Umra - - - - - - - - - - - *Appellant.*

v.

The King-Emperor - - - - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL UPON PETITION FOR SPECIAL LEAVE TO APPEAL, DELIVERED THE 17TH NOVEMBER, 1924.

Present at the Hearing:

LORD DUNEDIN.
LORD ATKINSON.
LORD SUMNER.
SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

This is a petition for special leave to appeal against a sentence of death pronounced on the petitioner by the Sessions Judge of Shahpur and confirmed by the High Court at Lahore.

The petitioner, with others, organised a robbery in the house of a moneylender. They broke into the house at night and took ornaments, money and other things from the wife who was in the house (the moneylender himself being absent). Other persons arriving on the scene, two of the gang stationed on the roof fired shots and killed two persons. The conviction pronounced against the petitioner and four others was for the murder of these persons.

One Misri, one of the party, made a statement to the police, in which he detailed the incidents of the robbery and incriminated the various accused, including the petitioner. The admission of this statement was objected to by the vakil for the petitioner, but it was admitted by the Sessions Judge, and this admission was confirmed by the High Court. The ground for the present

application is that the admission of the statement was clearly wrong and that the improper admission of this evidence amounted to a grave injustice and a violation of the principles of natural justice, and especial reference was made to the case of *Vaithinatha Pillai* v. *The King-Emperor*, 40 I.A. 193.

Their Lordships find that in the judgment of the High Court one of the learned Judges, while dealing with the point as to the admission of the evidence, expressed himself thus :—

> "I do not suggest that in the present case, the statement of Misri is essential to the conviction, as I am satisfied that the rest of the evidence on the record establishes the guilt beyond any reasonable doubt."

And the other learned Judge agreed with these remarks. In view of this it seems to their Lordships out of the question that leave to appeal should be granted, as to do so would be to turn this Board into a Court of Criminal Appeal, a position which it has been again and again explained the Board will not assume. But, in view of the judgments given and the argument raised thereon, their Lordships feel constrained to add something more. The question of the admissibility of the evidence turned entirely on the interpretation of certain sections of the Code of Criminal Procedure and the Evidence Act. According to the view taken of these sections the evidence was or was not admissible. Now, although if there has been any departure from the ordinary rules of procedure such as to amount to a denial of ordinary justice, of which an illustration is given in *Pillai's* case, their Lordships will interfere ; yet where the matter depends upon the particular view taken of sections of an Indian Act their Lordships could not say that to assert that upon those sections the Judges had come to a wrong conclusion is tantamount to saying that there has been substantial and grave injustice done. Even, therefore, if there had not been the expression of opinion above quoted that the other evidence was sufficient, their Lordships would not have held that the so-called miscarriage of justice in respect of a wrong interpretation of the sections—as to the proper interpretation, their Lordships have not formed and express no opinion—is such as to bring the case within the rules laid down in *In re Dillet*, L.R. App. Cas. XII, 459, and insisted upon in subsequent cases.

Their Lordships are, therefore, unable to advise the Sovereign to grant special leave to appeal.

In the Privy Council.

UMRA

v.

THE KING-EMPEROR.

DELIVERED BY LORD DUNEDIN.

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