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it is claimed. In this case a demand for possession or a kabuliat at fair and equitable rates is made, but it only refers to the additional land, and does not mention the amount of rent. The suit is therefore badly framed, and I concur in dismissing the suit.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

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May 7.

THE EMPRESS *v.* VAIMBILEE.*
VAIMBILEE *v.* THE EMPRESS.

Criminal Proceedings—Necessity for explaining Charge to Accused—Statement to Magistrate in foreign language—Criminal Procedure Code (Act X of 1872), ss. 122, 237, 346.

When arraigning an accused, and before receiving his plea, the Court should be careful to insure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead.

It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded.

Baboo *Kallychurn Banerjee* for the petitioner.

THE facts of this case sufficiently appear in the judgment of the Court (MORRIS and PRINSEP, JJ.), which was delivered by

PRINSEP, J.—The prisoner Vaimbilee, a Madrassee, was charged, before the Additional Sessions Judge of the 24-Pargannas, with culpable homicide amounting to murder, by causing the deaths of Trevedee and Naga, and with having caused hurt to one Lazarus by a dangerous weapon, these three men being Madrassees employed with him in a tannery at Tengra.

As the prisoner was ignorant of any language except Tamil,

* Criminal Reference No. 22 of 1880, and Appeal No. 248 of 1880, against the order of F. J. G. Campbell, Esq., Officiating Additional Sessions Judge, 24-Pargannas, dated the 5th April 1880.

an interpreter, Mr. S. A. Daniel, minister of the Madrassee Church, was sworn.

On the record of the trial the Additional Sessions Judge has recorded, "the prisoner, through the interpreter, Mr. Daniel, having been asked whether he pleaded guilty or claimed to be tried, pleaded *guilty* to the first charge, that of the murder of Trevedee." The Additional Sessions Judge thereupon convicted the prisoner on this charge, and sentenced him to death, subject to the confirmation of this Court.

Two days later, that is on 7th February, Mr. Daniel appeared before the Additional Sessions Judge, and made an affidavit that he failed to use the correct terms in Tamil to convey the full meaning of the word 'murder,' the word made use of indicating only the killing or being the cause of the death of Trevedee. The Additional Sessions Judge has himself recorded at considerable length what took place in his Court on the trial of the prisoner, and his statement is confirmed by an affidavit put in by the Government Pleader. The Additional Sessions Judge records, that "the Government Pleader read out the charge of murder of Trevedee to the interpreter, who having spoken to the prisoner interpreted the latter's statement, 'yes, I did kill Trevedee.' I thereupon at once said that that answer was insufficient, that he must distinctly ask the prisoner whether he pleaded *guilty to the charge of the murder of Trevedee or claimed to be tried.* He then spoke again to the prisoner, and rendered his statement, 'yes, I am guilty.'"

We entirely accept this statement of what occurred at the trial, but we observe that s. 237 of the Code of Criminal Procedure requires that the charge shall be read and *explained* to the accused person. The term 'murder' has a special meaning under the Indian Penal Code. The Judge should, therefore, have been careful to explain its meaning to the interpreter in order that he might convey its full sense to the prisoner, and so enable the latter to understand thoroughly the nature of the charge to which he was asked to plead. Here manifestly, as described by Mr. Daniel, no sufficient explanation of the charge, such as the law contemplates, was made upon which a plea of guilty could be properly accepted.

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If the prisoner had denied that he killed Trevedee, it is obvious that it would have been unnecessary to proceed further in explanation of the charge. But in the case now before us, the prisoner's admission cannot properly be regarded as an admission of having committed the offence of murder as defined in the Indian Penal Code, because the mere killing or causing the death of Trevedee would not in itself constitute that offence. Before he was convicted on his own plea, he should have admitted that he intended to cause the death of Trevedee or did so with a knowledge such as is described in s. 300 of the Penal Code. It was more especially necessary in the present case to obtain such an admission, because before the committing Magistrate the prisoner admitted that he had killed Trevedee, but added that he did so in a struggle arising from Trevedee having first attacked him. With this statement before him the Additional Sessions Judge should have ascertained from the prisoner whether he fully admitted the commission of the offence charged or adhered to his former statement.

Under these circumstances, we are of opinion that the prisoner cannot be held to have pleaded guilty, and cannot therefore be convicted on his plea. We accordingly direct that a retrial be held in the Sessions Court.

There are, moreover, circumstances in this case which should have induced the Additional Sessions Judge to have taken evidence instead of convicting the prisoner solely on his plea of guilty. The circumstances under which the offences are alleged to have been committed are very peculiar, and suggest a doubt regarding the prisoner's state of mind at the time. The committing Magistrate had evidently misgivings on this head, and specially examined the medical officer Dr. Joubert, under whose special observation the prisoner had been since his admission to jail. That officer's evidence cannot be considered as by any means decisive on the point, and it is therefore somewhat surprising that the Magistrate should have omitted to put any questions to the witnesses, who were the prisoner's fellow workmen, regarding his ordinary habits and behaviour, and his demeanour both before and immediately after the fatal occurrences. The Additional Sessions Judge would have exercised

a wise discretion if he had examined the witnesses in Court, and taken the verdict of the jury on the fact of the soundness or unsoundness of the prisoner's mind. This was the more necessary, because although it might be established that the prisoner at the time when the acts were committed was not by reason of unsoundness of mind incapable of knowing the nature of the acts charged, yet his physical and mental condition might be such as to cause a Judge to weigh carefully the measure of punishment to be inflicted.

We notice also that the Additional Sessions Judge in his judgment has expressed doubts regarding the admissibility in evidence of the statement made by the prisoner to the Magistrate, because it was not recorded in Tamil, the language used by the prisoner. On this we observe that though the law requires that the whole of the statement made by a prisoner should be accurately recorded as nearly as possible in the very words used by him, yet it does not require that it should be recorded in a foreign language unknown to the Court or Magistrate, the use of which makes it necessary to have recourse to an interpreter. The language in which that statement is conveyed to the Court by the interpreter is in our opinion the language in which it should be recorded. Unless this were so, the administration of justice in a case in which a foreigner was accused might be attended with great difficulty and be seriously impeded.

Re-trial ordered.