

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS *v.* GHARYA AND OTHERS.*

1894.

October 8.

Evidence—Confession—Retracted confession—Necessity of corroborative evidence—Practice.

A retracted confession, if proved to be voluntarily made, can be acted upon along with the other evidence in the case.

There is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law.

Queen-Empress v. Rangí(1) and *Queen-Empress v. Bharmáppa*(2) dissented from. *Regina v. Balvant*(3) and *Queen-Empress v. Sangáppa*(4) followed.

APPEAL by the Local Government from the order of acquittal passed by A. S. Moriarty, Sessions Judge of Ratnágiri.

The three accused were charged with the murder of one Sakháram Deoli, a money-lender, on the morning of the 4th March, 1894.

On the 20th of March, 1894, accused Nos. 1 and 3 confessed before the First Class Magistrate of Ratnágiri. Their confessions were recorded under section 164 of the Code of Criminal Procedure (Act X of 1882).

On the 27th of March, 1894, these confessions were retracted during the course of the preliminary inquiry, the accused stating that they had been made owing to ill-treatment by the police.

The confessions were also retracted and the same allegations of ill-treatment made at the trial before the Court of Sessions.

The assessors were of opinion that the confessions were false and induced by fear of the police. The Sessions Judge, however, was of opinion that the confessions had been voluntarily made by the accused, but as they were not corroborated by any independent reliable evidence, he held that it would be unsafe to convict upon them. He, therefore, passed an order acquitting all the accused.

* Criminal Appeal, No. 169 of 1894.

(1) I. L. R., 10 Mad., 295.

(3) 11 Bom. H. C. Rep., 137.

(2) I. L. R., 12 Mad., 123.

(4) B. H. C. Cr. Rulings of 25th April 1889.

Against this order of acquittal the Government of Bombay appealed to the High Court.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the Crown:—The Sessions Judge has found that the confessions were not made under the influence of any threats or ill-treatment offered by the police. He finds that they were truly and voluntarily made by the accused Nos. 1 and 3. That being the case, they can be accepted as conclusive proof of guilt, without material corroboration. In the present case the confessions are supported by ample corroborative evidence. The weapon produced by accused No. 1 was blood-stained. There was a strong motive for the crime, as the property of the accused was to be sold in a few days in execution of decrees obtained by the deceased. The accused were identified soon after the murder, and there is no reason whatever why the evidence on this point should be disbelieved. The Sessions Judge was, moreover, wrong in holding that the confession of accused No. 1 could not be used against accused No. 2, because it was not made while the two were being jointly tried. This is an erroneous view of section 30 of the Evidence Act.

M. V. Bhat for the accused:—Both Judge and assessors disbelieve the witnesses who speak to the identification of the accused. Their story is inherently improbable. Their evidence is, moreover, in direct conflict with the medical evidence, which clearly shows that the deceased did not die of wounds inflicted with a stick like that produced in Court. There is thus no reliable independent evidence to corroborate the confessions of the accused. Those confessions were recorded by the Magistrate under section 164 of the Criminal Procedure Code (Act X of 1882). But the Magistrate does not certify, as required by the section, that at the time the confessions were made before him, the prisoners were not in police custody. This is an irregularity which makes the confessions worthless.

Máneksáh Jehángirsháh for the complainant.

JARDINE, J.:—In a judgment in which the Sessions Judge discusses the evidence with his usual carefulness he acquitted the three prisoners whom he tried for the murder on Sunday, the

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4th March, 1894, before day dawn, of Sakháram Deoli, a money-lender at Kinjáwade, in the Devgad Táluka. The two assessors also held that the charge was not brought home. The learned Judge found the fact of murder proved; and, differing from the assessors who said the confessions made by the prisoners Ghárya and Ratnak to the Magistrate of the First Class at Ratnágiri, on the 20th March, were, in their opinion, false and made through fear of the police, he found that they were truly and voluntarily made. These prisoners retracted their confessions on the 27th March; and for reasons chiefly based on the want of corroboration of these confessions, the Sessions Judge held that it was unsafe to act upon them. Against these acquittals, an appeal was preferred by the Governor in Council, and admitted by this Court as regards Ghárya and Ratnak, who have been re-arrested.

It is urged for the Crown that the Court below has not given proper weight to the confessions. As regards the acquitted prisoner Bhornak, we draw the attention of the Judge to the ruling on section 30 of the Indian Evidence Act in *Imperatrix v. Tanya*, Criminal Ruling 30 of the 24th July, 1890. The learned Judge, following as it seems the rule laid down by Mr. Justice Kernan in *Queen-Empress v. Rangá*⁽¹⁾ and followed in *Queen-Empress v. Bharmáppa*⁽²⁾, has acquitted the two confessing prisoners. The rule followed in Madras is that "a retracted confession must be supported by independent reliable evidence corroborating it in material particulars." These cases have often been cited to us, but, so far as we are aware, this Court while fully conscious of the need of caution in dealing with retracted confessions, has refrained from laying down any binding rule, but treated the value of a retracted confession as a matter of prudence rather than of law. We have often in dealing with such cases declined to treat the Madras practice as based on a rule of law. The view hitherto taken by this High Court is stated in the case relied upon by the committing Magistrate, *Reg. v. Balvant*⁽³⁾ and in *Imperatrix v. Sangáppa*⁽⁴⁾. We have had further evidence taken on the point, where the assessors differ from the Judge,

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as to whether the confessions were made under terror of the police. We have also taken the evidence of the Magistrate, and are now satisfied that there is no reason to suppose that the prisoners were induced by threat or ill-treatment to make these confessions. They appear to have been quite voluntary: and as the prisoners were in a different custody at Ratnágiri on the 20th March, it is probable that if the ill-treatment they allege as given at Kinjáwade on the 12th and 13th March did really occur, they would have complained about it to the Magistrate at Ratnágiri.

We, therefore, agree with the Judge that the two confessions were voluntarily made; and we have next to consider them along with the other evidence in the manner pointed out in the earlier decisions of this High Court, as has been urged for the Crown. Viewed in that light, the corroborating evidence becomes more weighty. It is proved that the prisoners had motive of ill-will. It is possible that the eye-witnesses may have spoken incautiously or falsely about their recognition of the prisoners; but even if the recognition is untrue, the rest of their story may be true. The police pátel says they denied all knowledge on the 4th March, and they appear not to have spoken till the 7th, and the finding of the stick, bill-hook, shoes, &c., was two or three days after the murder. As the pátel did not hold the inquest as required by Bombay Act VIII of 1867, it is possible that no prompt or searching inquiry was made until the arrival of the district police. The omission of the pátel ought to have been pointed out by the Courts below on the principle stated in *Kendillon v. Maltby*⁽¹⁾, as otherwise it may not come to the notice of the District Magistrate. The Court refrains from passing capital sentences, as all the facts of the case are not clear, and as the prisoners have once been acquitted. The Court reverses the order of acquittal and discharge, and convicts Ghárya Suryáji and Ratnák bin Máhádnák of murder, and under section 302 of the Indian Penal Code sentences them to transportation for life.

Order of acquittal quashed.

(1) 2 Moo. and R., 438.