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SHEOBARAT
KUMAR
BHAGWATI
PRASAD.

that under the deed of the 26th May 1874, the widow still had power to dispose of the property in question, excepting only the 4 annas of mauza Nigori; and that in any case the claim for possession could not be maintained in the lifetime of the widow.

The Court of first instance (Subordinate Judge of Gorakhpur) decreed the plaintiffs' claim for a declaration that the alienation in question would not affect their interests in the property after the widow's death.

The defendants thereupon appealed to the High Court.

Munshi *Gobind Prasad* for the appellants.

Mr. *T. Conlan* and Mr. *Abdul Majid* for the respondents.

EDGE, C. J., and BANERJI, J.—The only question in this case is whether the plaintiffs were reversioners. If they were reversioners, they were entitled to maintain the suit. The last owner of the property was one Sheo Charan. He died leaving a widow, who made a deed of gift in favor of Nand Kishore, one of the appellants here, and one of the defendants to the suit. The plaintiffs are the sons of the son of a daughter of Sheo Charan. Their father and his mother died before suit. This case is governed by the decision in *Krishnayya v. Pichamma* (1), and is within the principle of the decision of the Calcutta High Court in *Babu Lal v. Nanku Ram* (2). We hold that these plaintiffs were *bandhus*, being *bhinna gotra sapindas* of Sheo Charan, and, there being no one nearer, they were reversioners and entitled to maintain the suit.

We dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

QUEEN-EMPRESS v. PIRBHU AND OTHERS.

Act No. 1 of 1872 (Indian Evidence Act), s. 30—Joint trial—Statement of co-accused who pleaded guilty—Evidence.

Where two out of several persons on their trial in a Court of Session on a joint charge pleaded guilty and made certain statements to the Court, it was held that

(1) I. L. R., 11 Mad., 287.

(2) I. L. R., 22 Calc., 339.

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such statements could not be taken into consideration as evidence against the other accused persons, inasmuch as after pleading guilty the persons making those statements were no longer on their trial.

THE facts of this case sufficiently appear from the judgment of the Court.

The Officiating Public Prosecutor (Mr. *A. H. S. Reid*) for the Crown.

EDGE, C. J., and AIKMAN, J.—Pirbhu and seven other men, who were convicted of the offence punishable under s. 396 of the Indian Penal Code, have appealed. One of them, Gobind, was convicted of abetting. The dacoity in question was one which was carried out by some 22 or 25 men. They came under different leaders and from different districts of the country, and those who were not armed with carbines or blunderbusses or swords carried *lathis*. The villagers showed great pluck: they assembled and boldly attacked the dacoits: one of them was killed by the dacoits, and several were more or less severely wounded.

As to two of these appellants, Pirbhu and Kishan, they pleaded guilty in the Court of Session; and indeed it would have been useless for them to have attempted a defence, for, when the body of dacoits escaped, these two men were locked into the room in which they were, and were kept there until the police came. Pirbhu was armed with a blunderbuss, which, in firing, burst. He has been sentenced to death, and most rightly sentenced. We dismiss his appeal, and, confirming the conviction and the sentence of death, direct that the sentence be carried into effect.

As to the other men, the evidence clearly shows that they took part in the commission of this dacoity. It appears to us that Nathu Singh, the informer, gave a true account of what took place and spoke truly as to these appellants. His evidence is corroborated as to each of the appellants by one or more witnesses whose truthfulness and accuracy we have no reason to doubt. There is one witness for the prosecution who was called in the Court of Session, on whose evidence we do not rely, and that is Dalla, who identified all the accused at the Sessions trial. All these men, except Pirbhu,

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Gobind and Khimmi, were sentenced to transportation for life. We think the Sessions Judge adopted a very lenient course in merely passing a sentence of transportation on these men. It was a most daring dacoity, and the dacoits were determined to carry it out regardless of life. Gobind and Khimmi have been sentenced to ten years' rigorous imprisonment. As to Gobind, if the case had been tried by us, he would assuredly have been sentenced to transportation for life. There may be a good reason in the case of Khimmi, in view of his youth, why a sentence of ten years was sufficient. We may mention that in arriving at our conclusion we have not relied on the statements of Pirbhu and Kishan, as they, having pleaded guilty, were not on their trial. Nor have we placed any reliance on the dying statement of Kirat Singh. It is not necessary to go into the matter, but we may say that we consider that his statement was not admissible in evidence.

Some of the appellants plead that their witnesses were not examined. So far as we can judge from the English record, they did not call any witnesses at their trial. As, however, it is a frequent ground of appeal that the Court of Session has refused or omitted to examine witnesses for the defence, it would be advisable for Sessions Judges to state specifically in their record whether or not the accused had present witnesses, and whether or not the accused refused to call witnesses or elected to call some, and whether the witnesses whom he elected to call were examined. We dismiss these appeals.

[See also *Queen-Empress v. Pahuji* (1)—ED.]

APPELLATE CIVIL.

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April 25.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

NARAINI KUAR (PLAINTIFF) v. MAKHAN LAL AND OTHERS (DEFENDANTS).*

Civil Procedure Code, ss. 403, 409—Application for leave to sue in formâ pauperis—Refusal of application—Institution of regular suit—Limitation.

When an application for leave to sue as a pauper is refused and the applicant subsequently brings a suit in the same matter on a full court-fee, such suit dates,

* First Appeal No. 47 of 1894, from a decree of Maulvi Muhammad Mazhar Hussain Khan, Subordinate Judge of Mainpuri, dated the 23rd December 1893.