

APPELLATE CRIMINAL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

EMPEROR v. BIHARI.*

1926
September.
7.

Criminal Procedure Code, section 288—Evidence—Statements before Committing Magistrate now admissible “for” all purposes.”

Under section 288 of the new Code of Criminal Procedure, statements made before a Committing Magistrate, when admissible under the Indian Evidence Act, can be admitted “for all purposes” and not only for the purpose of corroboration or contradiction. The use of the expression “for all purposes” was clearly intended to remove the previous conflict of opinion and the words “subject to the provisions of the Indian Evidence Act, 1872,” mean nothing more than that such statements should not contain matters which would be irrelevant or inadmissible under that Act. *Queen-Empress v. Dan Sahai* (1), *Queen-Empress v. Nirmal Dass* (2), *Emperor v. Dwarka Kurmi* (3) and *King-Emperor v. Jehal Teli* (4), referred to.

THIS was a criminal appeal from a conviction under section 302 of the Indian Penal Code. The accused was charged with the offence of murdering his wife Musammat Gobardhani. For the last three years or so there had been an illegal intimacy between the accused’s wife and a shop-keeper named Masna. The brothers of the accused disliked this, and when the intrigue was not stopped they separated their part of the house by means of a partition wall a few months before the occurrence. Some complaint had been filed by Masna’s

* Criminal Appeal No 507 of 1926, from an order of Kashi Prasad, Sessions Judge of Muttra, dated the 12th of July, 1926.

(1) (1885) I.L.R., 7 All., 862.

(2) (1900) I.L.R., 22 All., 445.

(3) (1906) I.L.R., 28 All., 688.

(4) (1924) I.L.R., 3 Pat., 781.

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father in a criminal court, and the 3rd of June, 1926, was fixed for its hearing. Masna came over and asked the accused to give evidence on behalf of his father. The accused declined to do so. His wife Musammat Gobardhani also tried to persuade him to give evidence, but he persisted in refusing to go to court. Musammat Gobardhani, however, herself offered to give evidence on behalf of her paramour's father. Musammat Gobardhani was murdered on the night preceding the 3rd of June, 1926. Her dead body was found in a well next morning. Bihari was then arrested and tried for the murder and convicted and sentenced to death by the Sessions Judge of Muttra. He appealed.

Pandit *K. N. Laghate*, for the appellant.

The Government Advocate (Mr. *G. W. Dillon*), for the Crown.

The judgement of the Court (SULAIMAN and BANERJI, JJ.), after discussing at length the evidence in the case, as regards the point of law raised on behalf of the accused, thus continued :—

We have overruled the point of law raised by the learned vakil for the accused that the statements of Roshan and Tiku made before the Committing Magistrate, though admitted by the Judge under section 288 of the Code of Criminal Procedure, cannot be used as substantive evidence and could only have been used for the purpose of corroboration or contradiction. Under the old Code there was some conflict of opinion. In the earlier cases, namely, *Queen-Empress v. Dan Sahai* (1) and *Queen-Empress v. Nirmal Das* (2) it was suggested that such statements could not be used as substantive evidence. But in

(1) (1885) I.L.R., 7 All., 862.

(2) (1900) I.L.R., 22 All., 445.

the case of *Emperor v. Dwarika Kurmi* (1) a Bench of this Court held that statements made before a Committing Magistrate could be admitted as evidence. Since then the section has been amended and reads as follows :—

“ The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes, subject to the provisions of the Indian Evidence Act, 1872.”

This, in our opinion, makes it quite clear that statements when admissible under the Indian Evidence Act can be admitted “ for all purposes ” and not only for the purpose of corroboration or contradiction. The use of the expression “ for all purposes ” was clearly intended to remove the previous conflict. The words “ subject to the provisions of the Indian Evidence Act, 1872,” mean nothing more than that such statements should not contain matters which would be irrelevant or inadmissible under that Act. After expressing this opinion our attention was drawn to the case of *King-Emperor v. Jehal Teli* (2) where this view has been accepted.

We find, however, that the accused is a young man of about 22 years of age and his wife was openly immoral. He put up with her immorality for some time, but she proved too much for him and was bold enough to offer to go to court and give evidence on behalf of her paramour's father very much to the dislike of the accused. The accused must have resented it extremely and must have felt that he would be considerably disgraced by this act. It was in that moment of despair that he must have committed this murder.

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(2) (1924) I.L.R., 3 Pat., 781.

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We, therefore, think that the ends of justice will be met by reducing the sentence to one of transportation for life. We accordingly uphold the conviction but reduce the sentence to one of transportation for life.

Conviction upheld.

REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

1926
 October, 2.

PANCHANAN BANERJI v. UPENDRA NATH
 BHATTACHARJI.*

Criminal Procedure Code, section 561A.—“Inherent powers” of a High Court—Power to direct expungement of objectionable remarks from judgement of a subordinate court.

The inherent power of a High Court referred to in section 561A of the Code of Criminal Procedure must be deemed to include a power to order the deletion from the record of a subordinate court of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the court. Such jurisdiction, however, can only be exercised when there is no foundation whatsoever for the remark objected to and not where it is a matter of inference from evidence.

Emperor v. Thomas Pellako (1), *Ma Kya v. Kin Lat Gyi* (2), *Emperor v. G. Dunn* (3) and *Mohammad Qasam v. Anwar Khan* (4), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Babu *Sailanath Mukerji*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

* Criminal Revision No. 303 of 1926, from an order of K. A. H. Sams, Sessions Judge of Benares, dated the 19th of January, 1926.
 (1) (1911) 14 Indian Cases, 643. (2) (1911) 11 Indian Cases, 1000.
 (3) (1922) L.I.R., 41 All., 401. (4) (1926) A.J.R. (Lahore), 382.