

1872.
REG.
c.
NA'RA'YAN
GANGA'RAM

to one thousand rupees, could take cognizance of the case, referred the matter for the orders of the High Court. Mr. Pinhey also brought to the notice of the court an illegality in the original arrest of the accused and in the sentence passed upon them by Mr. Tagore.

The reference was heard by LLOYD and KEMBALL JJ.

PER CURIAM :—The court concurs with the opinion of the Session Judge that his Assistant had no jurisdiction, and directs that the accused be tried by the Magistrate of the District, who, the court is of opinion, has, under Section 21 of the Code of Criminal Procedure, power to inflict any fine which he may be competent to impose under Regulation XXI. of 1827, this being an offence punishable under a special law. The Court also concurs with the Session Judge in thinking that an arrest without a warrant for such an offence is generally illegal, though under the provision of Sec. 108 of the Code of Criminal Procedure it is competent to a Police officer, under the circumstances therein named, to arrest without a warrant.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION.]

Aug. 22.

REG. v. GARBAD BECHAR.

*Evidence—Confession—Retracting Confession—Crim. Proc. Code
Section 205.*

A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with Sec. 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession, viz., ill-treatment of the accused by the police, may be inquired into and found to be untrue.

THE accused was tried and convicted of murder by W. H. Newnham, Session Judge of Súrat, and sentenced to transportation for life.

From the evidence of Máhákor—a pardoned accomplice—it appeared that she had been carrying on a criminal intrigue with Garbad, the convict, that her husband Mansing,

coming to know of this, refused to let Garbad have a share in a piece of land, that Garbad, at the instigation of, or in conjunction with, two other persons, Umed and Girdhar, gave some arsenic to Máhákor to be administered to her husband. Máhákor mixed the arsenic in the food of her husband who died in consequence. Garbad made a full disclosure of the circumstances connected with this matter before the committing Magistrate, but when his examination was read over to him, and he was asked whether what he had stated was true, he retracted and said that he had been beaten by the Police. The Magistrate found this allegation to be false, and the Session Judge, concurring with him on this point, convicted the accused upon the approver Máhákor's evidence, corroborated by the confession so made.

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The appeal was heard by LLOYD and KEMBALL, JJ.

Shántáram Náráyan, for the appellant, contended that a confession retracted before the certificate required by Sec. 205 of the Code of Criminal Procedure was recorded was not admissible in evidence; that this was not a technical objection, and had not been regarded as such by the High Courts at Bombay and Calcutta, and that, the approver's evidence being thus uncorroborated, there was no legal evidence upon which to found a conviction.

Dhirajlál Mathurádás, Government Pleader, appeared for the Crown.

PER CURIAM:—In this case the accused made a detailed confession before the committing Magistrate, but on his examination being read over to him in conformity with Sec. 205 of the Criminal Procedure Code, he retracted and stated: "I said this because they beat me at Jamri." So that in fact there is no admissible confession on the record, and as there is nothing to corroborate the evidence of the approver on any material part of the case, the Court is unable to rely on the evidence of the approver alone. We must, therefore, reverse the conviction and sentence, and direct the accused to be discharged.

Conviction and Sentence reversed.