

ADEMMA  
v.  
HANUMA  
REDDI.

said principle we allow this appeal and hold that the father's half sister's son is the preferential heir.

The decree of the lower Court is reversed and the case remanded to the lower Court for disposal of the further issues raised in the case. The appellants are entitled to recover the costs of this appeal, which we fix at Rs. 150, from the respondents. As the appellants have filed the appeal in *forma pauperis* and as the court-fee, if paid, will have to be refunded we make no order as to the court-fee.

A.S.V.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.*

1937,  
August 2.

IN RE MYLSWAMI AND ANOTHER (FIRST AND SECOND  
ACCUSED), PRISONERS.\*

*Evidence—Foot impressions—Similarity of—Evidence—  
Admissibility of.*

Though the science, if it could be so called, of footprints has not yet progressed very far, evidence of similarity of the impressions of the foot, shod or unshod, is admitted by the Courts and such evidence comes under the head of circumstantial evidence.

*Emperor v. Babulal*(1) referred to.

TRIAL referred by the Court of Session of the Coimbatore Division for confirmation of the sentences of death passed on 17th April 1937 upon the prisoners in Calendar Case No. 135 of 1936 (Retrial).

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\* Referred Trial No. 60 of 1937 and Criminal Appeal No. 275 of 1937.  
(1) (1928) I.L.R. 52 Bom. 223.

*N. Somasundaram* for first accused.

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*K. Krishnamurti* for second accused.—The footprint expert came only a fortnight after the occurrence, and he discovered a large number of footprints. The village munsif who inspected the place soon after the occurrence discovered a fewer number of footprints. The evidence in the case shows that a large number of persons had walked over the place. No weight should be given to the so-called expert's evidence. His evidence is inadmissible under section 45 of the Indian Evidence Act as it is not on a point of foreign law, or science or art, or as to identity of handwriting or finger impressions. The words "finger impressions" were added to the section by Act V of 1899. The section does not apply to footprints. The study of foot impressions cannot be called a science. [Gross on Criminal Investigation, page 323, and *Regina v. Britton*(1) were referred to].

*R. N. Aingar* for *Public Prosecutor (V. L. Ethiraj)* for the Crown.—The examination of footprints would come under the head of "science". In this case the expert has given evidence as to the similarity between the footprints found near the scene of occurrence and those of the second accused. This witness has examined and studied many cases of footprints and his evidence is certainly entitled to great weight. If the other witnesses discovered only a smaller number of footprints it was because they had not the necessary training to look for them. The expert has noted certain very peculiar characteristics in the feet of the second accused and also in the impressions found. His evidence is clearly admissible. *Regina v. Britton*(1) refers only to the impressions of boots of the prisoners. This is a case of impressions of feet. "Footprints are of decisive importance"; Gross on "Criminal Investigation", page 320. The evidence regarding them is admissible generally even apart from section 45 of the Evidence Act.

The JUDGMENT of the Court was delivered by BURN J.—The two prisoners have been convicted and sentenced to death for the murder of a woman, named Unnamalai, which they are said to have committed on the morning of 7th June 1936.

(1) (1858) 1 F. & F. 354; 175 E.R. 761.

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Along with another they were tried by another Sessions Judge in Calendar Case No. 135 of 1936. They were convicted on 4th December 1936, and sentenced to death ; the third accused was acquitted. On appeal to this Court, in Referred Trial No. 7 of 1937 the learned Judges, MOCKETT and HORWILL JJ., set aside the convictions of these two accused and ordered that they should be retried largely for the reason that one Rangaswami Goundan who had been examined as a witness in the Court of the Committing Magistrate was not cited at the Sessions Court. This Rangaswami Goundan has now been examined as P.W. 8. He was cross-examined with regard to enmity and he denied all the insinuations made against him by the accused in the cross-examination ; and the learned Advocates who have appeared for the accused in this case have not been able to show from the evidence of any other witness that the charges of enmity against Rangaswami Goundan were well-founded or that he had anything to do with the concoction of a false case against them.

The case was of a very simple nature. There was no eye-witness. P.W. 5, a woman, deposed that when she went to the house of Unnamalai to borrow money from her, she saw the second accused come out of the kitchen followed by the first accused, that she saw blood on the clothes of the second accused, and asked him where Unnamalai was. The second accused is alleged to have told her that she was not there and ordered her to go away. She became afraid, and when she was about to go, the second accused stopped her and warned her not to tell anyone saying

"Don't tell anyone that we have cut Unnamalai. We will give you Rs. 25".

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The rest of the evidence against both the accused is entirely circumstantial. The house of the first accused was searched the same night but nothing of an incriminating nature was found. On 8th June it is alleged that both these accused separately gave information to the police which led to the discovery of important facts. The second accused is said to have given them information about the disposal of the blood-stained clothes which he was wearing at the time of the murder. A statement, Exhibit C, was recorded, and the second accused took the police to the place where his clothes, M.Os. 7 to 9, were found buried. The evidence of the police and other witnesses is that the clothes were wet when they were taken out and appeared to be stained with blood, because there were certain brown stains upon them. When they were submitted for examination to the Chemical Examiner, Madras, he found blood only on one of the clothes, M.O. 8, and when this was submitted to the Imperial Serologist, Calcutta, the report came back that the stains were too much disintegrated to enable the Imperial Serologist, to express an opinion whether the blood was human blood or not. The first accused is said to have told the police that he had buried the jewels taken from the body of the woman at the time of the murder and that he would go and show them the place where he had buried them. This information was recorded in Exhibit E; and the first accused is said to have led the police to his own backyard and dug out a mud pot (M.O. 10) in which was found a cloth pouch

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(M.O. 16) containing three jewels (M.Os. 13, 14 and 15) which are identified by P.W. 6 as the jewels belonging to his late wife, Unnamalai. Of these, two M.Os. (M.Os. 13 and 15) were found by the Chemical Examiner and the Imperial Serologist to be marked with human blood.

In addition to these, there is the evidence regarding certain footprints observed by the Inspector of Police, P.W. 9, in the room in which the body of the deceased was found. It is to be noted that from about 10 o'clock when the murder must have been committed till about 3-30 p.m. when the village munsif came to the scene, we have no evidence regarding the persons who entered the house. After the village munsif arrived he prevented anyone else from going in ; and the Inspector when he noticed the footprints took particular precaution to see that no one should go in to disturb them. He sent a requisition to the footprint expert from Vellore, who came a fortnight later and took impressions of these footprints. He compared them and gave evidence as P.W. 14 regarding the results of his comparisons of the marks on the floor of the room with the impressions taken from the feet of these accused persons. His opinion was quite definite that all footprints found in the room where the woman lay murdered had been made by the feet of the second accused. He pointed out many dissimilarities between the impressions made in the room and the impressions by the first accused's foot. He pointed out several similarities between the impressions made in the room and the second accused's foot. Mr. K. Krishnamurthi for the second accused has contended that the

evidence of the expert was inadmissible and referred to section 45 of the Indian Evidence Act. He points out that though provision is made for expert evidence regarding finger impressions there is no provision for expert evidence regarding impressions of feet. He also contends that the study of foot-marks is not worthy of the name of science and that therefore the evidence regarding foot-marks cannot be brought under the general description given in section 45. There is some force in this contention. It is quite clear that the science, if it could be so called, of footprints has not yet progressed very far. There is equally no doubt whatever, as was observed in the case of *Emperor v. Babulal*(1), about the fact that

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“evidence of similarity of the impressions of the foot, shod or unshod, is admitted by the Courts in India and in Great Britain, and as far as I know, in every other country, though there is no science of such impressions”.

The fact is that such evidence comes under the head of circumstantial evidence; *vide* Wills on Circumstantial Evidence, page 285. In a case of this kind it is not the opinion of the expert that is of any importance but the facts that the expert has noticed. It is quite clear that a person who has made a study of the prints made by the human foot is better qualified to notice points of similarity or dissimilarity than one who has made no such study. He is able to lay these points before the Court and from his evidence the Court draws its own conclusions. This is precisely what has been done in the present case. P.W. 14 has explained the grounds of his opinion and these grounds are such as can be appreciated by any

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(1) (1928) I.L.R. 52 Bom. 223, 226.

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ordinary person. He has pointed out several points of similarity between the footprints in the room where the woman's body was found and the footprints of which he took impressions from the feet of the second accused. The most important and the most easily verifiable of these are that on the second accused's left foot the little toe is rather farther away from the fourth toe than usual, whereas the second toe is rather unusually close to the big toe. Again there is, as P.W. 14 says, a very rare projection of the heel just below the hollow in both the feet; and finally, there is a very remarkable circumstance, that the left foot of the second accused is  $\frac{1}{3}$  inch shorter than his right foot; and P.W. 14 was able to say, from the tracings which he made of the footprints found in the room, that the left foot of the man who had walked in the blood in the room was  $\frac{1}{3}$  inch shorter than the right foot. We think that the only possible conclusion that can be drawn from these facts is that the impressions made in the room where the body was found were made by the second accused.

Neither of the accused made any attempt to explain the facts appearing in evidence against them. Both alleged that the case against them was wholly false. They both alleged that P.Ws. 7 (the village munsif), 8 and 15 (karnam) had given false evidence against them on account of enmity. We have already noticed that the learned Advocates for the accused were not able to point to anything in the evidence which could indicate that P.W. 8 had any motive to give false evidence against the accused. The same must be said with regard to the village munsif and the

karnam. There is nothing to show that they had any motive to bring a false case against the accused or that they in fact took part in anything of the kind. The evidence though circumstantial is conclusive.

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There was some contradiction between the evidence of P.W. 5 in the Sessions Court and what she said in the Court of the Committing Magistrate; but these contradictions were not on matters of importance.

We agree with the learned Sessions Judge who was himself in agreement with the majority of the assessors in holding that the only reasonable inference to be drawn from the facts established against the accused is that they jointly murdered the woman, Unnamalai. The sentence of death is the only appropriate sentence in this case and we are not prepared to refrain from confirming that sentence merely on the ground that these accused have been twice tried. The main reason why they have had to undergo the ordeal of a second trial was that they succeeded in persuading the learned Judges who heard their appeal on the former occasion that the absence of Rangaswami Goundan, P.W. 8, from the prosecution witness-box was a matter of importance to them.

We confirm the convictions and sentences of death passed upon both the accused and dismiss the appeal of the first accused.

V.V.C.