

1928.

THAKUR
RAGHU-
NANDAN
SAHAY
SINGH.
v.
THAKUR
DRIPIA
NATH
SAHAI
SINGH.

the lower Appellate Court so far as these appeals are concerned are set aside and the appeals remanded to that Court for disposal according to law. It will be open to the parties to argue any other point that may occur to them covered by the pleadings, issues and the evidence in the case; but neither of the parties will be entitled to adduce fresh evidence. Costs will abide the result and will be disposed of by the learned Judge in the Court below.

WORT, J.—I agree.

S. A. K.

Appeals remanded.

APPELLATE CRIMINAL.

Before Terrell, C.J., and Allanson, J.

SHEONARAIN SINGH

v.

KING-EMPEROR.*

1928.

July, 27.

Evidence Act, 1872, (Act I of 1872), section 24—retracted confession, admissibility of—statement whether can be used against a co-accused.

A retracted confession is admissible in evidence but should have no weight attached to it unless it is corroborated in material particulars or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight and may be used against a co-accused.

The facts of the case material to this report are stated in the judgment of the Chief Justice.

H. L. Nandkeolyar, for the appellants.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

*Criminal Appeal no. 95 of 1928, against a decision of Rai Bahadur J. Chatterji, Sessions Judge of Saran, dated the 25th February, 1928.

COURTNEY TERRELL, C.J.—This is an appeal by two persons Sheonarain Singh and Deosaran Rai who were together with three others namely Ramchander Singh, Ram Sawarath Singh and Laldas Ahir placed upon trial before the Sessions Judge of Saran on charges under sections 395, 458 and 457, read with 114 of the Indian Penal Code. Laldas Ahir has been acquitted. Ramchander and Ram Sawarath Singh were convicted by the jury and their appeal to this Court has been dismissed. The appellants were convicted by the jury under section 457 read with section 114 of abetting housebreaking by night and were sentenced to one year's rigorous imprisonment each, the Sessions Judge accepting the verdict of the jury.

1928.

 SHEONARAIN
 SINGH
 v.
 KING-
 EMPEROB.

 TERRELL,
 C. J.

The story upon which the prosecution is based to put it shortly is as follows:—A woman named Timli was on the 21st November asleep in her house and at about midnight she was awakened by sounds in her room and saw the accused Ramchander and Ram Sawarath breaking open a box. She went outside the house and raised an alarm and then there came upon the scene a man named Ramcharitar who lives in the immediate neighbourhood. He went into the house, fought with these two accused persons and ultimately came outside and carried on the fight with the two appellants who were standing outside. The men who had been inside the house were apprehended. Rahmatulla on going outside the house says that he saw three persons one of whom was the person Laldas who has been acquitted by the jury with the approval of the Sessions Judge and the other two were the two appellants in this case. The prisoner who was acquitted was at a distance of 7 or 8 paces and threw brickbats at him and actually, according to his story, assaulted him with a lathi. Rahmatulla was accompanied by two persons with lantern and by the light of the lanterns he says he was able to recognise not only Laldas but also the two appellants. The convicted man Ramchander made a confession which he subsequently retracted, the confession being made on the

1928.
SHEONARAIN
SINGH
v.
KING-
EMPEROR.
TERRELL,
C. J.

spot and immediately after his apprehension in which he gave a list of the persons who were his accomplices and that list included the names of the two appellants in this case.

The whereabouts of Laldas upon the night of the occurrence were made the subject of an enquiry by the Sub-Inspector and he stated in Court that he had received a report that Laldas who was a person under surveillance had been visited at or about midnight at his house some miles away from the scene of the occurrence and had been found to be in his house at that time and was visited later on at about 4 o'clock in the morning and was again found to be present. The report which was referred to by the Sub-Inspector was not proved but it is perfectly clear that the jury regarded it as having been established and has certainly believed the Sub-Inspector that Laldas could not possibly have been at the scene of the occurrence on the 21st. Therefore the identification by Rahmatulla of Laldas in the view of the jury was unsatisfactory and they appear to have come to the conclusion that it was unreliable and they acquitted and, in our opinion, rightly acquitted, Laldas. On the other hand as to the two appellants the jury came to the conclusion that the identification by Rahmatulla was satisfactory. The learned Sessions Judge distinctly warned the jury that Rahmatulla's identification of Laldas was probably mistaken but he also pointed out to them that the identification by Rahmatulla of Laldas stood upon a somewhat different footing from the identification by Rahmatulla of the two appellants inasmuch as Laldas was pitching brickbats at him from some distance and the two appellants were beating him with lathis.

It is, however, contended for these two appellants that the jury should have been expressly warned that inasmuch as the identification by Rahmatulla of Laldas was clearly unsatisfactory they should regard his evidence of identification of the two appellants with special caution and should not rely on it unless

convinced of its truth. It is further contended that inasmuch as there is substantially no other evidence against these two appellants but the identification by Rahmatulla, they have been convicted on the evidence of a witness who was prima facie open to suspicion and that the jury had not been warned of the danger of convicting on evidence of that nature. To my mind there are several answers to these propositions. In the first place as regards the accused Deosaran there is corroborative evidence of the identification in the fact that being a person under surveillance his dwelling was visited on the night in question and he was in fact absent at midnight and at 4 A.M. Secondly, there is the retracted confession of Ramchander. It is true that a retracted confession must be regarded with the utmost suspicion. It must be regarded with stronger suspicion than that which attaches to the confession of an approver who gives evidence in Court. But nevertheless such evidence is admissible and criticisms upon it can only be directed to its cogency. In this case the confession implicates the person making it, that is to say, Ramchander and therefore it becomes admissible. It was made immediately after the occurrence which fact removes to some extent the suspicion which inherently attaches to it. It is corroborated in a material particular because not only Ramchander but one of the other persons mentioned by him Ram Sawarath was apprehended on the spot. It may therefore properly be taken into consideration by a jury. But in this particular case the learned Sessions Judge went even further in favour of the appellants than he need have done and told the jury that

“ A retracted confession carried no weight except against the maker and was not to be used against any one of the other four accused.”

This statement is, in my opinion, contrary to the principles of the law of evidence. Such a retracted statement is admissible but should have no weight attached to it unless either corroborated in a material

1928.

 SHEENARAIN
 SINGH
 v.
 KING-
 EMPEROR.

 TERRELL,
 C. J.

1928.

 SHEONARAIN
 SINGH
 v.
 KING-
 EMPEROR.
 TERRELL,
 C.J.

particular or unless the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement may be given full weight. In this case in my opinion there was ample evidence upon which the jury could come to their verdict and there was no misdirection on the part of the learned Judge. It is frequently urged in dacoity cases where the accused have been identified by a witness who is shewn to have mistakenly identified also other persons who clearly could not have been present that the evidence of such a witness is unreliable against the others. But this view cannot be stated as a general proposition. Each case must depend upon its own merits and where the erroneous identification is of such a character as definitely to throw doubt upon the credibility of the witness then it may well be that the jury should be warned against the danger of accepting his identification of the other accused, particularly where the sole evidence against the accused is that of identification by the witness. These circumstances do not present themselves in this case. In my view the appeal should be dismissed and the convictions and sentences should be affirmed.

ALLANSON, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Adami and Macpherson, JJ.

GANJHU UPENDRA SINGH

v.

SURJAN SINGH.*

1926.

July, 23.

Trees, tenant's liability to rent for, in Ranchi District—Entry in record-of-rights relating to liability in respect of trees—Chota Nagpur Tenancy Act, 1908 (B. & O. Act VI of

*Appeal from Appellate Decree no. 488 of 1924, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Ranchi, dated the 2nd February, 1924, reversing a decision of Babu Khetra Nath Singh, Munsif of Ranchi, dated the 24th November, 1922.