

1874.
March 12.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. DAYA' A'NAND AND RANCHOD KHA'LPO.

Confession—Signature of accused—The Code of Criminal Procedure, Sections 167, 256, 346—Duty of Judge to prevent production of inadmissible evidence.

The direction of Section 346 of the Code of Criminal Procedure, enjoining that an accused person shall sign the record of his confession, is not satisfied by the following:—"Signature of A. B. (the accused); the handwriting of C. D." Where the conviction of a person was based upon a confession thus subscribed, the High Court reversed it, and held that the Session Judge was bound to prevent the production of such a confession.

THE two accused persons were convicted of murder by G. M. Macpherson, Acting Session Judge of Surat, and sentenced to death.

The conviction was principally based upon a confession made by the second prisoner, Ranchod Khálpó, and recorded by the Second Class Subordinate Magistrate of Bulsad under Sec. 122 of the Code of Criminal Procedure. The confession was in the form of questions and answers, and duly attested by the signature of the Magistrate; but instead of the signature or mark of the accused person it bore the following subscription:—

"The signature of Ranchod Khálpó; the handwriting of Venktesh Narotam, Taláti of Binári."

The appeal was heard by WEST and NA'NA'BHAI HARIDA's, JJ.

Chunilál Mániklál for the appellants:—The confession of Ranchod, on which the conviction mainly rests, is defective. Section 346 of the Code imperatively demands that the accused person shall sign or attest by his mark the record of his confession. Both these elements are wanting. There is no mark, and there is nothing to show that the accused authorized the writer of his name to sign for him.

Dhirajlál Mathurádás, Government Pleader, for the Crown.

PER CURIAM:—We must reverse the conviction and sentence in this case. The Second Class Subordinate Magistrate, Mr. Mániklál Venilál, in taking the confession of the accused Ranchod, omitted to cause that prisoner to sign

or mark the confession. This, which was a very serious piece of carelessness, makes the confession inadmissible as evidence, and even under Sec. 91 of the Evidence Act excludes secondary evidence of what the prisoner said as ruled in the case of *Reg v. Bâi Ratan (a)*. Section 167 of the Evidence Act implies that the improper reception of evidence is not generally to be made a ground for the reversal of a judgment, unless it was objected to by the party who was prejudiced by its admission ; but again, Section 256 of the Code of Criminal Procedure says : " It is the duty of the Judge in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties." If this discretion should be strictly exercised in any case, it should be exercised in the case of a confession afterwards repudiated, and the effect of which is to bring about a capital conviction not only of the prisoner who made it but of his co-accused. We think, therefore, that the Session Judge was bound to prevent the production of Ranchod's confession in this case. The testimony recorded apart from that confession is admittedly insufficient to sustain the charge, and we are thus compelled to reverse the judgment passed against the prisoners.

Conviction and sentence reversed.

(a) 10 Bom. H. C. Rep, 166.

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