

KONDALU  
AIYAR, *In re.*

the appellate jurisdiction of the High Court that was invoked and that the order was made in exercise of that jurisdiction. *Sri Sri Sri Chandra Chudamani Rajah Harichandran Jagudev v. Lokkeno Patnaik*(1), (decided by RAMESAM and TIRUVENKATA ACHARYA, JJ.), is a direct case on the point and supports our view. The appeal is dismissed.

K.R.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice Cornish.*

1929,  
August 21.

KESAVA PILLAI *alias* KORALAN AND ANOTHER,  
PRISONERS (ACCUSED Nos. 2 AND 4)

and

KESAVA PILLAI *alias* THILLAI KANNU PILLAI.  
(ACCUSED No. 1), APPELLANT.\*

*Retracted confession—If can be acted upon without material corroboration—Reasons given by accused for making confession, subsequently retracted, on the face of them, false—If corroboration necessary.*

There is no absolute rule that a retracted confession cannot be acted upon, unless there is material corroboration. If the reasons given by an accused person for having made a confession which he subsequently withdraws are, on the face of them, false, that confession may be acted upon as it stands and without any further corroboration.

TRIAL referred by the Court of Session of the South Arcot Division for the confirmation of the sentences of death passed upon accused Nos. 2 and 4 in Case No. 14 of the Calendar for 1929, and case taken up by the

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(1) S.R. 12731 of 1928 (unreported).

\* Referred Trial No. 82 of 1929 and Criminal Appeal No. 334 of 1929 (taken up No. 22 of 1929).

High Court for enhancement of the sentence passed on the first accused in the same case. KESAVA  
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*N. S. Mami* for accused No. 2.

*D. R. Venkatesa Ayyar* for accused No. 4.

*S. Venkatachala Sastri* for accused No. 1.

*Public Prosecutor (L. H. Bewes)* for the Crown.

The JUDGMENT of the Court was delivered by

WALLER, J.—The three appellants have been convicted of the murder of one Tillaikannu Pillai. The first appellant is the murdered man's son. The second and third appellants are respectively the first appellant's brother-in-law and father-in-law. Another brother-in-law was charged with them but acquitted. There was, we consider, no ground for differentiating between him and his brother. If the Sessions Judge accepted, as he did, the confessions of the first and third appellants and the evidence of P.Ws. 10 and 11, he should have convicted the third accused as well. The fact that his name did not appear in Exhibit E was, comparatively speaking, of very little significance. WALLER, J.

That there was ample motive for the murder is clear. In the first place, Thillaikannu was keeping a woman called Nagu and spending money on her, to which his son and no doubt his wife's family objected. In the next, Thillaikannu's relations with his son's wife (P.W. 2) had given rise to constant quarrels. He had been intimate with her before she was married, and the intimacy continued after her marriage. About ten days before the murder, the first appellant had caught her going to his father's room at night and thrashed her, threatening to kill himself or her, unless his father was murdered. Lastly, the father had been talking of settling some of his property on his daughter (P.W. 1) on account of the quarrels between himself and his son. All this has been conclusively established.

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On the night of 11th January last, Thillaikannu went out to his field with the first appellant, after which he disappeared. Eighteen days later his body was dug up, in consequence of information given by the first appellant to P.W. 1. She heard of her father's disappearance and came back to her native village to make enquiries. When she came, the first appellant began by telling her that their father had gone to Cuddalore. The next day, he confessed to her that he and his father-in-law and brothers-in-law had murdered Thillaikannu and buried the body between two rocks in his field, after which he attempted to commit suicide, but was saved by P.W. 8. The village munsif was informed, and the first appellant took him and pointed out the place where his father's body had been buried, and it was dug up.

The main evidence in the case consists of confessions by the first and third appellants. There can be no doubt but that the first appellant confessed to his sister that he and the other three had murdered his father, though she made a desperate attempt to save him by alleging that he did not, in his confession, implicate himself. In the end, when confronted with Exhibit F—a statement made by her to the village munsif—she had to admit that he confessed to her that he also had helped in the murder. Strong objection has been taken by the defence to the Sessions Judge's procedure in having recalled her, after her deposition had been concluded, in order to put Exhibit F to her. There is no force in the objection. Section 540, Criminal Procedure Code, gives a Judge the fullest discretion to recall a witness at any stage of a trial and makes it imperative for him to do so, if he considers further evidence essential to the just decision of the case. Here an essential document had been overlooked by the prosecution, and it was the Judge's duty to have it admitted in evidence. To argue that he should not have carried out that duty, as the result was fatal to the

accused, is to suggest that the words "just decision" mean a decision in favour of the defence.

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We are satisfied that P.W. 1 has given a perfectly correct account of what her brother confessed to her. The circumstances all indicate that he must have taken part in the murder himself. He had the strongest of motives for doing so. He was certainly present. He knew where the body had been buried. He first of all lied to his sister about their father's whereabouts and, after confessing, tried to commit suicide. Before the committing Magistrate, no doubt, he, while admitting his presence, attributed the murder to the other three accused. In the Sessions Court, he resiled even from that admission. The fact that he has retracted altogether makes little or no difference, as—apart from his retracted confession—there is ample circumstantial evidence from which his guilt can be inferred.

The third appellant made a complete confession to the committing Magistrate, implicating himself, the first appellant, and his sons, in the murder. This he withdrew in the Sessions Court, alleging that he had been tortured by the Police into making it. That was, of course, absurd. He had not been in the custody of the Police. He had never complained of torture before, and, when he made his confession, he was standing in the presence of a Magistrate. What happened seems obvious. He must have been angered at the first appellant attempting to save his neck at the expense of his fellow-culprits, and was unable to contain himself and blurted out the truth. We are told that the confession, having been retracted, cannot be acted upon without material corroboration. There is, of course, no such absolute rule. If the reasons given by an accused person for having made a confession, which he subsequently withdraws, are, on the face of them, false, it is not apparent why that confession should not be acted on as it stands and without

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any further corroboration. Not that corroboration is lacking in this instance. It is not likely that the murder was the work of one hand. Thillaikannu's treatment of his daughter-in-law and her husband, his wasting of his substance on P.W. 5, his threat to settle his property on P.W. 1, must all have roused fierce resentment in the daughter-in-law's family. It is conclusively established that the appellant was away from his house on the night of the murder, and, before the committing Magistrate, his wife admitted that he had told her that he had taken part in the murder. In the Sessions Court, she asserted that this admission was due to torture by the Police, of which she had never complained before. We are of opinion that the Sessions Judge was entirely justified—in view of her obvious desire to save her husband and sons—in admitting her deposition before the committing Magistrate as evidence at the trial under section 288, Criminal Procedure Code.

In the result, we must find that the first and third appellants have been rightly convicted. It is urged that P.Ws. 1 and 8 should not be believed, as they would benefit by the conviction of the first appellant. The answer is that P.W. 8 saved him from committing suicide and that both he and P.W. 1 have made every effort to save him from conviction.

The sentence passed on the third appellant is confirmed. The first appellant has been called on to show cause why his sentence should not be enhanced. We do not entirely accept the reasons given by the Sessions Judge for not hanging him, but his father had treated him very badly, and it is possible that his father-in-law may have been the leader in the crime. We propose therefore not to interfere, but to confirm his sentence.