

payment of money. The rest of the application was also in accordance with those rules. We are of opinion, as we have already said, that the fact that on an adjudication of the merits of the application the court was not in a position to grant the relief prayed for does not make the application in any manner less in accordance with law.

On the above grounds we reverse the order of the learned Subordinate Judge under appeal in each case and under order XLI, rule 23 of the Code of Civil Procedure, remand these cases to him with directions that the applications for execution be re-admitted under their original number in the proper register and be determined according to law.

The conduct of the decree-holder has been open to a charge of negligence and absence of proper caution. We would, therefore, not allow any costs to him so far either in the court below or in this Court. The future costs will abide the event.

Order reversed.

APPELLATE CRIMINAL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Muhammad Raza.*

KING-EMPEROR (COMPLAINANT-APPELLANT) v. RAJKALI
(ACCUSED-RESPONDENT).*

1926
September,
24.

*Confession—Admission of guilt soon after the occurrence—
Retraction of confession by accused, effect of.*

Where an accused made an admission of her guilt to several persons soon after the occurrence and also made a confession of the guilt before a magistrate and being in full possession of her faculties was utterly unable to give any satisfactory explanation as to how she came to make those

* Criminal Appeal No. 324 of 1926, against the order of Fateh Bahadur, officiating Sessions Judge of Hardoi, dated the 15th of June, 1926.

1926
KING-
EMPEROR
".
RAJKALI.

admissions and confessions, held, that those admissions and confessions did not become ineffective against her because they were subsequently retracted.

The Government Advocate (Mr. G. H. Thomas),
for the Crown.

Mr. N. C. Dutt, for the accused.

STUART, C. J., and RAZA, J. :—This is an appeal filed by the Local Government under section 417 of the Code of Criminal Procedure against the acquittal of a woman called Rajkali by a judgment of the learned Sessions Judge of Hardoi, dated the 15th of June, 1926. Rajkali was represented by a competent Counsel at the hearing of this appeal. Upon the facts, as disclosed by the evidence, and found by the learned Sessions Judge, it appears that there was residing in the hamlet of Basawanpurwa in the village of Aicha Mau in the Hardoi district a man called Nand Kishore, a *lonia* whose home is in a village in the Partabgarh district. He resided in Basawanpurwa as he was employed as a contractor in the Irrigation Department, Hardoi. Rajkali (against whose acquittal this appeal was presented) is his wife. She is described as 36 years of age but is probably older. Some 8 or 10 years ago Nand Kishore took into his establishment a married woman called Sohankali. She was the wife of a man called Badha who is still alive. Badha appears to be an aged and infirm man. The arrangements of the household infringed the rules of morality, and infringed the rules of decency, for Nand Kishore lived with Sohankali as his wife, keeping her on the same premises as his real wife Rajkali, and at the same time Badha, Sohankali's husband, resided on the premises also, and was fed and lodged by the adulterer. Badha was not permitted access as a husband to his own wife. On the 3rd of April, 1926, severe injuries were caused

to Sohankali in consequence of which she died about midnight. At midday on the 4th of April, 1926, Pohkar, the chaukidar of Ainchau Mau, arrived at the police-station accompanied by Nand Kishore, Rajkali, and a *thakur* called Bhup Singh. It appears that Nand Kishore was living in a house in Basawanpurwa which he had leased from Bhup Singh. The *chaukidar* reported the death of Sohankali. He gave no details and no explanation as to how her death, had occurred. The second officer of the police-station proceeded to Basawanpurwa, and, as a result of his investigation, Rajkali was put upon her trial for murder. The learned Sessions Judge acquitted her and set her at liberty although three out of four assessors were of opinion that Rajkali had killed Sohankali. The evidence against Rajkali is as follows:—A woman called Jasoda (P. W. 1) who lived close to the residence of Nand Kishore deposed that on the 3rd of April, 1926, at noon, Badha came to her, and asked her to request Rajkali to give him food. Sohankali at the time was suffering from fever. Jasoda knocked at the door and Rajkali opened it. Jasoda noticed that her hands were stained with blood, and when Jasoda asked her what had happened she replied that she had committed a crime and had wounded Sohankali. Sohankali was lying on a *charpoy* in the *kothri* bleeding profusely. Jasoda was very frightened and ran away raising an alarm, and Rajkali also ran away, got on to the roof, jumped on to the roof of an adjacent cowshed and ran into the jungle. A woman called Lalti, who resides in the house over the roof of the cowshed of which Rajkali ran, happened to be present. She asked Rajkali what she was doing and Rajkali told her also that she had killed her rival Sohankali. She then ran on. A *teli* called Peman who had come up to the house and

1926.

KING-
EMPEROR
V.
RAJKALI.

1926
KING-
EMPEROR
C.
RAJKALI.

to whom Rajkali also admitted that she had attacked Sohankali before she ran away, pursued her with other villagers. As she was running away she ran into a place where a *thakur* called Dubar Singh who was grazing his cattle stopped her and she admitted to Dubar Singh that she had attacked Sohankali. On the 5th of April, 1926 Rajkali herself produced a *khurpa* and handed it over to the police officers. On the 7th of April, 1926 she made a confession before Mr. Jafri, Magistrate of the first class, in which she frankly admitted that she had inflicted the injuries upon Sohankali which caused her death. She subsequently retracted the statement, and said that Sohankali had met her death as the result of a fall, in which she had struck her head upon the iron pin, on which the family grindstone revolved, and upon the grindstone itself. In her subsequent statement she put forward the case that she was so crippled with rheumatism as to be unable to inflict injuries such as had been inflicted on Sohankali. The medical evidence shows this latter statement to be untrue. The learned Sessions Judge has refused to believe the evidence against her, upon a view of the law which we find to be mistaken. He apparently was under the impression that none of the admissions made by Rajkali to Jasoda, Lalti, Peman and Dubar Singh or made in her confession to Mr. Jafri could have any effect against her because she has subsequently retracted them. He apparently took the view that there was no corroboration. As a matter of fact, there was very considerable corroboration of the statements in the circumstance that it was established by the evidence of Jasoda that Sohankali and Rajkali were alone in the room at the time, and that the door was closed from inside when she arrived. Further these statements were strongly corroborated by the circum-

stance that there was no blood upon the grindstone, thus showing that the final explanation given by Rajkali was untrue. There is also the circumstance that the injuries upon the deceased woman could not be accounted for satisfactorily by a fall. There was further the circumstance that Rajkali's hands were stained with blood and there was further the circumstance that she ran away over the roof and along a cowshed in a frantic attempt to escape. But even if this corroboration had not been in existence, Rajkali has been absolutely unable to give any satisfactory explanation as to how she came to make these admissions and confession. We direct the learned Judge's attention to the remarks made by the learned CHIEF JUSTICE of the Allahabad High Court in *Raggha v. King-Emperor* (1), which, in our opinion, state the law upon the subject correctly, and to a decision of this Bench (so far unreported) in *Nirbhay Nath v. King-Emperor* (2) decided on the 26th of July, 1926. The woman Rajkali is in full possession of her faculties and she has been utterly unable to show how she made the admissions which she did if they were not true. The learned Sessions Judge has made a point of the fact that Jasoda never stated that she saw the *khurpa* with which the murder had been committed but on the facts there was no reason why Jasoda should see the *khurpa*. It could easily at the time have been in a portion of the *kothri* where it escaped her attention. He further points out that when Rajkali handed the *khurpa* to the police officer there was no blood upon it. He has omitted to note that, whereas the attack upon Sohankali took place on the 3rd of April, 1926, the *khurpa* was not handed over to the police till the 5th of April, 1926. During the intervening period the appellant had ample opportunity of having access to the *khurpa*. The learned

1926

 KING-
EMPEROR
v.
RAJKALI.

(1) (1925) 23 A.L.J., 82.

(2) (1926) I.L.R., 1 Lucknow p. 417

1926

KING-
EMPEROR
v.
RAJKALI.

Sessions Judge has arrived at a conclusion for which there was no evidence and, in our opinion; no justification that the murder might have been committed by the old man Badha but he overlooks the fact that if the murder had been committed by the old man Badha, Rajkali would have been the first person to accuse him of it. It is also clear that Rajkali's husband, Nand Kishore, has supported her defence in every possible way. He gave evidence for the defence. His evidence is, in our opinion, absolutely false and unreliable, but the circumstance that he has gone out of his way to perjure himself on behalf of his wife is sufficient to show that he is not ill disposed towards her. If the murder had been committed by Badha *lonia*, Nand Kishore would have certainly suggested that this was the case. We have no hesitation whatever in finding that the evidence upon the record supports absolutely and unmistakably one conclusion only, and that conclusion is that Rajkali murdered Sohankali with the *khurpa* with which she says that she did murder her. The medical officer who performed the *post mortem* examination gave a somewhat undecided opinion upon the point. He said that it was possible that the injuries caused upon Sohankali could have been caused by the *khurpa* in question, but that personally he thought they could have been caused more easily by a heavier weapon. Though it is very likely that they could have been caused more easily by a heavier weapon, as they could have been caused by that *khurpa*—and Rajkali says that they were caused by that *khurpa*—there is absolutely no reason to suppose that they were caused by anything else. We, therefore, allow the appeal and set aside the acquittal of Rajkali. We do not find that there was any grave or sudden provocation, or anything which can reduce the offence which she has committed to an offence less than the

offence of murder. We, accordingly, convict her under section 302 of the Indian Penal Code. In respect to sentence these are the facts: The situation in which Rajkali had been placed by the despicable man to whom she was married was deplorable. She was compelled as a married woman to live in intimate association with her husband's kept mistress, to attend to her and even to attend to Badha. There is evidence to show that Sohankali had abused her position and was endeavouring to show her authority, called herself the *thekadarin* and assuming the position of the head of the house. Causes for irritation must have been very numerous, and we see no reason to suppose that Rajkali did more than give way to a fit of furious temper in which she seized the nearest weapon to her hand with which to end the life of her rival. In these circumstances we refrain from passing a capital sentence and sentence her to transportation for life.

1926
KING-
EMPEROR
v.
RAJKALI.

Appeal allowed.

PRIVY COUNCIL.

NAND RANI KUNWAR (PLAINTIFF) v. INDAR KUNWAR
AND OTHERS (RESPONDENTS).*

P. C.*
1926
Nov. 1.

[On Appeal from the Court of the Judicial Commissioner of Oudh.]

Oudh taluqdari estate—Succession—List 3—Primogeniture sanad presumed—Grant to head of joint family—Oudh Estates Act (I of 1869), sections 10 and 22.

Before the annexation of Oudh a taluqa had been held by two brothers who formed a joint Hindu family. After confiscation the taluqa was settled with the elder brother, as head of the family, and in 1860 a *sanad* was given to him. He was entered in List 3 under the Oudh Estates Act, 1869, namely,

* Present :—Lord PHILLIMORE, Lord CARSON, Mr. AMEER ALI, and Sir JOHN WALLIS.