

per cent. per mensem simple interest. Applying that rate and taking into account the payment of Rs.900 made on 21st February, 1930, it appears that the amount due to the plaintiff will be less than the Rs.1,160 which has been granted by the trial court. The office will make a calculation of the amount now due to the plaintiff. We allow plaintiff proportionate costs in all courts. A decree will be prepared in the terms of order XXXIV, rule 4 for the whole of the property mortgaged, with costs against all the defendants. The period for payment will be fixed as six months from the date of our order. The rate of interest *pendente lite* and future interest till the end of the six months will be at 12 per cent. per annum simple interest and thereafter at 6 per cent. simple interest per annum.

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 APPELLATE CRIMINAL

Before Mr. Justice Allsop

EMPEROR v. RAM NARESH AND OTHERS*

1938

 December, 15

Confession—Confession contained in written petition of surrender to Magistrate—Not recorded and verified by Magistrate—Admissibility in evidence—Evidence Act (I of 1872), sections 21, 24, 25, 26—Criminal Procedure Code, sections 164, 364—Criminal Procedure Code, section 1(2)—Special law—Relevancy of evidence not affected by the Code unless where specifically so stated—Public policy.

Two persons, who along with some others were accused of a crime, went into a Magistrate's court, confessed their guilt and asked that they should be arrested and sent to jail so that they should not fall into the hands of the police. The Magistrate sent for a petition writer, who went into the court room and took down the petition containing the confession to the dictation of the two persons, and the petition was then signed by them. The confession was not recorded and verified by the Magistrate in accordance with sections 164 and 364 of the Criminal Procedure Code:

Held, that the confession was admissible in evidence, under section 21 of the Evidence Act; and as it did not fall within

*Criminal Appeal No. 429 of 1938, from an order of K. N. Wanchoo, Sessions Judge of Benares, dated the 14th of June, 1938.

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section 24 or 25 or 26 of the Act it did not become irrelevant. The admissibility in evidence was not at all affected by the question whether the provisions of sections 164 and 364 of the Criminal Procedure Code relating to the mode of recording confessions were or were not complied with.

Section 1(2) of the Criminal Procedure Code enacts that in the absence of any specific provision to the contrary nothing in the Code shall affect any special law. The Evidence Act is a "special law" as defined in section 41 of the Indian Penal Code, and that definition has been adopted by section 4 of the Criminal Procedure Code. It follows therefore that no rule about the relevancy of evidence in the Evidence Act is affected by any provision in the Criminal Procedure Code unless it is so specifically stated in that Code. There is no provision in that Code which says that non-compliance with the requirements of section 164 or section 364 thereof renders irrelevant a confession which is relevant according to the provisions of the Evidence Act.

If a confession is relevant under the Evidence Act, though the provisions of section 164 or section 364 of the Criminal Procedure Code may not have been complied with in the mode of recording it, its admission in evidence cannot be said to be against public policy, as tending to the evasion of the provisions of those sections.

Dr. S. N. Sen and Messrs. E. V. David, Madan Mohan Lal and H. P. Sen, for the appellants.

The Assistant Government Advocate (Mr. Vishwa Mitra), for the Crown.

ALLSOP, J.:—The appellants Ram Nares, Jagan, Bissu, Banarsi and Barku have been sentenced each to rigorous imprisonment for a period of two years under section 147 of the Indian Penal Code for rioting, to rigorous imprisonment for a period of ten years under section 307 of the Indian Penal Code for attempting to commit murder, and to rigorous imprisonment for a period of ten years under section 326 of the Indian Penal Code for causing grievous injury by means of a corrosive substance.

The case for the prosecution is that Ramji Das was walking up some steps from the edge of the river at Benares when he was surrounded by the appellants who

threw nitric acid over him and caused very serious injuries.

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* * * *

Jagan and Bissu gave themselves up together. They apparently went into the Magistrate's court and asked that they should be arrested and sent to jail so that they should not fall into the hands of the police. No evidence has been produced to show exactly what happened on that occasion, but a witness called Pearey Mohan has stated that he is a petition writer attached to the Collector's court, that the Magistrate sent for him, that he went into the court and found Bissu and Jagan in the dock and that Bissu and Jagan dictated an application to him which they signed. That application has been produced as evidence and in it Jagan and Bissu certainly stated that they were guilty of the offence of throwing acid upon Ramji. They said in the application that the police were friendly with Ramji and that they did not wish to fall into the hands of the police. The two men say that they did not understand what was in the application. They say that they were led to suppose that it was an application for bail and that on that understanding they signed it. They have been contradicted upon this point by Pearey Mohan and I have no doubt that his evidence is true, that the application was made and that these two appellants signed it with full knowledge of its contents. The learned Judge is of the same opinion but he has rejected the document as being irrelevant upon the ground that it would be against public policy to admit such documents, because if they were admitted they would enable those who wished to make confessions or who wished to have confessions recorded to evade the provisions of sections 164 and 364 of the Code of Criminal Procedure.

I think courts should be very careful in rejecting evidence which is relevant under the Indian Evidence Act, merely because of provisions in the Code of Criminal Procedure. Section 1 of that Code is as follows:

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“(1) This Act may be called the Code of Criminal Procedure, 1898, and it shall come into force on the 1st day of July, 1898. (2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force”

The term “special law” is not defined in the Code of Criminal Procedure, but section 4 of that Code says that all words and expressions used therein and defined in the Indian Penal Code and not defined in the Code of Criminal Procedure shall have the meanings respectively attributed to them by the Indian Penal Code.

Section 41 of the Indian Penal Code defines a “special law” as a law applicable to a particular subject. The Indian Evidence Act deals with the particular subject of evidence including the admissibility of evidence and is a special law within the meaning of the Code of Criminal Procedure.

It follows therefore that no rule about the relevancy of evidence in the Indian Evidence Act is affected by any provision in the Code of Criminal Procedure unless it is so specifically stated in the latter Code. The admission of guilt in the application dictated to Pearey Mohan and afterwards presented to the Magistrate was admissible under section 21 of the Indian Evidence Act. It did not become irrelevant under section 24 or 25 of that Act. The appellants were not in the custody of the police and therefore section 26 of the Act does not affect the issue.

The learned Judge says that the Magistrate was not called upon to record the confession under the provisions of section 164 of the Criminal Procedure Code when the application was presented to him, but, as I have already said, he seems to have thought that it would be against public policy to admit this document. For the reasons which I have given I cannot agree with him. There is nothing in the Code of Criminal Procedure which says that a confession contained in a document

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delivered to a Magistrate shall not be relevant in spite of the provisions in the Indian Evidence Act. The learned Judge seems to have thought that the application should have been verified in accordance with the provisions of section 364 of the Criminal Procedure Code because it was in fact verified before the Magistrate. I cannot see any force in this argument because it is the statement in the confession and not the verification of the statement which affords the evidence that the appellants were guilty. The learned Judge seems to have been influenced in some measure by the decision of their Lordships of the Privy Council in *Nazir Ahmad v. King-Emperor* (1), but that decision is quite irrelevant to the question which was before the court. Their Lordships held that a Magistrate could not give oral evidence of a confession made to him if he deliberately ignored the provisions of sections 164 and 364 of the Code of Criminal Procedure and did not even purport to act under those sections. There was no question in the case before me of the admissibility of oral evidence given by a Magistrate. I therefore hold that the confession was admissible.

I have already said that Jagan and Bissu did not admit that they had intended to make any confession, but there is an alternative argument that they were induced to make it in order that the police might use them as approvers in the case. There is no force in this contention. There was already ample evidence against the appellants and there is no reason why anybody should have thought that it was necessary to procure the evidence of Jagan and Bissu. If there had been any need to get the evidence of an approver there was no reason why two men should have been induced to confess in this way. The suggestion was that Hira Lal might have induced these two men to make this statement, but it is clear that the relation between them and Hira Lal was not such that Hira Lal would

(1) (1936) I.L.R. 17 Lah. 629.

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have any influence over them. This confession certainly affords corroboration to the other evidence against Jagan and Bissu.

* * * * *

The final argument addressed to me by the appellants was that there was no particular reason why any of these people should have attacked Ramji. Barku certainly had motive because Ramji had taken steps to get his brother arrested and Ram Naresh was employed by an enemy of Ramji's. The suggestion is that the other appellants were friends of these people. There is evidence that they were seen consorting with the other appellants. The point however is of no importance. We cannot know what motives actuated the appellants. We do know that there is conclusive evidence that they did take part in this offence.

There is no force in the appeal and I dismiss it.

APPELLATE CIVIL

Before Mr. Justice Bennet and Mr. Justice Verma

DWARKA DAS (PLAINTIFF) v. GODHANA AND OTHERS
(DEFENDANTS)*

1938
December, 16

Partition Act (IV of 1893), section 4—Partition suit by transferee of a share in a house—Application by shareholders to buy the plaintiff's share—Time when the application should be made—Application lies at any stage of the suit, even after decree.

Section 4 of the Partition Act fixes no stage up to which alone an application under the section can be made; on the contrary, the language of the section shows that the application can be made at any stage of the suit.

So where such an application was made after the preliminary decree for partition was passed by the trial court and modified by the appellate court, and in the course of preparation of the final decree the amin had made valuations and prepared the lots, it was *held* that the application could not be treated as being too late and must be entertained.

*Second Appeal No. 159 of 1936, from a decree of Z. Islam Khan, Civil Judge of Agra, dated the 30th of May, 1935, confirming a decree of S. M. Ahsan Kazmi, Additional Munsif of Agra, dated the 19th of March, 1934.