APPELLATE CRIMINAL.

Before Mr. Justice Burn and Mr. Justice Mockett.

1939, November 7.

IN RE KATTAMEEDI CHENNA REDDI AND ANOTHER (ACCUSED NOS. 1 AND 2), PRISONERS.*

Evidence Act, Indian (I of 1872), sec. 27—Statement made by accused, under—Recording of—Incomplete—Not the first statement made to police but the second one made before panchayatdars—Admissibility of.

The accused in a murder case had made a statement to the police. But the Circle Inspector thought it wise to get it repeated in the presence of panchayatdars. Accordingly a statement was made by the accused before them and it was recorded merely as follows: "I and the second and third accused removed the jewels from the person of the deceased."

Held that the statement was inadmissible under section 27 of the Indian Evidence Act as it was incomplete and as what was stated by the accused was a repetition of something that he had previously said to a police officer.

The duty of the police, if they desire to record a statement, is to record it as given by the accused and to leave it to the Court to decide what evidence is admissible.

Athappa Goundan, In re(1) followed.

The practice of police officers giving in evidence statements made for the second time before panchayatdars but not statements as made to them in the first instance, condemned.

Public Prosecutor v. *Subba Reddi*(2) referred to.

TRIAL referred by the Court of Session of the Cuddapah Division for confirmation of the sentences of death passed upon the said prisoners and appeals by the said

* Referred Trial No. 114 of 1939 and Criminal Appeals Nos. 469 and 470 of 1939.

(1) I.L.R. [1937] Mad. 695 (F.B.). (2) 1938 M.W.N. 1118.

prisoners against the said sentences passed on them in Sessions Case No. 24 of the Calendar for 1939 on 22nd August 1939.

The first and the second accused together with one Guddi Peeran were charged before the learned Sessions Judge of Cuddapah with the murder on 12th March 1939 of a woman Golla Nagamma. Guddi Peeran who was the third accused was acquitted; the first and the second accused were convicted and sentenced to death and they appealed.

The deceased Nagamma lived at Venkatapuram. On the 12th March, some time before mid-day she was alive. P.W. 3, her husband, said that she gave him his food before he left for Proddatur and P.W. 2, her sister, was with her in her house on that morning. Some time after noon she was found dead, having been throttled.

The deceased was wearing, as was her custom, on her body gold katlu, gold kantini gundulu, gold thalakulu, gold rettakadiyam, gold bendu kammalu, gold upper ear-rings and silver kala kadiyalu. P.W. 2 took the buffaloes out leaving her sister in the house. She grazed the buffaloes, brought them back, collected the buffalo-dung and stacked it. A little before noon she returned home and told her sister that she had stacked the collected buffalo-dung near the palmyra tope. The deceased left, bidding P.W. 2 to follow after she had her food. When she left, the deceased was wearing the jewels mentioned. After her meal P.W. 2 went to the scene and stated that she saw the first accused "accompanied by two strangers" throttling her sister.

P.W. 2 claimed to have seen the murder and she at once reported it to her aunt. P.Ws. 7 to 10 claimed

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to have seen the accused in the neighbourhood of the scene of murder at about the time of the murder. So far as the third accused was concerned, that was all the evidence and the learned Sessions Judge thought that that evidence was insufficient to convict the third accused. There was however in the case of the first and the second accused some further evidence.

C. Narasimhachariar for the first accused.
M. Ranganatha Sastri for the second accused.
Public Prosecutor (*V. L. Ethiraj*) for the Crown.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by MOCKETT J.—

[His Lordship set out the facts of the case summarised above, discussed the evidence and proceeded :]

MOCKETT J.

It appears and it is obviously a fact, that the accused made a statement to the police which might well be admissible under section 27 of the Evidence Act and the statement was admitted by the Magistrate. The statement was made in the presence of panchayatdars, but it is obvious that this was not the first statement that had been made. A statement had been made to the police which P.W. 20 (the Circle Inspector of Police) had thought it wise to get repeated in the presence of panchayatdars. It is obvious that the statement cannot be complete. It is remotely improbable that the accused said simply, "I and the second and third accused removed the jewels from the person of the deceased," without any sort of initial narrative as to how he came to be where the deceased was, or whether the woman was alive or dead at the time. This is an example of the mutilation of a statement made by the accused person, due apparently to

the Circle Inspector supposing that it was his duty to decide what evidence was admissible and what was not. The duty of the police is, if they desire to record a statement, to record it as given and to leave it to the Court to decide what evidence is admissible. In *Public Prosecutor* v. *Subba Reddi*(1) this Court has condemned the practice of police officers giving in evidence not statements made to them in the first instance but statements made obviously for the second time before panchayatdars. Such statements have been held to be inadmissible. The result of the handling of this statement by the police is that what probably was a simple and admissible statement under section 27 must, in our opinion, be ruled out entirely for reasons which may be restated as follows :—(i) that the statement is obviously incomplete, and (ii) that obviously what was stated by the accused was a repetition of something that he had previously said to a police officer. It is the first statement of the accused, to whomsoever made, that leads to the discovery of the fact, if a fact is discovered. The attention of the trial Judge may usefully be directed to the Full Bench decision of this High Court in *Athappa Goundan, In re*(2).

[His Lordship discussed the other evidence in the case and concluded :]

The learned Sessions Judge was satisfied, and we are satisfied, that the evidence brought home beyond all reasonable doubt the guilt of this murder to the first and the second accused. We therefore confirm the convictions. With regard to the sentence, the second accused is twenty-five years old and the first accused is stated to be seventeen although before the Court of Sessions

(1) 1938 M.W.N. 1118. (2) I.L.R. [1937] Mad. 695 (F.B.).

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his age was given as nineteen. In the case of the first accused, as we have frequently had occasion to remark before, youth by itself is not a reason why the Court should evade its duty of sentencing the accused to death especially in the case of a cruel murder such as this. We think that the sentences of death were rightly passed and we confirm them. The appeals of the accused are dismissed.

V.V.C.