APPELLATE CRIMINAL.

Before Mr. Justice Cornish and Mr. Justice K. S. Menon.

IN RE RANGAPPA GOUNDAN AND ANOTHER (ACCUSED) APPELLANTS.*

1935, December 3

Criminal trial—Admissions dispensing with proof of facts—Distinguished from admissions which are evidential—Permissibility of—Post-mortem report—Use of.

Except by a plea of guilty, admissions dispensing with proof, as distinguished from admissions which are evidential, are not permitted in a criminal trial.

In a murder case, no consent or admission by the accused's Advocate to dispense with the medical witness can relieve the prosecution of proving by evidence the nature of the injuries received by the deceased and that the injuries were the cause of death; and the conviction that has taken place in the absence of such evidence cannot stand.

A *post-mortem* report is not evidence, and can only be used by the witness who conducted the *post-mortem* enquiry as an aid to memory.

Queen-Empress v. *Jadub Das*, (1899) I.L.R. 27 Calc. 295, 303, referred to.

TRIAL referred by the Court of Session of the Coimbatore Division for confirmation of the sentence of death passed upon the prisoners in Case No. 93 of the Calendar for 1935.

V. L. Ethiraj and *R. Sadasivan* for first accused.

N. Somasundaram for second accused.

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

Cur. adv. vult.

*Referred Trial No. 134 of 1935; Criminal Appeals Nos. 625 and 626 of 1935.

RANGAPPA GOUNDAN, *In re.*

CORNISH J.

The JUDGMENT of the Court was delivered by CORNISH J.—The two appellants have been convicted of the murder of one Sinne Goundan on the 4th March last, and have been sentenced to death.

The case for the Crown is that the man was murdered by the appellants near a hut in some cotton fields where the three had gone that night to watch their crops. All three men were cultivators.

It is common ground that the two appellants called for the deceased at his house that evening, about nine o'clock, to accompany them to the fields, and that he went away with them.

In consequence of information given to the police by the two appellants at five o'clock next morning, a constable arrived upon the scene and found the dead body of Sinne Goundan lying in the cotton field, about fifty or sixty feet away from the hut. It was also seen there by the Village Munsif, Prosecution Witness 9, who arrived later.

But an extraordinary thing happened at the trial. We are told that the medical witness, who had made a deposition before the Committing Magistrate, was present in Court. But the Public Prosecutor asking the defence Advocate if he wished to examine this witness, and the defence Advocate answering in the negative, the witness was not called. The result was that no evidence was given at the trial with regard to the injuries received by Sinne Goundan, or to the cause of death, or whether the injuries received by him were responsible for death. Section 509, Criminal Procedure Code, is not intended to be applied where the medical witness is present in Court, and it does not even appear that his deposition in the Magistrate's Court was given in evidence. It

is an elementary rule that, except by a plea of guilty, admissions dispensing with proof, as distinguished from admissions which are evidential, are not permitted in a criminal trial. (See Phipson on Evidence, seventh edn. page 19.) Therefore, no consent or admission by the prisoner's Advocate to dispense with the medical witness could relieve the prosecution of proving by evidence the nature of the injuries received by the deceased and that the injuries were the cause of death. The consequence was that an essential element of proof of the crime alleged against the two accused was wanting, and the conviction which has taken place in the absence of this evidence cannot stand.

The learned Sessions Judge referred to the autopsy made upon the body as establishing beyond doubt that the man was murdered. But a *post-mortem* report proves nothing. It is not even evidence, and can only be used by the witness who conducted the *post-mortem* inquiry as an aid to memory. These propositions have already been stated in *Queen-Empress* v. *Jadub Das*(1).

The question is whether a re-trial should be ordered or whether, acting under section 428, Criminal Procedure Code, we should direct the medical witness's evidence to be taken. The second course would obviously be the preferable one. But, as we have come to the conclusion that the other evidence in the case is so unsatisfactory that it leaves considerable doubt of the guilt of the two accused, there is no necessity to call for the medical evidence to be taken.

(1) (1899) I.L.R. 27 Calc. 295, 303.

RANGAPPA GOUNDAN, *In re.*

CORNISH J.

[His Lordship discussed the oral evidence and proceeded :]

Now, undoubtedly, there is a strong case of suspicion against the accused. They were the persons in whose company the deceased was last seen alive, and he met his death that night near the shed which the accused and the deceased admittedly occupied that night. The suggestion is that the First Information Report (Exhibit E) which they made early next morning to the police was for the purpose of screening themselves at the expense of others. In this statement they say that while they were sleeping in the hut they were aroused by the deceased's cries, and saw the deceased on the threshing floor outside the shed being beaten by Prosecution Witnesses 5, 6, 7 and another named person. The report further says that when they raised an alarm they were threatened by the assailants, so they waited until the assailants made off and then went to the injured man and gave him a drink of water.

The learned Sessions Judge regarded this statement as "obviously false", which means, we suppose, that it is demonstrably untrue.

[His Lordship discussed the evidence in regard to the First Information Report (Exhibit E) and proceeded :]

We do not for one moment accept the contents of Exhibit E as true. But we think that they have not been shewn to be so obviously untrue as to raise the presumption that the accused had sought to foist their guilt on to others by means of a false charge.

There remains the evidence of the disclosure of the blood-stained articles—the splinter from the

hut by accused 1, and the carpet, sheet, stick, and spear (Material Objects I to IV) by the two accused from the garden of the fourth Prosecution Witness's father-in-law at Karunaipalayam. The accused deny that they disclosed these things. But we see no reason to disbelieve the evidence of the Police Inspector and Prosecution Witness 14 on this matter. The stick and the spear, which was the deceased man's weapon, had been concealed in manure heaps. This is the strongest piece of evidence in the case against the accused. Unfortunately, there is no evidence of the statement made by the accused which led to the discovery of these things. All that the Inspector says is:

> "At 7 p.m. after both accused had made a statement to me, they took me to Karunaipalayam."

Anything said by the accused to the police officer which led to the discovery of these things would have been admissible and might have been of the greatest importance. But we have not got it. We think that the discovery of these articles of the accused raises a grave suspicion against the accused. But suspicion will not justify a conviction, and, as we have already indicated, the other evidence in the case is not, in our judgment, sufficient to support the conviction.

We accordingly allow the appeals, set aside the convictions, and direct that the appellants be set at liberty.

K.W.R