Guru Bhag Singh, has left any other spiritual descendants, plaintiff has right to oust a trespasser. The first Court speaks of the property as wakf. It may be wakf to a certain extent, but I do not think there are any sufficient grounds for considering that the rights of ownership have entirely ceased to exist.

Then it is urged that Rangi Ram Singh's possession should be regarded as adverse from the date of Guru Bhag Singh's death. But Rangi Ram Singh clearly recognized Guru Bhag Singh as the owner and himself as holding as Mahant only. His possession was not adverse to Guru Bhag Singh, and I see no reason to suppose that his possession was adverse to Man Singh on Bhag Singh's death; I think Rangi Ram Singh's possession was never adverse, and as this suit has been brought within 12 years of Rangi Ram Singh's death I do not regard it as time barred.

Lastly, it is urged on defendant's behalf that he is not liable to be ousted except by a Mahant, and that no Mahant has yet been appointed. But though I doubt whether the plaintiff, as owner could turn out a Mahant, I see no reason whatever to doubt that the plaintiff can, in the absence of a Mahant, oust the defendant who is a mere trespasser.

The application for revision is dismissed with costs.

R.M./R.K. *Application dismissed.*

A. I. R. 1914 Lahore 379

RATTIGAN AND BEADON, JJ.

Mutsaddi Singh and *others*—Plaintiffs—Appellants.

v.

Narain—Defendant—Respondent.

Second Appeal No. 676 of 1910, Decided on 6th January 1914, from decree of Divl. Judge, Ludhiana, D/- 15th May 1910.

(a) Custom (Punjab)—Succession—Collateral succession of appointed heir in natural family not excluded—Where excluded it is open in adoptive family.

The general custom among the Punjab agriculturists is that an appointed heir does not succeed collaterally in the family of the person appointing such heir. This rule has been adopted on the principle, which is almost of universal applicability in this Province, that an appointed heir is not precluded from succeeding collaterally in his natural father's family. So where by custom such heir does not succeed collaterally in his real father's family his right of collateral succession in the adoptive father's family is very often recognized: 4 *I.C.* 857, *Ref.* [P 379 C 2]

(b) Custom (Punjab)—Succession—Among Jats of Jagraon tahsil collateral succession in natural family is open to appointed son.

Among Jats of the Jagraon Tahsil in the Ludhiana District no custom prohibiting collateral succession of the appointed heir in his natural father's family exists and he is not entitled to succeed collaterally in his adoptive father's family. [P 380 C 1]

(c) Custom (Punjab)—Succession—Prohibition in Riwajiam of Jagraon of succeeding to natural father does not apply to collateral succession to paternal uncle.

The Riwajiam of Jagraon Tahsil prohibiting an appointed heir from inheriting his natural father's property along with his own brothers does not mean to establish that he is also debarred from succeeding collaterally to his paternal uncle. [P 380 C 1]

Muhammad Din—for Appellants.

Muhammad Iqbal—for Respondent.

Judgment.—The parties are Jats of Tahsil Jagraon, Ludhiana District, and ths sole question before us is, whether an appointed heir is entitled by custom to succeed collaterally to property left by the nephew of the person who appointed him heir in the presence and to the prejudice of the collateral heirs of the deceased. The general rule, no doubt, is that an appointed heir does not succeed collaterally in the family of the person who appointed him such heir and the reason for this rule is presumably the other rule, also of almost universal applicability throughout the Province, that a person who has been appointed heir in one family does not lose his right of succession collaterally in the family of his natural father. It may well be therefore that in cases where custom does not recognize the latter rule, that is to say, where the appointed heir loses all right of collateral succession in his own natural family, that custom would recognize his right to collateral succession in the family of the person who appointed him heir: see *Dial Singh* v. *Sewa Singh* (1).

In the present instance the Divisional Judge has dismissed the claim of the plaintiffs, who are collateral heirs of Naraina, the deceased proprietor, on the ground that by custom in the Jagraon Tahsil a collateral adoptee by his adoption loses his right of succession directly and collaterally in his natural family. We are unable ourselves to find any proof of such custom on the record and the Riwajiam of the tahsil referred to

(1) [1909] 103 P. R. 1909=4 I.C. 857.

by the Divisional Judge merely states, that a person who is appointed heir in another family loses his right to succeed to his natural father as against his natural brothers. This is of course a very different proposition and in no way precludes such person from claiming to succeed to his paternal uncle.

In the present case the defendant stated, on solemn affirmation in the lower appellate Court, that he was relinquishing all rights to succeed to his natural father. As he is said to have three natural brothers living, his right to succeed to Lallu, his natural father, would appear to be exceedingly remote and in any event this statement of his would not necessarily debar him from claiming to succeed to Lallu, and it certainly would not prevent him from claiming collateral succession in Lallu's family. Nor again would it in all probability be held binding on the defendant's descendants.

As we are not satisfied that defendant is disentitled to succeed collaterally in his natural family, we must hold that the ordinary rule applies, and that he has no right to succeed to Naraina in the presence of Naraina's collaterals. We accordingly accept the appeal and restore the decree of the Munsif First Class. Respondent must pay costs throughout.

R.M./R.K. *Appeal allowed.*

A. I. R. 1914 Lahore 380

JOHNSTONE AND BEADON, JJ.

Mt. Fatima—Appellant.

v.

Emperor—Opposite Party.

Criminal Appeal No. 677 of 1913, Decided on 17th November 1913, from order of Sess. Judge, Ludhiana, D/- 9th August 1913.

(a) Evidence Act (1 of 1872), S. 122—Husband's evidence of confession against wife for murder of stepson is not admissible — "Against" person does not include against son.

Where a woman is charged with the murder of her stepson, her husband's evidence, in so far as it relates to the alleged confession by her to him and to the alleged pointing out of the body by her to him alone, is inadmissible in view of S. 122, Evidence Act, and of the interpretation put upon it in 19 *I. C.* 705. An offence "against" a person within the meaning of the section is an offence calculated to injure his person or property or reputation—as in cases of defamation—and does not include an offence against a son, though such offence may cause to the father grief of mind. [P 381 C 1]

(b) Evidence Act (1 of 1872), S. 26—Confession by woman while in police custody is of little value.

A confession by a woman in police custody, to which she has been relegated by her own husband and to which she was remanded after the confession was made, is of little value when it is found to have been retracted only five days later before the same Magistrate. [P 381 C 1]

Brij Lal—for Appellant.

Johnstone, J. — In this case Mt. Fatima alias Fattan, wife of Abdullah Arain, of mohallah Chhauni, Ludhiana, has been convicted by the Sessions Court of the crime of murdering her stepson, Abdul Karim, a little boy of three and a half years of age, by strangulation with her hands, and, in view of the fact that she was pregnant when under trial —she has since then given birth to a child—instead of a capital sentence the more lenient punishment of transportation for life has been inflicted. She has appealed, declaring her innocence, and we have heard her case argued by Mr. Brij Lal, her counsel. We have given this somewhat difficult case our most anxious consideration, and I have arrived at the conclusion that the evidence on the record, so far as it is in law admissible and relevant, is insufficient to support the conviction.

The theory of the prosecution is that on the afternoon of 17th June last she took the child out to a pond to the south of the canal bungalow and there throttled it with her hands after removing from its neck a silver tawiz on a black thread, and then threw the body and the tawiz into the water. The learned Sessions Judge has found this theory established upon evidence which may be classified thus:

(1) The confession of the appellant before the committing Magistrate on 21st June 1913; (2) the previous alleged confession by her to her husband on 18th June and the alleged pointing out by her on that day to him alone of the body floating on the pond; (3) the production by her of the tawiz and thread from the pond on 19th June at 3 p. m. in presence of the police and others; (4) the depositions of Mt. Rani, wife of Abdullah's brother, Ali Sher, and of Mt. Mehri, wife of Ruknuddin, to the effect that they had seen appellant carrying the child away from home on the afternoon of 17th June.