

aside the order dismissing the application out of which this appeal has arisen, and we remand the case under section 562 of the Code of Civil Procedure to the Court of the Subordinate Judge for the application to be restored to the file and to be disposed of according to law. The appellant will have her costs of this appeal.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS *v.* MAIKU LAL AND ANOTHER.*

Evidence—Confession—Value to be attached to confession subsequently withdrawn.

It does not necessarily follow, because a confession made by an accused person is subsequently retracted and there is little or no evidence on the record to support the confession, that therefore the confession is to be rejected. The credibility of such a confession is in each case a matter to be decided by the Court according to the circumstances of each particular case, and if the Court is of opinion that such a confession is true, the Court is bound to act, so far as the person making it is concerned, upon such belief. *Queen-Empress v. Mahabir* (1) and *Queen-Empress v. Rangji* (2) referred to.

In this case two men, Maiku Lal and Nathu, were tried for and convicted of the offence of dacoity under section 395 of the Indian Penal Code. Maiku Lal made a long and detailed confession before the committing Magistrate and there was also other evidence connecting him with the dacoity. Nathu made a similar confession before the District Magistrate. In those confessions both men denied that any undue influence had been used to make them confess, and afterwards they admitted that none of the Police were in the room at the time when the confessions were recorded. Before the Sessions Judge both confessions were retracted, but both the Judge and the assessors believed the confessions to have been voluntarily made and to be substantially accurate. Each accused in his confession implicated the other accused, and, as has

* Criminal Appeal No. 1073 of 1897.

(1) I. L. R., 18 All., 76.

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

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been said, in the case of Maiku Lal there was other evidence against him. As against Nathu the only evidence was his own confession subsequently retracted, and the similarly retracted confession of Maiku Lal.

Kunwar *Parmanand*, for the appellants.

The Government Advocate (Mr. *E. Chamier*), for the Crown.

EDGE, C. J. and BURKITT, J. :—Maiku Lal and Nathu Lal have been sentenced to transportation for life under section 395 of the Indian Penal Code. As against Maiku there was his own circumstantial confession and proof that some of the articles stolen in the dacoity were found in his house. He is also implicated by the confession made by Nathu. As to Nathu Lal the case against him depends upon a statement made by him before the District Magistrate, which subsequently withdrawn, and further upon the fact that he is named as one of the dacoits in the confession made by Maiku. Kunwar *Parmanand*, for Nathu, has argued that inasmuch as Nathu's confession was subsequently withdrawn, and as there is no evidence in the case against him, we should not accept the confession as sufficient ground for his conviction. Kunwar *Parmanand* has relied upon *Queen-Empress v. Mahabir* (1) and *Queen-Empress v. Rangi* (2). It appears to us that every case of this kind must be decided upon its own circumstances, and not upon the amount of credibility which was attached in other cases to confessions made. If a Judge believes that a confession made by a prisoner, although subsequently withdrawn, contains a true account of that prisoner's connection with the crime, the Judge in our opinion is bound to act, so far as that prisoner is concerned, on that confession, which he believes to be true. Courts frequently act, even in the most serious cases, on a simple plea of guilty, although in some cases it is possible that the person pleading guilty was not in fact connected with the crime. Where a confession is not supported by the evidence of witnesses, a Judge must examine very carefully to see whether it gives those details which indicate that it is a natural

(1) I. L. R., 13 All., 70.

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

narrative of what took place in the presence of the man making it and is not at variance with any evidence in the case which is believed, and is not merely a parrot-like repetition of a story put into the man's mouth. In the present case the confession is full of detail. It is very circumstantial, and bears on it, in our opinion, the impress of truth. There is nothing in the evidence to suggest that it was false in any particular, and it was made before a District Magistrate who would take care, so far as he could, that no advantage was taken of the prisoner. Our belief in the truth of Nathu's confession before the District Magistrate is not in the slightest affected by his subsequent retraction of it. In our opinion these men were guilty, and were rightly convicted. Although the dacoits had fire-arms with them, no personal injury seems to have been done to any of the villagers or to the people of the house, and we think that in this case we may alter the sentence to one of ten years' rigorous imprisonment, and we do so accordingly. In other respects the appeals are dismissed.

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APPELLATE CIVIL.

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November 20.

Before Mr. Justice Blair and Mr. Justice Aikman.

KANDHIA LAL (DEFENDANT) v. MUNA BIBI (PLAINTIFF).*

Guardian and minor—Loans to a minor—Inquiries necessary to be made by lender—Burden of proof.

A plaintiff who has advanced money to relieve the necessities of a minor must make all reasonable inquiries as to the facts of such necessities, and having made such inquiries and reasonably entertaining a *bona fide* belief in the existence of such necessities he can advance his money in safety, even though the sum borrowed by the guardian upon the security of the minor's estate is not in point of fact used for his necessities or his benefit. On the other hand a plaintiff who lends money without such inquiries cannot thereafter successfully have recourse to the minor's estate for the satisfaction of the debt. *Hanuman Pershad Pandey v. Babooes Munraj Kunwari* (1) referred to.

* Second Appeal No. 910 of 1895 from a decree of C. L. M. Eales, Esq., District Judge of Benares, dated the 16th April 1895, modifying a decree of Babu Nil Madhab Roy, Subordinate Judge of Benares, dated the 13th December 1894,