

## APPELLATE CRIMINAL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

1898.

June 28.

QUEEN-EMPRESS v. GANGIA AND OTHERS.\*

*Criminal procedure—Judge's charge—Misdirection—Confessions—Retracted confessions—Admissibility of such confessions without corroborative evidence—Evidence.*

The accused were tried for murder. The Sessions Judge in his charge to the jury discussed the evidence generally, describing it as very poor evidence which, standing alone, amounted to nothing. He also told the jury that, as regards retracted confessions, "the law is that you are to look for corroboration in independent evidence. If that supplies such corroboration that you can confidently say, 'the confessions must be absolutely true,' you can act upon them, otherwise not."

*Held*, that the charge was defective. The Sessions Judge ought to have summed up the evidence to the jury, calling their attention to the material parts of it, and leaving them to form their own opinion on it, instead of treating it generally.

*Held*, also, that the Judge had misdirected the jury, as there is no rule of law that a retracted confession cannot be treated as evidence unless it is corroborated in material particulars by independent reliable evidence.

APPEAL by the Local Government from an order of acquittal passed by F. C. O. Beaman, Sessions Judge of Belgaum.

The accused, who were eight in number, were tried on a charge of murder under section 302 of the Indian Penal Code (Act XLV of 1860).

In his charge to the jury the Sessions Judge said as follows:—

"The whole case turns on the confessions which have all been retracted. For if you eliminate the confessions, what remains? This much only.

"A. General evidence of ill-will against the complainant. But this is common to the whole country side and in no sense particular to the accused or any of them.

"B. Very poor evidence of witness to conspiracy.

"C. Very poor evidence of one witness as to seeing some of the accused going together on the night of the murder.

"D. Production of a gun in presence of the panch by one of the accused.

"That evidence standing alone amounts practically to nothing.

\* Criminal Appeal, No. 122 of 1898.

“Thus it turns out that the case rests solely on retracted confessions. I cannot even direct you to independent corroboration of the kind there ought to be before you found a verdict on a retracted confession. The law is that you are to look for corroboration in the independent evidence. If that supplies such corroboration that you can confidently say, ‘the confessions must be substantially true,’ you can act upon them, otherwise not . . . . It is very unsafe to act upon an uncorroborated retracted confession.”

THE jury by a unanimous verdict acquitted all the accused.

The Sessions Judge accepted this verdict and directed the accused to be acquitted and discharged.

Against this order of acquittal, the Local Government appealed to the High Court.

Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

*Dattatrya K. Idgungi* for the accused.

PARSONS, J.:—The charge of the Sessions Judge to the jury in this case has been attacked on many grounds, but it is sufficient for us to notice two of them only. First, that the Sessions Judge did not sum up the evidence to the jury calling their attention to the material facts of it and leaving them to form their own opinion upon it, but treated it generally and called it “very poor evidence,” which, “standing alone, amounted to nothing.” With reference to this, we would draw the attention of the Sessions Judge to the judgment of Sargent, J., in *Reg. v. Futtechand*<sup>(1)</sup>. Secondly, that he misdirected the jury by telling them that in the case of retracted confessions “the law is that you are to look for corroboration in the independent evidence. If that supplies such corroboration that you can confidently say ‘the confessions must be absolutely true,’ you can act upon them, otherwise not.” We think this is a clear misdirection. This Court has always consistently held that there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars—*Queen-Empress v. Gharya*<sup>(2)</sup>. The Madras High Court in a recent case, *Queen-Empress v. Raman*<sup>(3)</sup>, has arrived at the same conclusion. In

(1) (1868) 5 Bom. H. C. Rep., 85, Cr. C.

(2) (1894) 19 Bom., 728.

(3) (1897) 21 Mad., 83.

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that case the Chief Justice and Shepherd, J., say: "We are of opinion that it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence." We would also refer the Sessions Judge to the Criminal Rulings of this Court, 12 of 1896 (*Imp. v. Genu*) and 3 of 1898 (*Imp. v. Balya*), especially the latter one, where the subject of confessions is dealt with, and the case of *Queen-Empress v. Maiku Lal*<sup>(1)</sup>.

We reverse the acquittals of the accused and direct them to be retried.

(1) (1897) 20 All., 133.

## APPELLATE CIVIL.

*Before the Honourable Mr. Parsons, (Acting) Chief Justice, and  
 Mr. Justice Ranade.*

1898.  
 July 6.

SATU AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, v. HANMANT-  
 RAO GOPALRAV NIMBALKAR (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 120—Refusal of a plaintiff  
 to attend as a witness.*

A plaintiff who was represented by a pleader was summoned at the instance of a defendant to attend the Court and to give evidence on his behalf on the day fixed for final hearing. The plaintiff refused to attend, on the ground that he was a person of rank and was exempted from personal appearance in the Courts of a Native State. The first Court, considering the personal appearance of the plaintiff necessary, issued an order under section 120<sup>(1)</sup> of the Civil Procedure Code (Act XIV of 1882) that he should attend, and, on his failure to do so, passed

\* Appeals No. 37 and 39 of 1897 from order.

(1) Section 120, Civil Procedure Code (Act XIV of 1882) :—

"If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

"If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit."