

*mull v. The Commissioners of Calcutta*<sup>(1)</sup>, or as still in force in this Court.

I am, therefore, of opinion that the company are protected in this case by the provisions of section 11 of the Railways Act, 1879, and that the appeal ought to be allowed, and the plaintiffs' suit dismissed with costs throughout.

*Appeal allowed.*

March 1, 1895. The respondents applied under clause (c), section 595, of the Civil Procedure Code for leave to appeal to the Privy Council, but the application was refused.

Attorneys for appellants :—Messrs. *Little, Smith, Nicholson and Bowen.*

Attorneys for respondents :—Messrs. *Crawford, Burder and Co.*

(1) I. L. R., 18 Calc., 427.

## APPELLATE CRIMINAL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

QUEEN-EMPRESS v. PAHUJI AND ANOTHER\*

*Evidence Act (I of 1872), Sec. 30—Confession of co-prisoner—Joint trial—*

*Plea of guilty—Evidence.*

A and B were charged with murder. A pleaded guilty, but he was not convicted or sentenced till the conclusion of the trial of his fellow prisoner B. The Sessions Judge, holding that both the accused were jointly tried for the same offence, took into consideration as against B the confessions made by A and convicted both of murder.

*Held*, that after A had pleaded guilty he could not be treated as being jointly tried with B. A's confessions were, therefore, not admissible against B under section 30 of the Indian Evidence Act (I of 1872).

THE accused Pahuji and Mánik were committed for trial to the Sessions Court at Dhulia on a charge of murder under section 302 of the Indian Penal Code (XLV of 1860). Mánik (accused No. 2) pleaded not guilty, and claimed to be tried. Pahuji (accused No. 1) pleaded guilty, but he was not convicted and sentenced till the conclusion of the trial of accused No. 2.

The Sessions Judge, holding that both the accused were being jointly tried for the same offence took into consideration as against accused No. 2 the confessions made by accused No. 1, under section 30 of the Indian Evidence Act (I of 1872).

\* Confirmation Case, No. 34 of 1893.

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Both the accused were convicted of murder and sentenced to death.

The case was submitted to the High Court under section 374 of the Code of Criminal Procedure (Act X of 1882) for confirmation of the sentences of death passed on the accused.

*Naráyan Vishnu Gokhale* for accused No. 2:—After accused No. 1 had pleaded guilty, his confessions were inadmissible against his fellow prisoner under section 30 of the Indian Evidence Act (I of 1872)—*Venkatasámi v. the Queen*<sup>(1)</sup>; *Reg. v. Kalki Patil*<sup>(2)</sup>. The proper course would have been to convict the accused No. 1, and then examine him as a witness. Unless this is done, his statement cannot be used against his fellow-prisoner—*Reg. v. Gardner*<sup>(3)</sup>. The so-called confession of accused No. 2 was retracted before the committing Magistrate as being the result of tutoring. It does not, therefore, amount to a confession—*Reg. v. Garbad*<sup>(4)</sup>.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the Crown:—Section 30 of the Evidence Act empowers the Court to take into consideration the confession of one prisoner against his fellow-prisoner when they are jointly tried for the same offence. In the present case accused No. 1 had no doubt pleaded guilty, but he was not convicted and sentenced till the end of the trial. The Sessions Judge treated both prisoners as being jointly tried. He was, therefore, at liberty to use the confessions of the one against the other. Refers to *Queen-Empress v. Chand valad Ibráhim*<sup>(5)</sup>; *Reg. v. Hanmanta*<sup>(6)</sup>; *Reg. v. Balvant*<sup>(7)</sup>. There is no evidence here that the confession of accused No. 2 was induced by illegal pressure. In the absence of such evidence it will not be presumed that the confession was so induced.

JARDINE, J.:—In this case there is no doubt that on the 17th November, 1893, at Bhadgaon the boy Papa was murdered. When the body was found next morning there was a mark round the neck which the witnesses say seemed to be caused by strangulation. Some ornaments which the boy was wearing

(1) I. L. R., 7 Mad., 102.

(2) 11 Bom. H. C. Rep., 146.

(3) 9 Cox's C. C., 332.

(4) 9 Bom. H. C. Rep., 344.

(5) Cr. Ruling No. 60 of 1888.

(6) I. L. R., 1 Bom., 610.

(7) 11 Bom. H. C. Rep., 137.

were missing from the body. On the 20th November the prisoner Pahuji was arrested by the police near his sister's house at the village of Takli wearing one of these ornaments, a wristlet; and he then produced from an earthen pot others of them, namely, earrings. On the same day he made a full confession to a Third Class Magistrate and another on the 24th November to a Magistrate of the First Class. At the trial he pleaded guilty, and in his appeal petition he does not contest the correctness of the conviction, but only asks that the sentence may be commuted, because he has confessed from the beginning. There is some evidence confirming the confession: and we see no reason for interfering with the conviction and sentence of Pahuji, which we now confirm.

The evidence against the other prisoner Mánik consists chiefly of his own confession made on the 21st November at Bhadgaon, where an hour or two before he had been arrested by the police and brought before the chief constable. This was in consequence of something which the prisoner Pahuji had told to the police. The confession was recorded by the Magistrate of the Second Class of Bhadgaon. But on the 24th November, when being examined by the Magistrate of the First Class, the prisoner while admitting that he had made the confession said that he had been tutored by the Second Class Magistrate, and had stated what he had been tutored to say. No property has been found on the prisoner Mánik, nor in his possession.

The Sessions Judge, however, admitted into his consideration as against Mánik the confessions made by the prisoner Pahuji, considering that after the plea of guilty had been recorded, and although no issue affecting Pahuji was raised at the trial, he was nevertheless being "tried jointly" with Mánik within the meaning of section 30 of the Indian Evidence Act, because it was possible that the evidence elicited at the trial of Mánik, Pahuji being still at the bar unconvicted and not sentenced, might enable the Sessions Judge to determine whether to pass the sentence of death or that of transportation for life. No precedent has been shown us in which a High Court has in such circumstances held the co-prisoner's statement admissible. In

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Confirmation Case No. 22 of 1893, the reason, as we have ascertained on consulting our brother Candy, for admitting the statement was that the Court of Session had not dealt with the plea of guilty as if it were such, but had allowed the prisoner so pleading to remain on trial so that he could cross-examine. The opinion of the assessors was also taken about his guilt. These circumstances do not exist in the present case. After considering *Winsor's case*<sup>(1)</sup> and other English cases there referred to, as also *Reg. v. Gardner*<sup>(2)</sup>, *Venkatasámi v. The Queen*<sup>(3)</sup>, we are of opinion that the Court below ought not to have treated Pahuji as being jointly tried with Mánik. The confessions made by Pahuji we must, therefore, hold, are not admissible against Mánik.

We have to say what value should be placed on the confessions of Mánik; and to discharge this duty in the light of whatever evidence is obtainable, we direct that the evidence of the Second Class Magistrate be taken about the alleged tutoring, and also that of the prisoner Pahuji as to the circumstances in which the murder was committed. No objection is taken to this course by the pleader who appears for Mánik. Pahuji as a witness may be cross-examined by Mánik or his pleader.

We direct the Sessions Judge to take this evidence, and certify it to this Court within one month.

(1) L. R., 1 Q. B., 289, 390.

(2) 9 Cox's C. C., 332.

(3) I. L. R., 7 Mad., 102.

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

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February 7.

BA'I AMBA' AND MANGLI (ORIGINAL PLAINTIFFS), APPELLANTS, v. PRA'N-JIVANDA'S DULLABHRA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Stamp—Suits' Valuation Act (VII of 1887), Sec. 8—Suit to take accounts—Court-fee stamp—Jurisdiction—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief—Appeal.*

According to section 8 of the Suits' Valuation Act (VII of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff.

\* Appeal No. 143 of 1891.