1961

The management of Tocklai Experimental Station represented by the Indian Tea Association
v.
The Workmen

Gajendragadkar J.

to draw an analogy between the requirements of the senior research staff and the junior staff with whose claims the tribunal was dealing. Therefore, we are not satisfied that there is any substance in the grievance made by the workmen against the award passed by the tribunal in respect of house allowance. The result is Civil Appeal No. 460 of 1960 fails and is dismissed.

There would be no order as to costs in both the appeals.

Appeal No. 459 *allowed.*
Appeal No. 460 *dismissed.*

1961

November 24.

K. M. NANAVATI
v.
STATE OF MAHARASHTRA

(S. K. DAS, K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Jury Trial—Charge—Misdirection—Reference by Judge, if and when competent—Plea of General Exception—Burden of proof—"Grave and sudden provocation"—Test—Power of High Court in reference—Code of Criminal Procedure(Act, 5 of 1898), ss. 307, 410, 417, 418(1), 423(2), 297, 155 (1), 162—Indian Penal Code, 1860 (Act 45 of 1860), ss. 302, 300, Exception I—Indian Evidence Act, 1872 (1 of 1872), s. 105.

Appellant Nanavati, a Naval Officer, was put up on trial under ss. 302 and 304 Part I of the Indian Penal Code for the alleged murder of his wife's paramour. The prosecution case in substance was that on the day of occurrence his wife Sylvia confessed to him of her illicit intimacy with Ahuja and the accused went to his ship, took from its stores a revolver and cartridges on a false pretext, loaded the same, went to Ahuja's flat, entered his bed room and shot him dead. The defence, *inter alia*, was that as his wife did not tell him if Ahuja would marry her and take charge of their children, he decided to go and settle the matter with him. He drove his wife and children to a cinema where he dropped them promising to pick them up when the show ended at 6 P. M., drove to the ship and took the revolver and the cartridges on a false pretext intending to shoot himself. Then he drove

1961

K. M. Nanavati v. The State of Maharashtra

his car to Ahuja's office and not finding him there, drove to his flat. After an altercation a struggle ensued between the two and in course of that struggle two shots went off accidentally and hit Ahuja. Evidence, oral and documentary, was adduced in the case including three letters written by Sylvia to Ahuja. Evidence was also given of an extra-judicial confession made by the accused to prosecution witness 12 who deposed that the accused when leaving the place of occurrence told him that he had a quarrel with Ahuja as the latter had 'connections' with his wife and therefore he killed him. This witness also deposed that he told P. W. 13, Duty Officer at the Police Station, what the accused had told him. This statement was not recorded by P. W. 13 and was denied by him in his cross-examination. In his statement to the investigation officer it was also not recorded. The jury returned a verdict of 'not guilty' on both the charges by a majority of 8 : 1. The Sessions Judge disagreed with that verdict, as in his view, no reasonable body of men could bring that verdict on the evidence and referred the matter to the High Court under s. 307 of the Code of Criminal Procedure. The two Judges of the Division Bench who heard the matter agreed in holding that the appellant was guilty under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. One of them held that there were misdirections in the Sessions Judge's charge to the jury and on a review of the evidence came to the conclusion that the accused was guilty of murder and the verdict of the jury was perverse. The other Judge based his conclusion on the ground that no reasonable body of persons could come to the conclusion that jury had arrived at. On appeal to this Court by special leave it was contended on behalf of the appellant that under s. 307 of the Code of Criminal Procedure it was incumbent on the High Court to decide the competency of the reference on a perusal of the order of reference itself since it had no jurisdiction to go into the evidence for that purpose, that the High Court was not empowered by s. 307(3) of the Code to set aside the verdict of the jury on the ground that there were misdirections in the charge, that there were no misdirections in the charge nor was the verdict perverse and that since there was grave and sudden provocation the offence committed if any, was not murder but culpable homicide not amounting to murder.

Held, that the connections were without substance and the appeal must fail.

Judged by its historical background and properly construed, s. 307 of the Code of Criminal Procedure was meant to confer wider powers of interference on the High Court than

in an appeal to safeguard against an erroneous verdict of the jury. This special jurisdiction conferred on the High Court by s. 307 of the Code is essentially different from its appellate jurisdiction under ss. 410 and 417 of the code, s. 423(2) conferring no powers but only saving the limitation under s. 418(1), namely, that an appeal against an order of conviction or an acquittal in a jury trial must be confined to matters of law.

The words "for the ends of justice" in s. 307(1) of the Code, which indicate that the Judge disagreeing with the verdict, must be of the opinion that the verdict was one which no reasonable body of men could reach on the evidence, coupled with the words 'clearly of the opinion' gave the Judge a wide and comprehensive discretion to suit different situations. Where, therefore, the Judge disagreed with the verdict and recorded the grounds of his opinion, the reference was competent, irrespective of the question whether the Judge was right in so differring from the jury or forming such an opinion as to the verdict. There is nothing in s. 307(1) of the Code that lends support to the contention that though the Judge had complied with the necessary conditions, the High Court should reject the reference without going into the evidence if the reasons given in the order of reference did not sustain the view expressed by the Judge.

Section 307(3) of the Code by empowering the High Court either to acquit or convict the accused after considering the entire evidence, giving due weight to the opinions of the Sessions Judge and the jury, virtually conferred the functions both of the jury and the Judge on it.

Where, therefore, misdirections vitiated the verdict of the jury, the High Court had as much the power to go into the entire evidence in disregard of the verdict of the jury as it had when there were no misdirections and interfere with it if it was such as no reasonable body of persons could have returned on the evidence. In disposing of the reference, the High Court could exercise any of the procedural powers conferred on it by s. 423 or any other sections of the Code.

Ramanugarh Singh v. *King Emperor*, (1946) L. R. 73 I. A. 174, *Akhlakali Hayatalli* v. *State of Bombay*, [1954] S. C. R. 435, *Ratan Rai* v. *State of Bihar*, [1957] S. C. R. 273, *Sashi Mohan Debnath* v. *State of West Bengal* [1958] S. C. R. 960, and *Emperor* v. *Ramdhar Kurmi*, A. I. R. 1948 Pat. 79, referred to.

A misdirection is something which the judge in his charge tells the jury and is wrong or in a wrong manner

1961

K. M. Nanavati v. The State of Maharashtra

tneding to mislead them. Even an omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct verdict may also in certain circumstances amount to a misdirection. But in either case, every misdirection or non-direction is not in itself sufficient to set aside a verdict unless it can be said to have occasioned a failure of justice.

Mustak Hussein v. *State of Bombay* [1953] S. C. R. 809 and *Smt. Nagindra Bala Mitra* v. *Sunil Chandra Roy*, [1960] 3 S. C. R. 1, referred to.

There is no conflict between the general burden that lies on the prosecution in a criminal case and the special burden imposed on the accused under s. 105 of the Evidence Act where he pleads any of the General Exceptions mentioned in the Indian Penal Code. The presumption of innocence in the favour of the accused continues all through and the burden that lies on the prosecution to prove his guilt, except where the statute provides otherwise, never shifts. Even if the accused fails to prove the Exception the prosecution has to discharge its own burden and the evidence adduced, although insufficient to establish the Exception, may be sufficient to negative one or more of the ingredients of the offence.

Woolmington v. *Director of Public Prosecutions*, L. R. (1935) A. C. 462, considered.

Attygalle v. *Emperor*, A. I. R. 1936 P. C. 169, distinguished.

State of Madras v. *A. Vaidyanatha Iyer*, [1958] S. C. R. 580 and *C. S. D. Swamy* v. *State*, [1960] 1 S. C. R. 461, referred to.

Consequently, where, as in the instant case, the accused relied on the Exception embodied in s. 80 of the Indian Penal Code and the Sessions Judge omitted to point out to the jury the distinction between the burden that lay on the prosecution and that on the accused and explain the implications of the terms 'lawful act', 'lawful manner', 'unlawful means' and 'with proper care and caution' occurring in that section and point out their application to the facts of the case these were serious misdirections that vitiated the verdict of the jury.

Extra-judicial confession made by the accused is a direct piece of evidence and the stringent rule of approach to circumstantial evidence has no application to it. Since in the instant case, the Sessions Judge in summarising the circumstances mixed up the confession with the circumstances while directing the jury to apply the rule of circumstantial evidence and

it might well be that the jury applied that rule to it, his charge was vitiated by the grave misdirection that must affect that correctness of the jury's verdict.

The question whether the omission to place certain evidence before the jury amounts to a misdirection has to be decided on the facts of each case. Under s. 297 of the Code of Criminal Procedure it is the duty of the Sessions Judge after the evidence is closed and the counsel for the accused and the prosecution have addressed the jury, to sum up the evidence from the correct perspective. The omission of the Judge in instant case, therefore, to place the contents of the letters written by the wife to her paramour which in effect negatived the case made by the husband and the wife in their deposition was a clear misdirection. Although the letters were read to jury by the counsel for the parties, that did not absolve the judge from his clear duty in the matter.

R. V. Roberts, [1942] 1 All. E. R. 187 and *R.* v. *Affield*, [1961] 3 All. E. R. 243, held inapplicable.

The commencement of investigation under s. 156 (1) of the Code of Criminal Procedure in a particular case, which is a question of fact, has to be decided on the facts of the case, irrespective of any irregularity committed by the Police Officer in recording the first information report under s. 154 of the Code.

Where investigation had in fact commenced, as in the instant case, s. 162 of the Code was immediately attracted. But the proviso to that section did not permit the eliciting from a prosecution witness in course of his cross-examination of any statement that he might have made to the investigation officer where such statement was not used to contradict his evidence. The proviso also had no application to a oral statement made during investigation and not reduced to writing.

In the instant case, therefore, there could be no doubt that the Sessions Judge acted illegally in admitting the evidence of P. W. 13 to contradict P. W. 12 in regard to the confession of the accused and clearly misdirected himself in placing the said evidence before the jury.

Exception 1 to s. 300 of the Indian Penal Code could have no application to the case. The test of "grave and sudden" provocation under the Exception must be whether a reasonable person belonging to the same class of society as the accused, placed in a similar situation, would be so provoked as to lose his self control. In India, unlike in England, words and gestures may, under certain circumstancess cause grave and sudden provocation so as to attract that Exception. The mental background created by any previous act of the victim can

1961

K. M. Nanavati
v.
The State of Maharashtra

also be taken into consideration in judging whether the subsequent act could cause grave and sudden provocation, but the fatal blow should be clearly traced to the influence of the passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise, giving room and scope for premeditation and calculation.

Mancini v. *Director of Public Prosecutions*, L.R. (1942) A. C. 1, *Holmes* v. *Director of Public Prosecutions*, L. R. (1946) A.C. 588 *Duffy's case*, [1949]1 All. E. R. 932 and *R.* v. *Thomas*, (1837) 7 C. & P. 817, considered.

Empress v. *Khogayi*, (1879) I. L. R. 2 Mad. 122, *Boya Munigadu* v. *The Queen*, (1881) I. L. R. 3 Mad. 33, *In re Murugian*, I. L. R. (1957) Mad. 805, *In re C. Narayan*, A.I.R. 1958 A. P. 235, *Jan Muhammad* v. *Emperor*, I. L. R. (1929) Lah. 861, *Emperor* v. *Balku*, I. L. R. (1938) All 789 and *Babu Lal* v. *State*, A. I. R. 1960 All. 223, referred to.

Semble: Whether a reasonable person in the circumstances of a particular case committed the offence under grave and sudden provocation is a question of fact for the jury to decide.

Holmes v. *Director of Public Prosecution*, L. R. (1946) A. C. 588, considered.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 195 of 1960.

Appeal by special leave from the judgment and order dated March 11, 1960, of the Bombay High Court in Criminal Jury Reference No. 159 of 1959.

G. S. Pathak, S. G. Patwardhan, Rajini Patel, Porus A. Mehta, J. B. Dadachanji, Ravinder Narain and *O. C. Mathur*, for the appellant.

M. C. Setalvad, Attorney-General of India, C. M. Trivedi, V. H. Gumeshte, B. R. G. K. Achar and *R. H. Dhebar*, for the respondent.

1961. November 24. The Judgement of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—This appeal by special leave arises out of the judgment of the Bombay High Court sentencing Nanavati, the appellant, to life imprisonment for the murder of Prem Bhagwandas Ahuja, a businessman of Bombay.

This appeal presents the commonplace problem of an alleged murder by an enraged husband of a paramour of his wife : but it aroused considerable interest in the public mind by reason of the publicity it received and the important constitutional point it had given rise to at the time of its admission.

The appellant was charged under s. 302 as well as under s. 304, Part I, of the Indian Penal Code and was tried by the Sessions Judge, Greater Bombay, with the aid of special jury. The jury brought in a verdict of "not guilty" by 8 : 1 under both the sections; but the Sessions Judge did not agree with the verdict of the jury, as in his view the majority verdict of the jury was such that no reasonable body of men could, having regard to the evidence, bring in such a verdict. The learned Sessions Judge submitted the case under s. 307 of the Code of Criminal Procedure to the Bombay High Court after recording the grounds for his opinion. The said reference was heard by a division bench of the said High Court consisting of Shelat and Naik, JJ. The two learned Judges gave separate judgments, but agreed in holding that the accused was guilty of the offence of murder under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Shelat, J., having held that there were misdirections to the jury, reviewed the entire evidence and came to the conclusion that the accused was clearly guilty of the offence of murder, alternatively, he expressed the view that the verdict of the jury was perverse, unreasonable and, in any event, contrary to the weight of evidence. Naik, J., preferred to base his conclusion on the alternative ground, namely, that no reasonable body of persons could have come to the conclusion arrived at by the jury. Both the learned Judges agreed that no case had been made out to reduce the offence from murder to culpable

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

homicide not amounting to murder. The present appeal has been preferred against the said conviction and sentence.

The case of the prosecution may be stated thus : This accused, at the time of the alleged murder, was second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in the registry office at Portsmouth, England. They have three children by the marriage, a boy aged $9\frac{1}{2}$ years a girl aged $5\frac{1}{2}$ years and another boy aged 3 years. Since the time of marriage, the couple were living at different places having regard to the exigencies of service of Nanavati. Finally, they shifted to Bombay. In the same city the deceased Ahuja was doing business in automobiles and was residing, along with his sister, in a building called "Shreyas" till 1957 and thereafter in another building called "Jivan Jyot" in Setalvad Road. In the year 1956, Agniks, who were common friends of Nanavatis and Ahujas, introduced Ahuja and his sister to Nanavatis. Ahuja was unmarried and was about 34 years of age at the time of his death, Nanavati, as a Naval Officer, was frequently going away from Bombay in his ship, leaving his wife and children in Bombay. Gradually, friendship developed between Ahuja and Sylvia, which culminated in illicit intimacy between them. On April 27, 1959, Sylvia confessed to Nanavati of her illicit intimacy with Ahuja. Enraged at the conduct of Ahuja, Nanavati went to his ship, took from the stores of the ship a semi-automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja entered his bed-room and shot him dead. Thereafter, the accused surrendered himself to the police. He was put under arrest and in due course he was committed to the Sessions for facing a charge under s. 302 of the Indian Penal Code.

The defence version, as disclosed in the statement made by the accused before the Sessions Court under s. 342 of the Code of Criminal Procedure and

his deposition in the said Court, may be briefly stated: The accused was away with his ship from April 6, 1959, to April 18, 1959. Immediately after returning to Bombay, he and his wife went to Ahmednagar for about three days in the company of his younger brother and his wife. Thereafter, they returned to Bombay and after a few days his brother and his wife left them. After they had left, the accused noticed that his wife was behaving strangely and was not responsive or affectionate to him. When questioned, she used to evade the issue. At noon on April 27, 1959, when they were sitting in the sitting-room for the lunch to be served, the accused put his arm round his wife affectionately, when she seemed to go tense and unresponsive. After lunch, when he questioned her about her fidelity, she shook her head to indicate that she was unfaithful to him. He guessed that her paramour was Ahuja. As she did not even indicate clearly whether Ahuja would marry her and look after the children, he decided to settle the matter with him. Sylvia pleaded with him not go to Ahuja's house, as he might shoot him. Thereafter, he drove his wife, two of his children and a neighbour's child in his car to a cinema, dropped them there and promised to come and pick them up at 6 P.M. when the show ended. He then drove his car to his ship, as he wanted to get medicine for his sick dog, he represented to the authorities in the ship, that he wanted to draw a revolver and six rounds from the stores of the ship as he was going to drive alone to Ahmednagar by night, though the real purpose was to shoot himself. On receiving the revolver and six cartridges, and put it inside a brown envelope. Then he drove his car to Ahuja's office, and not finding him there, he drove to Ahuja's flat, rang the door bell, and, when it was opened by a servant, walked to Ahuja's bed-room, went into the bed-room and shut the door behind him. He also carried with him the envelope containing

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

the revolver. The accused saw the deceased inside the bed-room, called him a filthy swine and asked him whether he would marry Sylvia and look after the children. The deceased retorted, "Am I to marry every woman I sleep with?" The accused became enraged, put the envelope containing the revolver on a cabnit nearby, and threatened to thrash the deceased. The deceased made a sudden move to grasp at the envelope, when the accused whipped out his revolver and told him to get back. A struggle ensued between the two and during that struggle two shots went off accidentally and hit Ahuja resulting in his death. After the shooting the accused went back to his car and drove it to the police station where he surrendered himself. This is broadly, omitting the details, the case of the defence.

It would be convenient to dispose of at the outset the questions of law raised in this case.

Mr. G. S. Pathak, learned counsel for the accused, raised before us the following points: (1) Under s. 307 of the Code of Criminal Procedure, the High Court should decide whether a reference made by a Sessions Judge was competent only on a perusal of the order of reference made to it and it had no jurisdiction to consider the evidence and come to a conclusion whether the reference was competent or not. (2) Under s. 307(3) of the said Code, the High Court had no power to set aside the verdict of a jury on the ground that there were misdirections in the charge made by the Sessions Judge. (3) There were no misdirections at all in the charge made by the Sessions Judge; and indeed his charge was fair to the prosecution as well to the accused. (4) The verdict of the jury was not perverse and it was such that a reasonable body of persons could arrive at it on the evidence placed before them. (5) In any view, the accused shot at the deceased under grave and sudden provocation, and therefore even if he had committed

an offence, it would not be murder but only culpable homicide not amounting to murder.

Mr. Pathak elaborates his point under the first heading thus: Under s. 307 of the Code of Criminal Procedure, the High Court deals with the reference in two stages. In the first stage, the High Court has to consider, on the basis of the referring order, whether a reasonable body of persons could not have reached the conclusion arrived at by the jury; and, if it is of the view that such a body could have come to that opinion the reference shall be rejected as incompetent. At this stage, the High Court cannot travel beyond the order of reference, but shall confine itself only to the reasons given by the Sessions Judge. If, on a consideration of the said reasons, it is of the view that no reasonable body of persons could have come to that conclusion, it will then have to consider the entire evidence to ascertain whether the verdict of the jury is unreasonable. If the High Court holds that the verdict of the jury is not unreasonable, in the case of a verdict of "not guilty", the High Court acquits the accused, and in the case where the verdict is one of "guilty" it convicts the accused. In case the High Court holds that the verdict of "not guilty", is unreasonable, it refers back the case to the Sessions Judge, who convicts the accused; thereafter the accused will have a right of appeal wherein he can attack the validity of his conviction on the ground that there were misdirections in the charge of the jury. So too, in the case of a verdict of "guilty" by the jury, the High Court, if it holds that the verdict is unreasonable, remits the matter to the Sessions Judge, who acquits the accused, and the State, in an appeal against that acquittal, may question the correctness of the said acquittal on the ground that the charge to the jury was vitiated by misdirections. In short, the argument may be put in three propositions, namely, (i) the High Court rejects the

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

reference as incompetent, if on the face of the reference the verdict of the jury does not appear to be unreasonable, (ii) if the reference is competent, the High Court can consider the evidence to come to a definite conclusion whether the verdict is unreasonable or not, and (iii) the High Court has no power under s. 307 of the Code of Criminal Procedure to set aside the verdict of the jury on the ground that it is vitiated by misdirections in the charge to the jury.

The question raised turns upon the coustruction of the relevant provisions of the Code of Criminal Procedure. The said Code contains two fascicule of sections dealing with two different situations. Under s. 268 of the Code, "All trials before a Court of Session shall be either by jury, or by the Judge himself." Under s. 297 thereof:

> "In cases tried by jury, when the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided ....."

Section 298 among other imposes a duty on a judge to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to be proved, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and to decide upon all matters of fact which it is necessary to prove in order to enable evidence of particular matter to be given. It is the duty of the jury "to decide which view of the facts is true and then to return the verdict which under such view ought, according to the directions of the Judge, to be returned." After the charge to the jury, the jury retire to consider their verdict and, after due consideration, the foreman of the jury informs the Judge what is their verdict or what is the verdict of the majority of the jurors.

Where the Judge does not think it necessary to disagree with the verdict of the jurors or of the majority of them, he gives judgment accordingly. If the accused is acquitted, the Judge shall record a verdict of acquittal; if the accused is convicted, the Judge shall pass sentence on him according to law. In the case of conviction, there is a right of appeal under s. 410 of the Code, and in a case of acquittal, under s. 417 of the Code, to the High Court. But s. 418 of the Code provides:

> "(1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only."

Sub-section (2) thereof provides for a case of a person sentenced to death, with which we are not now concerned. Section 423 confers certain powers on an appellate Court in the matter of disposing of an appeal, such as calling for the record, hearing of the pleaders, and passing appropriate orders therein. But sub-s. (2) of s. 423 says:

> "Nothing herein contained shall authorise the Court to alter or reverse the verdict of the jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

It may be noticed at this stage, as it will be relevant in considering one of the arguments raised in this case, that sub-s. (2) does not confer any power on an appellate court, but only saves the limitation on the jurisdiction of an appellate court imposed under s. 418 of the Code. It is, therefore, clear that in an appeal against conviction or acquittal in a jury trial, the said appeal is confined only to a matter of law.

The Code of Criminal Procedure also provides for a different situation. The Sessions Judge may

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

not agree with the verdict of the jurors or the majority of them; and in that event s. 307 provides for a machinery to meet that situation. As the argument mainly turns upon the interpretation of the provisions of this section, it will be convenient to read the relevant clauses thereof.

> *Section 307* : (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.
>
> (3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

This section is a clear departure from the English law. There are good reasons for its enactment. Trial by jury outside the Presidency Towns was first introduced in the Code of Criminal Procedure of 1861, and the verdict of the jury was,

subject to re-trial on certain events, final and conclusive. This led to miscarriage of justice through jurors returning erroneous verdicts due to ignorance and inexperience. The working of the system was reviewed in 1872, by a Committee appointed for that purpose and on the basis of the report of the said Committee, s. 262 was introduced in the Code of 1872. Under that section, where there was difference of view between the jurors and the judge, the Judge was empowered to refer the case to the High Court in the ends of justice, and the High Court dealt with the matter as an appeal. But in 1882 the section was amended and under the amended section the condition for reference was that the High Court should differ from the jury completely; but in the Code of 1893 the section was amended practically in terms as it now appears in the Code. The history of the legislation shows that the section was intended as a safeguard against erroneous verdicts of inexperienced jurors and also indicates the clear intention of the Legislature to confer on a High Court a separate jurisdiction, which for convenience may be described as "reference jurisdiction". Section 307 of the Code of Criminal Procedure, while continuing the benefits of the jury system to persons tried by a Court of Session, also guards against any possible injustice, having regard to the conditions obtaining in India. It is, therefore clear that there is an essential difference between the scope of the jurisdiction of the High Court in disposing of an appeal against a conviction or acquittal, as the case may be, in a jury trial, and that in a case submitted by the Sessions Judge when he differs from the verdict of the jury: in the former the acceptance of the verdict of the jury by the Sessions Judge is considered to be sufficient guarantee against its perversity and therefore an appeal is provided only on questions of law, whereas in the latter the absence of such agreement necessitated the conferment of a larger power on

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

the High Court in the matter of interfering with the verdict of the jury.

Under s. 307(1) of the Code, the obligation cast upon the Sessions Judge to submit the case to the High Court is made subject to two conditions, namely, (1) the Judge shall disagree with the verdict of the jurors, and (2) he is clearly of the opinion that it is necessary in the ends of justice to submit the case to the High Court. If the two conditions are complied with, he shall submit the case, recording the grounds of his opinion. The words "for the ends of justice" are comprehensive, and coupled with the words "is clearly of opinion", they give the Judge a discretion to enable him to exercise his power under different situations, the only criterion being his clear opinion that the reference is in the ends of justice. But the Judicial Committee, in *Ramanugrah Singh* v. *King Emperor*(1), construed the words "necessary for the ends of justice" and laid down that the words mean that the Judge shall be of the opinion that the verdict of the jury is one which no reasonable body of men could have reached on the evidence. Having regard to that interpretation, it may be held that the second condition for reference is that the Judge shall be clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence. It follows that if a Judge differs from the jury and is clearly of such an opinion, he shall submit the case to the High Court recording the grounds of his opinion. In that event, the said reference is clearly competent. If on the other hand, the case submitted to the High Court does not *ex facie* show that the said two conditions have been complied with by the Judge, it is incompetent. The question of competency of the reference does not depend upon the question whether the Judge

(1) (1946) L. R. 173, I. A. 174, 182, 186.

is justified in differing from the jury or forming such an opinion on the verdict of the jury. The argument that though the Sessions Judge has complied with the conditions necessary for making a reference, the High Court shall reject the reference as incompetent without going into the evidence if the reasons given do not sustain the view expressed by the Sessions Judge, is not supported by the provisions of sub-s. (1) of s. 307 of the Code. But it is said that it is borne out of the decision of the Judicial Committee in *Ramanugrah Singh's* case(1). In that case the Judicial Committee relied upon the words "ends of justice" and held that the verdict was one which no reasonable body of men could have reached on the evidence and further laid down that the requirements of the ends of justice must be the determining factor both for the Sessions Judge in making the reference and for the High Court in disposing of it. The Judicial Committee observed:

> "In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial court, and if the jury take one view of the evidence and the judge thinks that they shoud have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that on the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded."

The Judicial Committee proceeded to state:

> "In their Lordships' opinion had the High Court approached the reference on the right

(1) (1946) L. R. 73, I. A. 174, 182, 186.

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

lines and given due weight to the opinion of the jury they would have been bound to hold that the reference was not justified and that the ends of justice did not require any interference with the verdict of the jury."

Emphasis is laid on the word "justified", and it is argued that the High Court should reject the reference as incompetent if the reasons given by the Sessions Judge in the statement of case do not support his view that it is necessary in the ends of justice to refer the case to the High Court. The Judicial Committee does not lay down any such proposition. There, the jury brought in a verdict of not "guilty" under s. 302, Indian Penal Code. The Sessions Judge differed from the jury and made a reference to the High Court. The High Court accepted the reference and convicted the accused and sentenced him to transportation for life. The Judicial Committee held, on the facts of that case, that the High Court was not justified in the ends of justice to interfere with the verdict of the jury. They were not dealing with the question of competency of a reference but only with that of the justification of the Sessions Judge in making the reference, and the High Court in accepting it. It was also not considering a case of any disposal of the reference by the High Court on the basis of the reasons given in the reference, but were dealing with a case where the High Court on a consideration of the entire evidence accepted the reference and the Judicial Committee held on the evidence that there was no justification for the ends of justice to accept it. This decision, therefore, has no bearing on the competency of a reference under s. 307(1) of the Code of Criminal Procedure.

Now, coming to sub-s. (3) of s. 307 of the Code, it is in two parts. The first part says that the High Court may exercise any of the powers which it may exercise in an appeal. Under the

second part, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, the High Court shall acquit or convict the accused. These parts are combined by the expression "and subject thereto". The words "subject thereto" were added to the section by an amendment in 1896. This expression gave rise to conflict of opinion and it is conceded that it lacks clarity. That may be due to the fact that piecemeal amendments have been made to the section from time to time to meet certain difficulties. But we cannot ignore the expression, but we must give it a reasonable construction consistent with the intention of the Legislature in enacting the said section. Under the second part of the section, special jurisdiction to decide a case referred to it is conferred on the High Court. It also defines the scope of its jurisdiction and its limitations. The High Court can acquit or convict an accused of an offence of which the jury could have convicted him, and also pass such sentence as might have been passed by the Court of Session. But before doing so, it shall consider the entire evidence and give due weight to the opinions of the Sessions Judge and the jury. The second part does not confer on the High Court any incidental procedural powers necessary to exercise the said jurisdiction in a case submitted to it, for it is neither an appeal nor a revision. The procedural powers are conferred on the High Court under the first part. The first part enables the High Court to exercise any of the powers which it may exercise in appeal, for without such powers it cannot exercise its jurisdiction effectively. But the expression "subject to" indicates that in exercise of its jurisdiction in the manner indicated by the second part, it can call in aid only any of the powers of an appellate court, but cannot invoke a power other than that conferred on an appellate court. The limitation on the second part implied in the expression "subject thereto" must

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

be confined to the area of the procedural powers conferred on a appellate court. If that be the construction, the question arises, how to reconcile the provisions of s. 423 (2) with those of s. 307 of the Code ? Under sub-s. (2) of s. 423 :

> "Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

It may be argued that, as an appellate court cannot alter or reverse the verdict of a jury unless such a verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him, the High Court, in exercise of its jurisdiction under s. 307 of the Code, likewise could not do so except for the said reasons. Sub-section (2) of s. 423 of the Code does not confer any power of the High Court ; it only restates the scope of the limited jurisdiction conferred on the court under s. 418 of the Code, and that could not have any application to the special jurisdiction conferred on the High Court under s. 307. That apart, a perusal of the provisions of s. 423 (1) indicates that there are powers conferred on an appellate court which cannot possibly be exercised by courts disposing of a reference under s. 307 of the Code, namely, the power to order commitment etc. Further s. 423 (1) (a) and (b) speak of conviction, acquittal, finding and sentence, which are wholly inappropriate to verdict of a jury. Therefore, a reasonable construction will be that the High Court can exercise any of the powers conferred on an appellate court under s. 423 or under other sections of the Code which are appropriate to the disposal of a reference under s. 307. The object is to prevent miscarriage of the justice by the jurors returning erroneous

or preverse verdict. The opposite construction defeats this purpose, for it equates the jurisdiction conferred under s. 307 with that of an appellate court in a jury trial. That construction would enable the High Court to correct an erroneous verdict of a jury only in a case of misdirection by the Judge but not in a case of fair and good charge. This result effaces the distinction between the two types of jurisdiction. Indeed, learned counsel for the appellant has taken a contrary position. He would say that the High Court under s. 307 (3) could not interfere with the verdict of the jury on the ground that there were misdirections in the charge to the jury. This argument is built upon the hypothesis that under the Code of Criminal Procedure there is a clear demarcation of the functions of the jury and the Judge, the jury dealing with facts and the Judge with law, and therefore the High Court could set aside a verdict on the ground of misdirection only when an appeal comes to it under s. 418 and could only interfere with the verdict of the jury for the ends of justice, as interpreted by the Privy Council, when the matter comes to it under s. 307 (3). If this interpretation be accepted, we would be attributing to the Legislature an intention to introduce a circuituous method and confusion in the disposal of criminal cases. The following illustration will demonstrate the illogical result of the argument. The jury brings in a verdict of "guilty" on the basis of a charge replete with misdirections ; the Judge disagrees with that verdict and states the case to the High Court ; the High Court holds that the said verdict is not erroneous on the basis of the charge, but is of the opinion that the verdict is erroneous because of the misdirections in the charge ; even so, it shall hold that the verdict of the jury is good and reject the reference thereafter, the Judge has to accept the verdict and acquit the accused ; the prosecution then will have

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

to prefer an appeal under s. 417 of the Code on the ground that the verdict was induced by the misdirections in the charge. This could not have been the intention of the Legislature. Take the converse case. On similar facts, the jury brings in a verdict of "guilty"; the Judge disagrees with the jury and makes a reference to the High Court; even though it finnds misdirections in the charge to the jury, the High Court cannot set aside the conviction but must reject the reference; and after the conviction, the accused may prefer an appeal to the High Court. This procedure will introduce confusion in jury trials, introduce multiplicity of proceedings, and attribute ineptitude to the Legislature. What is more, this construction is not supported by the express provisions of s. 307 (3) of the Code. The said sub-section enables the High Court to consider the entire evidence, to give due weight to the opinions of the Sessions Judge and the jury, and to acquit or convict the accused. The key words in the sub-section are "giving due weight to the opinions of the Sessions Judge and the jury". The High Court shall give weight to the verdict of the jury; but the weight to be given to a verdict depends upon many circumstances—it may be one that no reasonable body of persons could come to; it may be a perverse verdict; it may be a divided viidict and may not carry the same weight as the united one does; it may be vitiated by misdirections or non-directions. How can a Judge give any weight to a verdict if it is induced and vitiated by grave misdirections in the charge? That apart, the High Court has to give due weight to the opinion of the Sessions Judge. The reasons for the opinion of the Sessions Judge are disclosed in the case submitted by him to the High Court. If the case stated by the Sessions Judge discloses that there must have been misdirections in the charge, how can the High Court ignore them in giving due weight to his

opinion ? What is more, the jurisdiction of the High Court is couched in very wide terms in sub-s. (3) of s. 307 of the Code : it can acquit or convict an accused. It shall take into consideration the entire evidence in the case ; it shall give due weight to the opinions of the Judge and the jury ; it combines in itself the functions of the Judge and jury ; and it is entitled to come to its independent opinion. The phraseology used does not admit of an expressed or implied limitation on the jurisdiction of the High Court.

It appears to us that the Legislature designedly conferred a larger power on the High Court under s. 307(3) of the Code than that conferred under s. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury.

The decisions cited at the Bar do not in any way sustain in narrow construction sougt to be placed by learned counsel on s. 307 of the Code. In *Ramanugrah Singh's* case (1), which has been referred to earlier, the Judicial Committee described the wide amplitude of the power of the High Court in the following terms :

> "The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused."

The Judicial Committee took care to observe :

> ".....the test of reasonableness on the part of the jury may not be conclusive in every case. It is possible to suppose a case in which the verdict was justified on the evidence placed before the jury, but in the light of further evidence placed before the High Court the verdict is shown to be wrong. In such a case the ends of justice would

(1) (1945-46) L. R. 73 I. A. 174, 182.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

require the verdict to be set aside though the jury had not acted unreasonably."

This passage indicates that the Judicial Committee did not purport to lay down exhaustively the circumstances under which the High Court could interefere under the said sub-section with the verdict of the jury. This Court in *Akhlakali Hayatalli* v. *The State of Bombay* (1) accepted the view of the Judicial Committee on the construction of s. 307 of the Code of Criminal Procedure, and applied it to the facts of that case. But the following passage of this Court indicates that it also does not consider the test of reasonableness as the only guide in interfering with the verdict of the jury :

> "The charge was not attacked before the High Court nor before us as containing any misdirections or non-directions to the jury such as to vitiate the verdict."

This passage recognizes the possibility of interference by the High Court with the verdict of the jury under the said sub-section if the verdict is vitiated by misdirections or non-directions. So too, the decision of this Court in *Ratan Rai* v. *State of Bihar* (2) assumes that such an interference is permissible if the verdict of the jury was vitiated by misdirections. In that case, the appellants were charged under ss. 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of "guilty". The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court. At the hearing of the reference the counsel for the appellants contended that the charge to the jury was defective, and did not place the entire evidence before the Judges. The learned Judges of the High Court considered the objections as such and nothing more, and found the appellants guilty and convicted them. This Court, observing that it was incumbent on the High

(1) [1954] S. C. R. 435, 438. (2) [1957] S. C. R. 273.

Court to consider the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion whether the evidence was such that could properly support the verdict of guilty against the appellants, allowed the appeal and remanded the matter to the High Court for disposal in accordance with the provisions of s. 307 of the Code of Criminal Procedure. This decision also assumes that a High Court could under s. 307 (3) of the Code of Criminal Procedure interfere with the verdict of the jury, if there are misdirections in the charge and holds that in such a case it is incumbent on the court to consider the entire evidence and to come to its own conclusion, after giving due weight to the opinions of the Sessions Judge, and the verdict of the jury. This Court again in *Sashi Mohan Debnath* v. *The State of West Bengal* (1). held that where the Sessions Judge disagreed with the verdict of the jury and was of the opinion that the case should be submitted to the High Court, he should submit the whole case and not a part of it. There, the jury returned a verdict of "guilty" in respect of some charges and "not guilty" in respect of others. But the Sessions Judge recorded his judgment of acquittal in respect of the latter charges in agreement with the jury and referred the case to the High Court only in respect of the former. This Court held that the said procedure violated sub-s. (2) of s. 307 of the Code of Criminal Procedure and also had the effect of preventing the High Court from considering the entire evidence against the accused and exercising its jurisdiction under sub-s. (3) of s. 307 of the said Code. Imam, J., observed that the reference in that case was incompetent and that the High Court could not proceed to exercise any of the powers conferred upon it under sub-s. (3) of s. 307 of the Code, because the very foundation of the exercise of that power was lacking, the reference being incompetent. This

(1) [1958] S. C. R. 960.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Court held that the reference was incompetent because the Sessions Judge contravened the express provisions of sub-s. (2) of s. 307 of the Code, for under that sub-section whenever a Judge submits a case under that section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail. As in that case the reference was made in contravention of the express provisions of sub-s. (2) of s. 307 of the Code and therefore the use of the word 'incompetent' may not be inappropriate. The decision of a division bench of the Patna High Court in *Emperor* v. *Ramadhar Kurmi* (1) may usefully be referred to as it throws some light on the question whether the High Court can interfere with the verdict of the jury when it is vitiated by serious misdirections and non-directions. Das, J., observed :

> "Where, however, there is misdirection, the principle embodied in s. 537 would apply and if the verdict is erroneous owing to the misdirection, it can have no weight on a reference under s. 307 as on an appeal.

It is not necessary to multiply decisions. The foregoing discussion may be summarized in the form of the following propositions : (1) The competency of a reference made by a Sessions Judge depends upon the existence of two conditions, namely, (i) that he disagrees with the verdict of the jurors, and (ii) that he is clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence, after reaching that opinion, in the case submitted by him he shall record the grounds of his opinion. (2) If the case submitted shows that the conditions have not been complied with or that the reasons for the opinion are not recorded, the High Court may reject the reference as incompetent : the

(1) A. I. R. 1948 Pat. 79, 84.

High Court can also reject it if the Sessions Judge has contravened sub-s. (2) of s. 307. (3) If the case submitted shows that the Sessions Judge has disagreed with the verdict of the jury and that he is clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury, and he discloses his reasons for the opinion, sub-s. (3) of s. 307 of the Code comes into play, and thereafter the High Court has an obligation to discharge its duty imposed thereunder. (4) Under sub-s. (3) of s. 307 of the Code, the High Court has to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused. (5) The High Court may deal with the reference in two ways, namely, (i) if there are misdirections vitiating the verdict, it may, after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion, and (ii) even if there are no misdirections, the High Court can interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong", or "against the weight of evidence", or, in other words, if the verdict is such that no reasonable body of men could have reached on the evidence. (6) In the disposal of the said reference, the High Court can exercise any of the procedural powers appropriate to the occasion, such as, issuing of notice, calling for records, remanding the case, ordering a retrial, etc. We therefore, reject the first contention of learned counsel for the appellant.

The next question is whether the High Court was right in holding that there were misdirections in the charge to the jury. Misdirection is something which a judge in his charge tells the jury and is wrong or in a wrong manner tending to mislead them. Even an omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

verdict may also in certain circumstances amount to a misdirection. But, in either case, every misdirection or non-direction is not in itself sufficient to set aside a verdict, but it must be such that it has occasioned a failure of justice.

In Mushtak Hussein v. *The State of Bombay*(1), this Court laid down:

> "Unless therefore it is established in a case that there has been a serious misdirection by the judge in charging the jury which has occasioned a failure of justice and has misled the jury in giving its verdict, the verdict of the jury cannot be set aside."

This view has been restated by this Court in a recent decision, viz., *Smt. Nagindra Bala Mitra* v. *Sunil Chandra Roy* (2).

The High Court in its judgment referred to as many as six misdirections in the charge to the jury which in its view vitiated the verdict, and it also stated that there were many others. Learned counsel for the appellant had taken each of the said alleged misdirections and attempted to demonstrate that they were either no misdirections at all, or even if they were, they did not in any way affect the correctness of the verdict.

We shall now take the first and the third misdirections pointed out by Shelat, J., as they are intimately connected with each other. They are really omissions. The first omission is that throughout the entire charge there is no reference to s. 105 of the Evidence Act or to the statutory presumption laid down in that section. The second omission is that the Sessions Judge failed to explain to the jury the legal ingredients of s. 80 of the Indian Penal Code, and also failed to direct them that in law the said section was not applicable to the facts of the case. To appreciate the scope of the alleged

(1) [1953] S.C.R. 809. (2) [1960] 3 S.C.R.1.

omissions, it is necessary to read the relevant provisions.

Section 80 of the Indian Penal Code.

> "Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution."

Evidence Act.

> *Section 103*: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."
>
> *Section 105*: "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."
>
> *Section 3*: "In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
>
> A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

Section 4: ..... "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

The legal impact of the said provisions on the question of burden of proof may be stated thus: In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, s. 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the non-existence of such circumstances as proved till they are disproved. An illustration based on the facts of the present case may bring out the meaning of the said provision. The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off the revolver in the course of a struggle in the circumstances mentioned in s. 80 of the Indian Penal Code and hit the deceased resulting in his death. The Court then shall presume the absence of circumstances bringing the case within the provisions of s. 80 of the Indian Penal Code, that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist; but this presumption may be rebutted by the accused by adducing evidence to

support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged: that burden never shifts. The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see ss. 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see ss. 77,78,79,81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception if proved affecting the proof of all or some of the ingredients of the offence: (see s. 80 of the Indian Penal Code). In the first case the burden of proving the ingredients or some of the ingredients of the offence, as the case may be, lies on the accused. In the second case, the burden of bringing the case under the exception lies on the accused. In the third case, though the burden lies on the accused to bring his case within the exception, the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence. An illustration may bring out the meaning. The prosecution has to prove that the accused shot dead the deceased intentionally and thereby committed the offence of murder within the meaning of s. 300 of the Indian

1962

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Penal Code; the prosecution has to prove the ingredients of murder, and one of the ingredients of that offence is that the accused intentionally shot the deceased; the accused pleads that he shot at the deceased by accident without any intention or knowledge in the doing of a lawful act in a lawful manner by lawful means with proper care and caution; the accused against whom a presumption is drawn under s. 105 of the Evidence Act that the shooting was not by accident in the circumstances mentioned in s. 80 of the Indian Penal Code, may adduce evidence to rebut that presumption. That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, *i.e.*, it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder. In that event though the accused failed to bring his case within the terms of s. 80 of the Indian Penal Code, the Court may hold that the ingredients of the offence have not been established or that the prosecution has not made out the case against the accused. In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused. The failure on the part of the accused to establish all the circumstances bringing his case under the exception does not absolve the prosecution to prove the ingredients of the offence; indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence.

The English decisions relied upon by Mr. Pathak, learned counsel for the accused, may not be of much help in construing the provisions of s. 105 of the Indian Evidence Act. We would, therefore, prefer not to refer to them, except to one of the leading decisions on the subject, namely, *Woolmington* v. *The Director of Public Prosecutions* (1). The headnote in that decision gives its gist, and it read :

> "In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

In the course of the judgment Viscount Sankey, L. C., speaking for the House, made the following observations :

> "But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence..... Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If,

(1) L.R (1935) A.C. 462, 481.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal."

These passages are not in conflict with the opinion expressed by us earlier. As in England so in India, the prosecution must prove the guilt of the accused, *i.e.*, it must establish all the ingredients of the offence with which he is charged. As in England so also in India, the general burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence, he is entitled to the benefit of doubt. In India if an accused pleads an exception within the meaning of s. 80 of the Indian Penal Code, there is a presumption against him and the burden to rebut that presumption lies on him. In England there is no provision similar to s. 80 of the Indian Penal Code, but Viscount Sankey, L. C., makes it clear that such a burden lies upon the accused if his defence is one of insanity and in a case where there is a statutory exception to the general rule of burden of proof. Such an exception we find in s.105 of the Indian Evidence Act. Reliance is placed by learned counsel for the accused on the dicision of the Privy Council in *Attygalle* v. *Emperor*(1) in support of the contention that notwithstanding s. 105 of the Evidence Act, the burden of establishing the absence of accident within the meaning of s. 80 of the Indian Penal Code is on the prosecution. In that case, two persons were prosecuted, one for performing an illegal operation and the other for abetting him in that crime. Under s. 106 of the Ordinance 14 of

(1) A.I.R. 1936 P.C. 169, 170.

1895 in the Ceylon Code, which corresponds to s. 106 of the Indian Evidence Act, it was enacted that when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him. Relying upon that section, the Judge in his charge to the jury said :

> "Miss Maye—that is the person upon whom the operation was alleged to have been performed—was unconscious and what took place in that room that three-quarters of an hour that she was under chloroform is a fact specially within the knowledge of these two accused who were there. The burden of proving that fact, the law says, is upon him, namely that no criminal operation took place but what took place was this and this speculum examination."

The Judicial Committee pointed out:

> "It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The jury might well have thought from the passage just quoted that that was in fact a burden which the accused person had to discharge. The summing-up goes on to explain the presumption of innocence in favour of accused persons, but it again reiterates that the burden of proving that no criminal operation took place is on the two accused who were there."

The said observations do not support the contention of learned counsel. Section 106 of Ordinance 14 of 1895 of the Ceylon Code did not cast upon the accused a burden to prove that he had not committed any crime; nor did it deal with any exception similar to that provided under s. 80 of the Indian Penal Code. It has no bearing on the construction of s. 105 of the Indian Evidence Act. The

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

decisions of this Court in *The State of Madras* v. *A. Vaidyanatha Iyer* (1), which deals with s. 4 of the Prevention of Corruption Act, 1947, and *C.S.D. Swami* v. *The State*(2), which considers the scope of s. 5(3) of the said Act, are examples of a statute throwing the burden of proving and even of establishing the absence of some of the ingredients of the offence on the accused; and this Court held that notwithstanding the general burden on the prosecution to prove the offence, the burden of proving the absence of the ingredients of the offence under certain circumstances was on the accused. Further citations are unnecessary as, in our view, the terms of s. 105 of the Evidence Act are clear and unambiguous.

Mr. Pathak contends that the accused did not rely upon any exception within the meaning of s.80 of the Indian Penal Code and that his plea all through has been only that the prosecution has failed to establish intentional killing on his part. Alternatively, he argues that as the entire evidence has been adduced both by the prosecution and by the accused, the burden of proof became only academic and the jury was in a position to come to one conclusion or other on the evidence irrespective of the burden of proof. Before the Sessions Judge the accused certainly relied upon s. 80 of the Indian Penal Code, and the Sessions Judge dealt with the defence case in his charge to the jury. In paragraph 6 of the charge, the learned Sessions Judge stated :

> "Before I proceed further I have to point out another section which is section 80. You know by now that the defence of the accused is that the firing of the revolver was a matter of accident during a struggle for possession of the revolver. A struggle or a fight by itself does not exempt a person. It is the accident which exempts a person from criminal liability

(1) [1958] S.C.R. 580. (2) [1960] 1. S.C.R. 461.

because there may be a fight, there may be a struggle and in the fight and in the struggle the assailant may over-power the victim and kill the deceased so that a struggle or a fight by itself does not exempt an assailant. It is only an accident, whether it is in struggle or a fight or otherwise which can exempt an assailant. It is only an accident, whether it is in a struggle or a fight or otherwise which can exempt a prisoner from criminal liability. I shall draw your attention to section 80 which says :.....(section 80 read). You know that there are several provisions which are to be satisfied before the benefit of this exception can be claimed by an accused person and it should be that the act itself must be an accident or misfortune, there should be no criminal intention or knowledge in the doing of that act, that act itself must be done in a lawful manner and it must be done by lawful means and further in the doing of it, you must do it with proper care and caution. In this connection, therefore, even while considering the case of accident, you will have to consider all the factors, which might emerge from the evidence before you, whether it was proper care and caution to take a loaded revolver without a safety catch to the residence of the person with whom you were going to talk and if you do not get an honourable answer you were prepared to thrash him. You have also to consider this further circumstance whether it is an act with proper care and caution to keep that loaded revolver in the hand and thereafter put it aside, whether that is taking proper care and caution. This is again a question of fact and you have to determine as Judges of fact, whether the act of the accused in this case can be said to be an act which was lawfully

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

done in a lawful manner and with proper care and caution. If it is so, then and only then can you call it accident or misfortune. This is a section which you will bear in mind when you consider the evidence in this case."

In this paragraph the learned Sessions Judge mixed up the ingredients of the offence with those of the exception. He did not place before the jury the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception. He did not tell the jury that where the accused relied upon the exception embodied in s. 80 of the Indian Penal Code, there was a statutory presumption against him and the burden of proof was on him to rebut that presumption. What is more, he told the jury that it was for them to decide whether the act of the accused in the case could be said to be an act which was lawfully done in a lawful manner with proper care and caution. This was in effect abdicating his funtions in favour of the jury. He should have explained to them the implications of the terms "lawful act", "lawful manner", "lawful means" and "with proper care and caution" and pointed out to them the application of the said legal terminology to the facts of the case. On such a charge as in the present case, it was not possible for the jury, who were laymen, to know the exact scope of the defence and also the circumstances under which the plea under s. 80 of the Indian Penal Code was made out. They would not have also known that if s. 80 of the Indian Penal Code applied, there was a presumption against the accused and the burden of proof to rebut the presumption was on him. In such circumstances, we cannot predicate that the jury understood the legal implications of s. 80 of the Indian Penal Code and the scope of the burden of proof under s. 105 of the Evidence Act, and gave their verdict correctly. Nor can we say that the jury understood the distinction between the ingredients of the offence

and the circumstances that attract s. 80 of the Indian Penal Code and the impact of the proof of some of the said circumstances on the proof of the ingredients of the offence. The said omissions therefore are very grave omissions which certainly vitiated the verdict of the jury.

The next misdirection relates to the question of grave and sudden provocation. On this question, Shelat, J., made the following remarks :

> "Thus the question whether a confession of adultery by the wife of accused to him amounts to grave and sudden provocation or not was a question of law. In my view, the learned Session Judge was in error in telling the jury that the entire question was one of fact for them to decide. It was for the learned Judge to decide as a question of law whether the sudden confession by the wife of the accused amounted to grave and sudden provocation as against the deceased Ahuja which on the authorities referred to hereinabove it was not. He was therefore in error in placing this alternative case to the jury for their determination instead of deciding it himself."

The misdirection according to the learned Judge was that the Sessions Judge in his charge did not tell the jury that the sudden confession of the wife to the accused did not in law amount to sudden and grave provocation by the deceased, and instead he left the entire question to be decided by the jury. The learned judge relied upon certain English decisions and textbooks in support of his conclusion that the said question was one of law and that it was for the Judge to express his view thereon. Mr. Pathak contends that there is an essential difference between the law of England and that of India in the matter of the charge to the jury in respect of grave and sudden provocation. The House of Lords

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

in *Holmes* v. *Director of Public Prosecution* (1) laid down the law in England thus :

> "If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self-control, to the degree and method and continuance of violence which produces the death it is the duty of the judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict."

Viscount Simon brought out the distinction between the respective duties of the judge and the jury succinctly by formulating the following questions :

> "The distinction, therefore, is between asking 'Could the evidence support the view that the provocation was sufficient to lead a reasonable person to do what the accused did ?' (which is for the judge to rule), and, assuming that the judge's ruling is in affirmative, asking the jury : 'Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the

(1) 1 A.E.R. (1946) A.C. 588, 597.

> accused did ?' and, if so, 'Did the accused act under the stress of such provocation' ?"

So far as England is concerned the judgment of the House of Lords is the last word on the subject till it is statutorily changed or modified by the House of Lords. It is not, therefore, necessary to consider the opinions of learned authors on the subject cited before us to show that the said observations did not receive their approval.

But Mr. Pathak contends that whatever might be the law in England, in India we are governed by the statutory provisions, and that under the explanation to Exception I to s. 300 of the Indian Penal Code, the question "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is one of fact", and therefore, unlike in England, in India both the aforesaid questions fall entirely within the scope of the jury and they are for them to decide. To put it in other words, whether a reasonable person in the circumstances of a particular case committed the offence under provocation which was grave and sudden is a question of fact for the jury to decide. There is force in this argument, but it is not necessary to express our final opinion thereon, as the learned Attorney-General has conceded that there was no misdirection in regard to this matter.

The fourth misdirection found by the High Court is that the learned Sessions Judge told the jury that the prosecution relied on the circumstantial evidence and asked them to apply the stringent rule of burden of proof applicable to such cases, whereas in fact there was direct evidence of Puransingh in the shape of extra-judicial confession. In paragraph 8 of the charge the Sessions Judge said :

> "In this case the prosecution relies on what is called circumstantial evidence that is

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

to say there is no witness who can say that he saw the accused actually shooting and killing deceased. There are no direct witnesses, direct witnesses as they are called, of the event in question. Prosecution relies on certain circumstances from which they ask you to deduce an inference that it must be the accused and only the accused who must have committed this crime. That is called circumstantial evidence. It is not that prosecution cannot rely on circumstantial evidence because it is not always the case or generally the case that people who go out to commit crime will also take witnesses with them. So that it may be that in some cases the prosecution may have to rely on circumstantial evidence. Now when you are dealing with circumstantial evidence you will bear in mind certain principles, namely, that the facts on which the prosecution relies must be fully established. They must be fully and firmly established. These facts must lead to one conclusion and one only namely the guilt of the accused and lastly it must exclude all reasonable hypothesis consistent with the innocence of the accused, all reasonable hypothesis consistent with the innocence of the accused should be excluded. In other words you must come to the conclusion by all the human probability, it must be the accused and the accused only who must have committed this crime. That is the standard of proof in a case resting on circumstantial evidence."

Again in paragraph 11 the learned Sessions Judge observed that the jury were dealing with circumstantial evidence and graphically stated :

"It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined

> they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case."

In paragraph 18 of the charge, the learned Sessions Judge dealt with the evidence of Puransingh separately and told the jury that if his evidence was believed, it was one of the best forms of evidence against the man who made the admission and that if they accepted that evidence, then the story of the defence that it was an accident would become untenable. Finally he summarized all the circumstances on which the prosecution relied in paragraph 34 and one of the circumstances mentioned was the extra-judicial confession made to Puransingh. In that paragraph the learned Sessions Judge observed as follows :

> "I will now summarize the circumstances on which the prosecution relies in this case. Consider whether the circumstances are established beyond all reasonable doubt. In this case you are dealing with circumstantial evidence and therefore consider whether they are fully and firmly established and consider whether they lead to one conclusion and only one conclusion that it is the accused alone who must have shot the deceased and further consider that it leaves no room for any reasonable hypothesis consistent with the innocence of the accused regard being had to all the circumstances in the case and the conclusion that you have to come to should be of this nature and by all human probability it must be the accused and the accused alone who must have committed this crime".

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

Finally the learned Sessions Judge told them :

> "If on the other hand you think that the circumstances on which the prosecution relies are fully and firmly established, that they lead to one and the only conclusion and one only, of the guilt of the accused and that they exclude all reasonable hypothesis of the innocence of the accused then and in that case it will be your duty which you are bound by the oath to bring verdict accordingly without any fear or any favour and without regard being had to any consequence that this verdict might lead to."

Mr. Pathak contends that the learned Sessions Judge dealt with the evidence in two parts, in one part he explained to the jury the well settled rule of approach to circumstantial evidence, whereas in another part he clearly and definitely pointed to the jury the great evidentiary value of the extra-judicial confession of guilt by the accused made to Puransingh, if that was believed by them. He therefore, argues that there was no scope for any confusion in the minds of the jurors in regard to their approach to the evidence or in regard to the evidentiary value of the extra-judicial confession. The argument proceeds that even if there was a misdirection, it was not such as to vitiate the verdict of the jury. It is not possible to accept this argument. We have got to look at the question from the standpoint of the possible effect of the said misdirection in the charge on the jury, who are laymen. In more than one place the learned Sessions Judge pointed out that the case depended upon circumstantial evidence and that the jury should apply the rule of circumstantial evidence settled by decisions. Though at one place he emphasized upon evidentiary value of a confession he later on included that confession also as one of the circumstances and again directed the jury to apply the rule of circumstantial evidence. It is

not disputed that the extra-judicial confession made to Puransingh is direct piece of evidence and that the stringent rule of approach to circumstantial evidence does not apply to it. If that confession was true, it cannot be disputed that the approach of the jury to the evidence would be different from that if that was excluded. It is not possible to predicate that the jury did not accept that confession and therefore applied the rule of circumstantial evidence. It may well have been that the jury accepted it and still were guided by the rule of circumstantial evidence as pointed out by the learned Sessions Judge. In these circumstances we must hold, agreeing with the High Court, that this is a grave misdirection affecting the correctness of the verdict.

The next misdirection relied upon by the High Court is the circumstance that the three letters written by Sylvia were not read to the jury by the learned Sessions Judge in his charge and that the jury were not told of their effect on the credibility of the evidence of Sylvia and Nanavati. Shelat, J., observed in regard to this circumstance thus:

> "It cannot be gainsaid that these letters were important documents disclosing the state of mind of Mrs. Nanavati and the deceased to a certain extent. If these letters had been read in juxtaposition of Mrs. Nanavati's evidence they would have shown that her statement that she felt that Ahuja had asked her not to see him for a month for the purpose of backing out of the intended marriage was not correct and that they had agreed not to see each other for the purpose of giving her and also to him an opportunity to coolly think out the implications of such a marriage and then to make up her own mind on her own. The letters would also show that when the accused asked her, as he said in his

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

evidence, whether Ahuja would marry her, it was not probable that she would fence that question. On the other hand, she would, in all probability, have told him that they had already decided to marry. In my view, the omission to refer even once to these letters in the charge especially in view of Mrs. Nanavati's evidence was a nondirection amounting to misdirection."

Mr. Pathak contends that these letters were read to the jury by counsel on both sides and a reference was also made to them in the evidence of Sylvia and, therefore the jury clearly knew the contents of the letters, and that in the circumstances the non-mention of the contents of the letters by the Sessions Judge was not a misdirection and even if it was it did not affect the verdict of the jury. In this context reliance is placed upon two English decisions, namely, *R.* v. *Roberts* (1) and *R.* v. *Attfield* (2). In the former case the appellant was prosecuted for the murder of a girl by shooting her with a service rifle and he pleaded accident as his defence. The Judge in his summing-up, among other defects, omitted to refer to the evidence of certain witnesses; the jury returned a verdict of "guilty" on the charge of murder and it was accepted by the judge, it was contended that the omission to refer to the evidence of certain witnesses was a misdirection. Rejecting that plea, Humphreys, J., obsered :

> "The jury had the statements before them. They had the whole of the evidence before them, and they had, just before the summing up, comments upon those matters from counsel for the defence, and from counsel for the prosecution. It is incredible that they could have forgotten them or that they could have misunderstood the matter in any

(1) [1942] 1 All. E.R. 187, 190. (2) [1961] 3 All. E.R. 243.

way, or thought, by reason of the fact that the judge did not think it necessary to refer to them, that they were not to pay attention to them. We do not think there is anything in that point at all. A judge, in summing-up, is not obliged to refer to every witness in the case, unless he thinks it necessary to do so. In saying this, the court is by no means saying that it might not have been more satisfactory if the judge had referred to the evidence of the two witnesses, seeing that he did not think it necessary to refer to some of the statements made by the accused after the occurrence. No doubt it would have been more satisfactory from the point of view of the accused. All we are saying is that we are satisfied that there was no misdirection in law on the part of judge in omitting those statements, and it was within his discretion."

This passage does not lay down as a proposition of law that however important certain documents or pieces of evidence may be from the standpoint of the accused or the prosecution, the judge need not refer to or explain them in his summing-up to the jury, and, if he did not, it would not amount to misdirection under any circumstances. In that case some statements made by witnesses were not specifically brought to the notice of the jury and the Court held in the circumstances of that case that there was no misdirection. In the latter case the facts were simple and the evidence was short; the judge summed up the case directing the jury as to the law but did not deal with evidence except in regard to the appellant's character. The jury convicted the appellant. The court held that, "although in a complicated and lengthy case it was incumbent on the court to deal with the evidence in summing-up, yet where, as in the present case, the issues could be simply and clearly stated, it was

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

not fatal defect for the evidence not to be reviewed in the summing-up." This is also a decision on the facts of that case. That apart, we are not concerned with a simple case here but with a complicated one. This decision does not help us in deciding the point raised. Whether a particular omission by a judge to place before the jury certain evidence amounts to a misdirection or not falls to be decided on the facts of each case.

These letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her, that they had made up their minds to marry, but agreed to keep apart for a month to consider coolly whether they really wanted to marry in view of the serious consequences involved in taking such a step. Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation. If the Judge had read these letters in his charge and explained the implication of the contents thereof in relation to the evidence given by Nanavati and Sylvia, it would not have been possible to predicate whether the jury would have believed the evidence of Nanavati and Sylvia. If the marriage between them was a settled affair and if the only obstruction in the way was Nanavati, and if Nanavati had expressed his willingness to be out of the way and even to help them to marry, their evidence that Sylvia did not answer the direct question about the intentions of Ahuja to marry her, and the evidence of Nanavati that it became necessary for him to go to Ahuja's flat to ascertain the latter's intentions might not have been believed

by the jury. It is no answer to say that the letters were read to the jury at different stages of the trial or that they might have read the letters themselves for in a jury trial, especially where innumerable documents are filed, it is difficult for a lay jury, unless properly directed, to realise the relative importance of specified documents in the context of different aspects of a case. That is why the Code of Criminal Procedure, under s. 297 thereof, imposes a duty on the Sessions Judge to charge the jury after the entire evidence is given, and after counsel appearing for the accused and counsel appearing for the prosecution have addressed them. The object of the charge to the jury by the Judge is clearly to enable him to explain the law and also to place before them the facts and circumstances of the case both for and against the prosecution in order to help them in arriving at a right decision. The fact that the letters were read to the jury by prosecution or by the counsel for the defence is not of much relevance, for they would place the evidence before the jury from different angles to induce them to accept their respective versions. That fact in itself cannot absolve the Judge from his clear duty to put the contents of the letters before the jury from the correct perspective. We are in agreement with the High Court that this was a clear misdirection which might have affected the verdict of the jury.

The next defect pointed out by the High Court is that the Sessions Judge allowed the counsel for the accused to elicit from the police officer, Phansalkar, what Puransingh is alleged to have stated to him orally, in order to contradict the evidence of Puransingh in the court, and the Judge also dealt with the evidence so elicited in paragraph 18 of his charge to the jury. This contention cannot be fully appreciated unless some relevant facts are stated. Puransingh was examined for the prosecution as P. W. 12. He was a

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

watchman of "Jivan Jyot." He deposed that when the accused was leaving the compound of the said building, he asked him why he had killed Ahuja, and the accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. At about 5-5 P. M. on April 27, 1959, this witness reported this incident to Gamdevi Police Station. On that day Phansalkar (P. W. 13) was the Station House Duty Officer at that station from 2 to 8 P.M. On the basis of the statement of Puransingh, Phansalkar went in a jeep with Puransingh to the place of the alleged offence. Puransingh said in his evidence that he told Phansalkar in the jeep what the accused had told him when he was leaving the compound of "Jivan Jyot." After reaching the place of the alleged offence, Phansalkar learnt from a doctor that Ahuja was dead and he also made enquiries from Miss Mammie, the sister of the deceased. He did not record the statement made by Puransingh. But latter on between 10 and 10-30 P. M. on the same day, Phansalkar made a statement to Inspector Mokashi what Puransingh had told him and that statement was recorded by Mokashi. In the statement taken by Mokashi it was not recorded that Puransingh told Phansalkar that the accused told him why he had killed Ahuja. When Phansalkar was in the witness-box to a question put to him in cross-examination he answered that Puransingh did not tell him that he had asked Nanavati why he killed Ahuja and that the accused replied that he had a quarrel with the deceased as the latter had "connections" with his wife and that he had killed him. The learned Sessions Judge not only allowed the evidence to go in but also, in paragraph 18 of his charge to the jury, referred to that statement. After giving the summary of the evidence given by Puransingh, the learned Sessions Judge proceeded to state in his charge to the jury :

"Now the conversation between him and Phansalkar (Sub-Inspector) was brought on record in which what the chowkidar told Sub-Inspector Phansalkar was, the servants of the flat of Miss Ahuja had informed him that a Naval Officer was going away in the car. He and the servants had tried to stop him but the said officer drove away in the car saying that he was going to the Police Station and to Sub-Inspector Phansalkar he did not state about the admission made by Mr. Nanavati to him that he killed the deceased as the deceased had connections with his wife. The chowkidar said that he had told this also to sub-Inspector Phansalkar. Sub-Inspector Phansalkar said that Puransingh had not made this statement to him. You will remember that this chowkidar went to the police station at Gamdevi to give information about this crime and while coming back he was with Sub-Inspector Phansalkar and Sub-Inspector Phansalkar in his own statement to Mr. Mokashi has referred to the conversation which he had between him and this witness Puransingh and that had been brought on record as a contradiction."

The learned Sessions Judge then proceeded to state other circumstances and observed, "Consider whether you will accept the evidence of Puransingh or not." It is manifest from the summing-up that the learned Sessions Judge not only read to the jury the evidence of Phansalkar wherein he stated that Puransingh did not tell him that the accused told him why he killed Ahuja but also did not tell the jury that the evidence of Phansalkar was not admissible to contradict the evidence of Puransingh. It is not possible to predicate what was the effect of the alleged contradiction on the mind of the jury and whether they had not rejected the evidence of Puransingh

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

because of that contradiction. If the said evidence was not admissible, the placing of that evidence before the jury was certainly a grave misdirection which must have affected their verdict. The question is whether such evidence is legally admissible. The alleged omission was brought on record in the cross-examination of Phansalkar, and, after having brought it in, it was sought to be used to contradict the evidence of Puransingh. Learned Attorney-General contends that the statement made by Phansalkar to Inspector Mokashi could be used only to contradict the evidence of Phansalkar and not that of Puransingh under s. 162 of the Code of Criminal Procedure; and the statement made by Puransingh to Phansalkar, it not having been recorded, could not be used at all to contradict the evidence of Puransingh under the said section. He further argues that the alleged omission not being a contradiction, it could in no event be used to contradict Puransingh. Learned counsel for the accused, on the other hand, contends that the alleged statement was made to a police officer before the investigation commenced and, therefore, it was not hit by s. 162 of the Code of Criminal Procedure, and it could be used to contradict the evidence of Puransingh. Section 162 of the Code of Criminal Procedure reads:

> "(1) No statement made by any person to a Police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

"Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination."

The preliminary condition for the application of s. 162 of the Code is that the statement should have been made to a police-officer in the course of an investigation under Chapter XIV of the Code. If it was not made in the course of such investigation, the admissibility of such statement would not be governed by s. 162 of the Code. The question, therefore, is whether Puransingh made the statement to Phansalkar in the course of investigation. Section 154 of the Code says that every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station shall be reduced to writing by him or under his direction; and section 156(1) is to the effect that any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV relating to the place of inquiry or trial. The evidence in the case clearly establishes that Phansalkar, being the Station House Duty Officer at Gamdevi Police-station on April 27, 1959, from 2 to 8 P.M., was an officer in charge of the

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Police-station within the meaning of the said sections. Puransingh in his evidence says that he went to Gamdevi Police-station and gave the information of the shooting incident to the Gamdevi Police. Phansalkar in his evidence says that on the basis of the information he went along with Puransingh to the place of the alleged offence. His evidence also discloses that he had questioned Puransingh, the doctor and also Miss Mammie in regard to the said incident. On this uncontradicted evidence there cannot be any doubt that the investigation of the offence had commenced and Puransingh made the statement to the police officer in the course of the said investigation. But it is said that, as the information given by Puransingh was not recorded by Police Officer Phansalkar as he should do under s. 154 of the Code of Criminal Procedure, no investigation in law could have commenced with the meaning of s. 156 of the Code. The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the concerned police officer. If so, s. 162 of the Code is immediately attracted. Under s. 162(1) of the Code, no statement made by any person to a Police-officer in the course of an investigation can be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. But the proviso lifts the ban and says that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused to contradict such witness. The proviso cannot be invoked to bring in the statement made by Phansalkar to Inspector Mokashi in the cross-examination of Phansalkar, for the statement made by him was not used to contradict the evidence of Phansalkar. The proviso cannot obviously apply to the oral

statement made by Puransingh to Phansalkar, for the said statement of Puransingh has not been reduced into writing. The faint argument of learned counsel for the accused that the statement of Phansalkar recorded by Inspector Mokashi can be treated as a recorded statement of Puransingh himself is to be stated only to be rejected, for it is impossible to treat the recorded statement of Phansalkar as the recorded statement of Puransingh by a police-officer. If so, the question whether the alleged omission of what the accused told Puransingh in Puransingh's oral statement to Phansalkar could be used to contradict Puransingh, in view of the decision of this Court in *Tahsildar Singh's* case(1), does not arise for consideration. We are, therefore, clearly of the opinion that not only the learned Sessions Judge acted illegally in admitting the alleged omission in evidence to contradict the evidence of Puransingh, but also clearly misdirected himself in placing the said evidence before the jury for their consideration.

In addition to the misdirections pointed out by the High Court, the learned Attorney-General relied upon another alleged misdirection by the learned Sessions Judge in his charge. In paragraph 28 of the charge, the learned Sessions Judge stated thus:

> "No one challenges the marksmanship of the accused but Commodore Nanda had come to tell you that he is a good shot and Mr. Kandalawala said that here was a man and good marksman, would have shot him, riddled him with bullets perpendicularly and not that way and he further said that as it is not done in this case it shows that the accused is a good marksman and a good shot and he would not have done this thing, this is the argument."

The learned Attorney-General points out that the learned Sessions Judge was wrong in saying that

(1) [1959] Supp. (2) S.C.R. 875.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

no one challenged the marksmanship of the accused, for Commodore Nanda was examined at length on the competency of the accused as a marksman. Though this is a misdirection, we do not think that the said passage, having regard to the other circumstances of the case, could have in any way affected the verdict of the jury. It is, therefore, clear that there were grave misdirections in this case, affecting the verdict of the jury, and the High Court was certainly within its rights to consider the evidence and come to its own conclusion thereon.

The learned Attorney-General contends that if he was right in his contention that the High Court could consider the evidence afresh and come to its own conclusion, in view of the said misdirection, this Court should not, in exercise of its discretionary jurisdiction under Art. 136 of the Constitutions interfere with the findings of the High Court. There is force in this argument. But, as we have heard counsel at great length, we propose to discuss the evidence.

We shall now proceed to consider the evidence in the case. The evidence can be divided into three parts, namely, (i) evidence relating to the conduct of the accused before the shooting incident, (ii) evidence in regard to the conduct of the accused after the incident, and (iii) evidence in regard to the actual shooting in the bed-room of Ahuja.

We may start with the evidence of the accused wherein he gives the circumstances under which he came to know of the illicit intimacy of his wife Sylvia with the deceased Ahuja, and the reasons for which he went to the flat of Ahuja in the evening of April 27, 1959. After his brother and his brother's wife, who stayed with him for a few days, had left, he found his wife behaving strangely and without affection towards him. Though on that ground he was unhappy and worried, he did not

suspect of her unfaithfulness to him. On the morning of April 27, 1959, he and his wife took out their sick dog to the Parel Animal Hospital. On their way back, they stopped at the Metro Cinema and his wife bought some tickets for the 3-30 show. After coming home, they were sitting in the room for the lunch to be served when he put his arm around his wife affectionately and she seemed to go tense and was very unresponsive. After lunch, when his wife was reading in the sitting room, he told her "Look, we must get these things straight" or something like that, and "Do you still love me?" As she did not answer, he asked her "Are you in love with some one else?", but she gave no answer. At that time he remembered that she had not been to a party given by his brother when he was away on the sea and when asked why she did not go, she told him that she had a previous dinner engagement with Miss Ahuja. On the basis of this incident, he asked her "Is it Ahuja ?" and she said "Yes." When he asked her "Have you been faithful to me ?", she shook her head to indicate "No." Sylvia in her evidence, as D. W. 10, broadly supported this version. It appears to us that this is clearly a made-up conversation and an unnatural one too. Is it likely that Nanavati, who says in his evidence that prior to April 27, 1959, he did not think that his wife was unfaithful to him, would have suddenly thought that she had a lover on the basis of a trivial circumstance of her being unresponsive when he put his arm around her affectionately ? Her coldness towards him might have been due to many reasons. Unless he had a suspicion earlier or was informed by somebody that she was unfaithful to him, this conduct of Nanavati in suspecting his wife on the basis of the said circumstance does not appear to be the natural reaction of a husband. The recollection of her preference to attend the dinner given by Miss Mammie to that of his brother, in the absence

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

of an earlier suspicion or information, could not have flashed on his mind the image of Ahuja as a possible lover of his wife. There was nothing extraordinary in his wife keeping a previous engagement with Miss Mammie and particularly when she could rely upon her close relations not to misunderstand her. The circumstances under which the confession of unfaithfulness is alleged to have been made do not appear to be natural. This inference is also reinforced by the fact that soon after the confession, which is alleged to have upset him so much, he is said to have driven his wife and children to the cinema. If the confession of illicit intimacy between Sylvia and Ahuja was made so suddenly at lunch time, even if she had purchased the tickets, it is not likely that he would have taken her and the children to the cinema. Nanavati then proceeds to say in his evidence: on his wife admitting her illicit intimacy with Ahuja, he was absolutely stunned; he then got up and said that he must go and settle the matter with the swine; he asked her what were the intentions of Ahuja and whether Ahuja was prepared to marry her and look after the children; he wanted an explanation from Ahuja for his caddish conduct. In the cross-examination he further elaborated on his intentions thus: He thought of having the matters settled with Ahuja; he would find out from him whether he would take an honourable way out of the situation; and he would thrash him if he refused to do so. The honourable course which he expected of the deceased was to marry his wife and look after the children. He made it clear further that when he went to see Ahuja the main thing in his mind was to find out what Ahuja's intentions were towards his wife and children and to find out the explanation for his conduct. Sylvia in her evidence says that when she confessed her unfaithfulness to Nanavati, the latter suddenly got up rather excitedly and said that he wanted to go

to Ahuja's flat and square up the things. Briefly stated, Nanavati, according to him, went to Ahuja's flat to ask for an explanation for seducing his wife and to find out whether he would marry Sylvia and take care of the children. Is it likely that a person, situated as Nanavati was, would have reacted in the manner stated by him? It is true that different persons react, under similar circumstances, differently. A husband to whom his wife confessed of infidelity may kill his wife, another may kill his wife as well as her paramour, the third, who is more sentimental. may commit suicide, and the more sophisticated one may give divorce to her and marry another. But it is most improbable, even impossible, that a husband who has been deceived by his wife would voluntarily go to the house of his wife's paramour to ascertain his intentions, and, what is more, to ask him to take charge of his children. What was the explanation Nanavati wanted to get from Ahuja? His wife confessed that she had illicit intimacy with Ahuja. She is not a young girl, but a woman with three children. There was no question of Ahuja seducing an innocent girl, but both Ahuja and Sylvia must have been willing parties to the illicit intimacy between them. That apart, it is clear from the evidence that Ahuja and Sylvia had decided to marry and, therefore, no further elucidation of the intention of Ahuja by Nanavati was necessary at all. It is true that Nanavati says in his evidence that when he asked her whether Ahuja was prepared to marry her and look after the children, she did not give any proper reply; and Sylvia also in her evidence says that when her husband asked her whether Ahuja was willing to marry her and look after the children she avoided answering that question as she was too ashamed to admit that Ahuja was trying to back out from the promise to marry her. That this version is not true is amply borne out by the letters written by Sylvia to

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Ahuja. The first letter written by Sylvia is dated May 24, 1958, but that was sent to him only on March 19, 1959, along with another letter. In that letter dated May 24, 1958, she stated :

> "Last night when you spoke about your need to marry and about the various girls you may marry, something inside me snapped and I know that I could not bear the thought of your loving or being close to someone else."

Reliance is placed upon these words by learned counsel for the accused in support of his contention that Ahuja intended to marry another girl. But this letter is of May 1958 and by that time it does not appear that there was any arrangement between Sylvia and Ahuja to marry. It may well have been that Ahuja was telling Sylvia about his intentions to marry another girl to make her jealous and to fall in for him. But as days passed by, the relationship between them had become very intimate and they began to love each other. In the letter dated March 19, 1959, she said : "Take a chance on our happiness, my love. I will do my best to make you happy; I love you, I want you so much that everything is bound to work out well." The last sentence indicates that they had planned to marry. Whatever ambiguity there may be in these words, the letter dated April 17, 1959, written ten days prior to the shooting incident, dispels it ; therein she writes

> "In any case nothing is going to stop my coming to you. My decision is made and I do not change my mind. I am taking this month so that we may afterwards say we gave ourselves every chance and we know what we are doing. I am torturing myself in every possible way as you asked, so that, there will be no surprise afterwards".

This letter clearly demonstrates that she agreed not to see Ahuja for a month, not because that Ahuja refused to marry her, but because it was settled that they should marry, and that in view of the far-reaching effects of the separation from her husband on her future life and that of her children, the lovers wanted to live separately to judge for themselves whether they really loved each other so much as to marry. In the cross-examination she tried to wriggle out of these letters and sought to explain them away; but the clear phraseology of the last letter speaks for itself, and her oral evidence, contrary to the contents of the letters, must be rejected. We have no doubt that her evidence, not only in regard to the question of marriage but also in regard to other matters, indicates that having lost her lover, out of necessity or out of deep penitence for her past misbehaviour, she is out to help her husband in his defence. This correspondence belies the entire story that Sylvia did not reply to Nanavati when the latter asked her whether Ahuja was willing to marry her and that that was the reason why Nanavati wanted to visit Ahuja to ask him about his intentions. We cannot visualize Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only honourable course open to him was to marry her and take over his children. Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced Naval Officer and not a sentimental hero of a novel. The reason therefore for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Then, according to Nanavati, he drove his wife and children to cinema, and promising them to come and pick them up at the end of the show at about 6 P. M., he drove straight to his ship. He would say that he went to his ship to get medicine for his sick dog. Though ordinarily this statement would be insignificant, in the context of the conduct of Nanavati, it acquires significance. In the beginning of his evidence, he says that on the morning of the day of the incident he and his wife took out their sick dog to the Parel Animal Hospital. It is not his evidence that after going to the hospital he went to his ship before returning home. It is not even suggested that in the ship there was a dispensary catering medicine for animals. This statement, therefore, is not true and he did not go to the ship for getting medicine for his dog but for some other purpose, and that purpose is clear from his subsequent evidence. He met Captain Kolhi and asked for his permission to draw a revolver and six rounds because he was going to drive to Ahmednagar by night. Captain Kolhi gave him the revolver and six rounds, he immediately loaded the revolver with all the six rounds and put the revolver inside an envelope which was lying in his cabin. It is not the case of the accused that he really wanted to go to Ahmednagar and he wanted the revolver for his safety. Then why did he take the revolver? According to him, he wanted to shoot himself after driving far away from his children. But he did not shoot himself either before or after Ahuja was shot dead. The taking of the revolver on a false pretext and loading it with six cartridges indicate the intention on his part to shoot somebody with it.

Then the accused proceeded to state that he put the envelope containing the revolver in his car and found himself driving to Ahuja's office. At Ahuja's office he went in keeping the revolver in the car, and asked Talaja, the Sales Manager of

Universal Motors of which Ahuja was the proprietor whether Ahuja was inside. He was told that Ahuja was not there. Before leaving Ahuja's office, the accused looked for Ahuja in the Show Room, but Ahuja was not there. In the cross-examination no question was put to Nanavati in regard to his statement that he kept the revolver in the car when he entered Ahuja's office. On the basis of this statement, it is contended that if Nanavati had intended to shoot Ahuja he would have taken the revolver inside Ahuja's office. From this circumstance it is not possible to say that Nanavati's intention was not to shoot Ahuja. Even if his statement were true, it might well have been that he would have gone to Ahuja's office not to shoot him there but to ascertain whether he had left the office for his flat. Whatever it may be, from Ahuja's office he straightway drove to the flat of Ahuja. His conduct at the flat is particularly significant. His version is that he parked his car in the house compound near the steps, went up the steps, but remembered that his wife had told him that Ahuja might shoot him and so he went back to his car, took the envelope containing the revolver, and went up to the flat. He rang the doorbell; when a servant opened the door, he asked him whether Ahuja was in. Having ascertained that Ahuja was in the house, he walked to his bedroom, opened the door and went in shutting the door behind him. This conduct is only consistent with his intention to shoot Ahuja. A person, who wants to seek an interwiew with another in order to get an explanation for his conduct or to ascertain his intentions in regard to his wife and children, would go and sit in the drawing-room and ask the servant to inform his master that he had come to see him. He would not have gone straight into the bed-room of another with a loaded revolver in hand and closed the door behind. This was the conduct of an enraged man who had gone to wreak vengeance on a person who did him a

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

grievous wrong. But it is said that he had taken the loaded revolver with him as his wife had told him that Ahuja might shoot him. Earlier in his cross-examination he said that when he told her that he must go and settle the matter with the "swine" she put her hand upon his arm and said, "No, No, you must not go there, don't go there, he may shoot you." Sylvia in her evidence corroborates his evidence in this respect: But Sylvia has been cross-examined and she said that she knew that Ahuja had a gun and she had seen it in Ashoka Hotel in New Delhi and that she had not seen any revolver at the residence of Ahuja at any time. It is also in evidence that Ahuja had no licence for a revolver and no revolver of his was found in his bed-room. In the circumstances, we must say that Sylvia was only attempting to help Nanavati in his defence. We think that the evidence of Nanavati supported by that of Sylvia was a collusive attempt on their part to explain away the otherwise serious implication of Nanavati carrying the loaded revolver into the bed-room of Ahuja. That part of the version of the accused in regard to the manner of his entry into the bed-room of Ahuja, was also supported by the evidence of Anjani (P.W. 8), the bearer, and Deepak, the Cook. Anjani opened the door of the flat to Nanavati at about 4-20 P. M. He served tea to his master at about 4-15 P. M. Ahuja then telephoned to ascertain the correct time and then went to his bed-room. About five minutes thereafter this witness went to the bed-room of his master to bring back the tea-tray from there, and at that time his master went into the bath-room for his bath. Thereafter, Anjani went to the kitchen and was preparing tea when he heard the door-bell. He then opened the door to Nanavati. This evidence shows that at about 4-20 P.M. Ahuja was taking his bath in the bath-room and immediately thereafter Nanavati entered the bed-room. Deepak, the cook of Ahuja, also heard the ringing of the

door-bell. He saw the accused opening the door of the bed-room with a brown envelope in his hand and calling the accused by his name "Prem"; he also saw his master having a towel wrapped around his waist and combing his hair standing before the dressing-table, when the accused entered the room and closed the door behind him. These two witnesses are natural witnesses and they have been examined by the police on the same day and nothing has been elicited against them to discredit their evidence. The small discrepancies in their evidence do not in any way affect their credibility. A few seconds thereafter, Mammie, the sister of the deceased, heard the crack of the window pane. The time that elapsed between Nanavati entering the bed-room of Ahuja and her hearing the noise was about 15 to 20 seconds. She describes the time that elapsed between the two events as the time taken by her to take up her saree from the door of her dressing-room and her coming to the bed-room door. Nanavati in his evidence says that he was in the bed-room of Ahuja for about 30 to 60 seconds. Whether it was 20 seconds, as Miss Mammie says, or 30 to 60 seconds, as Nanavati deposes, the entire incident of shooting took place in a few seconds.

Immediately after the sounds were heard, Anjani and Miss Mammie entered the bed-room and saw the accused.

The evidence discussed so far discloses clearly that Sylvia confessed to Nanavati of her illicit intimacy with Ahuja; that Nanavati went to his ship at about 3.30 P.M. and took a revolver and six rounds on a false pretext and loaded the revolver with six rounds; that thereafter he went to the office of Ahuja to ascertain his whereabouts, but was told that Ahuja had left for his house; that the accused then went to the flat of the deceased at about 4-20 P.M.; that he entered the flat and then the bed-room unceremoniously with the loaded revolver, closed the door behind him and a few

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

seconds thereafter sounds were heard by Miss Mammie, the sister of the deceased, and Anjani, a servant; that when Miss Mammie and Anjani entered the bed-room, they saw the accused with the revolver in his hand, and found Ahuja lying on the floor of the bath-room. This conduct of the accused to say the least, is very damaging for the defence and indeed in itself ordinarily sufficient to implicate him in the murder of Ahuja.

Now we shall scrutinize the evidence to ascertain the conduct of the accused from the time he was found in the bed room of Ahuja till he surrendered himself to the police. Immediately after the shooting, Anjani and Miss Mammie went into the bed-room of the deceased. Anjani says in his evidence that he saw the accused facing the direction of his master who was lying in the bath-room; that at that time the accused was having a "pistol" in his hand; that when he opened the door, the accused turned his face towards this witness and saying that nobody should come in his way or else he would shoot at them, he brought his "pistol" near the chest of the witness; and that in the meantime Miss Mammie came there, and said that the accused had killed her brother.

Miss Mammie in her evidence says that on hearing the sounds, she went into the bed-room of her brother, and there she saw the accused nearer to the radiogram than to the door with a gun in his hand; that she asked the accused "what is this ?" but she did not hear the accused saying anything.

It is pointed out that there are material contradictions between what was stated by Miss Mammie and what was stated by Anjani. We do not see any material contradictions. Miss Mammie might not have heard what the accused said either because she came there after the aforesaid words were uttered or because in her anxiety and worry she did not hear the words. The different versions

given by the two witnesses in regard to what Miss Mammie said to the accused is not of any importance as the import of what both of them said is practically the same. Anjani opened the door to admit Nanavati into the flat and when he heard the noise he must have entered the room. Nanavati himself admitted that he saw a servant in the room, though he did not know him by name; he also saw Miss Mammie in the room. These small discrepancies, therefore, do not really affect their credibility. In effect and substance both saw Nanavati with a fire-arm in his hand—though one said pistol and the other gun—going away from the room without explaining to Miss Mammie his conduct and even threatening Anjani. This could only be the conduct of a person who had committed a deliberate murder and not of one who had shot the deceased by accident. If the accused had shot the diseased by accident, he would have been in a depressed and apologetic mood and would have tried to explain his conduct to Miss Mammie or would have phoned for a doctor or asked her to send for one or at any rate he would not have been in a belligerent mood and threatened Anjani with his revolver. Learned counsel for the accused argues that in the circumstances in which the accused was placed soon after the accidental shooting he could not have convinced Miss Mammie with any amount of explanation and therefore there was no point in seeking to explain his conduct to her. But whether Miss Mammie would have been convinced by his explanation or not, if Nanavati had shot the deceased by accident, he would certainly have told her particularly when he knew her before and when she happend to be the sister of the man shot at. Assuming that the suddenness of the accidental shooting had so benumbed his senses that he failed to explain the circumstances of the shooting to her, the same cannot be said when he met others at the gate. After the accused had come out of the flat of Ahuja,

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

he got into his car and took a turn in the compound. He was stopped near the gate by Puransingh, P.W. 12, the watchman of the building. As Anjani had told him that the accused had killed Ahuja the watchman asked him why he had killed his master. The accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. The watchman told the accused that he should not go away from the place before the police arrived, but the accused told him that he was going to the police and that if he wanted he could also come with him in the car. At that time Anjani was standing in front of the car and Deepak was a few feet away. Nanavati says in his evidence that it was not true that he told Puransingh that he had killed the deceased as the latter had "connection" with his wife and that the whole idea was quite absurd. Puransingh is not shaken in his cross-examination. He is an independent witness; though he is a watchman of Jivan Jyot, he was not an employee of the deceased. After the accused left the place, this witness, at the instance of Miss Mammie, went to Gamdevi Police Station and reported the incident to the police officer Phansalkar, who was in charge of the police-station at that time, at about 5-5 P.M. and came along with the said police-officer in the jeep to Jivan Jyot at about 7 P.M. he went along with the police-officer to the police station where his statement was recorded by Inspector Mokashi late in the night. It is suggested that this witness had conspired with Deepak and Anjani and that he was giving false evidence. We do not see any force in this contention. His statement was regarded on the night of the incident itself. It is impossible to conceive that Miss Mammie, who must have had a shock, would have been in a position to coach him up to give a false statement. Indeed, her evidence discloses that she was drugged to sleep that night. Can it be said that these two illiterate

witnesses, Anjani and Deepak, would have persuaded him to make a false statement that night. Though both of them were present when Puransingh questioned the accused, they deposed that they were at a distance and therefore they did not hear what the accused told Puransingh. If they had all colluded together and were prepared to speak to a false case, they could have easily supported Puransingh by stating that they also heard what the accused told Puransingh. We also do not think that these two witnesses are so intelligent as to visualize the possible defence and beforehand coached Puransingh to make a false statement on the very night of the incident. Nor do we find any inherent improbability in his evidence if really Nanavati had committed the murder. Having shot Ahuja he was going to surrender himself to the police; he knew that he had committed a crime; he was not a hardened criminal and must have had a moral conviction that he was justified in doing what he did. It was quite natural, therefore, for him to confess his guilt and justify his act to the watchman who stopped him and asked him to wait there till the police came. In the mood in which Nanavati was soon after the shooting, artificial standards of status or position would not have weighed in his mind if he was going to confess and surrender to the police. We have gone through the evidence of Puransingh and we do not see any justification to reject his evidence.

Leaving Jivan Jyot the accused drove his car and came to Raj Bhavan Gate. There he met a police constable and asked him for the location of the nearest police station. The direction given by the police constable were not clear and, therefore, the accused requested him to go along with him to the police station, but the constable told him that as he was on duty, he could not follow him. This

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

is a small incident in itself, but it only shows that the accused was anxious to surrender himself to the police. This would not have been the conduct of the accused, if he had shot another by accident, for in that event he would have approached a lawyer or a friend for advice before reporting the incident to the police. As the police constable was not able to give him clear directions in regard to the location of the nearest police station, the accused went to the house of Commander Samuel, the Naval Provost Marshal. What happened between the accused and Samuel is stated by Samuel in his evidence as P.W. 10. According to his evidence, on April 27, 1959, at about 4-45 P.M., he was standing at the window of his study in his flat on the ground floor at New Queen's Road. His window opens out on the road near the band stand. The accused came up to the window and he was in a dazed condition. The witness asked him what had happened, and the accused told him "I do not quite know what happened, but I think I have shot a man." The witness asked him how it happened, and the accused told him that the man had seduced his wife and he would not stand it. When the witness asked him to come inside and explain everything calmly, the accused said "No, thank you, I must go", "please tell me where I should go and report". Though he asked him again to come in, the accused did not go inside and, therefore, this witness instructed him to go to the C.I.D. Office and report to the Deputy Commissioner Lobo. The accused asked him to phone to Lobo and he telephoned to Lobo and told him that an officer by name Commander Nanavati was involved in an affair and that he was on the way to report to him. Nanavati in his evidence practically corroborates the evidence of Samuel. Nanavati's version in regard to this incident is as follows :

"I told him that something terrible had happened, that I did not know quite what

had happened but I thought I had shot a man. He asked me where this had happened. I told him at Nepean Sea Road. He asked me why I had been there. I told him I went there because a fellow there had seduced my wife and I would not stand for it. He asked me many times to go inside his room. But I was not willing to do so. I was anxious to go to the police station. I told Commander Samuel that there had been a fight over a revolver. Commander Samuel asked to report to Deputy Commissioner Lobo."

The difference between the two versions lies in the fact that while Nanavati said that he told Samuel that something terrible had happened, Samuel did not say that; while Nanavati said that he told Samuel that there had been a fight over a revolver, Somuel did not say that. But substantially both of them say that though Samuel asked Nanavati more than once to get inside the house and explain to him everything calmly, Nanavati did not do so; both of them also deposed that the accused told Samuel,"I do not quite know what happened but I think I have shot a man." It may be mentioned that Samuel is a Provost Marshal of the Indian navy, and he and the accused are of the same rank though the accused is senior to Samuel as Commander. As Provost Marshal, Samuel discharges police duties in the navy. Is it probable that if the deceased was shot by accident, the accused would not have stated that fact to this witness? Is it likely that he would not have stepped into his house, particularly when he requested him more than once to come in and explain to him how the accident had taken place ? Would he not have taken his advice as a colleague before he proceeded to the police station to surrender himself ? The only explanation for this unusual conduct on the part of the accused is that, having committed the murder, he wanted to surrender himself to

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

the police and to make a clean breast of everything. What is more, when he was asked directly what had happened he told him "I do not quite know what happened but I think I have shot a man". When he was further asked how it happened, that is, how he shot the man he said that the man had seduced his wife and that he would not stand for it. In the context his two answers read along with the questions put to him by Samuel only mean that, as the deceased had seduced his wife, the accused shot him as he would not stand for it. If really the accused shot the deceased by accident, why did he not say that fact to his colleague, particularly when it would not only be his defence, if prosecuted, but it would put a different complexion to his act in the eyes of his colleague. But strong reliance is placed on what this witness stated in the cross-examination *viz.*, "I heard the word fight from the accused", "I heard some other words from the accused but I could not make out a sense out of these words". Learned counsel for the accused contends that this statement shows that the accused mentioned to Samuel that the shooting of the deceased was in a fight. It is not possible to build upon such slender foundation that the accused explained to Samuel that he shot the deceased by accident in a struggle. The statement in the cross-examination appears to us to be an attempt on the part of this witness to help his colleague by saying something which may fit in the scheme of his defence, though at the same time he is not willing to lie deliberately in the witness-box, for he clearly says that he could not make out the sense of the words spoken along with the word "fight". This vague statement of this witness, without particulars, cannot detract from the clear evidence given by him in the examination-in-chief.

What Nanavati said to the question put by the Sessions Judge under s. 342 of the Code of Criminal Procedure supports Samuel's version. The

following question was put to him by the learned Sessions Judge :

> Q.—It is alleged against you that thereafter as aforesaid you went to Commander Samuel at about 4-45 P.M. and told him that something terrible had happened and that you did not quite know but you thought that you shot a man as he had seduced your wife which you could not stand and that on the advice of Commander Samuel you then went to Deputy Commissioner Lobo at the Head Crime Investigation Department Office. Do you wish to say anything about this ?
>
> A.—This is correct.

Here Nanavati admits that he told Commander Samuel that he shot the man as he had seduced his wife. Learned counsel for the accused contends that the question framed was rather involved and, therefore, Nanavati might not have understood its implication. But it appears from the statement that, after the questions were answered, Nanavati read his answers and admitted that they were correctly recorded. The answer is also consistent with what Samuel said in his evidence as to what Nanavati told him. This corroborates the evidence of Samuel that Nanavati told him that, as the man had seduced his wife, he thought that he had shot him. Anyhow, the accused did not tell the Court that he told Samuel that he shot the deceased in a fight.

Then the accused, leaving Samuel, went to the office of the Deputy Commissioner Lobo. There, he made a statement to Lobo. At that time, Superintendent Korde and Inspector Mokashi were also present. On the information given by him, Lobo directed Inspector Mokashi to take the accused into custody and to take charge of the articles and to investigate the case.

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

Lobo says in his evidence that he received a telephone call from Commander Samuel to the effect that he had directed Commander Nanavati to surrender himself to him as he had stated that he had shot a man. This evidence obviously cannot be used to corroborate what Nanavati told Samuel, but it would only be a corroboration of the evidence of Samuel that he telephoned to Lobo to that effect. It is not denied that the accused set up the defence of accident for the first time in the Sessions Court. This conduct of the accused from the time of the shooting of Ahuja to the moment he surrendered himself to the police is inconsistent with the defence that the deceased was shot by accident. Though the accused had many opportunities to explain himself, he did not do so; and he exhibited the attitude of a man who wreaked out his vengeance in the manner planned by him and was only anxious to make a clean breast of everything to the police.

Now we will consider what had happened in the bed-room and bath-room of the deceased. But before considering the evidence on this question, we shall try to describe the scene of the incident and other relevant particulars regarding the things found therein.

The building "Jivan Jyot" is situate in Setalvad Road, Bombay. Ahuja was staying on the first floor of that building. As one goes up the stairs, there is a door leading into the hall; as one enters the hall and walks a few feet towards the north he reaches a door leading into the bed-room of Ahuja. In the bed-room, abutting the southern wall there is a radiogram ; just after the radiogram there is a door on the southern wall leading to the bath-room, on the eastern side of the door abutting the wall there is a cupboard with a mirror thereon; in the bath-room, which is of the dimensions 9 feet x 6 feet, there is a commode in the front along the

wall, above the commode there is a window with glass panes overlooking the chowk, on the east of the commode there is a bath-tub, on the western side of the bathroom there is a door leading into the hall; on the southern side of the said door there is a wash-basin adjacent to the wall.

After the incident the corpse of Ahuja was found in the bath-room; the head of the deceased was towards the bed-room and his legs were towards the commode. He was lying with his head on his right hand. This is the evidence of Miss Mammie, and she has not been cross-examined on it. It is also not contradicted by any witness. The top glass pane of the window in the bath-room was broken. Pieces of glass were found on the floor of the bath-room between the commode and the wash-basin. Between the bath-tub and the commode a pair of spectacles was lying on the floor and there were also two spent bullets. One chappal was found between the commode and the wash basin, and the other was found in the bedroom. A towel was found wrapped arround the waist of the deceased. The floor of the bath-room was blood-stained. There was white handkerchief and bath-towel, which was bloodstained lying on the floor. The western wall was found to be bloodstained and drops of blood were trickling down. The handle of the door leading to the bath-room from the bed-room and a portion of the door adjacent to the handle were bloodstained from the inner side. The blood on the wall was lit a over three feet from the floor. On the floor of the bed-room there was an empty brown envelope with the words "Lt. Commander K. M. Nanavati" written on it. There was no mark showing that the bullets had hit any surface. (See the evidence of Rashmikant, P.W. 16)

On the dead-body the following injuries were found :

(1) A punctured wound $\frac{1}{4}$" x $\frac{1}{4}$" x chest cavity deep just below and inside the inner

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

end of the right collar bone with an abrasion collar on the right side of the wound.

(2) A lacerated punctured wound in the web between the ring finger and the little finger of the left hand ¼" x ¼" communicating with a punctured wound ¼" x ¼" on the palmar aspect of the left hand at knuckle level between the left little and the ring finger. Both the wounds were communicating.

(3) A lacerated ellipsoid wound oblique in the left parietal region with dimensions 1½" x ¼" x skull deep.

(4) A lacerated abrasion with carbonaceous tatooing ¼" x ⅛" at the distal end of the proximal interphalangeal joint of the left index finger dorsal aspect. That means at the first joint of the crease of the index finger on its dorsal aspect, *i.e.*, back aspect.

(5) A lacerated abrasion with carbonaceous tatooing ¼" x ⅛" at the joint level of the left middle finger dorsal aspect.

(6) Vertical abrasion inside the right shoulder blade 3" x 1" just outside the spine.

On internal examination the following wounds were found by Dr. Jhala, who performed the autopsy on the dead-body. Under the first injury there was :

"A small ellipsoid wound oblique in the front of the piece of the breast bone (Sternum) upper portion right side centre with dimensions ¼" x ¼" and at the back of the bone there was a lacerated wound accompanied by irregular chip fracture corresponding to external injury No. 1, *i, e.*, the punctured wound chest cavity deep. Same wound continued in the contusion in area 3" x 1¼" in the right lung upper lobe front border middle portion front and back. Extensive clots were seen

in the middle compartment upper and front part surrounding the laceration impregnated pieces of fractured bone. There was extensive echymosis and contusion around the root of the right lung in the diameter of 2" involving also the inner surface of the upper lobe. There were extensive clots of blood around the aorta. The left lung was markedly pale and showed a through and through wound in the lower lobe beginning at the inner surface just above the root opening out in the lacerated wound in the back region outer aspect at the level between 6th and 7th ribs left side not injuring the rib and injuring the space between the 6th and 7th rib left side 2" outside the junction of the spine obliquely downward and outward. Bullet was recovered from tissues behind the left shoulder blade. The wound was lacerated in the whole tract and was surrounded by contusion of softer tissues."

The doctor says that the bullet, after entering "the inner end, went backward, downward and then to the left" and therefore he describes the wound as "ellipsoid and oblique". He also points out that the abrasion collar was missing on the left side. Corresponding to the external injury No. 3, the doctor found on internal examination that the skull showed a haematoma under the scalp, *i.e.*, on the left parietal region ; the dimension was 2" x 2". The skull cap showed a gutter fracture of the outer table and a fracture of the inner table. The brain showed sub-arachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull.

A description of the revolver with which Ahuja was shot and the manner of its working would be necessary to appreciate the relevant evidence in that regard. Bhanagay, the Government

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Criminologist, who was examined as P. W. 4, describes the revoler and the manner of its working. The revolver is a semi-automatic one and it is six-chambered. To load the revolver one has to release the chamber ; when the chamber is released, it comes out on the left side. Six cartridges can be inserted in the holes of the chamber and then the chamber is pressed to the revolver. After the revolver is thus loaded, for the purpose of firing one has to pull the trigger of the revoler ; when the trigger is pulled the cartridge gets cocked and the revolver being semi-automatic the hammer strikes the percussion cap of the cartridge and the cartridge explodes and the bullet goes off. For firing the second shot, the trigger has to be pulled again and the same process will have to be repeated each time it is fired. As it is not an automatic revolver, each time it is fired, the trigger has to be pulled and released. If the trigger is pulled but not released, the second round will not come in its position of firing. Pulling of the trigger has a double action--one is the rotating of the chamber and cocking, and the other, releasing of the hammer. Because of this double action, the pull must be fairly strong. A pressure of about 20 pounds is required for pulling the trigger. There is controversy on the question of pressure, and we shall deal with this at the appropriate place.

Of the three bullets fired from the said revolver, two bullets were found in the bath-room, and the third was extracted from the back of the left shoulder blade. Exs. F-2 and F-2a are the bullets found in the bath-room. These two bullets are flattened and the copper jacket of one of the bullets, Ex. F-2a, has been turn off. The third bullet is marked as Ex. F-3.

With this background let us now consider the evidence to ascertain whether the shooting was intentional, as the prosecution avers, or only

accidental, as the defence suggests. Excepting Nanavati, the accused, and Ahuja, the deceased, no other person was present in the latter's bed-room when the shooting took place. Hence the only person who can speak to the said incident is the accused Nanavati. The version of Nanavati, as given in his evidence may be stated thus: He walked into Ahuja's bed-room, shutting the door behind him. Ahuja was standing in front of the dressing-table. The accused walked towards Ahuja and said, "You are a filthy swine", and asked him, "Are you going to marry Sylvia and look after the kids?" Ahuja became enraged and said in a nasty manner, "Do I have to marry every woman that I sleep with?" Then the deceased said, "Get the hell out of here, otherwise, I will have you thrown out." The accused became angry, put the packet containing the revolver down on a cabinet which was near him and told him, "By God I am going to thrash you for this." The accused had his hands up to fight the deceased, but the latter made a sudden grab towards the packet containing the revolver. The accused grappled the revolver himself and prevented the deceased from getting it. He then whipped out the revolver and told the deceased to get back. The deceased was very close to him and suddenly caught with his right hand the right hand of the accused at the wrist and tried to twist it and take the revolver off it. The accused "banged" the deceased towards the door of the bath-room, but Ahuja would not let go of his grip and tried to kick the accused with his knee in the groin. The accused pushed Ahuja again into the bath-room, trying at the same time desperately to free his hand from the grip of the accused by jerking it around. The deceased had a very strong grip and he did not let go the grip. During the stuggle, the accused thought that two shots went off: one went first and within a few seconds another. At the first shot the deceased just kept

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

hanging on to the hand of the accused, but suddenly he let go his hand and slumped down. When the deceased slumped down, the accused immediately came out of the bath-room and walked down to report to the police.

By this description the accused seeks to raise the image that he and the deceased were face to face struggling for the possession of the revolver, the accused trying to keep it and the deceased trying to snatch it, the deceased catching hold of the wrist of the right hand of the accused and twisting it, and the accused desperately trying to free his hand from his grip; and in the struggle two shots went off accidentally—he does not know about the third shot—and hit the deceased and caused his death. But in the cross-examination he gave negative answers to most of the relevant questions put to him to test the truthfulness of his version. The following answers illustrate his unhelpful attitude in the court:

> (1) I do not remember whether the deceased had the towel on him till I left the place.
>
> (2) I had no idea where the shots went because we were shuffling during the struggle in the tiny bath-room.
>
> (3) I have no impression from where and how the shots were fired.
>
> (4) I do not know anything about the rebound of shots or how the shots went off.
>
> (5) I do not even know whether the spectacles of the deceased fell off.
>
> (6) I do not know whether I heard the third shot. My impression is that I heard two shots.
>
> (7) I do not remember the details of the struggle.
>
> (8) I do not give any thought whether the shooting was an accident or not, because

I wished to go to the police and report to the police.

(9) I gave no thought to this matter. I thought that something serious had happened.

(10) I cannot say how close we were to each other, we might be very close and we might be at arm's length during the struggle.

(11) I cannot say how the deceased had his grip on my wrist.

(12) I do not remember feeling any blows from the deceased by his free hand during the struggle ; but he may have hit me.

He gives only a vague outline of the alleged struggle between him and the deceased. Broadly looked at, the version given by the accused appears to be highly improbable. Admittedly he had entered the bedroom of the deceased unceremoniously with a fully loaded revolver; within half a minute he came out of the room leaving Ahuja dead with bullet wounds. The story of his keeping the revolver on the cabinet is very unnatural. Even if he had kept it there, how did Ahuja come to know that it was a revolver for admittedly it was put in an envelope. Assuming that Ahuja had suspected that it might be a revolver, how could he have caught the wrist of Nanavati who had by that time the revolver in his hand with his finger on the trigger ? Even if he was able to do so, how did Nanavati accidentally pull the trigger three times and release it three times when already Ahuja was holding his wrist and when he was jerking his hand to release it from the grip of Ahuja ? It also appears to be rather curious that both the combatants did not use their left hands in the struggle. If, as he has said, there was a struggle between them and he pushed Ahuja into the bath-room, how was it that the towel wrapped around the waist of Ahuja was intact ? So too, if there was a struggle, why there was no bruise on the body of the accused ? Though Nanavati says that

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

there were some "roughings" on his wrist, he had not mentioned that fact till he gave his evidence in the court, nor is there any evidence to indicate such "roughings". It is not suggested that the clothes worn by the accused were torn or even soiled. Though there was blood up to three feet on the wall of the bath-room, there was not a drop of blood on the clothes of the accused. Another improbability in the version of the accused is, while he says that in the struggle two shots went off, we find three spent bullets—two of them were found in the bath-room and the other in the body of the deceased. What is more, how could Ahuja have continued to struggle after he had received either the chest injury or the head injury, for both of them were serious ones. After the deceased received either the first or the third injury there was no possibility of further struggling or pulling of the trigger by reflex action. Dr. Jhala says that the injury on the head of the victim was such that the victim could not have been able to keep standing and would have dropped unconscious immediately and that injury No. 1 was also so serious that he could not stand for more than one or two minutes. Even Dr. Baliga admits that the deceased would have slumped down after the infliction of injury No. 1 or injury No. 3 and that either of them individually would be sufficient to cause the victim to slump down. It is, therefore, impossible that after either of the said two injuries was inflicted, the deceased could have still kept on struggling with the accused. Indeed, Nanavati says in his evidence that at the first shot the deceased just kept on hanging to his hand, but suddenly he let go his grip and slumped down.

The only circumstance that could be relied upon to indicate a struggle is that one of the chappals of the deceased was found in the bed-room while the other was in the bath-room. But that is consistent with both intentional and accidental shooting, for in his anxiety to escape from the line of

firing the deceased might have in hurry left his one chappal in the bed-room and fled with the other to the bath-room. The situation of the spectacles near the commode is more consistent with intentional shooting than with accidental shooting, for if there had been a struggle it was more likely that the spectacles would have fallen off and broken instead of their being intact by the side of the dead-body. The condition of the bed-room as well as of the bath-room, as described by Rashmikant, the police-officer who made the inquiry, does not show any indication of struggle or fight in that place. The version of the accused, therefore, is brimming with improbabilities and is not such that any court can reasonably accept it.

It is said that if the accused went to the bed-room of Ahuja to shoot him he would not have addressed him by his first name "Prem" as deposed by Deepak. But Nanavati says in his evidence that he would be the last person to address the deceased as Prem. This must have been an embellishment on the part of Deepak. Assuming he said it, it does not indicate any sentiment of affection or goodwill towards the deceased—admittedly he had none towards him—but only an involuntary and habitual expression.

It is argued that Nanavati is a good shot—Nanda, D. W. 6, a Commodore in the Indian Navy, certifies that he is a good shot in regard to both moving and stationary targets--and therefore if he had intended to shoot Ahuja, he would have shot him perpendiculary hitting the chest and not in a haphazard way as the injuries indicate. Assuming that accused is a good shot, this argument ignores that he was not shooting at an inanimate target for practice but was shooting to commit murder; and it also ignores the desperate attempts the deceased must have made to escape. The first shot might have been fired and aimed at the chest as

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

soon as the accused entered the room, and the other two presumably when the deceased was trying to escape to or through the bathroom.

Now on the question whether three shots would have gone off the revoler accidentally, there is the evidence of Bhanagay, P. W. 4, who is a Government Criminologist. The Deputy Commissioner of Police, Bombay, through Inspector Rangnekar sent to him the revolver, three empty cartridge cases, three bullets and three live rounds for his inspection. He has examined the revolver and the bullets which are marked as Exs. F-2, F-2a and F-3. He is of the opinion that the said three empties were fired from the said revolver. He speaks to the fact that for pulling the trigger a pressure of 28 pounds is required and that for each shot the trigger has to be pulled and for another shot to be fired it must be released and pulled again. He also says that the charring around the wound could occur with the weapon of the type we are now concerned within about 2 to 3 inches of the muzzle of the weapon and the blackening around the wound described as carbonaceous tattooing could be caused from such a revolver up to about 6 to 8 inches from the muzzle. In the cross examination he says that the flattening of the two damaged bullets, Exs. F-2 and F-2a, could have been caused by their hitting a flat hard surface, and that the tearing of the copper jacket of one of the bullets could have been caused by a heavy impact, such as hitting against a hard surface; it may have also been caused, according to him, by a human bone of sufficient strength provided the bullet hits the bone tangently and passes of without obstruction. These answers, if accepted — we do not see any reason why we should not accept them—prove that the bullets, Exs. F 2 and F-2a, could have been damaged by their coming into contact with some hard substance such as a bone He says in the cross-examination that one 'strugg ling' will not cause three automatic firings and tha

even if the struggle continues he would not expect three rounds to go off, but he qualifies his statement by adding that this may happen if the person holding the revolver "co-operates so far as the reflex of his finger is concerned", to pull the trigger. He further elaborates the same idea by saying that a certain kind of reflex co-operation is required for pulling the trigger and that this reflex pull could be either conscious or unconscious. This answer is strongly relied upon by learned counsel for the accused in support of his contention of accidental firing. He argues that by unconscious reflex pull of the trigger three times by the accused three shots could have gone off the revolver. But the possibility of three rounds going off by three separate reflexes of the finger of the person holding the trigger is only a theoretical possibility, and that too only on the assumption of a fairly long struggle. Such unconscious reflex pull of the finger by the accused three times within a space of a few seconds during the struggle as described by the accused is highly improbable, if not impossible. We shall consider the evidence of this witness on the question of richocheting of bullets when we deal with individual injuries found on the body of the deceased.

This witness is not a doctor but has received training in Forensic Ballistics (Identification of Fire Arms) amongst other things in London and possesses certificates of competency from his tutors in London duly endorsed by the covering letter from the Education Department, High Commissioner's Office, and he is a Government Criminologist and has been doing this work for the last 22 years; he says that he has also gained experience by conducting experiments by firing on mutton legs. He stood the test of cross-examination exceedingly well and there is no reason to reject his evidence. He makes the following points: (1) Three used bullets, Exs. F-2, F-2a and F-3, were shot from the revolver Ex. B. (2) The revolver can be fired only by

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

pulling the trigger; and for shooting thrice, a person shooting will have to give a deep pull to the trigger thrice and release it thrice. (3) A pressure of 28 pounds is required to pull the trigger. (4) One "struggling" will not cause three automatic firings. (5) If the struggle continues and if the person who pulls the trigger co-operates by pulling the trigger three times, three shots may go off. (6) The bullet may be damaged by hitting a hard surface or a bone. As we have pointed out the fifth point is only a theoretical possibility based upon two hypothesis, namely, (i) the struggle continues for a considerable time, and (ii) the person holding the trigger co-operates by pulling it thrice by reflex action. This evidence, therefore, establishes that the bullets went off the revolver brought by the accused—indeed this is not disputed—and that in the course of the struggle of a few seconds as described by the accused, it is not possible that the trigger could have been accidentally pulled three times in quick succession so as to discharge three bullets.

As regards the pressure required to pull the trigger of Ex. B, Triloksing, who is the Master Armourer in the Army, deposing as D.W. 11, does not accept the figure given by the Bhanagay and he would put it at 11 to 14 pounds. He does not know the science of ballistics and he is only a mechanic who repairs the arms. He has not examined the revolver in question. He admits that a double-action revolver requires more pressure on the trigger than single-action one. While Major Burrard in his book on Identification of Fire-arms and Forensic Ballistics says that the normal trigger pull in double-action revolvers is about 20 pounds, this witness reduces it to 11 to 14 pounds; while Major Burrard says in his book that in all competitions no test other than a dead weight is accepted, this witness does not agree with him. His opinion is based on the experiments performed

with spring balance. We would prefer to accept the opinion of Bhanagay to that of this witness. But, on the basis of the opinion of Major Burrard, we shall assume for the purpose of this case that about 20 pounds of pressure would be required to pull the trigger of the revolver Ex. B.

Before considering the injuries in detail, it may be convenient to ascertain from the relevant text-books some of the indications that will be found in the case of injuries caused by shooting. The following passage from authoritative text-books may be consulted :

Snyder's Homicide Investigation, P. 117 :

> "Beyond the distance of about 18 inches or 24 at the most evidence of smudging and tattooing are seldom present."

Merkeley on Investigation of Death, P. 82 :

> "At a distance of approximately over 18" the powder grains are no longer carried forward and therefore the only effect produced on the skin surface is that of the bullet."

Legal Medicine Pathology and Toxicology by Gonzales, 2nd Edn., 1956 :

> "The powder grains may travel 18 to 24 inches or more depending on the length of barrel, calibre and type of weapon and the type of ammunition."

Smith and Glaister, 1939 Edn., P. 17 :

> "In general with all types of smokeless powder some traces of blackening are to be seen but it is not always possible to recognize unburnt grains of powder even at ranges of one and a half feet."

Glaister in his book on Medical Jurisprudence and Toxicology, 1957 Edn., makes a statement that at a range of about 12 inches and over as a rule there will not be marks of carbonaceous tattooing or

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

powder marks. But the same author in an earlier book from which we have already quoted puts it at 18 inches. In the book "Recent Advances in Forensic Medicine" 2nd Edn., p. 11, it is stated :

> "At ranges beyond 2 to 3 feet little or no trace of the powder can be observed."

Dr. Taylor's book, Vol. 1, 11th edn., p. 373, contains the following statement :

> "In revolver and automatic pistol wounds nothing but the grace ring is likely to be found beyond about two feet."

Bhanagay, P.W. 4, says that charring around the wound could occur with the weapon of the type Ex. B within about 2 to 3 inches from the muzzle of the weapon, and the blackening round about the wound could be caused from such a weapon up to about 6 to 8 inches from the muzzle. Dr. Jhala, P.W. 18, says that carbonaceous tattooing would not appear if the body was beyond 18 inches from the mouth of the muzzle.

Dr. Baliga, D.W. 2, accepts the correctness of the statement found in Glaister's book, namely, "when the range reaches about 6 inches there is usually an absence of burning although there will probably be some evidence of bruising and of powder mark, at a range of about 12 inches and over the skin around the wound does not as a rule show evidence of powder marks." In the cross-examination this witness says that he does not see any conflict in the authorities cited, and tries to reconcile the various authorities by stating that all the authorities show that there would not be powder marks beyond the range of 12 to 18 inches. He also says that in the matter of tattooing, there is no difference between that caused by smokeless powder used in the cartridge in question, and black powder used in other bullets, though in the case of the former there may be greater difficulty to find

out whether the marks are present or not in a wound.

Having regard to the aforesaid impressive array of authorities on Medical Jurisprudence, we hold, agreeing with Dr. Jhala, that carbonaceous tattooing would not be found beyond range of 18 inches from the mouth of the muzzle of the weapon. We also hold that charring around the wound would occur when it is caused by a revolver like Ex. B within about 2 or 3 inches from the muzzle of the revolver.

The presence and nature of the abrasion collar around the injury indicates the direction and also the velocity of the bullet. Abrasion collar is formed by the gyration of the bullet caused by the rifling of the barrel. If a bullet hits the body perpendicularly, the wound would be circular and the abrasion collar would be all around. But if the hit is not perpendicular, the abrasion collar will not be around the entire wound (See the evidence of Dr. Jhala and Dr. Baliga).

As regards the injuries found on the dead-body, two doctors were examined, Dr. Jhala, P. W. 18, on the side of the prosecution, and Dr. Baliga, D. W. 2, on the side of the defence. Dr. Jhala is the Police Surgeon, Bombay, for the last three years. Prior to that he was a Police Surgeon in Ahmedabad for six years. He is M. R. C. P. (Edin.), D.T. M. and H. (Lond.). He conducted the postmortem on the dead-body of Ahuja and examined both external and internal injuries on the body. He is, therefore, competent to speak with authority on the wounds found on the dead-body not only by his qualifications and experience but also by reason of having performed the autopsy on the dead-body. Dr. Baliga is an F. R. C. S. (England) and has been practising as a medical surgeon since 1933. His qualifications and antecedents show that he is not only an experienced surgeon but also has been taking

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

interest in extra-surgical activities, social, political and educational. He says that he has studied medical literature regarding bullet injuries and that he is familar with medico-legal aspect of wounds including bullet wounds. He was a Casuality Medical Officer in the K. E. M. Hospital in 1928. He had seen bullet injuries both as Casuality Medical Officer and later on as a surgeon. In the cross-examination he says :

> "I have never fired a revolver, nor any other fire-arm. I have not given evidence in a single case of bullet injuries prior to this occasion though I have treated and I am familar with bullet injuries. The last that I gave evidence in Medico-legal case in a murder case was in 1949 or 1950 or thereabout. Prior to that I must have given evidence in a medico-legal case in about 1939. I cannot off hand tell how many cases of bullet injuries I have treated till now, must have been over a dozen. I have not treated any bullet injuries case for the last 7 or 8 years. It was over 8 or 9 years ago that I have treated bullet injuries on the chest and the head. Out of all these 12 bullet injuries cases which I have treated up to now there might be 4 or 5 which were bullet injuries on the head. Out of these 4 or 5 cases probably there were three cases in which there were injuries both on the chest as well as on the head.....I must have performed about half a dozen post-mortems in all my career."

He further says that he was consulted about a week before he gave evidence by Mr. Khandalawala and Mr. Rajani Patel on behalf of the accused and was shown the post-mortem report of the injuries; that he did not have before him either the bullets or the skull; that he gave his opinion in about 20 minutes on the basis of the post-mortem

report of the injuries that the said injuries could have been caused in a struggle between the accused and the deceased. This witness has come to the Court to support his opinion based on scanty material. We are not required in this case to decide upon the comparative qualifications or merits of these two doctors of their relative competency as surgeons, but we must say that so far as the wounds on the dead-body of the deceased are concerned, Dr. Jhala, who has made the post-mortem examination, is in a better position to help us to ascertain whether shooting was by accident or by intention than Dr. Baliga, who gave his opinion on the basis of the post-mortem report.

Now we shall take injury No. 1. This injury is a punctured one of dimensions $\frac{1}{4}''$ x $\frac{1}{4}''$ x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound. The internal examination showed that the bullet, after causing the punctured wound in the chest just below the inner end of the right collor bone, struck the sternum and after striking it, it slightly deflected in its course and came behind the shoulder bone. In the course of its journey the bullet entered the chest, impacted the soft tissues of the lung, the aorta and the left lung, and ultimately damaged the left lung and got lodged behind the scapula. Dr. Jhala describes the wound as ellipsoid and oblique and says that the abrasion collar is missing on the left side. On the injury there is neither charring nor carbonaceous tattooing. The prosecution version is that this wound was caused by intentional shooting, while the defence suggestion is that it was caused when the accused and the deceased were struggling for the possession of the revolver. Dr. Jhala, after describing injury No. 1, says that it could not have been received by the victim during a struggle in which both the victim and the assailant were in each other's grip. He gives reasons

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

for his opinion, namely, as there was no carbonaceous tatooing on the injury, it must have been caused by the revolver being fired from a distance of over 18 inches from the tip of the mouth of the muzzle. We have earlier noticed that, on the basis of the authoritative text-books and the evidence, there would not be carbonaceous tattooing if the target was beyond 18 inches from the mouth of the muzzle. It is suggested to him in the cross-examination that the absence of tattooing may be due to the fact that the bullet might have first hit the fingers of the left palm causing all or any of injuries Nos. 2, 4 and 5, presumably when the deceased placed his left palm against the line of the bullet causing carbonaceous tattooing on the said fingers and thereafter hitting the chest. Dr. Jhala does not admit the possibility of the suggestion. He rules out this possibility because if the bullet first had an impact on the fingers, it would get deflected, lose its direction and would not be able to cause later injury No. 1 with abrasion collar. He further explains that an impact with a solid substance like bones of fingers will make the bullet lose its gyratory movement and thereafter it could not cause any abrasion collar to the wound. He adds, "assuming that the bullet first hit and caused the injury to the web between the little finger and the ring finger, and further assuming that it had not lost its gyrating action, it would not have caused the injury No. 1, *i. e*, on the chest which is accompanied by internal damage and the depth to which it had gone."

Now let us see what Dr. Baliga, D. W. 2 says about injury No. 1. The opinion expressed by Dr. Jhala is put to this witness, namely, that injury No. 1 on the chest could not have been caused during the course of a struggle when the victim and the assailant were in each other's grip, and this witness does not agree with that opinion. He futher says that it is possible that even

if the bullet first caused injury in the web, that is, injury No. 2, and thereafter caused injury No. 1 in the chest, there would be an abrasion collar such as seen in injury No. 1. Excepting this of the suggestion possibility, he has not controverted the reasons given by Dr. Jhala why such an abrasion collar could not be caused if the bullet had hit the fingers before hitting the chest. We will presently show in considering injuries Nos. 2, 4 and 5 that the said injuries were due to the hit by one bullet. If that be so, a bullet, which had caused the said three injuries and then took a turn through the little and the ring finger, could not have retained sufficient velocity to cause the abrasion collar in the chest. Nor has Dr. Baliga controverted the reasons given by Dr. Jhala that even if after causing the injury in the web the bullet could cause injury No. 1, it could not have caused the internal damage discovered in the post-mortem examination. We have no hesitation, therefore, to accept the well reasoned view of Dr. Jhala in preference to the possibility envisaged by Dr. Baliga and hold that injury No. 1 could not have been caused when the accused and the deceased were in close grip, but only by a shot fired from a distance beyond 18 inches from the mouth of the muzzle.

The third injury is a lacerated ellipsoid wound oblique in the left parietal region with dimensions $1\frac{1}{2}'' \times \frac{1}{4}''$ and skull deep. Dr. Jhala in his evidence says that the skull had a gutter fracture of the outer table and a fracture of the inner table and the brain showed subarachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull. The injury was effected in a "glancing way", that is, at a tangent, and the injury went upward and to the front. He is of the opinion that the said injury to the head must have been caused by firing of a bullet from a

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

distance of over 18 inches from the mouth of the muzzle and must have been caused with the back of the head of the victim towards the assailant. When it was suggested to him that the said wound could have been caused by a ricocheted bullet, he answered that though a ricocheted bullet coming from the same line of direction could have caused the said injury, it could not have caused the intra-cranial haemorrhage and also could not have caused the fracture of the inner table of the skull. He is definite that injury No. 3 could not have been inflicted from "front to back" as the slope of the gutter fracture was from the back to the front in the direction of the "grazing" of the bullet. He gives a further reason that as a rule the fracture would be broader in the skull where the bullet has the first impact and narrower where it emerges out, which is the case in respect of injury No. 3. He also relies upon the depth of the fracture at the two points and its slope to indicate the direction in which the bullet grazed. He further says that it is common knowledge that the fracture of both the tables accompanied by haemorrhage in the skull requires great force and a richocheted bullet cannot cause such an injury. He opines that, though a ricocheted bullet emanating from a powerful fire-arm from a close range can cause injury to a heavy bone, it cannot be caused by a revolver of the type Ex. B.

Another suggestion made to him is that the bullet might have hit the glass pane of the window in the bath-room first and then ricocheted causing the injury on the head. Dr. Jhala, in his evidence, says that if the bullet had hit the glass pane first, it would have caused a hole and fallen on the other side of the window, for ricocheting is not possible in the case of a bullet directly hitting the glass. But on the other hand, if the bullet first hit a hard substance and then the glass pane, it would act like a pebble and crack the glass and would

not go to the other side. In the present case, the bullet must have hit the skull first and then the glass pane after having lost its velocity, and fallen down like a pebble inside the bath-room itself. If, as the defence suggests, the bullet had directly hit the glass pane, it would have passed through it to the other side, in which case four bullets must have been fired from the revolver Ex. B, which is nobody's case.

The evidence, of Dr. Jhala is corroborated by the evidence of the ballistics expert Bhanagay, P.W. 4, when he says that if a bullet hits a hard substance and gets flattened and damaged like the bullets Exs. F-2 and F-2a, it may not enter the body and that even if it enters the body, the penetration will be shallow and the injury caused thereby will be much less as compared to the injury caused by a direct hit of the bullet. Dr. Baliga, on the other hand, says that injury No. 3 could be caused both ways, that is, from "front backward" as well as from "back forward". He also contradicts Dr. Jhala and says "back that in the type of the gutter fracture caused in the present case the wound is likely to be narrower at the entry than at the exit. He further says that assuming that the gutter fracture wound was caused by a ricocheted bullet and assuming further that there was enough force left after rebound, a ricocheted bullet could cause a fracture of even the inner table and give rise to intra-cranial haemorrhage. He asserts that a bullet that can cause a gutter fracture of the outer table is capable of fracturing the inner table also. In short, he contradicts every statement of Dr. Jhala ; to quote his own words, " I do not agree that injury No. 3, *i.e.*, the gutter fracture, cannot be inflicted from front to back for the reason that the slope of the gutter fracture was behind forward direction of the grazing of the bullet ; I also do not agree with the proposition that if it would have been from the front then the slope of the gutter wound would have been from the front backward;

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

I have not heard of such a rule and that at the near end of the impact of a bullet the gutter fracture is deeper than where it flies off; I do not agree that the depth of the fracture at two points is more important factor in arriving at the conclusion of the point of impact of the bullet." He also contradicts the opinion of Dr. Jhala that injury No. 3 could not be caused in a struggle between the victim and the assailant. Dr. Baliga has been cross-examined at great length. It is elicited from him that he is not a ballistics expert and that his experience in the matter of direction of bullet injuries is comparatively less than his experience in other fields. His opinion that the gutter fracture injury could be and was more likely to be caused from an injury glancing front backwards is based upon a comparison of the photograph of the skull shown to him with the figure 15 in the book " Recent Advances in Forensic Medicine " by Smith and Glaister, p. 21. The said figure is marked as Ex. Z in the case. The witness says that the figure shows that the narrower part of the gutter is on the rear and the wider part is in front. In the cross-examination he further says that the widest part of the gutter in figure Ex. Z is neither at the front and nor at the rear end, but the rear end is pointed and tailed. It is put to this witness that figure Ex. Z does not support his evidence and that he deliberately refused to see at it correctly, but he denies it. The learned Judges of the High Court, after seeing the photograph Ex. Z with a magnifying glass, expressed the view that what Dr. Baliga called the pointed and tailed part of the gutter was a crack in the skull and not a part of the gutter. This observation has not been shown to us to be wrong. When asked on what scientific principle he would support his opinion, Dr. Baliga could not give any such principle, but only said that it was likely—he puts emphasis on the word "likely"—that the striking end was likely to be

narrower and little broader at the far end. He agrees that when a conical bullet hits a hard bone it means that the hard bone is protruding in the path of the projectile and also agrees that after the initial impact the bullet adjusts itself in the new direction of flight and that the damage caused at the initial point of the impact would be more than at any subsequent point. Having agreed so far, he would not agree on the admitted hypothesis that at the initial point of contract the wound should be wider than at the exit. But he admits that he has no authority to support his submission. Finally, he admits that generally the breadth and the depth of the gutter wound would indicate the extensive nature of the damage. On this aspect of the case, therefore, the witness has broken down and his assertion is not based on any principle or on sufficient data.

The next statement he makes is that he does not agree that the fracture of the inner table shows that the initial impact was from behind ; but he admits that the fracture of the inner table is exactly below the backside of the gutter, though he adds that there is a more extensive crack in front of the anterior end of the gutter. He admits that in the case of a gutter on the skull the bone material which dissociates from the rest of the skull is carried in the direction in which the bullet flies but says that he was not furnished with any information in that regard when he gave his opinion.

Coming to the question of the ricocheting, he says that a ricocheting bullet can produce depressed fracture of the skull. But when asked whether in his experience he has come across any bullet hitting a hard object like a wall and rebounding and causing a fracture of a hard bone or whether he has any text-book to support his statement, he says that he cannot quote any instance nor

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

an authority. But he says that it is so mentioned in several books. Then he gives curious definitions of the expressions " likely to cause death ", "necessarily fatal " etc. He would go to the extent of saying that in the case of injury No. 3, the chance of recovery is up to 80 per cent. ; but finally he modifies that statement by saying that he made the statement on the assumption that the haemorrhage in the subarachnoid region is localised, but if the haemorrhage is extensive his answer does not hold good. Though he asserts that at a range of about 12 inches the wound does not show as a rule evidence of powder mark, he admits that he has no practical experience that beyond a distance of 12 inches no powder mark can be discovered as a rule. Though text-books and authorities are cited to the contrary, he still sticks to his opinion ; but finally he admits that he is not a ballistics expert and has no experience in that line. When he is asked if after injury No. 3, the victim could have continued the struggle, he says that he could have, though he adds that it was unlikely after the victim had received both injuries Nos. 1 and 3. He admits that the said injury can be caused both ways, that is, by a bullet hitting either on the front of the head or at the back of the head. But his reasons for saying that the bullet might have hit the victim on the front of the head are neither supported by principle nor by the nature of the gutter wound found in the skull. Ex. Z relied upon by him does not support him. His theory of a ricocheted bullet hitting the skull is highly imaginary and cannot be sustained on the material available to us : fistly, there is no mark found in the bath-room wall or elsewhere indicating that the bullet struck a hard substance before ricocheting and hitting the skull, and secondly, it does not appear to be likely that such a ricocheted bullet ejected from Ex. B could have caused such an extensive injury to the head of the deceased as found in this case.

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

Mr. Pathak finally argues that the bullet Ex. F-2a has a "process", *i.e.*, a projection which exactly fits in the denture found in the skull and, therefore, the projection could have been caused only by the bullet coming into contact with some hard substance before it hit the head of the deceased. This suggestion was not made to any of the experts. It is not possible for us to speculate as to the manner in which the said projection was caused.

We, therefore, accept, the evidence of the ballistics expert, P. W. 4, and that of Dr. Jhala, P. W. 18, in preference to that of Dr. Baliga.

Now coming to injuries Nos. 2, 4 and 5, injury No. 4 is found on the first joint of the crease of the index finger on the back side of the left palm and injury No. 5 at the joint level of the left middle finger dorsal aspect, and injury No. 2 is a punctured wound in the web between the ring finger and the little finger of the left hand communicating with a punctured wound on the palmer aspect of the left knukle level between the left little and the ring finger. Dr. Jhala says that all the said injuries are on the back of the left palm and all have corbonaceous tattooing and that the injuries should have been caused when his left hand was between 6 and 18 inches from the muzzle of the revolver. He futher says that all the three injuries could have been caused by one bullet, for, as the postmortem discloses, the three injuries are in a straight line and therefore it can clearly be inferred that they were caused by one bullet which passed through the wound on the palmar aspect. His theory is that one bullet, after causing injuries Nos. 4 and 5 passed between the little and ring finger and caused the punctured wound on the palmar aspect of the left hand. He is also definitely of the view that these wounds could not have been received by the victim during a struggle in which both of them were in each other's grip. It

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

is not disputed that injury No. 1 and injury No. 3 should have been caused by different bullets. If injuries Nos. 2, 4 and 5 were caused by different bullets, there should have been more than three bullets fired, which is not the case of either the prosecution or the defence. In the circumstances, the said wounds must have been caused only by one bullet, and there is nothing improbable in a bullet touching three fingers on the back of the palm and taking a turn and passing through the web between the little and ring finger. Dr. Baliga contradicts Dr. Jhala even in regard to these wounds. He says that these injuries, along with the others, indicate the probability of a struggle between the victim and the assailant over the weapon; but he does not give any reasons for his opinion. He asserts that one single bullet cannot cause injuries Nos. 2, 4 and 5 on the left hand fingers, as it is a circuitous course for a bullet to take and it cannot do so without meeting with some severe resistance. He suggests that a bullet which had grazed and caused injuries Nos. 4 and 5 could then have inflicted injury No. 3 without causing carbonaceous tattooing on the head injury. We have already pointed out that the head injury was caused from the back, and we do not see any scope for one bullet hitting the fingers and thereafter causing the head injury. If the two theories, namely, that either injury No. 1 or injury No. 3 could have been caused by the same bullets that might have caused injury No. 2 and injuries Nos. 4 and 5 were to be rejected, for the aforesaid reasons, Dr. Baliga's view that injuries Nos. 2, 4 and 5 must have been caused by different bullets should also be rejected, for to accept it, we would require more than three bullets emanating from the revolver, whereas it is the common case that more than three bullets were not fired from the revolver. That apart in the cross-examination this witness accepts

that the injury on the first phalangeal joint of the index finger and the injury in the knuckle of the middle finger and the injury in the web between the little and the ring finger, but not taking into account the injury on the palmar aspect would be in a straight line. The witness admits that there can be a deflection even against a soft tissue, but adds that the soft tissue being not of much thickness between the said two fingers, the amount of deflection is negligible. But he concludes by saying that he is not saying this as an expert in ballistics. If so, the bullet could have deflected after striking the web between the little and the ring finger. We, therefore, accept the evidence of Dr. Jhala that one bullet must have caused these three injuries.

Strong reliance is placed upon the nature of injury No. 6 found on the back of the deceased *viz*, a vertical abrasion in the right shoulder blade of dimensions 3"x1" just outside the spine, and it is said that the injury must have been caused when the accused pushed the deceased towards the door of the bath room. Nanavati in his evidence says that he "banged" him towards the door of the bath-room, and after some struggle he again pushed the deceased into the bath-room. It is suggested that when the accused "banged" the deceased towards the door of the bath-room or when he pushed him again into the bath-room, this injury might have been caused by his back having come into contact with the frame of the door. It is suggested to Dr. Jhala that injury No. 6 could be caused by the man's back brushing against a hard substance like the edge of the door, and he admits that it could be so. But the suggestion of the prosecution case is that the injury must have been caused when Ahuja fell down in the bath-room in-front of the commode and, when falling, his back may have caught the edge of the commode or the bath-tub or the edge of the door of the bath-room

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

which opens inside the bath-room to the left of the bath-tub. Shelat, J., says in his judgment :

> "If the abrasion was caused when the deceased was said to have been banged against the bath-room door or its frame, it would seem that the injury would be more likely to be caused, as the deceased would be in a standing position, on the shoulder blade and not inside the right shoulder. It is thus more probable that the injury was caused when the deceased's back came into contact either with the edge of the door or the edge of the bath-tub or the commode whe he slumped."

It is not possible to say definitely how this injury was caused, but it could have been caused when the deceased fell down in the bath-room.

The injuries found on the dead-body of Ahuja are certainly consistent with the accused intentionally shooting him after entering the bed-room of the deceased; but injuries Nos. 1 and 3 are wholly inconsistent with the accused accidentally shooting him in the course of their struggle for the revolver.

From the consideration of the entire evidence the following facts emerge : The deceased seduced the wife of the accused. She had confessed to him of her illicit intimacy with the deceased. It was natural that the accused was enraged at the conduct of the deceased and had, therefore, sufficient motive to do away with the deceased. He deliberately secured the revolver on a false pretext from the ship, drove to the flat of Ahuja, entered his bed-room unceremoniously with a loaded revolver in hand and in about a few seconds thereafter came out with the revolver in his hand. The deceased was found dead in his bath-room with bullet injuries on his body. It is not disputed that the bullets that caused injuries to Ahuja emanated from the revolver that was in the hand of the accused. After the shooting, till his

trial in the Sessions Court, he did not tell anybody that he shot the deceased by accident. Indeed, he confessed his guilt to the Chowkidar Puransingh and practically admitted the same to his colleague Samuel. His description of the struggle in the bath-room is highly artificial and is devoid of all necessary particulars. The injuries found on the body of the deceased are consistent with the intentional shooting and the main injuries are wholly inconsistent with accidental shooting when the victim and the assailant were in close grips. The other circumstances brought out in the evidence also establish that there could not have been any fight or struggle between the accused and the deceased.

We, therefore, unhesitatingly hold, agreeing with the High Court, that the prosecution has proved beyond any reasonable doubt that the accused has intentionally shot the deceased and killed him.

In this view it is not necessary to consider the question whether the accused had discharged the burden laid on him under s. 80 of the Indian Penal Code, especially as learned counsel appearing for the accused here and in the High Court did not rely upon the defence based upon that section.

That apart, we agree with the High Court that, on the evidence adduced in this case, no reasonable body of persons could have come to the conclusion which the jury reached in this case. For that reason also the verdict of the jury cannot stand.

Even so, it is contended by Mr. Pathak that the accused shot the deceased while deprived of the power of self-control by sudden and grave provocation and, therefore, the offence would fall under Exception 1 to s. 300 of the Indian Penal Code. The said Exception reads :

> "Culpable homicide is not murder if the offender, whilst deprived of the power of

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident".

Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with : (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

The first question raised is whether Ahuja gave provocation to Nanawati within the meaning of the exception and whether the provocation, if given by him, was grave and sudden.

Learned Attorney-General argues, that though a confession of adultery by a wife may in certain circumstances be provocation by the paramour himself, under different circumstances it has to be considered from the standpoint of the person who conveys it rather than from the standpoint of the person who gives it. He further contends that even if the provocation was deemed to have been given by Ahuja, and though the said provocation might have been grave, it could not be sudden, for the provocation given by Ahuja was only in the past.

On the other hand, Mr. Pathak cantends that the act of Ahuja, namely, the seduction of Sylvia, gave provocation though the fact of seduction was communicated to the accused by Sylvia and that for the ascertainment of the suddenness

of the provocation it is not the mind of the person who provokes that matters but that of the person provoked that is decisive. It is not necessary to express our opinion on the said question, for we are satisfied that, for other reasons, the case is not covered by Exception 1 to s. 300 of the Indian Penal Code.

The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In *Mancini* v. *Director of Public Prosecutions* (1), Viscount Simon, L. C., states the scope of the doctrine of provocation thus:

> "It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death.....The test to be applied is that of the effect of the provocation on a resonable man, as was laid down by the Court of Criminal Appeal in *Rex* v. *Lesbini* (2), so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very differnt thing from making use of a deadly instrument like a concealed dagger. In short,

(1) L. R. (1942) A. C. 1, 9.

(2) [1914] 3 K. B. 1116.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

Viscount Simon again in *Holmes* v. *Director of Public Prosecutions* (1) elaborates further on this theme. There, the appellant had entertained some suspicions of his wife's conduct with regard to other men in the village. On a Saturday night there was a quarrel between them when she said," Well, if it will ease your mind, I have been untrue to you", and she went on, "I know I have done wrong, but I have no proof that you haven't—at Mrs. X.'s". With this appellant lost his temper and picked up the hammerhead and struck her with the same on the side of the head. As he did not like to see her lie there and suffer, he just put both hands round her neck until she stopped breathing. The question arose in that case whether there was such provocation as to reduce the offence of murder to manslaughter. Viscount Simon, after referring to *Mancini's* case (2), proceeded to state thus :

> "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires an actual intention to kill (such as Holmes admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies."

Goddard, C. J., *Duffy's* case (3) defines provocation thus :

> "Provocation is some act, or series of acts, done by the dead man to the accused

(1) L. R. (1945) A. C. 588, 598.
(2) L.R. (1942) A.C. 1, 9.
(3) [1949] 1 All. E. R. 932.

which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind..... What matters is whether this girl (the accused) had the time to say : 'Whatever I have suffered, whatever I have endured, I know that Thou shall not kill.' That is what matters. Similarly,.....circumstances which induce a desire for revenge, or a sudden passion of anger, are not enough. Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person has had time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation. Provocation being,,.....as I have defined it, there are two things, in considering it, to which the law attaches great importance. The first of them is, whether there was what is sometimes called time for cooling, that is, for passion to cool and for reason to regain dominion over the mind.....Secondly in considering whether provocation has or has not been made out, you must consider the retaliation in provocation—that is to say, whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given."

A passage from the address of Baron Parke to the jury in *R.* v. *Thomas* (1) extracted in Russell on Crime, 11th ed., Vol. I at p. 593, may usefully be quoted :

(1) (1837) 7 C. & P. 817.

1961

K. M. Nanavati
v.
The State of Maharashtra

Subba Rao J.

"But the law requires two things : first that there should be that provocation; and secondly, that the fatal blow should be clearly traced to the influence of passion arising from that provocation."

The passages extracted above lay down the following principles: (1) Except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter. (2) The act of provocation which reduced the offence of murder to manslaughter must be such as to cause a sudden and temporary loss of self-control; and it must be distinguished from a provocation which inspires an actual intention to kill. (3) The act should have been done during the continuance of that state of mind, that is, before there was time for passion to cool and for reason to regain dominion over the mind. (4) The fatal blow should be clearly traced to the influence of passion arising from the provocation.

On the other hand, in India, the first principle has never been followed. That principle has had its origin in the English doctrine that mere words and gestures would not be in point of law sufficient to reduce murder to manslaughter. But the authors of the Indian Penal Code did not accept the distinction. They observed :

"It is an indisputable fact, that gross insults by word or gesture have as great tendency to move many persons to violent passion as dangerous or painful bodily injuries ; nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but

> a proof that he is a man of peculiarly bad heart."

Indian courts have not maintained the distinction between words and acts in the application of the doctrine of provocation in a given case. The Indian law on the subject may be considered from two aspects, namely, (1) whether words or gestures unaccompanied by acts can amount to provocation and (2) what is the effect of the time lag between the act of provocation and the commission of the offence. *In Empress* v. *Khogayi* (1), a division bench of the Madras High Court held, in the circumstances of that case, that abusive language used would be a provocation sufficient to deprive the accused of self-control. The learned Judges observed :

> "What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to man already enraged by the conduct of deceased's son."

It will be seen in this case that abusive language of the foulest kind was held to be sufficient in the case of man who was already enraged by the conduct of deceased's son. The same learned Judge in a later decision in *Boya Munigadu* v. *The Queen* (2) upheld plea of grave and sudden provocation in the following circumstances: The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to the ryots to get his wages from them, and at that time he saw his wife eating food along with her paramour; he killed the paramour with a bill-hook. The learned

(1) (1879) I. L. R. 2 Mad. 122, 123.
(2) (1881) I. L. R. 3 Mad. 33, 34-45.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

Judges held that the accused had sufficient provocation to bring the case within the first exception to s. 300 of the Indian Penal Code. The learned Judges observed :

> "..... .....If having witnessed the act of adultery, he connected this subsequent conduct as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self-control, and reduced the offence from murder to culpable homicide not amounting to murder."

The case illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be a sufficient provocation to bring the case within the exception. Another division bench of the Madras High Court in *In re Murugian* (1) held that, where the deceased not only committed adultery but later on swore openly in the face of the husband that she would persist in such adultery and also abused the husband for remonstrating against such conduct, the case was covered by the first exception to s. 300 of the Indian Penal Code. The judgement of the Andhra Pradesh High Court in *In re C. Narayan* (2) adopted the same reasoning in a case where the accused, a young man, who had a lurking suspicion of the conduct of his wife, who newly joined him, was confronted with the confession of illicit intimacy with, and consequent pregnancy by another, strangled his wife to death, and

(1) I.L.R [1957] Mad. 805. (2) A.I.R. 1958 A.P. 235.

held that the case was covered by Exception 1 to s. 300 of the Indian Penal Code. These two decisions indicate that the mental state created by an earlier act may be taken into consideration in ascertaining whether a subsequent act was sufficient to make the assailant to lose his self-control.

Where the deceased led an immoral life and her husband, the accused, upbraided her and the deceased instead of being repentent said that she would again do such acts, and the accused, being enraged struck her and, when she struggled and beat him, killed her, the Court held the immediate provocation coming on top of all that had gone before was sufficient to bring the case within the first exception to s. 300 of the Indian Penal Code. So too, where a woman was leading a notoriously immoral life, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct, she vulgarly abused him, whereupon the husband lost his self-control, picked up a rough stick, which happened to be close by and struck her resulting in her death, the Lahore High Court, in *Jan Muhammad* v. *Emperor* (1), held that the case was governed by the said exception. The following observations of the court were relied upon in the present case :

> "In the present case my view is that, in judging the conduct of the accused, one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman...
>
> .....
>
> As stated above, the whole unfortunate affair

(1) I.L.R. [1929] Lahore 861, 863.

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death."

A division bench of the Allahabad High Court in *Emperor* v. *Balku* (1) invoked the exception in a case where the accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot and going to another room and having sexual intercourse with his (accused's) wife, and the accused allowed the deceased to return to the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held :

> "When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the *charpai* this must have worked further on the mind of the accused and he must have reflected that 'this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden."

The Allahabad High Court in a recent decision, viz., *Babu Lal* v. *State* (2) applied the exception to a case where the husband who saw his wife in a compromising position with the deceased killed the latter subsequently when the deceased came, in his absence, to his house in another village to which he had moved. The learned Judges observed :

> "The appellant when he came to reside in the Government House Orchard felt that he had removed his wife from the influence of the deceased and there was no more any contact between them. He had lulled himself into a false security. This belief was shattered

(1) I.L.R. [1938] All. 789, 793. (2) A.I.R. 1960 All. 223, 226.

> when he found the deceased at his hut when he was absent. This could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden."

All the said four decisions dealt with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of the wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind.

Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc. ; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But if his version is true—for the purpose of this argument we shall accept that what he has said is true—it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bed-room of Ahuja and shot him dead. Between 1-30 P. M., when he left his house, and 4-20 P.M., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to

1961

K. M. Nanavati v. The State of Maharashtra

Subba Rao J.

regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused—though we do not believe that—it does not affect the question, for the accused entered the bed-room of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to s. 300 of the Indian Penal Code.

In the result, conviction of the accused under s. 302 of the Indian Penal Code and sentence of imprisonment for life passed on him by the High Court are correct, and there are absolutely no grounds for interference. The appeal stands dismissed.

Appeal dismissed.

BIRAJMOHAN DAS GUPTA

1961

November 28

v.

THE STATE OF ORISSA AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Road Transport—State Transport Undertaking—Scheme—Approval by Minister—Bias of Minister—Validity of scheme—Notice for adjourned date of hearing—If necessary—Omission of date of operation of route in final scheme—Transport Controller—Authority to publish scheme—Orissa Rules framed under Ch. IVA of Motor Vehicles Act, rr. 2 (vi), 8—Motor Vehicles Act, 1939 (4 of 1939), ss. 68C, 68D (2).

The validity of a scheme of road transport service approved by the Government of Orissa under s. 68D (2) of the