right of any person entitled to sue the person to whom payment has been made to compel him to refund. The appellant, we may observe, had not at that time obtained his decree, and his position was that of a person merely claiming to be an incumbrancer. It is not necessary to determine whether the plaintiff's suit falls under article 62 or under the general article 120, or whether he has not twelve years from the date of his incumbrance, for it is conceded that the suit will not be barred, unless article 13 applies.

SIVARÁMÁ v. SUBRAMANYA.

The result is that the decrees of the Courts below must be reversed, and, in lieu thereof, there will be a decree requiring the respondent to pay to the appellant Rs. 510 with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

AIYAVU AND ANOTHER*

against

QUEEN-EMPRESS.

1885. August 27.

Criminal Procedure Code, s. 271—Murder—Explanation of charge essential.

At a trial before a Sessions Court a charge was read out to the prisoners to the effect that they at a certain place on a certain date committed murder by causing the death of M, and that they had thereby committed an offence punishable under s. 302 of the Indian Penal Code and within the cognizance of the Court of Sessions. The prisoners pleaded guilty and were convicted on their plea.

The charge was not explained to the prisoners. In answer to questions put by the Court, prisoners stated that they had killed M, and that they made the admissions of their own accord and not on the persuasion of any one:

Held, that the conviction must be quashed and a new trial ordered.

THIS was an appeal from a sentence of death passed by J. C. Hughesdon, Sessions Judge of Tinnevelly, in session case 25 of 1885.

The facts appear sufficiently, for the purpose of this report, from the judgment of the High Court (Muttusámi Ayyar and Hutchins, JJ.).

Mr. *Wedderburn* for the prisoners.

Mr. *Powell* (Acting Government Pleader) for the Crown.

For appellants, it was contended that the conviction must be quashed, the provisions of s. 271 of the Code of Criminal Proce-

* Appeal 288 of 1885.

AIYAVU v. QUEEN EMPRESS.

dure not having been observed—*Empress* v. *Vaimbilee*,(1) *In re Gopal Dhanuk*.(2)

The charge, which was as follows:—

"That you (1) Aiyavu Nádan, (2) Sivattiya Nádan, (3) Suppaya Nádan, and (4) Mari Nádan, on or about the 27th day of April 1885, at Panduvarapatti in Sattúr talúk, committed murder by causing the death of one Marimuthu Nádan, and that you have thereby committed an offence punishable under s. 302 of the Indian Penal Code, and within the cognizance of the Court of Sessions," was read out, but not explained to the prisoners.

If it had been explained, it was probable from subsequent statements made by them that they would not have pleaded guilty.

For the Crown, it was contended that the facts admitted by the prisoners were sufficient to justify conviction.

JUDGMENT:—In this case four persons were tried on a charge of murder. Prisoners Nos. 1 and 2, the present appellants, pleaded guilty and the two others claimed to be tried. On recording their pleas, the Judge put a few questions to each of the four accused. He asked the appellants whether they killed Marimuthu Nádan as stated in the charge. Both said "yes." He next asked whether they said so of their own accord or whether they were persuaded by any one else to say so. The appellants said no one persuaded them to say what they said. The Judge then asked whether they knew they would be hanged for saying "yes." The appellant No. 1 said: "If I am to be hanged, let me be;" No. 2 said the same, adding "is it proper to deny after having done the deed."

The Judge then made a note that prisoners Nos. 1 and 2 will presently be convicted on their own plea, and that the trial does not proceed as regards them, that they are removed from the dock, and that it is probable they will be called as witnesses for the prosecution in the case against prisoners Nos. 3 and 4. Subsequently he examined them as the witnesses Nos. 1 and 2 against the prisoners Nos. 3 and 4. Eventually the prisoners No. 3 and 4 were acquitted. The Judge then convicted the appellants on their own plea, and having sentenced them to death, he has referred the sentence to this Court for confirmation.

In their petition of appeal they stated that they held the legs

(1) I.L.R., 5 Cal., 826. (2) I.L.R., 7 Cal., 97.

of the deceased when his throat was being cut, but that they did so because Mari Nádan, the accused No. 4, threatened to kill them if they did not assist, and put them in fear of instant death.

After reading out the charge to the appellants, the Judge does not appear to have explained it to them as he is required to do by s. 271 of the Procedure Code. It was argued by the learned counsel for the appellants that "murder" is a technical word and that, unless it was explained as directed by that section, the plea of guilty should not be accepted.

We are precluded by the course taken by the Judge from looking at the evidence taken after the appellants were removed from the dock. The prisoners were not asked in their examination whether they intended to kill, or in what circumstances they killed the deceased, and their statements do not disclose on their part a knowledge of the elements constituting the offence of murder. If the statements contained in their petition of appeal could be taken to be true, we might convict them of murder, but we should then feel bound to take the whole of those statements together and to recommend a mitigation of the sentence on the ground that they committed the crime from fear of instant death.

We have asked the Judge to certify whether the nature of the offence with which the appellants were charged was properly explained, and he says that it was not. That being so, we cannot accept the admission "we *killed* Marimuthu" as an admission that the appellants had committed murder. We are constrained to set aside the conviction and to direct a new trial of the appellants.

In his explanation the Sessions Judge has referred us to two cases (Appeal 286 of 1884,(1) *Queen-Empress* v. *Nelai Laskar* (2)), in which the High Court might have pointed out, but did not point out, that the expression "I killed" did not amount to an admission of having committed murder. In both those cases the words "I killed" were coupled with other statements showing beyond doubt that the accused did not intend to admit facts which amount in the eye of the law to murder. Here no other statements were asked for, and the simple question is whether killing is equivalent and tantamount to murder. Most certainly [illegible] not, for culpable homicide not amounting to murder would [illegible] with [illegible] meaning expression.

(1) Not reported. (2) I.L.R., 11 Cal., 410.