

APPELLATE CRIMINAL

Before Mr. Justice Melvill and Mr. Justice Kenball.

EMPRESS v. LAKSHMAN BALA AND BALA RAMSETH.*

1882
January 11.

Evidence—Confession—Joint trial—Evidence Act (1 of 1872), Sec. 30—The Code of Criminal Procedure (X of 1872), Sec. 250.

The two accused persons were jointly tried before the Session Judge on a charge of murder. The Session Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons.

Held that the examination of each accused could be used only against himself, and not against his fellow accused.

Imperatrix v. Chandra Nath Sarkar (1) followed.

THE two accused were tried on a charge of murder and sentenced to death by W. H. Crowe, Joint Session Judge at Nasik.

The facts of the case are not material for the purpose of this report. It is sufficient to say that the evidence recorded included the examination of each of the accused taken by the Session Judge in the absence of the other. The Session Judge stated in his judgment that when he examined Lakshman he ordered Bala to withdraw from the Court; and that when he examined Bala, Lakshman was ordered to leave the Court. The Session Judge stated, moreover, that he was in the habit of examining accused persons in this manner. He said: "I can see no objection legally to this course; nor can I see that the accused is prejudiced thereby. It has been a practice of mine on several occasions to examine prisoners separately, in order that those who are to be examined afterwards may not hear what the others have said, and to that end it is necessary to remove from the dock all those except the one undergoing examination. No objection was made by the pleaders until after the examination had been recorded, and the inquiry had terminated, and the address for the defence closed." In coming to the conclusion on the evidence the Session Judge used the examination of each of the accused against the other.

Both the convicts appealed to the High Court.

Branson, with him *Shivshankar Govindram*, for appellant No. 1.—The confessions are illegal, and cannot be used to the

* Confirmation Case, No. 48 of 1881.

(1) I. L. R. 7 Calc. 65.

prejudice of absent prisoners who had no opportunity of cross-examining the persons who made them: *Imperatrix v. Chandra Nath Sarkar*⁽¹⁾. They are not confessions properly so called, because each person tries to exculpate himself, and inculpate his fellow accused.

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BABA
RAMBETH.

K. T. Telang (with him *Daji Abaji Khare*) for appellant No. 2. *Nanabhai Haridas*, Government Pleader, for the Crown.—If confessions be left out, there is sufficient evidence left for conviction.

The judgment of the Court was delivered by

MELVILL, J.—This Court is of opinion that the so-called confession made by each prisoner cannot be taken into consideration against the other prisoner, if for no other reason, because the examination of each prisoner took place in the absence of the other, and that other had no opportunity of denying, or even of knowing, what his fellow prisoner had said. No doubt, section 30 of the Indian Evidence Act allows a confession to be used against another prisoner although made in his absence, but it requires that such confession should be “proved” as against the prisoner to whose prejudice it is to be used. In the present case the Session Judge says that he examined the prisoners separately, in order that neither of them might hear what the other had said; and it would appear that the statements so obtained were not read over to, or in any way proved against, those against whom it was intended to use them. The attention of the Session Judge may be directed to the observations of the Calcutta High Court in *Imperatrix v. Chandra Nath Sarkar*⁽²⁾.

There is, however, no objection to using the examination of each prisoner against himself, and we think that the statements contained in the examinations, coupled with the fact of the discovery of the stolen property concealed in the prisoners' houses, and the evidence of witness No. 10, the mother of the second prisoner, are fully sufficient to sustain the convictions.

The murder was one of a very cruel and cold-blooded description, and we are unable to see any ground for a mitigation of sentence.

The convictions and sentences are confirmed.

(1) I. L. R. 7 Cal. 65.

(2) I. L. R. Cal. 65.