

**In Re: Subbiah thevan**

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**SooperKanoon Citation :** [sooperkanoon.com/804201](http://sooperkanoon.com/804201)

**Court :** Chennai

**Decided On :** Mar-29-1920

**Reported in :** 56Ind.Cas.498; (1920)39MLJ65

**Judge :** Sadasiva Aiyar and ;Spenser, JJ.

**Appellant :** In Re: Subbiah thevan

**Judgement :**

**Sadasiva Aiyar, J.**

1. This is a reference by the Assistant Sessions Judge of Tinnevely, the Jury having returned a verdict of 'not guilty ' against the accused by a majority. The charge was that at about 10 p. m. the accused committed theft of two cloths from the yard in the dwelling house of P. W, No. 1. No doubt the time is not vary accurately spoken to by the witnesses, but there can be no question that it was after sunset and between (about) 8 and (about) 10 p. m. The accused examined no witnesses and beyond wild insinuations nude by him in cross examination, there is nothing to show that any of the prosecution witnesses was actuated by feelings of enmity towards the accused in giving evidence against the accused. As soon as the theft was discovered, the accused was pursued and he was caught red-handed with the stolen cloths in his possession. On the whole, I think that the Jury's verdict is perverse.

2. One matter relating to the procedure of the Assistant Sessions Judge has to be considered. After the Jury had pronounced their verdict that the accused was not guilty, he asked them to state briefly the reasons for their opinion. It has been held in *Emperor v. Siranadu* 30 M. 469 and in *Public Prosecutor v. Abdul Hameed* 22 Ind. Cas. 981 that the Sessions Judge has no power under Section 303 or Section 307, Criminal Procedure Code, to question the Jury as to the reasons for their verdict unless he considers that there has been an accident or mistake, or there is some ambiguity or doubt as to the nature and meaning of the verdict which has to be cleared. The Assistant Sessions Judge in this case, however, relies in justification in the course he took on the decision of a Bench of this Court which dealt with Reference Case No. 30 of 1919, even though the verdict in this case cannot be said to be ambiguous. The decision relied on by him does seem to lay down that the Court, if it intended to make a reference to the High Court, should have asked the Jury for their reasons for not believing the evidence of the witnesses for the prosecution and the learned Judges refer to Section 303 of the Criminal Procedure Code. With great respect, I do not think that Section 303 gives any power to the Sessions Court to call upon the Jury to give their reasons for their verdict unless the Court is unable to ascertain what the verdict of the Jury really is (section 307 is the section which deals with cases where the Sessions Judge disagrees with the verdict).

3. However, the decisions in *Emperor v. Siranadu* 30 M. 469 and *Public Prosecutor v. Abdul Hameed* 22 Ind. Cas. 981 do not, in my opinion, lay down that, for the purpose of coming to a conclusion satisfactorily to his own mind whether the case is a fit one for reference to the High Court, the Sessions Judge may not put questions to the Jury and even to the individual members of the Jury to ascertain the reasons for their verdict. It may be that after hearing these reasons he might change the view which he might have arrived at as to the necessity of a reference to the High Court or he might be confirmed in his opinion as to such necessity. He may not be entitled under these particular sections to put those questions and the Jury may not be bound to answer such questions, but I do not find anything to render it improper, for the particular purpose mentioned by me, for the Judge to put such questions. While I, therefore, differ from the ruling in Reference Case No. 30 of 1919 that under Section 303 (i) the Sessions Judge

should have asked the Jury for their reasons for their not believing the evidence of the witnesses when he considered the verdict perverse, I do not think that his having asked such questions in this case is improper or is a sufficient ground for not accepting the reference.

4. In the result, I convict the accused under Section 380, Indian Penal Code, and sentence him to 4 years' rigorous imprisonment.

**Spencer, J.**

5. I agree in thinking that the accused is guilty and that he should be sentenced to 4 years' imprisonment.

6. As regards the question that the Assistant Sessions Judge thought fit to put to the Jury, I consider that Section 303, Criminal Procedure Code, does not authorise him to question the Jury as to the grounds for their opinion, although it would be convenient and even desirable, when such references are made that the Court that makes the reference as well as the Court that disposes, of it should know what is in the mind of the Jury. The rulings in *Emperor v. Siranadu* 30 M. 469 and *Public Prosecutor v. Abdul Hameed* 22 Ind. Cas. 981 have laid down that such questions should not be asked. I think that all Courts should follow those decisions, and I am of opinion that so long as the present wording of the Criminal Procedure Code is retained, a Sessions Judge is neither authorised to ask questions nor is the Jury bound to answer questions as to the reasons for their verdict and that they can only be asked questions to make it clear what their verdict is when it is ambiguous.

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