

1911  
 DAMODAR  
 NARAYAN  
 CHOWDHRI  
 v.  
 DALGLIESH.

such a finding, and their Lordships see no reason to question it.

The result, in their Lordships' opinion, is that this appeal should be disallowed so far as relates to the larger of the two areas, but that so far as it affects the smaller area the judgment and decree of the High Court should be set aside and those of the Subordinate Judge restored, and their Lordships will humbly advise His Majesty accordingly.

With regard to costs, inasmuch as each party has succeeded in part and failed in part, there will be no order either here or below.

*Appeal partly dismissed and partly allowed.*

Solicitors for the appellants: *Watkins & Hunter.*

Solicitors for the respondent: *T. L. Wilson & Co.*

J. V. W.

## ORIGINAL CRIMINAL.

*Before Mr. Justice Carnduff.*

EMPEROR

v.

KERAMAT SIRDAR.\*

1911  
 Feb. 6.

*Confession—Joint trial—Plea of guilty by co-accused—Acceptance of plea by the Court and removal of co-accused from the dock—Trial of remaining prisoner alone—Admissibility of confession of co-accused against prisoner on trial—Evidence Act (I of 1872) s. 30.*

Where a co-accused pleads guilty, and the Court has accepted the plea and directed his removal from the dock, and the trial proceeds against the remaining prisoner alone, a confession by the former is not admissible under s. 30 of the Indian Evidence Act, 1872, against the latter.

*Queen-Empress v. Pahuji (1) approved.*

The prisoner, Keramat Sirdar, was committed with four others by Mr. N. L. Bagchi, Presidency Magistrate of Calcutta,

\*Original Criminal.

(1) (1894) I. L. R. 19 Bom. 195.

on a charge of dacoity. They were arraigned at the First Original Criminal Sessions of the High Court held on the 6th February 1910. When called upon to plead, Keramat Sirdar pleaded not guilty, but the others pleaded guilty. The presiding Judge thereupon recorded the pleas of the latter, intimated his acceptance thereof, and directed their removal from the dock without immediately convicting or sentencing them. The trial then proceeded against Keramat alone.

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*Mr. Shelley Bonnerjee*, for the Crown, raised the question of the admissibility of the confessions of the prisoners who had pleaded guilty, against Keramat, and referred to *Queen-Empress v. Chinna Paruchi* (1), *Queen-Empress v. Paltua* (2), and Woodroffe's Evidence Act, 5th Ed., p. 177.

CARNDUFF J. In this case five persons were placed before me in the dock, all charged with dacoity. Four of them pleaded guilty, while the fifth pleaded not guilty. I recorded the former plea and indicated my acceptance of it by directing that, in accordance with my usual practice, the accused be brought up for sentence at the end of the Sessions. The fifth is now on his trial alone, and the question has been raised whether certain statements made by the others can now be proved and taken into consideration against him under section 30 of the Evidence Act. Taking the same view as was taken in *Queen-Empress v. Pahuji* (3), I am of opinion that this cannot be allowed.

[At the close of the trial of Keramat, who was found guilty by the Jury, his Lordship directed the other prisoners to be brought up, and sentenced all the five accused to various terms of rigorous imprisonment.]

E. H. M.

(1) (1899) I. L. R. 23 Mad. 151.      (2) (1900) I. L. R. 23 All. 53.

(3) (1894) I. L. R. 19 Bom. 195.