

## REVISIONAL CRIMINAL

Before Mr. Justice Bennet

EMPEROR *v.* RICHPAL SINGH AND OTHERS\*

1934  
May, 8

*Evidence Act (I of 1872), section 30—Criminal Procedure Code, sections 110, 117(2)—Security proceedings against several persons jointly—Confession by one of them—Admissibility in evidence against the others.*

Where there is a proceeding under section 110 of the Criminal Procedure Code against a number of persons jointly, and one of them makes a confession implicating himself as well as the others, section 30 of the Evidence Act is applicable to the case and such confession is admissible in evidence against the others. Section 117(2) of the Criminal Procedure Code also leads to the same view.

Messrs. *Kumuda Prasad* and *K. Masud Hasan*, for the applicants.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

BENNET, J.:—This is a criminal revision filed on behalf of three persons Richpal Singh, Khub Singh and Shiamsundar Lal who have been required to furnish security by a Magistrate under section 110 (f) of the Criminal Procedure Code for a period of three years, and on a reference the learned Sessions Judge has sentenced them to imprisonment on failure to furnish the security required. Various points have been taken in revision in regard to the admissibility of different items of evidence and of different confessions. \* \* \* The accused Khub Singh made a full confession that he took part in revolutionary activities with the other two accused, and on the 24th December, 1932, this accused took the Magistrate to a certain place in the jungle where he showed the Magistrate where the conspirators had been indulging in target shooting. The confession of this accused has been corroborated by evidence showing that a number of chemicals and other materials had

\*Criminal Revision No. 130 of 1934, from an order of Muhammad Taqi Khan, Assistant Sessions Judge of Meerut, dated the 22nd of December, 1933.

been stolen from the laboratory, and from the house of Khub Singh certain chemicals were recovered on a search.

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Objection was taken as regards the other accused on a highly technical point that under section 30 of the Indian Evidence Act the confession of Khub Singh should not be taken into account against the other accused because that section begins by stating: "When more persons than one are being tried jointly for the same offence". The argument is that the proceedings before the Magistrate did not amount to a trial and were not in regard to an offence and that on the definition of "offence" in the Criminal Procedure Code, section 30 of the Evidence Act would not apply. It is to be noted that the Evidence Act does not state that the definition in the Criminal Procedure Code of an offence is to apply to the Evidence Act. The Evidence Act is a much older Code of the year 1872 and the definition in question apparently did not exist at the time that the Evidence Act was framed. The explanation to section 30 of the Evidence Act shows that the word "offence" is used in a wider sense than the technical definition, as the explanation states that "offence" as used in this section includes the abetment of or attempt to commit the offence. I consider that there is no reason to hold that section 30 of the Evidence Act may not be applied to a case like the present where there is a proceeding under section 110 of the Criminal Procedure Code against a number of persons, one of whom has made a confession implicating other persons whose conduct is also the subject of an inquiry. Another reason which leads me to this conclusion is the provision in the Criminal Procedure Code, section 117(2), which states as follows: "Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases;

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and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases, except that no charge need be framed." This shows that the procedure should be that of a warrant case, and accordingly I consider that the procedure of section 30 of the Evidence Act would apply. The objection was taken that there was little evidence to support the confession of Khub Singh. The court below mentions that 39 witnesses were called for the prosecution. Of those witnesses I find that Suraj Chandra, Bishambhar, and Balraj, all stated that they took part in the criminal conspiracy for revolutionary purposes with the three accused. There is indeed ample evidence on the record for the findings at which the courts below have arrived. I consider that no ground in revision has been made out.

I accordingly dismiss this application in revision.

### PRIVY COUNCIL

J. C.\*  
1935

February, 28

FANNY SKINNER (ALIAS NASIRA BEGAM), SINCE DECEASED,  
AND ANOTHER v. BANK OF UPPER INDIA, LIMITED, IN  
LIQUIDATION, AND OTHERS

[On appeal from the High Court at Allahabad]

*Mortgage—Unregistered agreement to transfer debt and security—Right to sue for debt—Right to sue to enforce security—Privy Council Practice—Contention not raised in appellate court.*

An unregistered agreement, for consideration, to transfer a debt with the benefit of the immovable security for it is ineffectual to transfer the security. Though it operates between the transferor and transferee to transfer the debt a suit to recover the debt must be in the name of the transferor, and consequently he is not prevented by the transfer from suing to enforce the security.

*Imperial Bank of India v. Bengal National Bank* (1), explained and applied.

\*Present: LORD BLANESBURGH, LORD THANKERTON, LORD ALNESS, SIR LANCELOT SANDERSON, and SIR SHADI LAL.

(1) (1930) I.L.R., 58 Cal., 136.