

PRIVY COUNCIL.

*Before Viscount Dunedin, Lord Tomlin, Lord Thankerton,
Sir George Lowndes, and Sir Dinshah Mulla.*

MOHINDAR SINGH AND ANOTHER

versus

THE KING-EMPEROR

(Lahore High Court Cr. Appeal No. 511 of 1931.)

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April 5.

Privy Council Practice—Criminal Matter—Application for Special Leave to Appeal—Limits of Jurisdiction—Retracted Confession—Indian Evidence Act, 1 of 1872, section 30.

The Judicial Committee does not sit as a Court of Criminal Appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice.

Petition for special leave to appeal from convictions dismissed, where the petitioners contended that, excluding a retracted confession by an accused charged jointly with them, which had been taken into consideration (improperly they said) under section 30 of the Indian Evidence Act, 1872, there was no evidence warranting their conviction.

In re Dillet (1), followed.

Petition for special leave to appeal from a judgment of the High Court at Lahore, dated December 7, 1931, affirming convictions and sentences passed by the Sessions Judge of Ferozepore.

The material facts appearing from the petition were as follows. The petitioners were tried, with others, by the Sessions Judge of Ferozepore on the following charges:—Jagir Singh and the petitioners with others were charged under section 120-B combined with sections 102 and 109 of the Indian Penal Code with conspiracy to murder Bhai Arganjan Singh,

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Extra Assistant Commissioner, and with his murder on the night between July 30 and 31, 1931, pursuant to the conspiracy. Jagir Singh and the first petitioner were further charged under section 302, with the murder of Chand, a servant of the said Arganjan Singh, and the murder of Arganjan Singh.

The Sessions Judge, agreeing with the unanimous opinion of the five assessors, convicted the two petitioners, also Jagir Singh and one Man Singh of the offences charged. He sentenced the first petitioner to death; the second petitioner and Man Singh he sentenced to transportation for life.

Jagir Singh, who had absconded when the inquiry commenced, was arrested later and when brought before the Additional District Magistrate had made a confession which was recorded under section 164 of the Code of Criminal Procedure. The inquiry was subsequently transferred to a First Class Magistrate to be heard *de novo*, and during the hearing Jagir Singh retracted his confession. There was, however, evidence that he had confessed to one of the witnesses that he and the first petitioner had committed the murders.

The High Court acquitted Man Singh, but confirmed the convictions and sentences as to the petitioners. Coldstream J., with whose judgment Jai Lal J. agreed, said that the Court had repeatedly held that a retracted confession was evidence against persons tried jointly with the confessor though its weight must depend upon the facts of the case. The rule should not be departed from that it was unsafe to convict unless the confession was corroborated by independent evidence unmistakably connecting the accused with the crime. Upon an examination of the

evidence the learned Judge held that there was corroboration as to both the present petitioners. Dealing with a contention that the confession had been made after the inquiry commenced and that therefore section 164 of the Code of Criminal Procedure did not authorize it being recorded, the learned Judge pointed out that an inquiry as to the guilt of Jagir Singh could not be regarded as commencing before he was brought before the magistrate.

PRITT K. C. and SYDNEY SMITH for the petitioners :—

Section 30 of the Indian Evidence Act was wrongly construed and applied. The section does not make a confession evidence but only something which the Court can take into consideration in connection with the evidence if there is any affirmative evidence. Further it is submitted that the section does not apply to a retracted confession. Excluding the confession there was no evidence to support the conviction. The result is that the petitioners have been convicted upon a confession made when they were not present and since retracted. There was, therefore, a departure from the fundamental principles of justice bringing the matter within the limited class of criminal matters into which the Board will inquire. The petitioners further contend that under section 164 of the Code of Criminal Procedure there was no power to record the confession as it was not made before the commencement of the inquiry or trial. [Reference was made to *Vaithinatha Pillai v. The King-Emperor* (1) and to *Knowles v. The King* (2)].

DUNNE K. C. and WALLACH for the respondent.

(1) (1913) I. L. R. 36 Mad. 501; L. R. 40 I. A. 193. (2) 1930 A. C. 366.

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The judgment of their Lordships was delivered by—

VISCOUNT DUNEDIN—Their Lordships have frequently stated that they do not sit as a Court of Criminal Appeal. For them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shock the very basis of justice. Such an instance was found in *Dillet's case* (1) which has always been held to be the leading authority on such matters.

In the present case the only real point is as to the meaning and effect of a section of the Evidence Act. The petitioners contended that a wrong view had been taken of the matter, also that upon a proper reading of the section there was an insufficiency of evidence to warrant the conviction. Those are merely points for a Court of Criminal Appeal.

Their Lordships will humbly advise His Majesty that the petition should be dismissed.

A. M. T.

Appeal dismissed.

Solicitors for petitioners—*H. S. L. Polak & Co.*
Solicitors for respondent—*Solicitor, India Office.*

(1) (1887) 12 A. C. 459.