deprived the natives of the soil from the free use of arms. Laws were passed in the land giving greater privileges to the Europeans than to the natives of the soil. Under the name of various taxes, the life-blood of the people was sucked. Famines, plague and internal dissensions made the country their permanent home. The foremost province of the country was divided into two against the wish of the whole nation simply to 'divide and rule.' Two of the eminent sons of the country were deported for no cause whatever shown till now. Several leaders of the people were thrown into prison under false pretext of law. Armenian horrors were perpetrated, terrible riots and outrages committed, in the country. Mischievous laws and unreasonable orders were passed. Trials of criminal cases became mere farces.

7. These inhuman and cruel measures of the Government made the people feel its absoluteness and the necessity for its change. It is but natural, that the people would feel so. Great saints have said:

(A king doing injustice (to people in view of money) is worse than a murderer).

(A cruel king exacting money (tax) from people, by oppression, is like robber demanding by ill treatment the travellers to give up property).

Every right thinking man will work to put down vice and to establish virtue in its stead. Accordingly the people of India are now trying to establish, in the place of the foreign Government their Swaraj.

19. We have now dealt with all the points of law taken by Mr. Cowdell on behalf of the 1st accused.

20. The two main questions we have to consider in this appeal are (1) have the prosecution proved that the words which they allege to be seditious were in fact spoken by the first accused, and if so, (2) do the words come within the provisions of Section 124A of the Indian Penal Code?

21. Meetings were held and speeches delivered almost daily from the 3rd February to the 11th March 1908. Most of the speeches were delivered on the beach of Tuticorin. On the 22nd, 23rd and 25th February 1908, speeches were delivered at Hindu Temples in Tuticorin.

22. The first charge is with reference to a speech alleged to have been made at a temple on the 23rd February 1908. Evidence as to this speech was given by the 2nd witness for the prosecution, Police Inspector Jaffar Hussain, by the 3rd witness for the prosecution, Sub-Inspector Venkatavarada Chari, and by the 4th witness for the prosecution, Head Constable Kaliyugarama Pillai. The evidence of these witnesses was recorded by the learned Judge in the manner we have described; and the notes taken by them were filed in the circumstances already stated and marked respectively Exhibits B3, J and N.

23. The second charge is with reference to the speech alleged to have been made at another temple by the first accused on the 25th February 1908. Evidence as to this speech was given by the 2nd witness for the prosecution. The notes were filed and marked as Exhibit C.

24. The third charge is with reference to a speech alleged to have been made by the first accused on the 5th March 1908. Evidence as to this was given by the 2nd witness for the prosecution and the 5th witness for the prosecution. These notes were marked respectively Exhibits E1 and O1.

25. The following are the notes of the speech of the 23rd February 1908 as taken by the 2nd witness for the prosecution:

In order to obtain Swaraj they must try their best to struggle and put down oppression. When God's creation is oppressed, He Himself would come forward under incarnation to put it down. The present state of affairs is in just need of an incarnation to put down high-handedness. There are now two factions. One of those that rule and the other of those that are ruled. My object is that there should be no faction and all should move harmoniously. 17,000 fire arms were stolen from Fort William. The Magistrate of Dacca was shot. But the authorities failed to detect those cases. Such being the case what help the people of India could expect from

Government? Every year they, Europeans, take home Indian money leaving behind currency notes. The Indians are very kind towards their servants but the Europeans mercilessly exact work from the Indian servants. About a lakh of Rupees is taken away every year to England from India for poor fund. If Indian coolies strike work for a fortnight the mills will be closed and Manchester will starve. If Indians block all gaps, the foreign Government would surely suffer. A man is blessed with all powers and if the divine gift is properly utilized, success is sure. As long as the people are perfect in health, there is no necessity for them to join foreigners. Indian coolies work in the mill for the benefit of Europeans and if they strike work the mill owners must necessarily suffer loss. By hand work the coolies get 3 or 4 rupees a month but the Europeans earn 400 or 500 by mere signing. In Bengal, the coolies of the jute mill struck work and their emoluments increased. So also in the North-West Bengal Railway. The Russian Revolution brought good to the people and so is the case throughout the world. If the workmen in the mill understand what he said and strike work for 3 days, European capitalists would suffer more. In Bengal people swear upon Kali to boycott foreign goods. In 1897, when the Bengalees asked Swami Vivekananda if they could perform Sivaji festival, he told them in reply that their question was unfair. If we are afraid to perform Sivaji festival how would they shed later on. If the people were to hear what took place in the rioting of Mymensing, Tubulpore and Comilla they would surely shudder. Without bloodshed nothing could be accomplished. It is a religious maxim. All Indians should undergo all troubles that might face them. Yuganter Patrika was brought to book four times and the editor convicted. As Japan was prepared to sacrifice 20,000 people she won victory over Russia. If 5 crores of Indians come to sacrifice themselves Swaraj would be theirs. In Johannesburg the Europeans pelted stones at Keir Hardic because he sympathised with the Indian people. Is this civilisation? The Indians are not weak, people. So in order to obtain Swaraj they should not be afraid of anything. If all Indians whether strong or weak come forward as strong men, foreign Government will collapse and Swaraj will be theirs. You must swear before Kali that you would support Swaraj.

26. The following are the notes of the 2nd witness for the prosecution of the speech of the 25th February 1908:

Gentlemen, I want you to cry out, 'Bande Mataram' before I commence to give my lecture and also you must recite 'Allah-o-Akbar' which is a favourite cry of our Mahomedan brothers, which must find its place with our national cry.

Gentlemen, I have already told you what the objects of my speeches were and why I took all this trouble to come here and remain with you for so many days. We want to obtain Swaraj and what that Swaraj is, I have already explained to you and unless we obtain Swaraj we are not free men but a body of slaves. We must all act harmoniously and make our aim the 'Swaraj.' I being a Sanyasi, must always say something on religion--People are afraid of death. We must give up fear as there is nothing as death in this world. It is mere 'Maya' which does all this mischief and which creates all sorts of fear in human mind. If we die we are born again. The body becomes a corpse; the 'atma' flies away to find its place in some other frame. So, we are born again. The body, when the life goes away, becomes a corpse which is burnt, buried or thrown away in some way or other. The only reason why we are afraid of death is that we have to leave relations and friends behind. There is Heaven for the good and holy. But don't suppose that the holy alone would get Heaven and not the rest. Don't think that he who does charity would get Heaven only. He, who dies for public good and public cause, is the first man to obtain Heaven, and he is a hero and a man in its true sense. Till now we were in 'Maya.' Now we open our eyes to see Swaraj which we will get soon. The Rajangathar will, in all probability, give Swaraj, on certain conditions which would not be acceptable to us. I appeal to you and beseech you, not to accept on certain conditions, unless it is given to you free of all conditions. The mere handing over by the Englishmen of the control of the Army and Finance of the country is of no use. The moderates would be very willing to accept this. If there be any conditions, it would not be considered as the real Restoration of Swaraj. When once Swaraj is restored, the country should belong to Indians without any connection between the Indians and the Englishmen. We ought not to allow them even to have their flag which can be very easily rolled and thrown into the sea. But no ! We must not give any room to further interference. If we obtain Swaraj without any conditions whatever, then we will hoist the flag of Swaraj on the precipice of the Himalayas and people of other nations wishing to visit India will have to pay a tax.

27. The following are the notes of speech of the 5th March 1908 as taken by the second witness for the prosecution:

As proposed yesterday, Somasundara Barathi is not well. So, I am obliged to speak. If I don't speak I have no rest; to speak, I feel weak. I am in a dilemma; however, I will speak.

We assemble here for several days. There is an advantage in it. We can discuss matters. I am able to inform publicly all that takes place all over the country. All say the strike was due to my preaching though I did not do it. I did not speak about the strike for this purpose. 'Swaraiadhulapathi' think always of Swarajiam and not under Pararajiam., So, think that we do thing's in Swarajiam, Swaraja. All of us Hindus, Mahomedans, Hindus, assembled here, have determined to attain Swaraj. One man comes and tells me to say something about the mismanagement of Municipality. One man tells me here that the police want to inconvenience us by parading the police on the beach. We don't care. Think that it is to our respect commented upon natural law to boycott, recommended passive resistance. Am I to be blamed for it? I come to know what the barbers think, washermen think and what police do, what vakils are boycotted. In the presence of two Inspectors I wish to say something about the strike which I did not do for the last so many days. It is known throughout India about the strike, which is stronger. Sub-Collector came and asked Chidambaram Pillai 'what about strike'. Venkatrama Aiyar, Balaji Rao, Padmanaba Aiyar sent for the strikers and asked them the cause of the strike, they said that the preaching had no effect on them. Because they were ill-treated they struck work. Yesterday some maistries were taken inside the mill and threatened, but to no effect. For the last 2 or 8 days I hear that some persons are dragging young boys, and maistries prevent. The Rajangathars are trying to find fault; they are searching in every nook and corner for any disturbance, the Europeans would misrepresent matters to officials who will side them and do what they think. If we do a thing we will do it openly at the same time not against law. B.I.S.N. Co. Manickam Asari is said to collect boys and go to mill and maistries complain. I don't know what takes place. I say to-day, if Manickam Asari drag the boys, maistries will prevent and I don't know if there would be a disturbance for which I am not responsible. So, I inform this to the authorities in the presence of

this public assembly. The Government authorities should assist the aggrieved party and not side the offending party. Public can be gained over by kind treatment and not by ill-treatment and threatenings. On the 9th March, Bepin Chandra Pal comes out of jail, lie who communicated to the public what Swaraj is. What did he do? The Government sentenced him to six months' rigorous imprisonment because he refused to consent to what was dictated to him which was concoction. Bande Mataram editor was arrested. Bepin Chandra Pal was summoned to give evidence against him, he refused, to give evidence against him and so he got six months. We have heard of Harischandra who lost everything for the sake of truth and likewise Bepin Chandra Pal. On the 9th March he comes out of jail. So, we must join on that day into a large crowd of 35,000 and I hope all will attend. We will celebrate that memorable occasion. We must come out in procession all round the town, in the evening we must assemble on the beach and every one should try his best to speak what he likes. We should light the town. The lion of Swaraj comes out and that day will be the day when we will come out from our bonds and hoist the flag of Swaraj. All should join. If you consent to join I will celebrate else not. I am not Lord Minto who refused to accept public opinion. That day is a Monday Karthingai and as Bepin comes out that day our paper Swaraj will come out. You will think that the police will prevent us, don't think so. As the authorities have come to understand that we are peaceable people we will take the photograph of Bepin Chandra Pal. If police were to accompany us and escort us we will consider it an honour and will be glad to see them. We will open a Swadeshi Medical Hall for the sale of Ayurvedic medicines. We must select six persons, young men, true men, bold men, faithful men and we will train them to go to villages to preach to ignorant masses. We must make Tuticorin a Barisal. As regards mass meeting and the holding of meetings where the Sedition Bill is in force and if Sedition Bill comes here we must think that we have done our work then we will go away to Tinnevely. 250 mill hands have struck work in Madura and the mill authorities have made arrangements there that if I were to go to Madura, I must not be allowed to preach. I have received this letter from a friend. Why should the Europeans be so much against me? Why should we not assemble? It is our land, our mother-land and not of foreigners. If I am stopped to preach publicly we will do so in a private building. We will prevent all officials from coming in, we will sit to eat

food and discuss, so that no one would come. If Sedition Bill comes into force in all places soon we will finish our duty. We are not prepared for war, but we are ready for passive resistance. We will make all Village Munsifs and Karnams to resign, then what they would do Barbers do not shave anti-swadesis. Two vakils went to them for a shave, they refused. If they had done what they did in Barisal it would have been much better, to shave partially and leave the men. Are barbers their slaves? Let Government send for barbers to work for loyalists. Europeans are not very good people, if barbers (Europeans) come, we make a fun with them. If they want we will keep quiet. Government is to see to the prosperity and not to rob the people and ruin them. If other Governments who are Rajangathars who have the good of the people at heart, come for the rescue, we don't know we will subject ourselves to the present Government. If you are in unanimity, we will gain much and God will assist us. Several crores of pounds have been taken away by foreigners for the last 150 years and they have sucked our blood and now we in turn must earn as much as possible and send them away. You must come to a determination, you are not born to Europeans, you are not related to them, you are not their friends, so you must make up your mind not to help them in any way. By parades I don't mean paupers but foreigners who came like paupers. Everything is mud and everything will become mud. So we must look to our own prosperity. Don't become slaves for money and disgrace yourselves. Don't trouble Swadesis, don't annoy them listening to foreigners words. Don't be selfish that you will get some money by taking coolies back to the mill. Keep your self-respect, beg from door to door for your food. The 9th March should be a memorable day and it should be celebrated with great eclat. Do you consent to this? 'Bande Mataram.' We must open an Ayurvedic Medical Hospital. Do you accept this? 'Bande Mataram.' We will have to select six persons to go out and preach and Swaraj paper will come out that day and all the public should assist. Would you do? 'Bande Mataram.'

28. As regards the speeches which do not form the subject matter of the charge but which, were admitted in evidence, evidence of a speech alleged to have been delivered by the first accused on the 19th. February 1908 was given by the second witness for the prosecution and his notes were marked as Exhibit 13, evidence of a speech alleged to have been delivered by the first accused on the 26th February

1908 was given by the 3rd witness for the prosecution and his notes were marked as Exhibit K. Evidence of a speech alleged to have been delivered by the first accused on the 1st March 1908 was given by the second witness for the prosecution and his notes were marked as Exhibit 1). Evidence of a speech alleged to have been delivered by the first accused on the 4th March 1908 was given by the 2nd, 3rd and 5th witnesses for the prosecution and their notes were marked respectively as Exhibits E, L and O. Evidence of a speech alleged to have been delivered by the first accused on the 9th March 1908 was given by the 6th witness for the prosecution and his notes were marked as Exhibit Q.

29. The police-officers do not profess to have taken a verbatim note of the words used by the accused. The record which they made of the speeches was of the same character as the record made by the witnesses in the trial of Edmonds and others (1821) Reports of State Trials, New Series, Vol. I. pp. 818 and 819, where the witnesses were allowed to read their notes as evidence of the speeches made. The second witness for prosecution stated in evidence that his notes represented to the best of his ability the substance of what the speakers said. The third witness stated that he took down to the best of his ability the words actually uttered. The fifth witness stated that his notes represented what the first accused said and that everything found written there was in substance said by the first accused. The sixth witness for the prosecution speaking of his notes said: 'All these words were uttered by the speaker and it is a substantially correct record of the speech.' He also said: 'My notes are not a verbatim report. I noted as far as I could the important utterances. I omitted things I considered unimportant.' He also said: 'In my notes I used as far as possible the exact words of the speakers. The notes contain the very words uttered by Chidambaram Pillai as far as I was able to take them.' The seventh witness said 'The notes accurately set forth what the speakers said.'

30. The chief witness in connection with the proof of the speeches was the second witness for the prosecution, and the learned Judge who had the opportunity of seeing his demeanour in the witness-box was satisfied that he spoke the truth. (See paragraph 15 of the judgment of the Additional Sessions Judge). The suggestion on behalf of the defence was that his notes were not in fact made at

the time they purport to have been made and that they were the outcome of consultation and collaboration between the police-officers. A strong point was made of the fact that some of the notes of the second witness for the prosecution were not produced before the District Magistrate, on the 9th March 1908 when security proceedings under Section 108 of the Code of Criminal Procedure were instituted against the accused and others. The explanation given by the witness was that the notes had been mislaid in consequence of the confusion at the Tuticorin Police Station owing to the arrival of a large number of special constables. Mr. Cowdell suggested that the explanation was not true and he referred to the evidence of the 3rd witness for the prosecution who stated, (on page 32 of the printed evidence), that the special constables arrived in three parties, the last party having arrived on the 5th March 1908. This witness stated in re-examination that the party who had arrived on the 5th March were quartered at the Police Station and other places and remained there till the end of March 1908. We are certainly not prepared to say that the learned Judge was wrong in accepting the explanation of the second witness for the prosecution as to why some of these notes were not produced before the District Magistrate on the 8th March 1908. Further, as the learned Judge points out, the police reports which were marked as Exhibits F., G. and H. series were clearly genuine and the terms of these reports support the case for the prosecution that the notes were in fact made at the time at which they purport to have been made.

31. The evidence of the police witnesses is corroborated by the evidence of independent witnesses of whom the eighth prosecution witness and the eleventh prosecution witness are the most important. Their evidence is no doubt of a somewhat general character and they do not profess to give specific dates. (The 8th prosecution witness gives no specific dates and the 11th prosecution witness only gives one--February 23rd). With regard to the eighth prosecution witness, Mr. Sadagopachariar was able to show from his cross-examination that he was not present at any of the speeches which formed the subject-matter of the charge: and it would also seem that he was not present at the meetings of February 22nd, March 1st, and possibly March 4th, 1908. We do not think, however, that it follows that, because the words to which he speaks also, according to the evidence, occur in speeches which he did not hear, that his evidence as to speeches which he

says he heard is altogether untrustworthy. It seems to us extremely probable that the same set of stock phrases would have been used by the accused in more than one speech. As has been pointed out, speeches were delivered almost daily from the 3rd February to the 11th March 1908. Another point made by Mr. Sadagopachariar with reference to the police notes of speeches was that the passage, 'We ought not to allow them even to have their flag which can be very easily rolled and thrown into the sea,' which is to be found, in Exhibit C (Jaffer Hussain's notes of the speech, of the first accused of February 25th, 1908) finds no place in the report of that speech made by this officer, Exhibit H, and that this report contains a note by the witness that there was nothing important in that speech, except building castles in the air. We have examined the original note and we are not prepared to infer--as the defence invited us to infer--that the omission of any reference to this passage in Exhibit H shows that Exhibit C was not a genuine note taken at the time. The learned Vakil also pointed out that the reference to 50,000 foreigners in India which occurs in the notes by the 2nd prosecution witness of a speech by the 2nd accused (Exhibit B I) is attributed by the 8th and 11th prosecution witnesses to the 1st accused and that the 11th prosecution witness gives the date of the occasion when the reference was made. The points made by Mr. Sadagopachariar no doubt go to show that much reliance ought not be placed on the memory of the witnesses as to the precise words used.

32. The police witnesses, however, were subjected to a minute and searching cross-examination at the trial before the Additional Sessions Judge. Their evidence has been scrutinised and discussed in great detail in the course of this appeal before us. After a careful consideration of the points taken on behalf of the defence with regard to this part of the Case, the conclusion at which we have arrived is that the notes taken by the police-officers are substantially accurate and that the evidence given by the police witnesses may safely be acted on.

33. It was strongly urged that the learned Judge had not given due weight to the evidence called on behalf of the defence with, reference to the words which the prosecution alleged were spoken by the first accused at the various meetings to which reference has been made. The evidence of the defence witnesses was of a negative character to the effect that they did not hear any seditious language used

at the speeches at which they were present.

34. None of the witnesses profess to have made notes of the speeches which they heard. After weighing the evidence on one side and on the other we are of opinion that the evidence of the witnesses called for the prosecution who speak to notes made at the time is not displaced or shaken by the general evidence given by the defence witnesses. We think also that the observation of the learned judge that the witnesses called on behalf of the defence were interested in, or partisans of the accused is borne out by the evidence. We are of opinion that the speeches containing the passages, which the prosecution alleges are of a seditious character, were in fact made by the first accused.

35. With regard to the question whether the words used by the first accused in his speech of February 23rd, 1908 come within the provisions of Section 124A, Indian Penal Code, we are of opinion that in making the speech the first accused attempted to bring into hatred or contempt or to excite disaffection towards the Government, and that the speech was seditious.

36. The burden of the speech of February 23rd, 1908, was the way to obtain Swaraj. There has been considerable discussion as to the meaning of this word. We have been referred to the case of Veni Bhushan Roy v. Emperor 34 C. 991; 7 Cr. L.J. 297; 11 C.W.N. 1050; 6 C.L.J. 699. There, the learned Judges express the opinion that the term does not necessarily mean Government of the country to the exclusion of the present Government, but that, its ordinary acceptance is 'home rule' under the Government. The Judges point out that the vernacular word used, if literally translated, would mean 'self-government' but that self-government would not necessarily mean the exclusion of the present Government or independence. The word is, no doubt, used in different senses and the sense in which a speaker employs it must be judged mainly by the context of the speech in which the word is used. We do not think it can be said that there is any ambiguity as to the meaning of this word as used by the 1st accused. In paragraph 2 of his own statement he defined the gospel which he preached as a gospel of 'Absolute Swaraj.'

37. The 36th witness for the defence, a correspondent to several important newspapers stated in examination-in-chief that the Swaraj which the first accused inculcated was a free and independent Swaraj independent of British Government, which they were to obtain by the Boycott and Panchayat System. The witness added that he did not hear the first accused advocating the use of force. In cross-examination he said: 'He (the 1st accused) wanted India to have complete independence, something more liberal than the Colonies. The greater privilege; would be self-government * * * * The Viceroy and Governor to be Indians without any connection with England. It would amount to forming a sort of republic. That is how I understood it.'

38. The passages in the speech of February 23rd, 1908 which the prosecution alleges were seditious are set out in the evidence of the 2nd prosecution witness. The reference to 'Swaraj is, in our opinion, to Swaraj in the sense in which the accused used the expression in his own statement, viz., absolute independence, and the reference to putting down oppression suggests a resort to physical force. Then we have the phrase 'When God's creation is oppressed, He himself will come forward under some incarnation to put it down.' The point of the allusions to 17,000 guns being stolen from Fort William and the shooting of the Magistrate of Dacca would seem to be that these crimes were never detected. Then we have the passage. 'Without bloodshed, nothing could be accomplished.' We cannot read the passages with reference to the sacrifices made by Japan in the War with Russia in spite of the ingenious attempts made by counsel to place an innocent interpretation on them, in any other sense than as an incitement to revolt. The phrase 'If all Indians whether strong or weak, come forward as strongmen, foreign Government will collapse and Swaraj will be theirs' is an appeal to his audience to replace the foreign Government by Swaraj'.

39. The 1st accused is, no doubt, entitled to ask that the question whether language used by him in any speech is seditious, should be considered with reference to the speech as a whole and not with reference to isolated passages taken apart from their context. But reading the notes of the speech of February 23rd, 1908 as a whole it seems to us that the speech not only advocates 'Swaraj' which means the exclusion of the present Government, but that it urges, if

necessary the use of force in order that that end may be attained. And we have no doubt that it was in this sense that the word was understood by the audience to whom the speech, was addressed.

40. The general tenor of the speech of February 25th, 1908 according to the notes of the prosecution second witness is much the same as that of the speech of February 23rd, 1908. We find a passage.

He who dies for the public good and in the public cause is the first man to obtain Heaven. When once 'Swaraj' is restored, the country should belong' to Indians without any connection between the Indians and Englishmen. We ought not to allow them even to have their flags which can be easily rolled and thrown into the sea.

If we obtain Swaraj without any condition whatever, then we will hoist the flag of 'Swaraj' on the precipice of the Himalayas and the people of other nations wishing to visit India will have to pay a tax.

41. We have pointed out that the reference to rolling the flags and throwing them into the sea does not appear in the report of this witness. (Exhibit H). In the speech of March 5th, 1908 he referred to B.C. Pal as 'the lion of Swaraj' and said that on the day of his release 'We will come out from our bonds and hoist the flag of Swaraj.' Ho also said:

We must make Tuticorin a Barisal.

It is our land, our mother-land and not of foreigners.

We are not prepared for war, but we are ready for passive resistance. If other Governments who are Rajangathars who have the good of the people at heart, come to the rescue, we do not know we will subject ourselves to the present Government.

Several crores of pounds have been taken away by foreigners for the last 150 years and they have sucked our blood and now we in turn must earn as much as possible and send them away.

Earlier in the speech he said:

We must select six persons, young men, true men, bold men, faithful men and we will train them to go to villages to preach to ignorant masses.

42. With regard to these speeches (25th February and 5th March 1908) we are of opinion that they also fall within the provisions of Section 124A, Indian Penal Code, and that they were seditious. We do not think it necessary to discuss in detail the language of the speeches which were put in evidence but which do not form the subject-matter of the charge. It is sufficient to say that in our opinion the language employed in those speeches indicates that the intention of the speaker was to bring into hatred or contempt, or to excite disaffection towards the Government. In connection with Section 124A, Indian Penal Code, Mr. Mayne observes (Criminal Law of India, III Edition, paragraph 295, page 522) 'In estimating the natural consequence which will flow from particular language, all the surrounding circumstances of the case are material, the excited state of public feeling, the ignorant or hostile character of the persons addressed, the critical condition of affairs, and the influence of the speaker'. There is much force in the observation of the Additional Sessions Judge that to the mind of the average mufussil cooly, there is no distinction between official and non-official foreigners. The non-officials are to them merely the kinsmen of the officials and the departure of the one at once involves the departure of the other.

43. We do not of course lose sight of the fact that some of the speeches which have been put in evidence dealt largely with the strike at the Coral Mills. A portion of the speech of February 23rd 1908, is in fact an incitement to the mill hands to strike. Other passages in the speeches are devoted to the question of 'boycott.' It is scarcely necessary to say that language advising a strike of workmen, or the boycott of foreign goods, is not in itself seditious, however misguided or mischievous such advice may be. We also do not lose sight of the fact that the change of demeanour among the lower classes in Tuticorin to which the witnesses for the prosecution speak may in a measure be due to the feelings of discontent with regard to their wages and treatment which had been excited among the workmen by the speeches of the accused and others, so far as we can judge

without reasonable cause. We say 'so far as we can judge without reasonable cause,' because there is no evidence on which we can rely that the workmen were underpaid or ill-treated and because workmen who struck for the first time on the 27th February 1908, and afterwards went back to work at a slightly increased wage, struck for a, second time on the 13th March 1908 and afterwards returned to work at their original wages. Mr. Andrew Harvey, head of the Coral Mills at Tuticorin, stated in his evidence that prior to the strike on the 27th February 1908 he had not heard any complaints from the mill hands to indicate that they were discontented in any way, that writers were sent to find out from the men what their grievances were and that in consequence of their reply an increase of the wages was given and they returned to work on the 7th March that they continued to work till the 13th March (the day of the riots at Tinnevely and Tuticorin) and that they left work on that day and that they started work again on the 20th March 1908 on the same pay as they originally got, and not on the increased scale of 7th March, and that after their return they were perfectly contented. The 28th witness for the defence says that having gone back to work on March 7th he was told to sign an agreement on the old scale and that he refused. In the face of Mr. Harvey's evidence we do not believe this witness.

44. There was evidence, which we see no reason for not accepting, of a marked change in the demeanour of the people after the speeches made by the 1st and 2nd accused although, as we have pointed out, this may in a large measure be attributed to the state of feeling in connection with the strike.

45. As regards Tuticorin, the 2nd witness for the prosecution said:

After the speeches, I noted a change in the conduct of the people, i.e., there was lawlessness amongst them, they were previously law abiding. They commenced to disobey the orders of public servants. I used to hear shouts of 'Bande Mataram' regardless of time and place. They commenced to shout 'Bande Mataram' in the presence of Europeans. They commenced collecting in small crowds and going to the houses of Europeans and sometimes threw stones.

46. In cross-examination, this witness said that after the strike on the 27th February 1908 the people began to disobey the police and that they began to

crowd and refused to disperse when ordered to do so.

47. The 3rd prosecution witness said:

Before the speeches the town was quiet and law abiding. After the speeches commenced I noticed a difference. The people of the town became more and more lawless. I mean the people in general i.e., the masses.

48. The 14th witness for the prosecution, the Sub-Magistrate, said:

After the speeches I heard one evening as I was returning from my office to my house a crowd of about 100 rowdies crying aloud 'Bande Mataram, let Swadeshi prosper, let the thalis of the Englishmen's wives be torn off (i.e., let them become widows), back to pieces the white men, the sons of harlots.' This I heard in the first week of March. No acts had been done by Europeans to provoke such utterances. It was unprovoked so far as they were concerned. I noticed a change in the attitude of the people after the speeches began. When I first took charge people were friendly and respectful to the authorities. After the speeches they became contemptuous of the authorities.

49. The 15th witness for the prosecution, Mr. Chapman, Agent of B.I.S.N. Company Tuticorin said:

Before I went on leave, the native population of Tuticorin were quiet and friendly. On my return, I noticed a great difference. They were not at all friendly. They shouted 'Bande Mataram' and Tamil words that I don't understand. It became so bad that I could not allow my wife and children to drive through the native town. We had to restrict ourselves to the beach road. The hostility of the people became most marked after the 1st March 1908.

50. The 19th witness for the prosecution, Mr. Rhenius an Assistant Commissioner of Salt and Abkari, said:-

The first week in March, I was grossly insulted by a knot of people standing in front of my window at which I was standing. They shouted 'Aday Vellaikkarur Kettuporar' you, there, whitemen will be wiped out. The word 'aday' is a most

insulting form of address from a cooly. On one occasion as I was driving to the Salt Factory at Arasadi 1 passed along the Great Cotton Road, I was shouted at by a group of people who shouted and jeered at me. On these occasions I had done nothing to provoke any one, I was particularly careful to avoid anything of the sort.

51. The 21st witness for the prosecution, a Second Grade Pleader, said:

Before February and March, people were well disposed and friendly towards Europeans and authorities of Government. After the speeches the people showed signs of dislike, hatred and disloyalty. I move freely among the people. I gathered my impressions from conversation with different people. Crowds going to hear the preaching shouted 'Bande Mataram, let Swadeshi prosper and foreigners to damned.' These cries were uttered especially by the lower orders.

52. It was suggested on behalf of the defence 'Let foreigners be damned' was not an accurate translation of the words which the witness alleged he had heard shouted. These words were given, in the vernacular before the Committing Magistrate and it would seem that the more correct translation of the expression 'Let foreigners to damned' would be 'Let foreigners die or perish.'

53. Speaking of Tinnevelly, the first Court witness, the Deputy Magistrate, said that on the 13th March, the day of the riots, one of the rioters cried out to the Reserved Policemen:

Why do you all stand there? Come away to us. We will shoot whitemen.

54. The evidence as to the events immediately preceding the riots is summarised by the Additional Sessions Judge in paragraph 13 of his judgment.

55. With reference to the riot at Tuticorin, the 14th witness for the prosecution, the Sub-Magistrate, gave evidence as follows:

On 13th March all the shops were closed. There was no food for the punitive police and other needy people in the town. I begged one and all of the shopkeepers to open the shops. Except Shanar merchants others refused to comply

with my request. The Shanar merchants also were afraid to open the shops for fear of the violence of the mob. I had to sit with the merchants for 3 hours with 2 armed constables and sell rice to the punitive police and other people who needed it. On the evening of 13th March, a meeting was held in spite of a prohibition. About 5-30 P.M., I was returning home from my office with a friend (a vakil of Srivaikuntam) and my police orderly. On the way Mr. Ashe, the Sub-Divisional Magistrate, met me and ordered me to proceed to the place where the meeting was being held, and direct them to disperse. I did so. I was pelted with stones. My friend the vakil and my orderly were struck with stones. A stone struck me on the head which was protected by a turban. Meanwhile the Divisional Magistrate and Deputy Superintendent of Police came with a force of police and dispersed the crowd with the use of fire-arms. There was a serious riot. I was pursued and had to take refuge somewhere. The house of refuge was surrounded and I escaped by the back door. The rioters numbered about 5,000.

56. The 6th witness for the prosecution gave evidence with reference to the riot at Tinnevely on the 13th March 1908.

57. Mr. Sadagopachariar contended that evidence of the riots was irrelevant and he referred us to Cave, J's charge to the Jury in *The Queen against Burns and others* 16 Cox. 361, which is set out in *Russell On Crimes and Misdemeanours'* 6th edition Vol. 1. p. 557. The only passage in the charge which would seem to bear upon this question is that in which the learned Judge leaves the question to the Jury whether riots which actually took place were the natural consequences of the speeches delivered.

58. It has been urged before us that the real cause of the riots in Tinnevely was the arrest of the two accused on the 12th March 1908 under the order of the District Magistrate, which was afterwards set aside by the High Court.

59. It seems to us to be not unlikely that the arrest was the immediate cause of the outbreak. At the same time, we think there can be little doubt that the fact of the arrest would not have occasioned a riot had it not been for the excited state of public feeling in Tuticorin and Tinnevely--a state of things which had been brought about by the inflammatory and seditious speeches which had been delivered by

the 1st accused and others. The speeches which form the subject-matter of the present charges were delivered at Tuticorin, but it does not seem reasonable to suggest that the effect which they produced, and which in our opinion, they were intended to produce, was limited to the particular audience to whom they were addressed. The facility of communication between Tuticorin and Tinnevely, is shown by the evidence of the movements of the accused on March 10th 1908 referred to in paragraph 115 of the judgment of the Additional Sessions Judge.

60. Upon the evidence, however, we are not prepared to hold that the riot at Tinnevely on March 13th 1908 was one of the natural consequences of the seditious speeches of the 1st accused.

61. We are of opinion that the first accused, Subramania Siva, was rightly convicted of offences under Section 124A of the Indian Penal Code.

62. As regards the question of punishment, we think the law will be vindicated by the imposition of a sentence of six (6) years' transportation and subject to this modification, we dismiss the appeal of the 1st accused, Subramania Siva.