

**In Re: Kimidi Narasimham**

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**SooperKanoon Citation :** [sooperkanoon.com/807587](http://sooperkanoon.com/807587)

**Court :** Chennai

**Decided On :** Mar-30-1936

**Reported in :** AIR1936Mad629

**Appellant :** In Re: Kimidi Narasimham

**Judgement :**

**Pandrang Row, J.**

1. The appellant has been convicted of the murder of a boy of 12 years and sentenced to death by the Sessions Judge of Vizagapatam. The boy was seen last alive in the morning of 22nd October last. A search was made for him and a report was made to the police that he was missing and a dead body was discovered on 26th October at a spot marked A in the plan. The body was considerably decomposed, most of the soft parts having been eaten away by maggots but, the mother and two other relations of the boy were able to identify what remained of the deceased as his remains. A pair of gold ear-ornaments, which the boy was wearing when he was last seen alive, were however found to be missing and these are alleged to have been sold by the appellant on the very day on which the boy was last seen alive and in the very village to which the boy belonged.

2. The evidence against the appellant is entirely of a circumstantial nature, but this is not to say that the evidence is not strong enough to justify, and in fact to require, his conviction. Unfortunately however it is impossible for us to say whether the

evidence is sufficient or not because of the failure of the learned Judge to elicit from the appellant any explanation which he had to give in respect of the facts appearing in the evidence against him. In the absence of any such opportunity given by putting the particular points to the appellant and asking for his explanation in respect of these points, it may not be fair to him to say, as the learned Judge did, that in the absence of any explanation from him about the earrings which he sold, that the inference should be drawn that he stole them from the deceased after murdering him. It has been very clearly laid down as a general rule by their Lordships of the Privy Council in *Dwarakanath Varma v. Emperor* 1933 64 MLJ 466, that it is the duty of the examining Judge under Section 342, Criminal P.C., to call the accused's attention to any point which the jury considers to be vital, or, in other words, to lead to the inference of guilt and to ask for an explanation. In this particular case it is clear that the examining Judge was certainly of opinion that, in the absence of any explanation about the jewels said to have been sold by the appellant, the proper inference to be drawn was that the appellant stole them from the deceased after murdering him because the appellant was the last person seen with the deceased when he was alive. This duty has not been performed in this case with the result that there is no explanation in the record by the appellant as to any of the points appearing in the evidence against him, viz., the sale of the jewellery by him, his being seen with the deceased when he was last seen alive, his putting the search party off the scent when an attempt was made to discover the missing boy, and so on.

3. In a case of circumstantial evidence it is all the more necessary to perform this duty, because the accused cannot be expected to know, when all the evidence against him is of a circumstantial nature and some of it is important while some of it is not, which are the points on which an explanation from him would be necessary to avoid the inference of his guilt. For instance, in this case the learned Judge appears to have thought that 'the finding of a partially smoked cigarette near the dead body strengthens the case against the accused to a trifling extent,' If because the appellant himself smokes cigarettes and beedies, the learned Judge thought that this was a point leading to an inference of guilt, however slight, and was going to use it against the accused, the accused ought to have been given an opportunity of explaining if possible, the discovery of a half-smoked cigarette near

the dead body. It is unfortunate that the] non-performance of an imperative duty by the learned trial Judge compels us to order a fresh trial. It is not fair that the appellant's case should be decided in the absence of an explanation from him about the points that were urged against him by the prosecution and regarded by the learned Judge as important or vital. The conviction and sentence must therefore be set aside and there must be a re-trial of the appellant on the same charge, during the course of which he must be given a proper opportunity to explain all the points appearing in the evidence against him which should be stated to him.

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