

Cochin, C.J.:—In this case, the charge was one of extortion, under Sec. 384 of the Indian Penal Code; and it is urged for the prisoners that there was no extortion, inasmuch as the putting in fear was not done by them.

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Now, it is not necessary that the threat should be used, and the property received, by one and the same individual. It may be matter of arrangement between several persons that the threat should be used by some, and the property received by others; and they would be all guilty of extortion. It would not, under such circumstances, be necessary to charge the receivers with abetment, although that might be done; but then, under the provisions of the Code, the punishment would be the same as for extortion.

We must uphold the conviction. There is sufficient evidence against the two persons charged. Shankarayá has escaped being tried, in an apparently unaccountable manner; and we must direct inquiry to be made as regards him.

WARDEN, J., concurred.

*Petition rejected.*

REG. V. KALLA' LAKHMA'JI.

Nov. 14.

*Crim. Proc. Code, Secs. 205, 366, 380, 426, and 439.*

1. When the examination of the prisoner by the Magistrate has not been recorded in full, so as to include the questions, as required by Sec. 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session, under Sec. 366, without further proof.

2. When the examination would, either alone or with other evidence, be sufficient for the conviction of the accused, the proper course is to remand the case to the Court of Session, in order that proof may be taken of the examination.

3. When the evidence, exclusive of the inadmissible examination, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case; and the admission of such an examination by the Court of Session does not invalidate the trial and conviction under Secs. 426 and 439 of the Code.

*Reg. v. Timmi* (2 Bom. H. C. Rep. 131) observed upon.

THE prisoner was convicted of murder by N. M. W. Daniell, Acting Session Judge of Ahmedabad, and sentenced to

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death, subject to the confirmation of the High Court, under Sec. 380 of the Code of Criminal Procedure.

The case was heard this day, before COUCH, C. J., and NEWTON, J.

COUCH, C.J. :—In this case the Session Judge has admitted in evidence the examination of the prisoner before the Magistrate, and has attached some importance to it. But that examination not having been recorded in full, so as to include the questions, as required by Sec. 205 of the Code of Criminal Procedure, was not admissible in evidence at the trial without further proof.

Sec. 366 directs that the examination of the accused before the Magistrate shall be given in evidence at the trial, and that the attestation of the Magistrate shall be sufficient *prima facie* proof of it; but that section refers to the examination which has been recorded in accordance with Sec. 205. The Legislature has recognised the importance of the questions put to the accused being before the Court in full, as well as the answers.

But although the evidence has been improperly admitted by the Judge, the acquittal of the prisoner does not necessarily follow. From the report of *Reg. v. Timmi (a)* the contrary might be inferred; but speaking for myself, as a member of the court which decided that case, I may now say that I did not intend so to decide; and was of opinion that, even supposing that the examination of the accused had been properly recorded, or had, upon the case being remanded, been legally proved, the evidence was not such that the conviction ought to be supported. It would, in my judgment, have been useless to have remanded the case, in order to have the examination proved.

But when the examination would, either alone, or with the other evidence, be sufficient for the conviction of the accused, the proper course is to remand; and this had, about a month previously, been followed by myself and the learned Judge now sitting with me, in the case of *Reg. v. Peváli bin*

(a) *Antè*, p. 125.

*Bassáppá* (b). Our views on this subject were also fully stated on the same day, in the case of *Reg. v. Vithoji valad A'bbá* (c), in which the evidence, exclusive of the examination, being sufficient to support the conviction, we did not consider it necessary to remand.

The present case, therefore, must be remanded, in order that proof may be taken of the examination; and an opportunity will then be afforded of ascertaining whether the confession was made freely, or in answer to questions, and what questions were put to the accused.

*Case remanded.*

(b) Next case.

(c) *Post*, p. 398.

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REG. V. PEVA'DI bin BASSA'PPA'.

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March 16.

THE prisoner was convicted of murder by A. L. Spens, Acting Session Judge of Dhárwár; and sentenced to death, subject to the confirmation of the High Court, under Sec. 380 of the Criminal Procedure Code.

The case was heard on the 16th of March 1864, before COUCH and NEWTON, JJ.

PER CURIAM :—The case to be returned to the Session Judge, in order that he may take any evidence that may be forthcoming to prove the alleged confession before the Magistrate, which as now recorded was inadmissible, because not taken as prescribed in Sec. 205 of the Criminal Procedure Code: the result of such inquiry and evidence to be certified to this court.

29th April. The case was resumed for final disposal this day.

PER CURIAM :—There is no evidence of what the questions were; but the witness says the confession was given freely, and was not elicited by any threats or promises. The form of the question is immaterial, even although it assumes the prisoner's guilt.

The Court alter the conviction of murder to one of culpable homicide, and sentence the prisoner to be transported for ten years.

*Conviction and sentence altered.*