

**In Re: Sivasubbu Nadar**

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**Court :** Chennai

**Decided On :** Oct-04-1950

**Reported in :** AIR1951Mad772; (1951)IMLJ207

**Judge :** Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 138 and 165

**Appeal No. :** Refd. Trial No. 93 and Crl. Appeal Nos. 567 and 695 of 1950

**Appellant :** In Re: Sivasubbu Nadar

**Advocate for Pet/Ap. :** K.S. Jayarama Aiyar, Adv. for ;C.K. Venkatanarasimham, Adv.;Public Prosecutor

**Judgement :**

**Basheer Ahmed Sayeed, J.**

1. Accused 1 & 2 have preferred these appeals against their conviction & sentence by the learned Ses. J. of Tirunelveli for the offences falling under Sections 324 & 302, I. P. C. The first accused has been convicted & sentenced to three years R. I. under Section 324 & the second accused under Section 302 to death .

2. The prosecution case is that those two accused stabbed the deceased Sudalaimani Nadar on 4-11-1949 when he was in the hotel of P.W. 1 & also when he went out near the hotel of P. W. 3 & finally at the end of the street where the

fatal blow seems to have been dealt by the second accused as a result of which the deceased fell down & died. (After discussing evidence their Lordships observed as follows :) We feel that the guilt of murder has not been brought home to the second accused. But what has been proved beyond reasonable doubt appears to be that he was responsible for stabbing the deceased in the hotel as spoken to by P. W. 1 & for causing the injuries found on the person of the deceased as testified to by the examination of the doctor & the post mortem certificate issued by him. In these circumstances, we feel that we shall be justified in setting aside the conviction & sentence against the second accused for the offence of murder; but we convict him for the offence under Section 324, I. P. C. & sentence him to R. I. for three years. We do not find that there is any justification to interfere with the sentence that has been imposed on the first applt & that will be confirmed. With these modifications the appeals are dismissed.

3. Before departing from this case, it is necessary to refer to a matter of procedure adopted by the learned Ses. J. During the course of the evidence of P. Ws. 1 to 3 as well as of P. W. 10, it is seen that the learned Judge has put very many questions to the witnesses both while the prosecution examined them as well as at the time when the defence cross-examined them. Large chunks of the deposition of these witnesses consist of answers to Ct. questions & in fact so far as P. W. 10 was concerned, after he was examined Across-examined & re-examined, he was recalled & the Ct. put to him quite a large number of questions with the result that a cross-examination was begun as it were de novo. More than 70 years ago in *Noor Bux Kazi v. The Empress*, 6 Cal. 279 : 7 C.L.R. 385, Sir Eicbard Garth C. J. & Tottenham J. deprecated the practice of Judges and Mags, questioning witnesses as if they were cross-examining counsel (sic) in the following words :

'We think it right to point out to the Ses. J. that the course which he adopted in the examination of the witnesses for the prosecution was irregular, opposed to the provisions of Section 138, Evidence Act, & not fair to the prisoners.

We find that, on the examination-in-chief being finished, the Judge questioned almost all the witnesses at considerable length upon the very points to which he must have known that the cross-examination would certainly & properly be

directed. The result of this, of course, was to render the cross-examination by the prisoner's pleaders to a great extent ineffective by assisting the witnesses to explain away, in anticipation, the point which might have afforded proper ground for useful cross -examination.

It is not the province of the Ct. to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Ct. should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in Section 138 of the Act. The Judge's power to put questions under Section 165 is certainly not intended to be used in the manner which we have had occasion to notice in the present case.'

The observations of the learned Judges apply very aptly to what has happened in the case under consideration. Any person with some experience either of examination-in-chief or cross-examination would feel the embarrassment & trouble when the learned Judge puts questions during the course of either examination-in-chief or cross-examination which would take him away from the trend of his questions. We, therefore, desire to impress upon the learned Judge that the procedure adopted by him has been irregular.

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