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could not, under Section 297, deal with the case as one of simple discharge of the prisoners. With an acquittal the Court will not, under that section, interfere, as was ruled in the case of *Reg.* v. *Pirkhán Jámà*, 21st May 1873. We must, therefore, reject the application.

*Appeal rejected.*

[APPELLATE CRIMINAL JURISDICTION.]

## *Criminal Reference No. 48 of 1874.*

June 25.

## REG. *v.* UTTAMCHAND KAPURCHAND and others.

*The Code of Criminal Procedure, Sec. 119—The Indian Evidence Act, Secs. 91 155, and 159—Statements made to the Police.*

Section 119 of the Code of Criminal Procedure not making it obligatory upon a police officer to reduce to writing any statements made to him during an investigation, neither that section, nor Section 91 of the Indian Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under Section 159 of the Evidence Act. Consequently, the person making the statements may properly be questioned about them; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statements were made, can be examined on the point under Section 155 of the Evidence Act.

THIS was a reference by H. M. Birdwood, Acting Session Judge at Surat, reporting, under Section 296 of the Code of Criminal Procedure, the proceedings of Jagjivandás Khusháldás, Magistrate, 1st Class, in the case of the accused Uttamchand and others.

The material facts of the case are as follows:—

The accused were convicted of an offence under Section 152 of the Indian Penal Code; one of them was also convicted in addition under Section 323. With the exception of Navalchand, whose conviction and sentence were reversed on appeal by the Court of Session, the other accused were sentenced to fines of a smaller amount than Rs. 50, and had, consequently, no right of appeal; but they

complained to the Court of Session that the witnesses for the prosecution contradicted, before the Magistrate, statements which they had previously made to the police, and that they, the accused, were not allowed to prove these contradictions. The Magistrate, being called upon to explain, stated that he objected to the cross-examination, because, under Section 119 of the Code of Criminal Procedure, any statement made before the police, by a witness, could not be treated as part of a record or used as evidence in a criminal trial. The Session Judge was of opinion that the evidence refused was admissible to impeach the credit of the witnesses for the prosecution, and he, therefore, reported the case for the orders of the High Court.

The reference was heard by NA'NA'BHA'I HARIDA'S and LARPENT, JJ.

The parties were not represented.

The judgment of the Court was delivered by

NA'NA'BHA'I HARIDA'S, J.—The object of a trial in every case is to ascertain the truth in respect of the charge made. For this purpose it is necessary that the Court should be in a position to estimate, at its true worth, the evidence given by each witness, and nothing that is calculated to assist it in doing so ought to be excluded, unless, for reasons of public policy, the law expressly requires its exclusion. Bearing this in mind, let us see how the case stands here.

It is complained in this case that the accused were not permitted to elicit from witnesses for the prosecution that they or some of them had before made statements inconsistent with their evidence before the First Class Magistrate. This is admitted by the First Class Magistrate, whose reason for so refusing permission we shall presently consider. When it is intended to throw discredit upon the evidence of any witness for the prosecution, nothing is more common in practice than for the counsel for the defence to prove, if it can be proved, that that witness has previously made statements inconsistent with his evidence at the trial. When this fact is satisfactorily

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established, the Court cannot but regard the evidence of such witness with suspicion, and the fact is established by the evidence of any one to whom such statements were made, or in whose presence and hearing they were made. But the First Class Magistrate is of opinion that if the statements are made to a policeman, who chooses, under Section 119 of the Code of Criminal Procedure, to reduce them to writing, they are, by that section, rendered inadmissible, and cannot be proved by the evidence of witnesses to whom or in whose hearing they were made. If the section were capable of no other construction than the one the Magistrate has put upon it, we should be bound to adopt that view, though thereby the criminal courts and counsel for the defence should be deprived of one of the modes of testing evidence adduced for the prosecution. But we are of opinion that the Magistrate has misunderstood the meaning of that section, which runs thus :—

"An officer in charge of the police station, or other police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

"Such person shall be bound to answer all questions relating to the case, put him by such officer, other than questions criminating himself.

"No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence."

The meaning of the section, so far as it has reference to the point we are now considering, is this.

A police officer may examine any person acquainted with the facts of the case.

He is not bound to reduce into writing any statement made by that person, though, if he wishes to do so, he may reduce it into writing.

If he does so, such written statement shall not be treated at the trial as part of the record or as evidence, which means that though it may be used by the police officer to aid him in his investigation, it is not to be used by the prosecution as evidence to establish the accused's guilt.

To our minds it is clear, from the wording of the section itself, that when a person makes a statement to a police officer which is not "reduced into writing" by him, such statement is not inadmissible in evidence under this section, since it does not profess to provide for such a case. The police officer may, therefore, be questioned as to such statement by the counsel for the defence, as also any other person who may have heard it made. And it is equally clear that when it is "reduced into writing," the section does not say that the police officer, or such other person, shall not be liable to be questioned as to it, or bound to state the truth when so questioned, but that the "statement so reduced into writing" (that is, the writing itself,) shall not be "used as evidence." Consequently, the police officer and such other person, if any, notwithstanding Section 119 of the Criminal Procedure Code, continue as liable to be questioned with regard to such statement as they were before its enactment, and may, under Section 159 of Act I. of 1872, make use of such writing to refresh their memories, though the writing itself cannot be "used as evidence." The rule which is laid down in Section 155 of that Act, that "the credit of a witness may be impeached" * * * * * * * * "By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted," and which has always been the rule of evidence both in England and in India, is thus left untouched by the subsequent enactment, Section 119 of the Code of Criminal Procedure. This view of ours, though it might at first sight seem opposed to Section 91 of the Evidence Act, is not, in reality so, as the statement made to the police officer is not a matter required by law to be "reduced to the form of a document," so as, under that section, to exclude oral evidence thereof from the mouth of the police officer, or such other person.

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Such being our view on this point, we are of opinion that the Magistrate was wrong in not permitting the accused to show, by eliciting answers to that effect in cross-examination, that the witnesses for the prosecution, or some of them, had previously made statements inconsistent with their evidence in Court. This was " a material error " on his part within the meaning of Section 297 of the Code of CriminalProcedure. We must, therefore, reverse the conviction, and send the case back, in order that he may pass a new judgment in the case, after allowing the accused to show, if they can, that any of the witnesses for the prosecution have made inconsistent statements, and are, therefore, not worthy of belief, and after recalling for that purpose any of such witnesses as the accused may desire to recall under Section 218 of the Criminal Procedure Code. In any judgment he may pass after doing so, the Magistrate should be directed to comply with the provisions of Section 464 of the Criminal Procedure Code.

*Order accordingly.*