

## APPELLATE CRIMINAL.

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

1940,  
April 1.

IN RE ABDUL BASHA SAHIB (FIRST ACCUSED),  
PRISONER.\*

*Indian Evidence Act (I of 1872), ss. 27 and 30—Confession to Police Officer—Information leading to discovery of deceased's jewels and involving a co-accused in the murder—Admissibility of.*

Where, in a case of murder, the first accused made a confession to the Circle Inspector which led to the discovery of certain jewels of the murdered woman, and also a blood-stained brick which, the first accused stated, the second accused had used to beat her with and in consequence of which she died,

*held*, (i) that the statement of the first accused so far as it related to the discovery of the jewels was admissible under section 27 of the Indian Evidence Act; but

(ii) that it could not be taken into consideration as against the second accused under section 30 of the Indian Evidence Act.

Under section 27 of the Evidence Act the only portions of the information given by the first accused which are admissible are those which relate distinctly to the facts discovered thereby. It cannot be said that the statements made by the first accused involving the second accused relate in any way to such facts.

TRIAL referred by the Court of Session of the Chingleput Division for confirmation of the sentence of death passed upon the said prisoner in Case No. 33 of the Calendar for 1939, on 27th January 1940 and APPEAL by the said prisoner and another against the sentence of death passed upon the first appellant (first accused) and the sentence of rigorous imprisonment for three years passed upon the second appellant

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\* Referred Trial No. 25 of 1940 and Criminal Appeal No. 121 of 1940.

(second accused) in the said Sessions Case No. 33 of 1939, on 27th January 1940.

ABDUL BASHA  
SAHIB,  
In rs.

*R. Narasimham* for *Muhammad Asker Ali* for first accused.

*Public Prosecutor (V. L. Ethiraj)* for the Crown.  
Second accused was not represented.

*Cur. adv. vult.*

### JUDGMENT.

The JUDGMENT of the Court was delivered by BURN J.—On the morning of 13th October 1939 an Adi-Dravida named Mandan (P.W. 9) who lives in Poonamallee found a corpse floating in a well called Mangadu Mudaliar's well. He saw a crowd of people searching in a neighbouring well and he told them what he had seen. Amongst that crowd was Mahadeva Chettiar, P.W. 8. He and the other people with him were looking for his mother Kanniammal who had left home the previous evening at about 6-30 to deliver some oil at the house of one Abdul Wahab Sahib and had not returned. P.W. 8 had reported the disappearance of his mother at the police station in Poonamallee at 1-10 a.m. on the 13th (*Vide* Exhibit F) and had requested the police to make enquiries about her disappearance. He mentioned there that his mother was in the habit of wearing valuable jewels consisting of a gold chain made out of twenty sovereigns, gold bangles and kammals set with red stones. P.W. 8 on hearing what P.W. 9 had discovered went to the well of Mangadu Mudaliar and saw that the corpse in the well was the corpse of his mother. He therefore went again to the police station at 7 a.m. and reported this fact. The police had the body lifted out of the well and held an inquest which showed that the woman had been brutally

BURN J.

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

murdered. No jewels were found upon the body except a nose screw. After the inquest the body was sent to the doctor in charge of the Poonamallee hospital and on the afternoon of the 13th October he made a post-mortem examination. He found that the woman's lower jaw had been fractured, that there was a contused wound on her face, abrasions on her face and neck, that the lobes of both ears had been torn through and that seven ribs on either side of the chest had been fractured. All these injuries had been inflicted before death and were the cause of death. There were no signs of drowning.

The two appellants were tried by the learned Sessions Judge of Chingleput for the murder of Kanniammal. The unanimous opinion of the Assessors was that the first accused was guilty of murder and that the second accused was guilty of an offence under section 201, Indian Penal Code. The learned Sessions Judge agreed with the Assessors and convicted the first accused of murder and sentenced him to death. He convicted the second accused under section 201, Indian Penal Code, and sentenced him to three years' rigorous imprisonment.

The first accused is the brother-in-law of Abdul Wahab Sahib, and the evidence of P.Ws. 4 and 5, the granddaughter and grandson of the deceased, was that on the evening of the 12th October the first accused came to their house to tell their grandmother Kanniammal that oil was required at the house of Abdul Wahab. Both these witnesses say that their grandmother picked up the vessel containing oil and the other implements of her trade and went off to deliver oil as requested. The police in their investigation found that she had actually delivered oil at the house of Abdul Wahab that evening. A dhobi (P.W. 6) said

that he had seen the deceased going in the direction of Abdul Wahab's house followed by both the accused. Narasammal (P.W. 7) who lives on the way between the house of the deceased and the house of Abdul Wahab also said that she had seen the deceased going in the direction of Abdul Wahab's house followed by the two accused.

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

The most important evidence is connected with the discovery of Kanniammal's gold chain, gold bangles and ear-ornaments. The first accused was arrested after the inquest and on the morning of the 14th October he made a confession to the Circle Inspector (P.W. 14). The portions of this confession admissible under section 27 of the Evidence Act relate to M.Os. 1, 6, 7 and 8. He alleged that Kanniammal had been beaten with a brick by the second accused and offered to show the place where the murder had taken place. He showed in the backyard of Abdul Wahab's house a piece of brick (M.O. 1) upon which stains of blood were found. These stains were afterwards proved to be stains of human blood. The first accused further said that after Kanniammal had been murdered he and the second accused had robbed her of her bangles, kammals and chain and had concealed them in a place which he offered to show. He took the Police Inspector and Sub-Inspector and three other witnesses (P.Ws. 10, 11 and 12) to a piece of waste ground in front of the Dharmaraja Kovil and there dug up a spot which he had marked. He produced a piece of rag (M.O. 19) which when untied was found to contain a gold chain necklace, a pair of gold bangles and a pair of kammals (M.Os. 6, 8 and 7). These have been identified as the jewels of Kanniammal which she was in the habit of wearing and which she was wearing on the evening of the 12th October when she went out.

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

Moreover on the kammals the chemical examiner found blood though the stains were so far disintegrated by the time the kammals reached the Imperial Serologist that it was not possible to say for certain that the blood was human blood.

The second accused was arrested on the 15th October after the confession made by the first accused in which he was involved. He is then said to have made a statement which led to the discovery of the oil vessel, the funnel, the ollock measure and the ladle that Kanniammal was in the habit of using. These are M.Os. 2, 3, 4 and 5 and they were found in consequence of information given by the second accused in two ruined wells about half-a-mile away from the well in which Kanniammal's corpse was found. Some evidence also was let in about some articles of clothing which it was said had been left by the first accused in the house of his brother Ismail. Blood was found on one of these garments but this item of evidence cannot be taken into consideration against the first accused because no one has been examined as a witness to prove that they were left in the house of Ismail by the first accused.

Both the accused denied that they had anything to do with the murder. [After considering the evidence, his Lordship held that the alibi pleaded by the first accused was not clearly established and that the alibi pleaded by the second accused need not be discussed as he must be acquitted on the evidence adduced for the prosecution.]

Learned Counsel for the first appellant has contended that the evidence of the witnesses who say they saw the first accused come to fetch Kanniammal on the evening of the 12th October is unreliable and that the confession said to have been made by the first accused to the police is inadmissible in evidence.

We can find no reason whatever for rejecting the evidence of P.Ws. 4, 5, 6 and 7. No facts were elicited from them in cross-examination from which it could be inferred that they had any reason to give false evidence against either of the accused. Narasammal (P.W. 7) was mentioned by P.W. 8 in his first complaint to the police (Exhibit F) which was made at 1-10 a.m. several hours before the corpse of Kanniammal was found. With regard to the statement made by the first accused to the police, learned Counsel's argument is based upon an assumption that before the first accused made any statement to the Inspector on the morning of the 14th October he had already disclosed to the police what he knew. This argument is an attempt to apply the principle of decisions recently given to the effect that if the police got incriminating information from an accused person and then called upon him to repeat that information in the presence of witnesses, the statements made in the presence of witnesses would not be admissible under section 27 of the Evidence Act. In the present case, however, there is no foundation for that argument because the Inspector has said quite clearly that the information given by the first accused which led to the discovery of the jewels was disclosed to him only on the morning of the 14th in the presence of the village munsif (P.W. 10) and two other witnesses (P.Ws. 11 and 12). We cannot find any reason to suspect the Inspector of telling falsehood in this matter. The jewels undoubtedly belonged to the deceased woman; she was wearing them when she went out to her death; the ear-rings had blood on them; they were found in consequence of what the first accused said. The first accused's statement so far as it relates to the discovery of these jewels is

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

therefore admissible under section 27 of the Evidence Act. There can be no doubt that the first accused is guilty and has been properly convicted of the murder of Kanniammal. We confirm his conviction for murder and the sentence of death passed upon him by the learned Sessions Judge.

The case of the second accused is very different. He did not make any confession involving him in the murder. All that he said was that he had met the first accused at about 7-30 on the night of the 12th October and that the first accused had given him M.Os. 2, 3, 4 and 5 and had asked him to throw them away in any well that might be on his path. The learned Sessions Judge considers that the second accused must have known that Kanniammal had been murdered and must have disposed of those articles in order to screen the first accused from punishment. It cannot be said that this conclusion follows from the mere fact of the second accused complying with the request made by the first accused. The second accused can only be convicted if the statement of the first accused is taken into consideration as against him. The learned Public Prosecutor suggested that this could be done under section 30 of the Evidence Act. One great difficulty in accepting this contention is that if the statement of the first accused is taken into consideration as against the second accused and if it is believed, the second accused also should be convicted for the murder of Kanniammal. In fact if the first accused was telling the truth to the police, it was the second accused who inflicted on Kanniammal the injuries that caused her death. The first accused says that it was the second accused who sat upon the old woman's chest and beat her on her face and neck with a brick. We are of opinion that it is not possible

to take the statement of the first accused into consideration as against the second. It is necessary to observe strictly the provisions of section 27 by which the only portions of the information given by the first accused which are admissible are those which relate distinctly to the facts discovered thereby. The facts discovered thereby, as we have already said, are the jewels of the murdered woman and the blood-stained brick (M.O. 1) which was used to beat her about the face. It cannot be said that the statements made by the first accused involving the second accused relate in any way to these facts. All that is established as against the second accused, therefore, is that he met the first accused on the evening of the 12th October and that he knew where M.Os. 2, 3, 4 and 5 were to be found. These facts lead to grave suspicion against the second accused but they are not sufficient to warrant his conviction either for murder or for intentional concealment of evidence. The second accused must therefore be acquitted. We set aside his conviction under section 201, Indian Penal Code, and the sentence of three years' rigorous imprisonment and direct that he be set at liberty forthwith.

ABDUL BASHA  
SAHIB,  
*In re.*  
BURN J.

V.V.C.

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