**(1975) 09 MAD CK 0035**

**Madras High Court**

**Case No:** None

In Re: Dhanabal and Others — APPELLANT

Vs

RESPONDENT

**Date of Decision:** Sept. 1, 1975

**Acts Referred:**

- Evidence Act, 1872 - Section 145
- Penal Code, 1860 (IPC) - Section 109, 302

**Citation:** (1976) CriLJ 1969

**Hon'ble Judges:** Varadarajan, J; Paul, J

**Bench:** Division Bench

**Judgement**

Varadarajan, J.

The three appellants, Dhanabal, Ramanujam and Muthuthamizharasan, accused 1 to 3 respectively were tried by the learned Sessions Judge of South Arcot Division in S. C. No. 26 of 1974, A-1 for the offence of murder of his sister Rasayal at about 1.30 P. M, on 5-12-1973 at Thulukkamanyam in Komaratchi village limits near Keelakarai by chopping off her head with a veeoharuval and the other two accused for the murder of Rasayal in furtherance of common intention or alternatively for abetment of the murder of Rasayal and found guilty, A-1 u/s 302, I.P.C. and the other two accused u/s 302 read with Section 109, I.P.C. and sentenced to imprisonment for life.

2. The first accused Dhanabal is the elder brother and accused 2 and 3 are the younger brothers of Rasayal, the deceased victim in this case. The third accused is employed as a Tamil Pandit in Pachayappa''s High School, Chidambaram and he used to visit Keelakkarai village at least once in a month. P.W. 9 is employed as the Head Master of that High School. The other accused 1 and 2 are residents of Keelakkarai village where Rasayal was living. Rasayal''s husband Raju Padayachi died in or about the year 1962 leaving three daughters and two sons of whom Lakshmi alone is a major. After the death of her husband, Rasayal save her eldest daughter

Lakshmi in marriage to the second accused, Rasayal owns about five cawnies of land called Thulukka Maniyam in Keelakkarai village. She had executed the general power of attorney Ex. P-15 dated 31-8-1970 in favour of the second accused giving him absolute powers of management of her properties and also to function as the guardian of her minor children. She began to lead an immoral life after the death of her husband and was having illegal intimacy with one Krishnamoorthi and Ramdoss. This was resented by the accused who often rebuked her for her conduct and there were frequent quarrels between the accused and Rasayal. Rasayal herself began to cultivate the lands after the execution of the power of attorney Ex. P-15. The feelings between the accused and Rasayal thereafter got more embittered and the accused were threatening to do away with her some time or other. Rasayal had sent the petitions Ex. P-10 series dated 17-11-1973 to the Superintendent of Police, Cuddalore, Deputy Superintendent of Police, Chidambaram and Inspector of Police, Kattummannarkudi alleging that her brothers were abusing her and had beaten her several times saying that she was an immoral woman and that the first accused showed her a big knife and threatened to do away with her with that knife one day or other. She had prayed in those petitions for police protection. The Sub Inspector of Police, Komaratchi P.W. 13 received these petitions on 24-11-1973 and sent for the accused and warned them.

3. The Pachayappa''s High School, Chidambaram in which the third accused is employed as a Tamil pandit had been closed from 4-12-1973 to 9-12-1973 under orders of the Collector of South Arcot. Whenever the school declares holidays normally the teachers do not attend the institution on those days and no special classes were conducted in the school in those days.

4. On 5-12-1973 when Rasayal and her farm servant P.W. 4 were working in her fields removing weeds, the accused went there at about 1.30 P. M. from several directions, A-1 armed with a veecharuval from the east, A-2 armed with a spade from the south and A-3 from the north-west. On seeing the accused rushing towards her, Rasayal began to run towards the Kalungadi channel running adjacent to her fields. Then A-3 instigated A-1 to cut her saying that she was leading an immoral life and should not be left. Thereupon, the first accused cut Rasayal on the right side of her neck with the veecharuval and she fell down in the channel, raising an alarm. A-2 stated that she should not be left at that and that her head should be severed from her body, she being an immoral woman. Thereupon, the first accused caught hold of her hair by the left hand and cut her neck with the veecharuval, severing the head from the trunk. A-3 also uttered similar instigating words before the first accused cut the neck of the deceased completely. Ramalingam P.W. 1 and Ramakrishnan P.W. 2 who were returning at that time after spraying insecticides in the fields of P.W. 1 saw the occurrence. Chelladurai P.W. 3 who was coming to the field of Rasayal with food for P.W. 4 also saw the occurrence. Nagappan P.W. 5 who was going towards the scene of occurrence to meet Ramakrishnan P.W. 2 for getting the arrears of wages also saw the occurrence. The accused left the scene of

occurrence after committing the murder, A-1 taking away the veecharuval with him and A-2 leaving the spade near the feet of the deceased Rasayal., P.W. 4 refused to take the food brought by P.W. 3 and ran towards east to Komaratchi police station.

5. P.W. 4 gave a report Ex. P-7 to the Sub-Inspector of Police, Komaratchi, P.W. 13 at 3 P.M. on the same day. P.W. 13 recorded the narration of P.W. 4 in Ex. P-7 and read it over to him and obtained his signature after P.W. 4 admitted the contents to be correct. He registered a case u/s 302, I.P.C. and sent express reports to the concerned authorities. He took up investigation and proceeded to the scene of occurrence at 3.30 P. M. and found the dead body of Rasayal lying in the channel with the head severed from the trunk and the spade M. O. 7 lying near the feet of the deceased Rasayal. He prepared the observation mahazar Ex. P-11 and recovered the jewels and the blood stained jacket M. O. 1 of the deceased and blood-stained earth M. O. 8. He held inquest over the dead body of Rasayal from 3.30 P. M. to 6.30 P. M. and examined P.Ws. 1 to 4 and another during the inquest. Ex. P-22 is the inquest report. Subsequently he arranged for the body being taken to the Government Hospital, Chidambaram for post mortem examination.

6. The autopsy on the body of the deceased Rasayal was conducted by the Medical Officer, Government Hospital, Chidambaram P.W. 12 at 11 A. M. on 6-12-1973. P.W. 12 found that the body and the head were separate. He found a hemispherical contusion red in colour 1" in diameter on the left side of forehead 1" above the middle of left eyebrow, a linear abrasion on the left hand dorsal aspect 4" lons starting from the base of left index finger to left wrist and an incised wound running round the neck on the right side i.e. 2" below the right ear lobule on the left, 3" below the left mastoid process on the front, 2" above the supra sternal notch on the back and 2" above the seventh cervical spine. He found the cut portion of the head and the cut portion of the trunk to fit in correctly. The thyroid cartilage and the pharynx were cut and the fifth cervical vertebra had been cut into two pieces. He was of the opinion that the deceased would appear to have died of severance of the head from the trunk at about 1.30 P. M. on 5-12-1973 that the severance of the head from the body is possible by cutting the neck completely with a veecharuval and that the injury was necessarily fatal. Ex. P-21 is the post-mortem certificate.

7. The third accused surrendered on 10-12-1973 while accused 1 and 2 surrendered on 11-12-1973 before the Sub Magistrate, Chidambaram. P.W. 13 sent requisition to the Sub Magistrate''s Court for sending the properties to the chemical examiner. The chemical examiner detected blood on M. O. 1 the jacket of the deceased, but not on M. O. 8. The serologist detected human blood on M. O. 1. On a requisition from the police the Sub Magistrate, Portonovo recorded statements of P.Ws. 1 to 5 u/s 164 of the Code of Criminal Procedure. P.W. 4 turned hostile to the prosecution even in the committal Court and the evidence of P.Ws. 1 to 3 and 5 recorded by the committing Magistrate has been admitted in evidence as Exs. P-2, P-4, P-6 and P-9 respectively u/s 288 of the Code of Criminal Procedure, after the witnesses had been

treated as hostile to the prosecution.

8. When questioned u/s 342, Criminal P. C. all the accused denied any complicity in the crime and stated that the prosecution witnesses have deposed against them on account of ill-feeling. They did not examine any witness on their behalf.

9. The evidence of the Medical Officer P.W. 12 who conducted autopsy on the body of the deceased at 11 A. M. on 6-12-1973. shows that the head of the deceased had been severed from the trunk by cut with veecharuvat at about 1.30 P. M. on 5-12-1973 and that the injury is necessarily fatal. No doubt there is no explanation in the evidence as to how the deceased came by a hemispherical contusion on the left side of the forehead and a linear abrasion on the left hand dorsal aspect. There is evidence to show that after receiving the first cut from the first accused the deceased fell down. Therefore it is probable that the contusion and abrasion had been sustained while the deceased fell on the ground after receiving the cut. The evidence of P.W. 12 establishes that the deceased had died of homicidal injuries sustained at 1.30 P. M. on 5-12-1973.

10. The evidence of the Head Master, Pachavappa''s High School, Chidambaram, P.W. 9. in which the third accused is employed as a Tamil Pandit shows that the High School had declared holidays from 4-12-1973 to 9-12-1973 and that no special classes are held and the teachers do not normally attend school on those days when the school had declared holidays. His evidence establishes that it was not necessary for the third accused to remain at Chidambaram on 5-12-1973. The evidence of P.W. 1 establishes that the third accused used to visit Keelakkarai village at least once in a month.

11. The case of the prosecution against the accused rests mainly on the evidence of P.Ws. 1 to 3 and 5 given before the committing Court and admitted in evidence u/s 288 of the Code of Criminal Procedure after those witnesses had been treated as hostile to the prosecution and their evidence before the committing Court had been read over to them and they stated that they had deposed like that before the committing Court but added that they had done so on account of coercion by the police. P.W. 1 has deposed about the relationship of the accused and the deceased Rasayal and has stated that after the death of Rasayal''s husband about 8 years prior to the occurrence leaving five children of whom one daughter is married to the second accused, Rasayal began to lead an immoral life and was having illegal-intimacy with one Krishnamoorthi and that the accused used to question her about her immoral conduct and that there was ''thagarar'' between the accused on the one hand and Rasayal on the other. He has also stated that the deceased Rasayal began to cultivate her lands by herself, He has further stated that he went along with P.W. 2 at about 10 A. M. On 5-12-1973 for spraying insecticides for the crops in his land and returned at about 11 or 11-30 A. M. and that he saw a crowd of people going to the scene of occurrence at 3.00 P. M. and he also went there and found the deceased having been killed by someone in Thulikkamaniyam and the

trunk and the head lying separately in Kalungadi channel. Having regard to his statement Ex. P-l recorded u/s 164, Criminal P. C. and his evidence that he had returned from the field after spraying insecticides at 11 or 11.30 P. M. he was treated hostile to the prosecution and had been cross-examined and his evidence before the lower Court Ex. P-2 had been read over to him and admitted in evidence u/s 288, Criminal P. C. as already stated. P.W. 1 has not stated in his evidence before the committing Court that the third accused instigated the first accused to cut the deceased. The evidence of the other witnesses P.Ws. 2, 3 and 5 before the committing Court is to the same effect as that of P.W. 1 before that Court, with the difference that they have said in their evidence that the third accused also instigated the first accused to cut the deceased Rasayal. It may be stated in this connection that P.W. 4 has practically admitted that Ex. P-7 had been recorded by P.W. 13 to his dictation, though in another portion of his evidence he has attempted to say that P.W. 13 had not recorded Ext. P-7 correctly. We are satisfied from the evidence of P.W. 13 that Ex. P-7 has been recorded to the narration of P.W. 4 by P.W. 13 correctly, and P.W. 13 had obtained the signature of P.W. 4 in Ex. P-7 after the contents of Ex. P-7 had been admitted by P.W. 4 to be correct. It may be stated here that P.W. 4 has not stated in Exhibit P-7 that the third accused instigated the first accused to cut the deceased. The evidence of P.Ws. 1, 2, 3 and 5 before the committing Court establishes satisfactorily that the first accused cut the. deceased Rasayal on the right side of her neck, that the second accused instigated the first accused to cut her saying that she was an immoral woman and that the first accused thereafter caught hold of the hair of Rasayal who had fallen on the ground after receiving the first cut and cut her neck completely and severed the head from the trunk and left the place along with the other accused, taking away the veecharuval with him. The evidence also establishes that the second accused had left the spade M. O. 7 behind at the feet of the deceased Rasayal. Though M. 0. 8 had been recovered by P.W. 13 as bloodstained earth from the scene of occurrence it has not been found to have been stained with blood. But there is evidence to show that water was flowing in the channel in which the body of Rasayal had been found. However, we are satisfied that the deceased had been done to death only in the Kalungadi channel situate near the land called Thulukkanmanyam in Keelakkarai village. Therefore, there can be no doubt regarding the scene of occurrence in this area.

12. Learned Counsel for the appellants contended that the evidence regarding the time of occurrence is not satisfactory. P.W. 1 had stated in his statement recorded u/s 164, Criminal P. C., Ex. p-1'', that the deceased had taken her food at about 10 or 11 A. M, But the Medical Officer P.W. 12 who conducted autopsy on the body of the deceased found 10 ounces of cooked rice in the stomach and he has stated that it is possible that the deceased died within 15 minutes or half an hour after taking rice food. On the basis of this evidence the learned Counsel for the appellants contended that the deceased should have died at about 10.30 or 11.30 A. M. and

that the evidence of the prosecution witnesses that the occurrence took place at 1.30 P. M. is not acceptable. It is not possible to expect P.W. 1 to have stated the time at which the deceased took her meal in the field correctly. P.W. 4 has mentioned the time of the occurrence as about 1.30 P. M. on 5-12-1973 in Ex. P-7. We are therefore satisfied that the occurrence in this case had taken place at 1.30 P. M. as opined by the Medical Officer, P.W. 12.

13. Learned Counsel for the appellants also contended that the place of occurrence has not been established satisfactorily by the prosecution having regard to the fact that no blood has been detected on M. O. 8. We have dealt with this aspect already and found that no blood could possibly be detected on M. O. 8 having regard to the fact that water to a height of 10 inches was following in the channel in which the occurrence had taken place.

14. Learned Counsel for the appellants next contended that the evidence of P.Ws. 1, 2, 3 and 5 recorded by the committing Magistrate have not been properly proved, that those statements are inadmissible in evidence having regard to the fact that they had been only read in full to the witnesses and had not been put to them passage by passage as required by Section 145 of the Evidence Act and that corroboration of these statements is necessary before the Court could convict the appellants on the basis of the same.

15. We find from the record that when the evidence tendered by the witnesses, P.Ws. 2, 3 and 5 before the committing Court had been read over to them by the learned Public Prosecutor in the Sessions Court, they were admitted by the respective witnesses to be their evidence recorded by the committing Court and they had only added that they gave such evidence on account of coercion by the police. We therefore find that the evidence of these witnesses recorded by the committing Court had been proved satisfactorily.

16. Learned Counsel for the appellants relied upon some decisions in support of his contention that the evidence recorded by the committing Court must be put passage by passage and the explanation of the witnesses obtained as required by Section 145 of the Evidence Act before they are admitted in evidence u/s 288, Criminal P. C. The first decision relied upon by the learned Counsel is that of the Supreme Court in Tara Singh v. State 1951 MWN 225 : 52 Cri LJ 1491, In that case, two of the three eye-witnesses whose depositions before the committing Magistrate were brought on record u/s 288, Criminal P. C. were not confronted with their former statements in the manner required by Section 145 of the Evidence Act and all that happened is that they were asked something about their previous statements and they replied that they were made under coercion. Bose, J. delivering the judgment for the Bench in that case had observed:

Now, it is evident that one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court

because until that evidence was contradicted and displaced, there was no room in this case for permitting the previous statements to be brought on record and used u/s 288. Therefore, as these statements were not put to these witnesses and as their attention was not drawn to them in the manner required by Section 145 of the Evidence Act, they were not admissible in evidence ..... in the case of Naridar Singh, his previous statement does seem to have been put to him in the proper way. The particular portions on which the prosecution desired to contradict him were read out and he was afforded an opportunity of explaining them. So, the inadmissibility extends only to the other two witnesses.

There is nothing in this judgment to show that the statements of the other two witnesses whose evidence before the committing Court had been held by the Supreme Court to be inadmissible had been read to them by the Court or the Public Prosecutor as in the present case.

17. The next decision relied upon by the learned Counsel for the appellants is of the Supreme Court in Bhagwan Singh Vs. The State of Punjab, The decision is rendered by Fazl Ali and Bose, JJ. who are parties to the earlier decision in Tara Singh v. State 1951 MWN 225 : 52 Cri LJ 1491. Bose, J. who delivered the judgment in this case also for the Bench has observed:

Resort to Section 145 of the Evidence Act would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to those parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made. Of course that statement cannot be used as substantive evidence unless Section 288 of the Criminal P. C. is called in aid ..... There can be no hard and fast rule. All that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner .....The matter is one of substance and not of mere form.

18. The other decision relied upon by the learned Counsel for the appellants is the decision in Kumaraswami Naicker v. State 1963 MWN 69 where the learned Judges have observed at p. 71 thus:

The difficulty we find in this case is that it is not clear, from the judgment of the learned Sessions Judge, that he has proceeded u/s 288, Criminal P. C. for rejecting the testimony of these witnesses in the Sessions Court and accepting their evidence in the committal Court instead. If he had really intended to do so, he should have complied with the necessary formalities. Those formalities, briefly stated, required the whole of the evidence of the witnesses given in the committal Court to be filed,

so that the Court could come to a conclusion whether it could exercise its discretion and treat the earlier evidence given in the committal Court as evidence for all purposes at the Sessions trial. Next, an earlier line of decisions had taken a certain view about the use of Section 145 of the Evidence Act to a case to which Section 288, Criminal P. C. has to be applied. It is not necessary to state that view, as the position has now been made clear by the decision of the Supreme Court in Tara Singh v. State 1951 MWN225 : 1951 Cri LJ 1491, that the evidence in the committal Court cannot be used in the Sessions trial unless the witness is confronted with his previous statement as required by Section 145 of the Indian Evidence Act. This means that after the whole of the deposition in the committal Court has been marked in evidence, it will be necessary to draw the attention of the witness to those portions of the deposition in the Sessions Court which are in conflict with the earlier statement, and in regard to which the earlier statements are proposed to be relied upon by the prosecution.

19. Yet another decision relied on by the learned Counsel for the appellants is the decision of the Bench of the Mysore High Court in B. Ramappa Naik v. State of Mysore 1963 MLJ 523 where it is observed as follows:

Strangely enough when P.Ws. 1, 2, 6 and 7 and 14 were cross-examined in the trial Court by the learned Public Prosecutor he did not contradict those witnesses by the evidence given by them in the Committal Court. Undoubtedly those witnesses have resiled from the evidence given by them in the committal Court, But unfortunately the attention of those witnesses was not drawn to the depositions given by them in the enquiry Court, as required by Section 145 of the Evidence Act. Hence those witnesses did not have any opportunity to explain the contradictions appearing in their depositions given in the two Courts..... This Court had occasions to emphasise the importance of the rule laid down in Tara Singh''s case 1951 SC 518 : 1952 Cri LJ 1491.....

As a result of the Public Prosecutor''s failure to conform to the requirements of Section 145 of the Evidence Act, the evidence given by P.Ws. 1, 2, 6, 7 and 14 in the committal Court and purported to have been treated as evidence, in the trial Court, has become inadmissible.

20. The last decision relied upon by the learned Counsel for the appellants in this connection is of Ramamurti and Krishnaswamy Reddy, JJ, in The Public Prosecutor v. Kandaiyan 1971 MLW 220 where Ramamurti, J. observed after referring to the observation of Hidayatullah C. J. in State of Rajasthan Vs. Kartar Singh, thus:

We are not inclined to regard the above statement as supporting the extreme contention of the learned Public Prosecutor that the marking in evidence of the entire prior deposition in the committal Court without anything more is sufficient compliance with Section 145 of the Evidence Act.....This decision of the Supreme Court which is clearly distinguishable on facts does not in any manner depart from

the well settled principle enunciated by it in its earlier decision of the year 1951. The test in all these cases is whether the principles of natural justice have been complied with, whether the witness has been treated fairly and whether the attention of the witness was drawn to the crucial portions of his prior deposition in the committal Court .....The practice of marking the entire deposition u/s 288, Criminal P. C. the moment the witness gave a different or discrepant version treating the witness for that reason as hostile cannot but be deprecated as it is violative of Section 145 of the Evidence Act.

What happened in that case can be gathered from what has been stated in the end of the judgment of the Bench, Viz., "The moment P.W. 7 stated that he did not see the particular assailant or assailants who inflicted the injuries, he was treated as hostile without anything more and his prior deposition in the committal Court was marked." All the above five decisions appear to relate to cases where the witnesses whose evidence before the committal Court had been admitted in evidence in the trial Court u/s 288, Criminal P. C. had turned hostile to the prosecution only in part while supporting it in some other part. They do not appear to relate to cases in which the prosecution witnesses who had given evidence before the committal Court supporting the case of the prosecution had turned hostile to the prosecution in the Sessions Court and had not supported the case of the prosecution to any extent in the Sessions Court. As we have already stated in the present case P.Ws. 1 to 3 and 5 who had supported the case of the prosecution in full before the committing Court, had turned hostile to the prosecution completely in the Sessions Court. P. Ws, 1 and 2 professed ignorance in the Sessions Court about the occurrence and P.Ws. 3 and 5 stated that they knew nothing about the occurrence. The observations of Hidayatullah C. J. in State of Rajasthan Vs. Kartar Singh, are apt and deserve to be noted having regard to the peculiar features of the present case. The learned Chief Justice observed as follows:

In our judgment, there was enough compliance with Section. 145 of the Evidence Act and the High Court erred in not reading these earlier statements for what they are worth. When these two witnesses were examined in the committal Court, they gave a clear version involving the two accused in the case. The statement, of Mst. Kartar Kaur was that Gurjant Singh and his father Kartar Singh came to the house of Dayal Singh and Gurjant Singh called aloud to Dayal Smash to open the door. The door was opened and the father and son entered. At that time Gurjant Singh was carrying a sword. She stated quite clearly that Gurjant Singh attacked her father Dayal Singh and later her step-mother Phinno. She also said that Kartar Singh had also entered with Gurjant Singh, and Kartar Singh fired a firearm when Gurjant Singh was caught by Mohinder Singh. She also stated that Mohinder Singh was wounded by Gurjant Singh and then she ran out of the house in the company of Mohinder Singh. These clear statements were completely denied by her when she Came to the Court of Session. Her effort then was to make it appear that the persons who had entered the house had muffled their faces and she could not

identify them. She also said that she had not seen anything in the hands of those persons. In fact she did not say that there were two persons at all but only one. She was declared hostile and was allowed to be cross-examined by the Public Prosecutor. The Public Prosecutor read to her the whole of her statement before the committal Court and asked her whether it was her statement. She admitted that it was a true record of what she had stated before the committal Court but she said that it was a false statement given under ''police pressure''. The objection taken to the admissibility of the statement was that every single passage which differed from her testimony in the Court of session was not put to her with a view to affording her an opportunity of explaining why she had made a contrary statement. No doubt, if there were some passages here and there which differed from her later version, that procedure would have been necessary. Here the witness admitted that her statement was truly recorded in the committal Court. She only denied that it was a true statement because she said that she was made to depose that way by the police. It: would have been useless to point out the discrepancies between the two statements because her explanation would have been the same. In these circumstances, the requirements of Section 145 of the Indian Evidence Act were fully complied with and the earlier statement could be read as evidence in the Sessions trial.

In the present case, as in that case, P.Ws. 1 to 3 and 5 had turned hostile to the prosecution completely and their evidence had been read over to them in full by the learned Public Prosecutor before the Sessions Court and they admitted that they deposed like that before the committing Court and added that they did so on account of coercion by the police. There is no material on record to show that there was any such coercion. Even if their evidence before the committing Court had been put to these witnesses, passage by passage, one cannot expect the witnesses in these circumstances to say anything other than that they had deceased like that before the committing Court on account of coercion by the police. In such circumstances, it would be only an empty formality to put the evidence of these witnesses before the committing Court passage by passage to them and ask for their explanation regarding the contradiction. In these circumstances, as has been held by Hidyatullah, C. J. in State of Rajasthan Vs. Kartar Singh, we are of the opinion that the requirements u/s 145 of the Evidence Act have been fully complied with and that the earlier statements of P.Ws. 1 to 3 and 5 before the committing Court could be read as evidence in the Sessions trial and are admissible in evidence. It is necessary to note in this connection that even in the decision in Bhagwan Singh Vs. The State of Punjab, referred to above it has been observed by the Supreme Court that there can be no hard and fast rule, that all that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner and that the matter is one of substance and not of mere form. We find that the witnesses had been treated fairly and were afforded reasonable opportunity to

explain the contradictions.

21. Learned Counsel for the appellants relied upon the decision of the Supreme Court in Shranappa Mutyappa Halke Vs. State of Maharashtra, in support of his contention that corroboration of the evidence of the hostile witnesses recorded in the Sessions Court is necessary before the evidence in the committal Court could be taken into consideration at the trial. The learned Judges have observed in that decision thus:

The question how far evidence in the committing Court given by a witness who resiles from it at the trial in Sessions and which is brought in as evidence at the trial u/s 288 of the Criminal P. C. requires corroboration or not, has engaged the attention of most of the High Courts in India in numerous cases ..... While the dust of controversy sometimes obscured the simplicity of the true position, most of the learned Judges have, if we may say so, with respect, appreciated the situation correctly. That is this. On the one hand, it is true that corroboration of such evidence is not required in law; but it is equally true that in order to decide which of the two versions, the one given in the committing Court and the one in the Sessions Court, both of which are substantive evidence, should be accepted, the Judge of facts would almost always feel inclined to look for something else beyond this evidence itself to help his conclusion. We cannot do better in this connection than to quote from the observations on this question by their Lordships of the Privy Council in AIR 1949 257 (Privy Council) . Dealing with the question as to the value that can be attached to such evidence their Lordships observed thus:

Apart from the suspicion which always attaches to the evidence of an accomplice it would plainly be unsafe, as the Judges of the High Court recognized, to rely implicitly on the evidence of a man who had deposed on oath to two different stories.

This, if we may say so, with respect, is the crux of the question. Where a person has made two contradictory statements on oath it is plainly unsafe to rely implicitly on his evidence. In other words, before one decides to accept the evidence brought in u/s 288 of the Criminal P.C., as true and reliable one has to be satisfied that this is really so. How can that satisfaction be reached ?" In most cases this satisfaction can come only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. If there be a case-and there is such infinite variety in facts and circumstances of the cases coming before the Courts that it cannot be dogmatically said that there can never be such a case-where even without such extrinsic support the Judge of facts, after bearing in mind the intrinsic weakness of the evidence, in that two different statements on oath have been made, is satisfied that the evidence is true and can be safely relied upon, the Judge will be failing in his duty not to do so.

Sadasivam and K.N. Mudaliyar, JJ. have observed in In Re: Muthian Nadar, thus:

The learned Judges of the Supreme Court in Shranappa Mutyappa Halke Vs. State of Maharashtra, held that the evidence of a witness tendered u/s 288 of the Criminal P. C. before the Sessions Court is substantive evidence. In law such evidence is not required to be corroborated. But where a person had made two contradictory statements on oath it. is ordinarily unsafe to rely implicitly on the evidence and the judge, before he accepts one or the other of the statements; as true, must be satisfied that this is so. For such satisfaction it will ordinarily be necessary for the evidence to be supported by extrinsic evidence not only as to the occurrence in general but also about the participation of the accused in particular. But in a case where even without any extrinsic evidence the judge is satisfied about the truth of one of the statements, his duty will be to rely on such evidence and act accordingly.

Another Bench of this Court has observed in In Re: Abdul Kader, thus:

But in a series of decisions of this Court and the Supreme Court, it has been held that evidence admitted u/s 288, Criminal P. C. is substantive evidence which does not really require corroboration.....In the decision of the Travancore-Cochin High Court in Narayana Pillai Balakrishna Pillai Vs. State, there is reference to the observation of Lord Goddard in Mohammad Sugal Esa v. The King AIR 1946 PC 3 though made in a different context, to the following effect:

Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence.

It is pointed out in the Travancorcochin decision that Section 288, Criminal P. C. has come up for consideration before the Privy Council as also before the Supreme Court of India and that though the question as to corroboration did not specifically arise for consideration before those tribunals, there are sufficient indications in their pronouncements that the section does not admit of any limitation. We are, therefore, unable to lay down as proposition of law that a retracted judicial confession cannot, under any circumstances, be corroborated by evidence admitted u/s 288, Criminal P. C. It would depend upon the facts of each case, whether it would be safe to do so and it is, in this view that we would like to distinguish the decision in Queen Empress v. Bharwappa ILR (1889) Mad 123, already referred to.

Thus, there are two lines of cases one following that corroboration is necessary and another that it is not necessary in all cases and. that in a case where even without any extrinsic evidence the Judge is satisfied about the truth of one of the statements, his duty will be to rely on such evidence and act accordingly.

22. We are satisfied having regard to the Section 164 statements of P.Ws. 1 to 3 and 5 that the statements given by those witnesses before the committing Court, are true and could be relied upon. Even if any corroboration is required as has been held by the Supreme Court in Shranappa Mutyappa Halke Vs. State of Maharashtra, , we are of the opinion that such evidence is available as there are more statements admitted in evidence u/s 288, Criminal P. C. than one in the present case and they

afford material to see whether the evidence given by one witness before the committing Court is corroborated by that given by the other witness in that Court. We therefore hold that the evidence tendered by P.Ws. 1 to 3 and 5 before the committing Court had been rightly admitted; as evidence in the Sessions Court u/s 288, Criminal P. C. in the present case and could be acted upon.

23. The evidence of P.Ws. 1 to 3: and 5 establishes, as we have already stated, that the first accused cut the deceased on the right side of her neck when she began to run towards the Kalungadi channel on seeing the accused approaching her, A-1 armed with a veecheruval and A-2 with a spade and when she fell down in the channel, on the instigation of A-2 that she should not be left at that and her head should be severed from her body she being an immoral woman, the first accused caught hold of her hair by the left hand and cut her neck with the veecharuval severing the head from the trunk. We are therefore satisfied that the convictions of the first accused u/s 302, I.P.C. and of the second accused u/s 302 read with 109, I.P.C. by the learned Judge and the sentence of imprisonment for life awarded to each of them, are correct. So far as the third accused is concerned, as we have already stated, P.W. 4 has not mentioned in the First information Report Ex. P-7 that the third accused also instigated the first accused to cut the deceased. P.W. 1 has not stated in his evidence before the committing Court that the third accused also instigated the first accused to cut the deceased. No doubt, there is the evidence of P.Ws. 2, 3 and 5 to show that even the third accused instigated the first accused. But having regard to the fact that no reference is made in Ex. P-7 to any instigation by the third accused to cut the deceased and P.W. 1 has not stated in his evidence before the committing Court that the third accused also instigated to cut the deceased, we are of the opinion that there is a reasonable doubt regarding the alleged instigation by the third accused to the first accused for cutting the deceased Rasayal and that the benefit of doubt should go to the third accused. We accordingly give the benefit of the doubt to the third accused and acquit him and set aside the conviction of the offence u/s 302 read with 109, I.P.C. and the sentence of imprisonment for life awarded to him by the learned Sessions Judge and we direct that he be set at liberty forthwith unless he is required to be detained in connection with some other case. The appeal is therefore allowed only as regards the third accused and is dismissed as regards accused 1 and 2.