APPELLATE CRIMINAL.

Before Mr. Justice Burn and Mr. Justice Stodart.

IN RE SUBBIAH TEVAR (PRISONER), APPELLANT.* 1939, April 19.

Code of Criminal Procedure (Act V of 1898), sec. 162—Statements made to police by an accused person after his arrest admissible under sec. 27 of the Indian Evidence Act (I of 1872)—Inadmissible by virtue of sec. 162, Criminal Procedure Code, if.

Statements made to the police by an accused person after his arrest which come within the meaning of section 27 of the Indian Evidence Act are not rendered inadmissible by virtue of section 162, Criminal Procedure Code.

The settled law under the decisions of the High Courts is that section 162, Criminal Procedure Code, does not shut out statements which are admissible under section 27 of the Evidence Act. That settled rule has not been abrogated by the decision of the Privy Council in *Pakala Narayan Swami* v. *The King-Emperor*(1).

Scope and effect of the decision in *Pakala Narayan Swami* v. *The King-Emperor*(1) explained.

TRIAL referred by the Court of Session of the Tinnevelly Division for confirmation of the sentence of death passed upon the said prisoner in Case No. 115 of the Calendar for 1938 on 10th February 1939, and appeal by the said prisoner against the said sentence.

R. Sadasivam Pillai for appellant.

Public Prosecutor (*V. L. Ethiraj*) for the Crown.

Cur. adv. vult.

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* Criminal Appeal No. 151 of 1939 and Referred Trial No. 33 of 1939.

(1) I.L.R. [1939] Pat. 234 (P.C.).

SUBBIAH TEVAR, *In re.*

STODART J.

The JUDGMENT of the Court was delivered by STODART J.—The accused Subbiah Tevar has been convicted and sentenced to death for the murder of Sundarammal. He has filed two petitions by way of appeal. In his statement made under section 342 to the Sessions Judge he declared that the Sub-Inspector of Police, P.W.9, concocted the case against him because he refused to give him fodder for his bulls. In one of his appeal petitions he states that the case has been concocted against him by enemies because he was the principal witness in a murder case five years ago. In the Referred Trial the question for our decision is whether the sentence of death should not be confirmed.

There is no doubt that Sundarammal, a woman of sixty, was murdered in her field on the morning of Saturday, the 30th July. She was seen in the early morning, when she set out for her field, by her daughter, P.W. 5, who lives in the opposite house and by P.W. 6, her next door neighbour, and she was seen again by P.W. 7 in her field about 8 a.m. At midday her son, P.W. 4, when he went to the field to take her her midday meal, found her lying dead near the well. Her face and the front of her head had been battered in. There was blood on the ground there. It was clear that she had been murdered there. A blood-stained stone lay near the body.

The motive for the murder was clear. The right ear-lobe was torn and lacerated. The left ear-lobe was completely cut off. Gold mudichus—a kind of ear ornament—which her daughter, P.W. 5, had lent to the deceased the previous day to wear when she went to a neighbouring village on a visit of condolence, were missing. P.W. 5 and P.W. 6 say they

saw these mudichus in the ears of the deceased on the morning of the crime.

P.W. 9, the Sub-Inspector, reached the village at 7 p.m. He held the inquest early next morning. The blood-stained stones and earth from the place where the body was lying and the blood-stained stone with which the murder might have been committed were sent by him with other things to be examined by the Chemical Examiner and Imperial Serologist and were found to be stained with human blood.

There was no clue to the murderer. The scene of crime is one and a half miles from the village: the cholam crop in the field was high: the unfortunate woman had evidently been taken unawares and killed without the knowledge of anyone who might have been in the surrounding fields.

The accused is a member of a registered Criminal Tribe who was bound to report to the authorities when he intended to leave the village. He was absent and he had not made any report. For this reason and because he suspected that the accused might have had something to do with the murder, the Sub-Inspector left instructions in the village that the whereabouts of the accused should be reported to him. On the morning of 26th August P.W. 10, a relation of the deceased, found the accused sleeping in his field and went off to the police station four miles away to tell the Sub-Inspector. The latter happened to be at Kurukkalpatti on the main road not far away and received this information at 12-30 p.m. He went to the village at once and to the place where the accused was, and arrested him. The accused then made a statement which is the principal evidence against him. He made it in the presence of the village

SUBBIAH TEVAR, *In re.*

STODART J.

munsif P.W. 11, P.W. 12 and P.W. 10. He said, according to P.W. 11 and P.W. 12 :

"I tore the ear-lobes of Sundarammal and took her mudichus. She raised an alarm. . . I have kept the mudichus in my house. I shall produce them."

P.W. 10's recollection of this statement however is simply that the accused said :

"I have kept the concerned property in my house in a hole made for a rafter in one corner, and I shall produce it."

P.W. 11 and P.W. 12 also say that the accused stated that he had killed Sundarammal with a black stone so that she might not disclose the robbery. But that part of the statement is not admissible in evidence since it did not, within the meaning of section 27 of the Indian Evidence Act, lead to the discovery of any fact. P.W. 11, the village munsif, deposes that when the accused was making this statement he took it down in writing and the record of it is Exhibit J. In Exhibit J the admissible portions are :

"On a Saturday, twenty-six days ago, in the morning my concubine Muthammal went out towards the south to gather cowdung. I followed her. Sundarammal was sitting at a place to the west of the well and to the north of the kamalai pit. I suddenly cut the two mudichus from both her ears. (Then comes the inadmissible portion.) I left her at the same place, came to my village, tied the two mudichus in a dirty white cloth with a green border and kept it in a hole in the southern wall in the south-eastern corner of the house in which I live. I shall take it and deliver it up. I should be protected."

Though the persons who heard the accused making this statement do not remember the whole of it, there is no reason to disbelieve the village munsif when he says that Exhibit J is a correct record of what the accused said.

Following on this the Sub-Inspector and the accused and the village munsif and P.W. 12, P.W. 10 and

P.W. 13 a neighbour of the accused, went at once to the accused's house. In their presence the accused took the jewels from their hiding place and handed them over to the Sub-Inspector.

That is all the evidence against the accused. It is plain, consistent and straightforward and has been believed by the learned Sessions Judge, and learned Counsel who appears for the appellant has not attempted to show that there are any grounds on which it should be rejected. His appeal rests on a point of law. He contends that statements made to the police by an accused person after his arrest, though they may come within the meaning of section 27 of the Evidence Act, are inadmissible under section 162 of the Criminal Procedure Code. Section 162 is:

> "No statement made by any person to a police officer in the course of an investigation shall be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made."

This section is clearly wide enough to include statements made to a police officer which would be admissible under section 27 as constituting information in consequence of which some fact has been discovered. But it has been held by this High Court and by other High Courts in a long series of decisions that section 162 does not shut out statements which are admissible under section 27 of the Evidence Act. That must now be regarded as settled law. Learned Counsel contends however that this settled rule has been abrogated by a recent decision of the Judicial Committee of the Privy Council in *Pakala Narayan Swami* v. *The King-Emperor*(1). We have examined that decision very carefully and we do not think that it disturbs the course of decisions of this and other Courts. In

(1) I.L.R. [1939] Pat. 234 (P.C.).

SUBBIAH TEVAR, *In re.*

STODART J.

that case one of the questions at issue was the admissibility of statements made before arrest to a police officer by a person ultimately accused. The Privy Council held that such statements were shut out under section 162 of the Criminal Procedure Code. Incidentally the Privy Council when considering the scope of section 162 discussed a view which had been taken by some of the High Courts in India that section 162 referred to statements made in the course of a police investigation by witnesses only and not by accused persons. And the Privy Council differing from that view—which I *might* observe has not been the view of this High Court—proceeded to make some observations relating to the reasons on which that view had been based. The principal reason was that if section 162 of the Criminal Procedure Code applied to statements by accused persons it would amount to a repeal of section 27 of the Indian Evidence Act. On this point the Judicial Committee observed :

"The words of section 162 are plainly wide enough to exclude any confession made to a police officer in the course of investigation whether discovery is made or not. They may therefore *pro tanto* repeal the provisions of the section which would otherwise apply. If they do not, presumably, it would be on the ground that section 27 of the Evidence Act is 'a special law' within the meaning of section 1 (2) of the Code of Criminal Procedure, and that section 162 is not a specific provision to the contrary. Their Lordships express no opinion on this topic."

The question therefore whether section 162 of the Criminal Procedure Code has repealed section 27 of the Indian Evidence Act so far as statements made to a police officer are concerned has not been here decided by the Privy Council and we are not therefore debarred by this decision from following the rule laid down in previous decisions of this Court. We may observe that it has been recently held specifically by learned Judges

of this Court that though section 162 of the Criminal Procedure Code applies to statements made by accused persons, nevertheless section 27 of the Indian Evidence Act is a " special law " which is not derogated from by the general rule enacted in section 162. *See* the dictum of RAMESAM J. in *Thimmappa* v. *Thimmappa*(1) and of REILLY and SUNDARAM CHETTI JJ. in *Syamo Maha Patro, In re*(2). The rule laid down in section 1 (2) of the Criminal Procedure Code

" Nothing herein contained shall affect any special law now in force "

is an application of the maxim " *Generalia specialibus non derogant* ".

The statements made by the accused in this case on 26th August being admissible in evidence we agree with the learned Sessions Judge that the charge against him is proved.

[His Lordship considered the other evidence in the case and dismissed the appeal, confirming the conviction and sentence passed by the Sessions Judge.]

V.V.C.

(1) (1928) I.L.R. 51 Mad. 967 (F.B.). (2) (1932) I.L.R. 55 Mad. 903 (F.B.).