High Court in the exercise of revisional jurisdiction and that orders passed in the exercise of that jurisdiction are not appealable under the Letters Patent.

The appeal fails and is dismissed with costs.

The petition for stay (C.M.P. No. 3590 of 1927) also is dismissed with costs. One set.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Ramesam and
Mr. Justice Jackson.

In re MANIARA KUPPATHAN ALIAS KUPPAN (ACCUSED), APPELLANT.*

1927, June 17.

Criminal Rules of Practice, R. 195 *and* 196—*R.* 195 *if a rule of law—R.* 196—*Object and policy of—Questions suggested in R.* 196 (2)—*Desirability of putting them.*

Rule 195 of the Criminal Rules of Practice which prohibits village magistrates from reducing to writing any confession or statement whatever made by an accused person after the police investigation had begun is not a rule of law, but is merely a rule for the guidance of village magistrates, such statement if recorded is admissible in evidence.

The whole object and policy of Rule 196 of the Criminal Rules of Practice which requires a magistrate to put certain questions to the accused before recording a confession, is that a magistrate should satisfy himself that that there has been no compulsion by the police or ill-treatment, so as to raise the suspicion that the statement of the accused is not a voluntary one and so long as the spirit of the rule is satisfied, it is undesirable that questions such as are suggested in the second clause of the rule should be put.

APPEAL against the order of the Court of Session of the North Arcot Division in Case No. 43 of the Calendar for 1926.

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* Criminal Appeal No. 140 of 1927.

KUPPATHAN, *In re.*

P. Veeraraghava Ayyar for appellant.
Public Prosecutor for the Crown.

JUDGMENT.

The accused in this case has been convicted by the Sessions Judge of North Arcot for having murdered his wife Chinna Pillai. The accused is a barber, but the deceased was an Adi-Dravida. She was previously married and after having been abandoned by her husband was married by the accused and had been abandoned by him three months before her death. There is the evidence of two witnesses for the actual occurrence, P.Ws. 5 and 10. P.W. 5 is a child of seven years who was related to the deceased as her niece. There is no reason to disbelieve either the evidence of P.W. 5 or that of P.W. 10. But apart from the evidence of these two witnesses there are confessional statements made by the accused. The first statement he made is Exhibit N, to the Village Magistrate on the 3rd of November.

The learned vakil for the accused drew our attention to Rule 195 of the Criminal Rules of Practice which prohibits village magistrates from reducing to writing any confession or statement whatever made by an accused person after the police investigation had begun. The evidence of the Sub-Inspector of Police (P.W. 3) shows that the investigation began on the 2nd of November. But it is not clear whether the village magistrate knew this fact and therefore it is difficult to say whether the village magistrate was acting in disobedience of any rule. But apart from whether he was obeying or disobeying a departmental rule, the effect of Rule 195 is not to make Exhibit N inadmissible in evidence. It is not a rule of law but merely a rule for the guidance of village magistrates. Under the law of

evidence Exhibit N is admissible. Then again we have Exhibit A, the confession made before the Joint Magistrate of Tiruppattur, who is P.W. 1. The learned vakil for the accused drew our attention to Rule 196 (2) of the Criminal Rules of Practice which runs thus:— "Before recording the statement the Magistrate shall question the accused in order to ascertain the exact circumstances in which his confession is made and the extent to which the police have had relations with the accused before the confession is made." Exhibit A shows that before the confession was taken the Magistrate put to him this question "Do you understand that you are at liberty to make a confession or not as you like and are you aware that there is no necessity or compulsion on you to make any such statement or confession which may be used in evidence against you?" We think this question satisfies the spirit of Rule 196 (2), but it is argued that there is no reference to the police and the question does not expressly call the attention of the accused to the relations which the accused had with the police. As samples of the questions which the Magistrate might put, Rule 196 (2) mentions the following:—

(*a*) When did the police first question you?

(*b*) How often were you questioned by the police?

(*c*) Were you detained anywhere by the police before you were taken formally into custody and, if so, in what circumstances?

(*d*) Were you urged by the police to make a confession?

(*e*) Have you been ill-treated in any way by the Police?

These specimens of questions suggested in the Criminal Rules of Practice as questions that might be put to the accused seem to be leading questions

KUPPATHAN, *In re.*

suggesting torture or other ill-treatment by the police and it seems to be undesirable to put such questions in the form mentioned in the rule. The whole object and policy of Rule 196 is that a Magistrate should satisfy himself that there is no compulsion by the police or ill-treatment so as to raise the suspicion that the statement of the accused is not a voluntary statement, and so long as the spirit of the rule is satisfied it is undesirable that questions should be put in this form showing a total want of trust in the police. In the present case the question put by the Magistrate, we think, satisfies the rule, and the fact that the questions were not put in the form suggested by the rule does not make the statement, Exhibit A, less valuable. At the end of Exhibit A the Magistrate notes: "I have explained to Kuppan that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him, and I believe that this confession was voluntarily made." Lower down in the questions, we have another question by the Magistrate, why do you make this confession now? and the answer is "I did it out of my excess of anger. So I want to confess." Taking the whole of Exhibit A, we are satisfied that there is nothing defective in it, and we doubt whether Rule 196 should be obeyed to the letter. Before the Sessions Judge the accused has retracted his confession; but, having regard to the other evidence and his earlier confessions, we do not attach any weight to this retraction.

The motive for the offence seems to be that the deceased had unlawful relations with other men at other times, but it is not suggested that anything happened on the day of the offence. The evidence about her bad conduct is too general, even taking the accused's statements, Exhibits A and N. It is highly doubtful

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.