APPELLATE CRIMINAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Addison.

1926

Jan. 12.

RANNUN—Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 855 of 1925.

Indian Evidence Act, I of 1872, section 27—Admissibility of statement of accused to Police leading to discovery of a fact—whether repealed by the provisions of section 162 of the Criminal Procedure Code, Act V of 1898, as amended —Interpretation of Statutes—Statement of accused that he buried the deceased's body and discovery of body accordingly—whether sufficient to establish his guilt of murder—Conviction under section 302, Indian Penal Code, may be changed in appeal to one under section 201 without a charge to that effect.

The accused was convicted by the Sessions Judge under section 302 of the Indian Penal Code. There was no eye-witness, and the conviction rested mainly upon the statement of the accused to the police that he had buried the body of the deceased in his field and the fact that the body was recovered from that field in consequence of that statement. On appeal to the High Court it was contended that the statement of the accused to the police was excluded from being received in evidence by the express terms of section 162, Criminal Procedure Code.

Held, that section 162 of the Code of Criminal Procedure applies to the statements of persons examined as witnesses by the Police in the course of an investigation and not to the statement of an accused person, and that it does not override or modify the provisions of section 27 of the Indian Evidence Act.

A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with, or repugnant to, the provisions of an earlier one, that the two cannot stand together.

It is a cardinal rule of interpretation that a general statute is to be construed as not repealing by mere implica-

tion a particular one, that is, one directed to a special object or a special class of objects.

Seward v. *The Vera Cruz* (1), per Lord Selborne, *Queen* v. *Harrald* (2), *Kutner* v. *Phillips* (3), and Maxwell on the Interpretation of Statutes, 6th Edition, page 149, referred to.

Held, therefore, that the prosecution can rely, not only upon the discovery of the corpse in the field of the accused, but also upon the statement made by him in consequence of which that discovery was made.

Held however, that as these two pieces of evidence do not necessarily point to the conclusion that the accused committed the murder, the conviction under section 302 of the Indian Penal Code could not stand; but as accused was clearly guilty of an offence described in section 201, the conviction should be changed to one under section 201, and that this could be done without a further charge being made against the accused under that section.

Begu v. *The King-Emperor* (4), followed.

Appeal from the order of Rai Sahib Lala *Topan Ram, Sessions Judge, Ludhiana, dated the 19th August 1925, convicting the appellant.*

C. L. GULATI, for Appellant.

D. R. SAWHNY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—On or about the 16th March 1925, one Harya, a *Jat* of the village Todarpur in the district of Ludhiana, disappeared from his house; and it was not until the 6th April 1925, that his corpse was disinterred from the field of the appellant Rannun. The Sessions Judge of Ludhiana has convicted Rannun of the murder of Harya, and has sentenced him under section 302, Indian Penal Code, to suffer the penalty of death. The medical evidence

(1) (1884) 10 A.C. 59.
(2) (1872) 41 L.J.Q.B. 173.
(3) (1891) 2 Q.B. 267.
(4) (1925) I.L.R. 6 Lah. 226 (P.C.)

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shows that Harya's death was due to asphyxia caused by strangulation, and the question for determination is whether the murder was committed by the prisoner Rannun.

Now, there is no eye-witness of the affair, and the conviction rests on the following pieces of evidence :—

(1) On the 6th April 1925, the prisoner stated to the police that he had buried the body of Harya in his own field.

(2) In consequence of the information supplied by him the body was recovered from the field.

(3) A cloth called '*daula*' was found on the corpse, and a weaver Sher Muhammad deposes that he made the *daula* in question with another *daula* for the prisoner's brother Santu, who too was tried for the murder but has been acquitted by the learned Sessions Judge.

It appears that Santu himself subsequently produced from his house another *daula* which has been identified by Sher Muhammad as one of the pair manufactured by him. The circumstance that a *daula* belonging to Santu was found on the corpse does not, in our opinion, materially advance the case for the prosecution so far as the guilt of the prisoner is concerned.

The learned counsel for the appellant, while conceding that the confessional statement made by his client which led to the discovery of the body is admissible under section 27 of the Indian Evidence Act, contends that section 162 of the Criminal Procedure Code prohibits the use of the statement in an enquiry or trial in respect of the offence which was under investigation at the time when the statement was made to the police officer. Our attention has been invited to the language of the section which, it is urged, for-

bids the use of a statement made by "any person" to a police officer in the course of an investigation, and it is argued that the words "any person" include an accused person. This contention, if accepted, would virtually repeal section 27 of the Indian Evidence Act, and we do not think that such a result was ever intended by the Legislature. The Indian Evidence Act is a separate statute dealing with an important branch of law, and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code, and must have full scope unless it is clearly proved that they have been repealed or altered by another statute. It must be remembered that section 27 of the Indian Evidence Act embodies a very important rule of evidence applicable to criminal cases, and one would expect that a repeal or alteration of that rule involving such far-reaching consequences would be carried out, not by a mere implication, but by an express provision to that effect. "It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness; and to give any such effect to general words, simply because they have that meaning when used either in their widest, their usual or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act, and as not altering the law beyond"—Maxwell on the Interpretation of Statutes, sixth Edition, page 149. In view of this principle it was held in England in the case of *Queen* v. *Harrald* (1) that the enactment which gave a vote for the election of

(1) (1872) 41 L.J.Q.B. 179.

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Town Councillors to every " person " of full age who had occupied a house for a certain time, and provided that the words importing the masculine gender should include females for all purposes relating to the right to vote, was intended, having regard to the general scope of the Act, to remove only that disability which was founded on sex, but not to affect that which was the result of marriage as well as sex, and therefore not to give the right of voting to married women.

As observed by Smith J. in *Kutner* v. *Phillips* (1), a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with, or repugnant to, the provisions of an earlier one, that the two cannot stand together, in which case the maxim " Leges posteriores priores contrarias abrogant " applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied. The language of every enactment must be construed, as far as possible, in accordance with the terms of every other statute which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it.

Moreover, it is obvious that, while section 27 of the Indian Evidence Act is confined in its operation to an incriminating statement made by an accused person in police custody, section 162 of the Code of Criminal Procedure contains a general provision embracing all statements made by persons examined during the police investigation; and it is a cardinal rule of interpretation that a general statute is to be construed as not repealing a particular one, that is, one directed to a special object or a special class of

(1) (1891) 2 Q.B. 267.

objects. "Now if anything be certain", observes Lord Selborne in *Seward* v. *The Vera Cruz* (1), "it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

Having regard to the above rules of interpretation we are of opinion that section 162 of the Code of Criminal Procedure applies to the statements of persons examined as witnesses by the police in the course of an investigation, and not to the statement of an accused person; and that it does not override or modify the provisions of section 27 of the Indian Evidence Act. We must, therefore, hold that the prosecution can rely, not only upon the discovery of the corpse in the field of the prisoner, but also upon the statement made by him in consequence of which that discovery was made. There is also some evidence bearing upon the motive for the murder. But motive for a crime, while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial, of the commission of the crime with which he is charged. Now, the question is whether the two pieces of evidence mentioned above necessarily point to the conclusion that the appellant committed the murder. The fundamental rule by which the effect of circumstantial evidence is to be estimated is well established. In order to justify the inference of guilt,

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the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Can we say that these facts are incapable of explanation upon any hypothesis other than that the prisoner committed the murder? It seems to us that, while they certainly prove that he made away with the evidence of the murder by concealing the body, they do not necessarily suggest the inference that he himself committed the murder. He cannot therefore, be convicted under section 302, Indian Penal Code; but he is clearly guilty of an offence described in section 201, Indian Penal Code. It is true that he was not charged with the commission of the latter offence but, as laid down by their Lordships of the Privy Council in *Begu and others* v. *The King-Emperor* (1), a person charged with an offence of murder can be convicted under section 201, Indian Penal Code, without a further charge being made against him under that section, and that such a conviction is warranted by section 237 of the Code of Criminal Procedure.

We accordingly accept the appeal so far as to alter the conviction under section 302, Indian Penal Code, to one under section 201 and setting aside the sentence of death we direct that the prisoner shall suffer rigorous imprisonment for a period of seven years.

C. H. O.

Appeal accepted in part.

(1) (1925) I.L.R. 6 Lah. 226 (P.C.).