

MUTHU-
KRISHNER
v.
VEERA-
RAGHAVA
IYER.

plaintiffs: what was retained by the first defendant was his right to redeem the mortgage. This contention is therefore of no avail, and moreover was not, so far as I can see, raised at any previous stage of the case.

MILLER, J.

I concur in dismissing the appeal with costs.

OLDFIELD, J.

OLDFIELD, J.—I concur in the decisions of my learned colleagues for the reasons given by them and have nothing to add.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling.

1913.
July 15.

Re V. BATI REDDI AND FIFTEEN OTHERS (ACCUSED),

PETITIONERS.*

Criminal Procedure Code (Act V of 1898), ss. 255 and 342—Indian Evidence Act (I of 1872), sec. 30—Confession of co-accused, admissible under—Separate trials not necessary where confession made during trial.

When before a magistrate in a statement under section 347, Criminal Procedure Code, certain accused confessed the crime and implicated their co-accused and further under section 255 (1), pleaded guilty to the charges:

Held, that it was not necessary to try the co-accused separately to enable the confessions to be used against them under section 30, Indian Evidence Act.

Queen-Empress v. Lukshmayya Pandaram (1899) I.L.R., 22 Mad., 491, dissented from.

Queen-Empress v. Pirbhu (1895) I.L.R., 17 All., 524 and *Queen-Empress v. Pahuji* (1895) I.L.R., 19 Bom., 195, distinguished.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of A. DURAISWAMI AYYAR, the Deputy Magistrate of Jammalamadugu, in Criminal Appeal No. 1 of 1913, presented against the conviction and sentence of S. SUBRAHMANYA AYYAR, the Stationary Sub-Magistrate of Jammalamadugu, in Calendar Case No. 182 of 1912.

In this case the accused, 17 in number, were charged with offences under sections 147 and 342, Indian Penal Code, and section 22 of the Cattle Trespass Act (I of 1871) by the Stationary Second-class Magistrate of Jammalamadugu. The fourteenth and the seventeenth accused in a statement made

* Criminal Revision Case No. 297 of 1913 (Criminal Revision Petition No. 642 of 1913).

under section 342, Criminal Procedure Code, implicated the remaining accused and on the pleas of the accused being taken under section 255, Criminal Procedure Code, these accused (Nos. 14 and 17) pleaded guilty to the charge whereas the remaining accused pleaded not guilty, and examined defence witnesses. The Magistrate convicted all the accused in one judgment in which he stated that the confessions of the fourteenth and the seventeenth accused showed that all the accused took part in the commission of the crime and were corroborated by the prosecution evidence.

In appeal it was argued that as the confessions of the accused Nos. 14 and 17 were made during the trial a separate trial should have been held of the remaining accused and that the confessions were therefore not relevant under section 30, Indian Evidence Act

The appellate Magistrate held that the confessions of the fourteenth and the seventeenth accused could not have influenced the trial Magistrate; but gave no other finding on the point of law raised. He confirmed the convictions of the accused.

The accused petitioned to the High Court.

P. Venkataramana Rao for the petitioner.

ORDER.—The chief point taken by the petitioners' vakil is the fact that the Magistrate has taken into consideration against the remaining accused, under section 30, Indian Evidence Act, the confessional statements of accused Nos. 14 and 17, who, when questioned under section 342, Criminal Procedure Code, at the close of the prosecution case, made statements implicating themselves and their co-accused, and pleaded guilty on a charge being framed under section 255. The vakil contends relying on the dictum of BODDAM, J., in *Queen-Empress v. Lakshmayya Pandaram*(1) that these were not the statements of persons "jointly tried" with the petitioners, and hence were inadmissible under section 30, Indian Evidence Act.

The learned Judge has based his conclusion on two other cases *Queen-Empress v. Pirbhu*(2) and *Queen-Empress v. Pahuji*(3). With all respect, I do not consider that these decisions have any application to a case tried before a Magistrate under chapter XXI of the Criminal Procedure Code. Both

Re RATT
LEDDI.

AYLING, J.

(1) (1889) I.L.R., 22 Mad., 491.

(2) (1895) I.L.R., 17 All., 524.

(3) (1895) I.L.R., 19 Bom., 195.

Re BATH
REDDI.
AYLING, J.

relate to trials before a Sessions Court, where the accused's plea of guilty is recorded under section 271 at the outset of the trial. No doubt a prisoner who then pleads guilty and is convicted on his plea cannot be held to be tried jointly with others (co-accused) against whom the case proceeds under section 272. But the present case is quite different. All the accused were jointly tried before the Magistrate, and their pleas were not recorded until after the close of the prosecution evidence, and after the recording of their statements now in question, I can see no reason why statements made under these circumstances should not be taken into consideration under section 30, Indian Evidence Act.

No other ground is shown for interference and the petition is dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling.

Re SUBRAMANIA AYYAR (ACCUSED), PETITIONER.*

1913.
August 1.

Magistrates, bench of—Magistrate, convicting who has not heard all the evidence—Criminal Procedure Code (Act V of 1898), sec. 530.

Where the trial of the accused was commenced before a Bench of four Magistrates who heard part of the evidence and continued before the same four Magistrates and another who had joined as the fifth, and all the five Magistrates deliver judgment convicting the accused.

Held, that the conviction was vitiated and that there must be a re-trial.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of A. PUSHPANATHA PILLAI, the First-class Sub-Divisional Magistrate of Mayavaram, in Criminal Appeal No. 3 of 1913 (Special Tribunal No. 620 of 1912 on the file of V. GOVINDASWAMI, the Stationary Second-class Magistrate of Mayavaram).

The facts of this case are stated in the following order:—

T. S. Rajagopala Ayyar for the petitioner.

J. O. Adam for the Public Prosecutor on behalf of the Government.

* Criminal Revision Case No. 155 of 1913 (Criminal Revision Petition No. 133 of 1913).