I decide nothing as between the defendants.

This suit fails and is dismissed with costs, two sets—one for defendants 1 and 2, and the other for the sixth defendant.

The other defendants will bear their own costs.

Plaintiffs will take their taxed costs out of the trust estate.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Anantakrishna Ayyar.

VEERA KORAVAN AND TWO OTHERS PRISONERS.*

1923, July 4.

Criminal trial—Practice of tendering for cross-examination important eye-witnesses cited by prosecution—Regularity of—Proper procedure.

The practice of tendering important eye-witnesses cited by the prosecution for cross-examination is highly irregular.

In cases where any witness known to the prosecution is able to swear to facts material to the case, the proper procedure to follow is to ask him to give evidence on oath as to the facts known to him, and which are relevant to the case, though other witnesses might have spoken to the same facts. Merely "tendering for cross-examination" is not a practice which should be encouraged, especially in murder cases, as it would be very unfair to the accused.

Queen Empress v. *Ram Sahai Lall*, (1884) I.L.R., 10 Calc., 1070, followed.

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* Referred Trial No. 67 of 1923.

VEERA KORAVAN, *In re.*

TRIAL referred by the Additional Sessions Judge of the Coimbatore Division for confirmation of the sentence of death passed upon the three accused in Case No. 11 of the Calendar for 1929.

Nugent Grant for accused No. 3.

K. Periyaswami Goundar for accused Nos. 1 and 3.

S. Venkatachala Sastri for accused No. 2.

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

The JUDGMENT of the Court was delivered by

ANANTAKRISHNA AYYAR, J.

ANANTAKRISHNA AYYAR, J.—The three appellants have been convicted by the Additional Sessions Judge of Coimbatore of the offence of the murder of one Muthusami Asari under section 302, I.P.C. The first accused has also been charged with the offence of voluntarily causing grievous hurt under section 325, I.P.C., and the third accused of the offence under section 324, I.P.C. All the four assessors were of opinion that the three accused were guilty of murder under section 302, I.P.C., and the learned Additional Sessions Judge agreed with the said opinion.

[His Lordship then discussed the evidence.]

In these circumstances, we think that the learned Additional Sessions Judge was right in accepting the unanimous opinion of the four assessors that accused 1, 2 and 3 are guilty of the offence of murder. We accordingly confirm the conviction, and also the sentence, as the murder was a brutal one. Accused 1 and 3 have also been found guilty under sections 325 and 324, Indian Penal Code, respectively, but, having regard to the fact that we have confirmed the sentence of death passed by the lower Court, no separate sentence need be passed in respect of the offences under these sections. The appeal preferred by the accused is dismissed.

Before parting with this case, we think it right to observe that the practice of tendering important eye-witnesses cited by the prosecution for cross-examination is not a practice which should be encouraged. In this case, Muhammad Sultan, cited by the prosecution, is a material witness who was present at the scene of occurrence. He is said to have been standing at the distance of a *mar* from the actual scene of struggle, and would *prima facie* be able to speak to important facts material to the case. Instead of putting him into the box and eliciting facts within his personal knowledge and observation, the prosecution merely "tendered him for cross-examination." Very discreetly, the defence Counsel put no questions to him. In cases where any witness known to the prosecution is able to swear to facts very material to the case, the proper procedure to follow is to ask him to give evidence on oath as to the several facts known to him; which are relevant to the case, though other witnesses might have spoken to the same facts. Merely "tendering him for cross-examination" is not a practice which should be encouraged, especially in murder cases, as it would be very unfair to the accused. If such a practice is in vogue in other districts also, we think it proper to remark that the same should be put an end to.

As observed by FIELD, J., in *Queen Empress* v. *Ram Sahai Lall*(1): "Now, it must be understood, and it had recently been pointed out in more than one judgment of this Court, that in conducting a case for the prosecution, all the witnesses who are alleged, or are known, to have knowledge of the facts ought to be brought before the Court and examined."

(1) (1884) I.L.R., 10 Calc., 1070 at 1072.

VEERA KORAVAN *In re.*

ANANTA-KRISHNA AYYAR, J.

In the present case, it is clear from the evidence of the other prosecution witnesses that Muhammad Sultan was present at the scene of offence and when the offence was being committed. If so, he should have been asked to swear to facts known to him in the ordinary way, and not merely "tendered for cross-examination."

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Anantakrishna Ayyar.

IN THE MATTER OF THANGATHAYEE AMMAL, A MINOR.

1929, July 20.

SUBBUSWAMI GOUNDAN (PETITIONER),

v.

KAMAKSHI AMMAL AND ANOTHER (RESPONDENTS).*

Code of Criminal Procedure (V of 1898), sec. 491—Minor wife illegally detained—Husband seeking to recover custody—If entitled to proceed under section—Plurality of remedies provided by law—If husband bound to resort to less expensive and less threatening remedy—Minor with her consent in custody of a person—Another better entitled in law desires custody—If minor "illegally detained" within meaning of section.

A husband seeking to recover custody of his minor wife illegally detained by others is entitled to proceed under section 491 of the Code of Criminal Procedure, and the opposite party cannot be heard to say that, where there are more than one remedy provided for under the law, the less expensive and less threatening remedy should be resorted to by the petitioner. *Bryant* v. *Bull*, (1879) 10 Ch.D., 155, followed.

If a minor, even though with her own consent, remains in the custody of a person, he must be held to have illegally detained

* Criminal Miscellaneous Petition No. 468 of 1929.