whether evidence of this kind justifies a Sessions Judge in not imposing the extreme penalty. The statement Exhibit N shows that the accused was waiting at a place which the deceased had to pass and thus the murder was premeditated. We are not able to follow the Sessions Judge when he says that the murder is not premeditated. But seeing that the learned Sessions Judge has not thought fit to impose the extreme penalty and seeing that some time has elapsed, we are not prepared to alter the sentence now.

The appeal is dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

In re SUPPAN CHETTI AND FIVE OTHERS (ACCUSED), PETITIONERS.* 1927, April 26.

Madras Village Courts Act (I of 1889) as amended by Act II of 1920—Village munsif or village magistrate trying criminal case without panchayat—If Act applicable—Regulation II of 1816—Applicability of—Power to inflict sentence of imprisonment—In village choultry or nowhere—In village common—If legal—Rules of procedure for the Court.

Act I of 1889 as amended by Act II of 1920 contains no provision for the conduct of criminal cases by village munsifs or village magistrates sitting without a panchayat. Regulation II of 1816 applies to such a case and under section 10 of the said Regulation a village magistrate is empowered to sentence a person for certain offences to imprisonment, which must be either in the village choultry or nowhere at all, and a sentence of imprisonment in the village common, no village choultry being available, is illegal.

* Criminal Revision Case No. 870 of 1926.

SUPPAN CHETTI, *In re.*

In re Ponnusami Pillai, (1920) 12 L.W., 638, followed.

A Court acting in accordance with Regulation II of 1816 should not be required to adopt the ordinary rules relating to the conduct of criminal cases so long as it observes the fundamental dictates of justice, equity and good conscience. But there might be ground for interference if the Court refused to allow the accused to put any questions.

PETITION under section 107 of the Government of India Act praying the High Court to revise the judgment of the Court of the Village Magistrate, Panrimalai, Dindigal, in Case No. 4 of 1926.

S. Nagaraja Ayyar for petitioner.

Public Prosecutor for the Crown.

JUDGMENT.

The petitioners in this case were convicted by the Village Magistrate of Panrimalai, Dindigul Taluk, of an offence of assault and were sentenced to simple imprisonment in the village common from 1 to 3 p.m. on the date on which the conviction was passed. The first point raised is that a village magistrate proceeds under Act I of 1889 as amended by Act II of 1920, and that section 76 of that Act gives power to fine but not to imprison. Section 76, however, relates only to the procedure of a panchayat Court and it is clear from section 75 that a village Court may be either a panchayat Court or the Court of a village munsif, section 7 enabling the Collector in villages where there are no panchayat courts to appoint village munsifs for this purpose. So far as I have been shown the Act contains no provision for the conduct of criminal cases by village munsifs or village magistrates sitting without a panchayat. For this we have to turn to Regulation II of 1816, section 10 of which authorizes a village magistrate to sentence a person for certain offences to confinement in the village choultry for a

period not exceeding 12 hours. It is clear therefore that the Court in this case had power to inflict imprisonment in the village choultry. The order, however, shows that the imprisonment was made in the village common, presumably because there was no village choultry available. As has been held in *In re Ponnusami Pillai*(1), such a sentence of imprisonment is illegal and it must be either in the choultry or nowhere at all. Following that decision I must set aside the sentence. In the circumstances I do not consider it necessary to pass any sentence in substitution.

The only other point urged has to do with the procedure of the village magistrate in trying the case. There is a record of the statements of the witnesses, and so far as can be gathered from them they were not cross-examined by the accused. In the first place, it is not clear that the record is complete, and secondly, a village magistrate acting under the Regulation is not required to do more than conduct a verbal examination and to record his decision. It is entirely contrary to the spirit of the Regulation that a Court acting in accordance with it should be required to adopt the ordinary rules relating to the conduct of criminal cases, so long as it observes the fundamental dictates of justice, equity and good conscience. The learned Public Prosecutor has drawn my attention to G.O. No. 283, Judicial, dated 25th February 1909, which lays down that the conduct of proceedings in village courts should be "untrammelled by any special procedure, the weight of their authority being virtually dependent upon the fact that they sit *coram populo*, and that their verdicts are supported by the common knowledge of the villagers." With this expression of opinion I find

(1) (1920) 12 L.W., 638.

SUPPAN CHETTI, *In re.*

myself in complete agreement, and it was certainly never intended that the procedure of a village magistrate should be open to such criticism as would be appropriate in the case of higher Courts. No doubt if the village magistrate had refused to allow the accused to put any questions there might be ground for interference, but I have not been satisfied that he took such a course here.

With the modification indicated above I dismiss this Criminal Revision Petition.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

1927, April 26.

MAHAMUD AMIRKHAN AND EIGHT OTHERS (COUNTER-PETITIONERS), PETITIONERS,

v.

MAHALINGAM PILLAI AND THIRTY-NINE OTHERS (PETITIONERS), RESPONDENTS. *

Criminal Procedure Code, sec. 147—Expression "land or water" —If restricted to private property—Public street—If included in expression.

The expression "land or water" as used in section 147 of the Code of Criminal Procedure is not necessarily restricted to private property, though it applies only to private property in sub-section (1) of section 145.

Section 147 of the Code of Criminal Procedure applies where the question is whether a certain community is entitled to use a public street, such user being resisted by another community living in that locality. *Sudalaimuthu Chettiar* v. *Enan Samban*, (1915) 81 LC., 367, *Karupanna Goundan* v. *Kandasami Goundan*, (1914) 26 M.L.J., 233, followed.

---

* Criminal Revision Case No. 890 of 1926.