

SUBBA-  
RATHNAMMAL  
v.  
SESHACHALAM  
NAIDU.  
BEASLEY C.J.

petitioner. Section 25 of the same Act does not assist the petitioner in the least degree. Section 25 merely deals with the case of a child which has been in the custody of, or should be in the custody of, a person appointed guardian, and which leaves or is removed from such custody. Under such circumstances as those, when the legal guardian or the natural guardian makes an application for the return of the child under section 25, the question may be enquired into as to whether it is right that the child should be returned to that person, on the ground that the person who has been appointed guardian or is the natural guardian of the infant is not a fit and proper person to have the child. That section has no application to this case.

This petition must be dismissed.

B.C.S.

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### APPELLATE CRIMINAL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice Sundaram Chetti.*

1931,  
March 5.

IN RE SELLAPPA GOUNDAN, ACCUSED.\*

*Madras Borstal Schools Act (V of 1926), sec. 8—Conditions mentioned in—To be satisfied before Act can be applied—Mere adolescence—Insufficient.*

Before the provisions of the Borstal Schools Act (V of 1926) can be applied, the conditions mentioned in section 8 of that Act must be satisfied: it is not sufficient that the offender is adolescent; he should be addicted to criminal habits or tendencies, or be associated with persons of bad character, and be a person likely to benefit by detention in a Borstal School.

CASE taken up on perusal of the record in Sessions Case No. 103 of 1930 on the file of the Court of Session of Coimbatore Division.

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\* Criminal Revision Case No. 842 of 1930 (Taken up No. 25 of 1930).

Section 8 of the Madras Borstal Schools Act (V of 1926) is as follows :—

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“ Where it appears to a Court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years :

Provided that, before passing such sentence, the Court shall consider any report or representation which may be made to it as to the suitability of the case for treatment in a Borstal School and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline aforesaid.”

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

No one appeared for the accused.

### JUDGMENT.

The respondent here was charged in the lower Court with having murdered one Palani Goundan, on the 28th June last, by hitting him on the head with the handle of an axe. The facts of the case need not be stated, and it is sufficient to say that the respondent appears to have lost his temper at the interference of the deceased in his quarrel with P.W. 3, and to have acted in the manner described. The learned Sessions Judge convicted him of an offence under section 304, latter part, Indian Penal Code, holding that there was no intention on the part of the respondent to cause the death of the deceased man, and ordered him to be detained in the Borstal School at Palamcottah for five years. He did so because he found that the respondent was an adolescent offender within the meaning of

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section 2 of the Madras Borstal Schools Act (V of 1926). It is quite clear that in the opinion of the doctor, who was examined as a Court witness, the respondent, who gave his age as fifteen, was about twenty years old, and certainly more than eighteen. The learned Sessions Judge agreed with the view of the Public Prosecutor of Coimbatore that this was a fit case for action under the Borstal Schools Act. He has, however, overlooked the fact that, before the provisions of that Act can be applied, the conditions of section 8 of that Act must be satisfied, that is to say, that it must appear to the Court that the adolescent offender should, by reason of his criminal habits or tendencies or association with persons of bad character, be subject to detention in a Borstal institution, instead of having a sentence of imprisonment passed upon him, provided that, before passing such sentence, the Court shall consider any report or representation which may be made to it as to the suitability of the case for treatment in a Borstal School, and be satisfied that the character, state of health, and mental condition of the offender are such that the offender is likely to profit by such instruction and discipline. It is clear that the requisites are that the adolescent offender should be addicted to criminal habits or tendencies or be associated with persons of bad character; and, if he satisfies those requirements, and, if he is a person who is likely to benefit by detention in a Borstal institution, then, he may be sent to any one of the institutions. The view taken in the lower Court seems to be that the only qualification necessary is for the offender to be adolescent within the provisions of the Madras Borstal Schools Act. That is not sufficient. He must come within the other qualifications, and there is no finding here by the learned Sessions Judge nor is there any evidence to show that the

respondent was a person addicted to criminal habits or was associated with persons of bad character. That being so, the order passed upon him was not the correct order. We have looked at the Prevention of Crimes Act, 1908, the English Act which authorizes a sentence of detention in Borstal institutions, and also the Criminal Justice Administration Act of 1914, section 10, which enables Courts of summary jurisdiction to send youthful delinquents to Borstal institutions. It seems quite clear to us that the scheme of those Acts is to deal only with young offenders who have been previously convicted or who are shown to have criminal tendencies or to be associated with criminal persons. The wording of the former is the same as the Madras Borstal Schools Act, and we think that exactly the same considerations apply here. Under these circumstances, the order of the learned Sessions Judge was clearly wrong, and we have therefore to substitute for his order our own sentence. The act committed was one, as the learned Sessions Judge finds, without premeditation. The offender is a young man, and we think that the justice of the case will be met by sentencing him to rigorous imprisonment for three years. We accordingly set aside the order of the lower Court with regard to sentence, and substitute therefor a sentence of three years' rigorous imprisonment.

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