

REVISIONAL CRIMINAL

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* RA'YA' LAKHMA*

1885. *December 16.* Appeal from an order awarding compensation for illegal seizure of cattle—*The Code of Criminal Procedure (Act X of 1882), Secs. 404, 407—The Cattle Trespass Act (I of 1871), Sec. 22.*

No appeal lies from an order passed under section 22 of the Cattle Trespass Act (I of 1871), awarding compensation for illegal seizure of cattle.

THIS was a reference by G. W. Vidal, District Magistrate of Thána, under section 438 of the Criminal Procedure Code (X of 1882).

The reference was made under the following circumstances:—

The accused in this case, who was charged with illegal seizure of cattle belonging to the complainant, Tukárám Kámthiá, was ordered by the 2nd Class Magistrate of Sálsette, Ráv Sáheb Vishnu Rámchandra, to pay to the complainant Rs. 9 as compensation for damages under section 22 of Act I of 1871. Against this order the accused appealed to the 1st Class Magistrate, who reduced the amount awarded for damages to Rs. 5-12-6.

The District Magistrate was of opinion that the Criminal Procedure Code (X of 1882) did not provide for an appeal against an order in such cases, and that, therefore, the proceedings of the 1st Class Magistrate, in entertaining the appeal in the case and interfering with the award of the 2nd Class Magistrate, were "*ultra vires*".

There was no appearance of parties in the High Court.

Per Curiam:—Under section 404 of the Code of Criminal Procedure (X of 1882) no appeal lies from a judgment or order of a Criminal Court, except as provided for by the Code or by any other law for the time being in force. Act I of 1871 provides for no appeal from an order awarding compensation for an illegal seizure of cattle; and, unless section 407 of the Code allows an appeal in the present case, no appeal lay from the order of the 2nd Class Magistrate to the 1st Class Magistrate. We are of opinion that the person against whom an order is made under section 22 of the Act, is not "a person convicted on a trial," and

* Criminal Reference, No 163 of 1885.

that, therefore no appeal lay from the 2nd Class Magistrate's order.

The order of the 1st Class Magistrate is annulled, and that of the 2nd Class Magistrate restored.

Order of the 1st Class Magistrate annulled.

1885.

QUEEN-
EMPRESS
v.
RAYA
LAKHMA.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. DOSA' JIVA'.*

Evidence Act (1 of 1872), Sec. 30—Confession by one of several persons tried jointly for the same offence—Corroboration.

1885.

December 17.

A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons.

Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property some months after the commission of the offence,

Held, that the mere production of the stolen property by the accused was not a sufficient corroboration of the confession of the other prisoner.

THIS was an application for revision of a sentence passed upon the accused by J. W. Walker, Session Judge of Ahmedabad.

The accused, Dosá Jivá, Hati Dosá, and two others were charged under section 457 of the Indian Penal Code (XLV of 1860), with house-breaking by night with intent to commit theft. The complainant alleged that on the night of the 19th May, 1885, his house had been broken into in his absence, and property of considerable value had been stolen. He reported the matter to the police on the following day. The houses of the accused were searched, but nothing was found. Nothing more was alleged to have transpired till 5th July, 1885, when, on certain information given by the accused, Hati Dosá, all the accused were arrested. Hati made a confession before the 2nd Class Magistrate of Sánand, implicating himself and all the four accused. And Dosá Jivá pointed out the stolen property which had been buried under ground in front of his house.

*No. 304 of 1885.