so far as the question of mesne profits was concerned, was interpreted by the parties. I do not think that these considerations are really relevant for the disposal of this appeal.

In the result, I agree that the appeal should be dismissed with costs.

The Memorandum of Objections is also dismissed but without costs.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Anantakrishna Ayyar.

1930, April 8.

IN RE KOLANDA NAYAKKAN (PRISONER), APPELLANT.*

Murder—Deliberately planned, and cold-blooded—Appropriate sentence irrespective of age—Exception under sec. 22, Madras Children Act (IV of 1920)—Circumstances in which capital sentence inappropriate.

In cases where the murder has been deliberately planned and is essentially of a cold-blooded and contemptible nature, whatever the age of the accused might be, provided his case does not come under section 22 of the Madras Children Act (IV of 1920), the Capital sentence would usually be the appropriate one.

But where the murder cannot be said to be wholly deliberate and cold-blooded, and where there may be a certain amount of legitimate provocation rankling, which in an immature mind might assume an exaggerated importance, the Capital sentence might not be the appropriate one.

TRIAL referred by the Court of Session of the Coimbatore Division for confirmation of the sentence of death passed upon the appellant in Case No. 4 of the Calendar for 1930.

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*Referred Trial No. 38 of 1930.

KOLANDA NAYAKKAN, In re.

V. L. Ethiraj and *N. Somasundaram* for appellant.
Public Prosecutor (*L. H. Bewes*) for the Crown.

JUDGMENT.

The accused has been convicted by the learned Sessions Judge of Coimbatore of the offence of murder and sentenced to death.

The charge against him was that at about 11 o'clock on the 20th of October last he stabbed one Abdul Muthu in the streets of Tiruppur and inflicted upon him seven incised wounds three of which were fatal. The man after running for some distance collapsed and died practically on the spot. The eye-witnesses to the attack are P.Ws. 2, 3, 4, 5 and 12. That it was the accused who so attacked the deceased has not been seriously disputed by the learned Counsel for the accused, although he would suggest that the series of blows occurred in quicker succession than the eye-witnesses would say, and perhaps it may be allowed that on the medical evidence it is a little difficult to imagine how the deceased was able to run about 180 yards after receiving the blows which the medical certificate describes, and it may be that the attack was something more rapid and not quite so deliberate as the eye-witnesses would make out. The offence *prima facie* is clearly murder. There can be no doubt that the person who inflicted with a knife such fatal wounds on the deceased certainly intended nothing short of inflicting death. We cannot find any extenuating circumstance which would bring the offence to anything less than murder. There is no question of self-defence raised, nor is there any such case appearing in the prosecution evidence. It has been suggested that the accused had a certain amount of provocation, but the only provocation that has been spoken to by prosecution witnesses occurred a

couple of hours earlier than the offence and cannot therefore easily be described as grave and sudden. The only defence put forward by the accused is that the case is a false one and has been got up by his enemies. But there is really no motive elicited why the eye-witnesses should lend themselves to a false case against the accused. There can be no doubt that the learned Sessions Judge is correct in convicting the accused of the offence of murder, and the only question which remains is whether the capital sentence, in the circumstances, was an appropriate one.

The accused is stated to be aged about 15. Both the committing Court and the Sessions Judge say that he looks more, that he looks about 18; so far as the records show, it may be taken that he is about 15 years of age, but his age has not been definitely determined. A plea has been put forward that in the case of a youth the capital sentence is inappropriate. To the proposition put thus broadly we cannot assent. Beyond the provisions of sections 82 and 83, the Penal Code does not say anything about there being any age limit for the capital sentence; and, in cases where the murder has been deliberately planned and is essentially of a cold-blooded and contemptible nature, we think that usually, whatever the age of the accused might be, provided his case does not come under section 22, Madras Children Act (IV of 1920), the death sentence would be the appropriate one. This Court has, for example, in cases where the accused had been convicted of decoying away children and cutting their throats, or drowning them, or putting them away, in order to possess themselves of a few rupees worth of jewels, held that, in spite of the murderers being youths (about 18 years old), the capital sentence would be the only appropriate sentence. But where the murder cannot be said to be wholly deliberate

KOLANDA NAYAKKAN, *In re.*

and cold-blooded, and where there may be a certain amount of legitimate provocation rankling, which in an immature mind might assume an exaggerated importance, we think that the capital sentence might in certain cases not be the appropriate one. In the present case, apart from the question whether the accused is entitled to the benefit of the provisions of section 22 of the Madras Children Act, we have evidence that within about a couple of hours before the occurrence the accused and the deceased had been quarrelling, and that the deceased, who is described by the prosecution witnesses themselves as a bully and the terror of the village, had assaulted this boy and had given him several blows; about two hours later the accused retaliated by stabbing the deceased in the manner described. There is, therefore, in the present case this amount of recent provocation which justifies us in describing the murder as not deliberately cold-blooded and inherently vicious. In these circumstances we think that the adequate sentence will be the lesser sentence of transportation for life.

We, therefore, reduce the capital sentence to one of transportation for life.

R.C.S.