

1928.

SYED ALI
ZAMIN
v.

SYED
MUHAMMAD
AKBAR ALI
KHAN.

DAWSON
MILLER, C.J.

appointed Badshah Nawab on their father's death some years earlier, and no cogent reason has been addressed to us for not accepting this evidence which the learned Judge considered worthy of credit.

In my opinion the learned Judge was right in the conclusion at which he arrived and I would dismiss this appeal with costs against the appellants, the costs to carry interest at 6 per cent. per annum from this date until realization.

MULLICK, J.—I agree. The statement of Latf Ali to Kamla Prasad having been made "at the time of dedication" is admissible as evidence of the mode in which the office of mutawalli was to devolve. The evidence of Kamla Prasad cannot in the circumstances be excluded as hearsay and being corroborated by the various acts of the children of Latf Ali is sufficient to enable the plaintiff to succeed.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Adami and Wort, JJ.

KING-EMPEROR

v.

BINDA AHIR.*

1928.

Feb. 27.

Code of Criminal Procedure, 1898 (Act V of 1898), section 75(2)—warrant of arrest— execution after returnable date.

By reason of the provisions of section 75(2) of the Code of Criminal Procedure, 1898, a warrant of arrest remains in force until it is cancelled or executed even though it bears a returnable date.

Appeal by the Crown.

The facts of the case material to this report are stated in the judgment of Adami, J.

* Government Appeals nos. 4 and 5 of 1928, from an order of J. Chatterji, Esq., Sessions Judge of Saran, Chapra, dated the 1st December, 1927, setting aside the order of M. A. Moid, Deputy Magistrate, 1st Class, Chapra, dated the 26th September, 1927.

Sir Sultan Ahmed, Government Advocate, for
the Crown.

1925.

B. N. Misra, for the accused persons.

KING-
EMPEROR
v.
BINDA
AHIR

ADAMI, J.—These are two appeals by the Crown against an order of acquittal passed on appeal by the Sessions Judge of Chapra against the orders of conviction by the Deputy Magistrate.

It appears that the Subdivisional Officer of Barrackpur issued a warrant returnable by the 17th May, 1927, against Ambika Raut. On the 27th May, 1927, the warrant was executed and Ambika was arrested but on arrest he was rescued by Binda Ahir and others. Ambika Raut was put on his trial on a charge under section 224 and convicted by the Deputy Magistrate, while, in a separate trial, Binda Ahir and other villagers were put on their trial under sections 353 and 225 and they were also convicted.

Two appeals were laid before the Sessions Judge and he allowed both of them on a preliminary point. Without going into the merits of the case he found that the returnable date of the warrant was the 17th May 1927 and that it had not been served until that date was passed, and therefore he held the warrant had no validity and that the accused persons in each case could not be convicted. It is obvious that the learned Sessions Judge in both cases failed to consider the provision of sub-section (2) of section 75 of the Code of Criminal Procedure which lays down that "every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed." The warrant in Ambika's case had not been cancelled and therefore it was valid when it was executed.

The order of acquittal must be set aside and the record in each case must be sent back to the Sessions Judge in order that the appeals may be reheard, and an order passed according to law.

WORT, J.—I agree.

Conviction set aside.