

ordinate Judge, or evidence tending to show that he sued for or enjoyed partially or wholly his one-third share, or exercised control over it or managed and exercised control over the property at large subsequently to the execution of exhibits 9 and 10.

This Court does not intend by these remarks in anywise to express an opinion as to the merits of the case, but merely desires to show what the process of investigation should be.

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[APPELLATE CRIMINAL JURISDICTION.]

REG. v. BALVANT V. PENDHA'RKAR.

July 9.

*Acquittal by Jury—Conviction by High Court—Confession—Sec. 24 of Act I. of 1872—Section 263 of the Code of Criminal Procedure.*

In the absence of evidence that a confession of an accused person has been induced by illegal pressure, it is not to be presumed that such confession was so induced.

According to Section 24 of the Indian Evidence Act, a confession is inadmissible only if the Court considers it to have been induced by illegal pressure. Where the Session Judge did not consider a confession to have been so induced, the High Court, upon a reference under Section 263 of the Code of Criminal Procedure: *Held* it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the Jury.

THE accused was tried on a charge of forgery by N. Daniell, Session Judge of Poona, and a Jury. The majority of the Jury were of opinion that the accused should be acquitted; but the Session Judge, differing from them, submitted the proceedings under Section 263 of the Code of Criminal Procedure.

The case was heard by NA'NA'BHA'I HARIDA'S and LARPENT, J.J.

*Dhirajlal Mathuradas*, Government Pleader, for the Crown:—There is no question that the bills presented by the accused have been altered. The accused made a full confession of his guilt before the Magistrate, although he afterwards retracted it in the Session Court, on the ground of its having

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been made under unlawful pressure. There is nothing to show there was any such pressure, and the Court of Session, which had to consider it, believes the confession to have been voluntarily made. There is, besides, ample evidence in the case to establish the guilt of the prisoner; and though this case is tried by a Jury, the High Court can go into the facts as in an ordinary appeal: Section 263 of the Code of Criminal Procedure.

*Pándurang Balibhadra* for the accused.

NA'NA'BHA'I HARIDA'S, J., in delivering judgment, said:— This appears to us to be a very clear case. The accused, when examined before the committing Magistrate, made a clear and full confession—a confession which was in every way borne out by the evidence of witnesses called for the prosecution. It occurred to the accused for the first time, when before the Session Court, to allege that that confession was the result of threats and hopes held out to him by every body connected with the Municipality. If a statement in confession of crime is the result of any such influences, there can be no doubt that it is utterly inadmissible; but, in the absence of evidence, it is not to be presumed that a statement objected to on the ground of its having been induced by illegal pressure is inadmissible. Section 24 of the Evidence Act says that a statement is inadmissible only if the Court considers it to have been made in consequence of “any inducement, threat or promise”; and so far as the record of this case goes, we can discover no evidence whatever of any such influence having been used. And we also find the Session Judge expressing his opinion that there was no reason to doubt the truth of that confession, or to think that it was made under any unlawful pressure. That being the case, we cannot but hold that the confession was properly admitted; and we do not see any reason to disbelieve any part of it. We are reluctant generally to differ from any opinion the Jury, or a majority of them, may arrive at; but in a clear case like this we cannot accept the view of the Jury (which we may further remark was not unanimous) in pre-

ference to the confession of the prisoner. We are thus compelled to find the accused guilty of the charges, viz., that he committed forgery of two documents, authorizing him to recover Municipal taxes, and we pass upon him a sentence of two years' rigorous imprisonment:

*Order accordingly.*

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 36 of 1874.*

July 9.

RA'VJI NA'RA'YAN.....Appellant.

KRISHNA'JI LAKSHMAN.....Respondent.

*Rights of a previous mortgagee—Sale, pendente lite.*

On the 31st August 1863, *A* mortgaged his house to *B*, who brought a foreclosure suit, and, on the 7th July 1866, obtained a decree against *A* for the sale of the house, if the mortgage debt was not paid on or before the 24th March 1868. The debt not having been paid, the house was sold at a Court's sale on the 15th July 1870, and purchased by *C*. In an action brought by the plaintiff to recover possession of the house on the ground that he had purchased it on the 2nd August 1868 at an execution sale under a common money decree against *A*:

*Held* that the plaintiff's sale was subject, not only to the mortgage of 1863, but also to the decree upon it under which the right, title, and interest of the mortgagor *A*, passed in 1870 to *C*, whose purchase was entitled to preference to the plaintiff's purchase in 1868.

*Held*, further, that if there had been no decree in the mortgage suit, the fact that that suit had been instituted in 1866, and was pending in 1868, would have been sufficient to defeat the plaintiff's suit; his purchase in 1868 having been made *pendente lite*, was completely subject to any decree which might be made in the mortgage suit.

THIS was a special appeal from the decision of E. T. Candy, Assistant Judge at Satara, reversing the decree of Rámchandra Apáji, Subordinate Judge at Walwa, in the District of Satara.

The special appeal was argued before WESTROPP, C.J., and WEST, J., on the 9th July 1874.

*Ganpatráv Bháshkar* for the appellant.