

APPELLATE CRIMINAL.

(5)

Before Mr. Justice West and Mr. Justice Pinhey.

EMPRESS v. RAMA BIRAPA.*

Confession—Inducement—Admissibility of Confession against Co-accused—Discovering of Evidence—Indian Evidence Act (I of 1872), ss. 24, 25, 26, 27, & 30.

Where more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence at all, should be taken into consideration against all the accused, and not against the person alone who made it.

The circumstances which will render a confession objected to under ss. 24—26 of the Indian Evidence Act (I of 1872) admissible in evidence, discussed.

THE accused Rámá Birápa was tried, together with Poka and Subba, by A. L. Spens, Session Judge of Kanara, on a charge of having committed the murder of one Rama Putaya, and being convicted, was sentenced to transportation for life. His fellow-accused, Poka and Subba, were acquitted and discharged.

The prosecution relied on the evidence of three witnesses, but principally on a confession made by the appellant Rama before a Second Class Magistrate. The Session Judge discredited the witnesses, looking upon their evidence as the uncorroborated testimony of accomplices; and rejected the confession of Rama Birapa as against Poka and Subba, on the ground of its having been made under undue influence. But as against Rama himself he took it into consideration (he said) “in relation to facts which have been brought to light in consequence of it, and, further, in relation to what accused said at the time when he pointed out where the murder was committed, and did other acts which prove that his confession in relation to them is true.” The confession so corroborated was made the basis of Rama’s conviction. The nature of that confession and the circumstances under which it was made, will appear from the following statement made by Rama:—

“I [Rama] was going, on the night of the murder, from Tipaya’s house to my own. Poka, Subba, and myself were sitting in the trench near the house to beat him. Afterwards we went to the spot, which I pointed out to-day, where we killed Rama. I pointed out the blood which fell there, and showed how Rama lay at

* Criminal Appeal, No. 119 of 1878.

the spot he was killed. Rama had a bill-hook in his hand, and a *rumal*, with white borders, on his head. When Rama came to the spot, Subba seized the bill-hook; Poka put his hand to his neck, pressed his throat, and threw him down. Subba then struck Rama a blow on his forehead with the *sulgi* of wood, which he had taken from my hands. Poka pressed Rama's throat tightly, on which Rama immediately expired. We then dragged away Rama's body 40 or 50 fathoms, and put it behind some trees. We there tied the body in a *kambli*, and threw it to the north of the fisheremen's lines. Poka buried the bill-hook, and Subba buried the *rumal*. I have pointed out to-day in the presence of yourself [the Second Class Magistrate] and the *Punch* the sand-heap in which they had buried them, and taken them out and given them up before the *Punch*."

The circumstances under which the confession, the substance of which is given above, took place, were thus deposed to by the police *patel* of Bhavekeri, the village where the murder is alleged to have been committed:—

"Rama is my tenant. I asked him on Saturday if he would point out the places, and he said he would. * * * * I told this to the inspector of police and the Second Class Magistrate. The inspector asked me to ask Rama, saying: 'He is your tenant; if he tells everything honestly, he will be made an approver; therefore tell him to say all he knows.' Then I questioned Rama. I did not tell Rama all the inspector had told me. I merely said to him: 'You have been my tenant for a long time; some blame has come on you—what is this? Tell me what really happened, and I will take steps to get you off * * * * * When Rama made this confession to me, I told it again to the police inspector, and then Rama showed the places and produced the things. I questioned him again, and he again confessed. I told the police of the confession, both at night and so Saturday morning. Then on Saturday he pointed out all that he did point out for the first time. * * * * * Rama made his confession in the presence of the Second Class Magistrate after he made his confession to me, and that willingly; he made it, I think, in the hopes of being pardoned. The police

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inspector told me that Rama would be made an approver if he confessed, and I told this to Rama, and after this he made the confession."

The Session Judge was of opinion that "inducement to confess, was not made by either the Magistrate or the police inspector, though, doubtless, the latter made use of it, however obtained * * * The Court finds it clearly established that inducement was held out to confess by the police *patel*, and that the police *patel* was a person in authority in the sense of s. 24 of the Evidence Act, and, further, that the inducement was sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain an advantage or avoid an evil of a temporal nature in reference to the proceedings against him. Bombay Act VIII of 1867 fully defines the authority vested in a police *patel*. The Court, therefore, find that the confession made before the Second Class Magistrate, is inadmissible as evidence under s. 24 of the Evidence Act, and more so under s. 120 of the Criminal Procedure Code, which provides that 'no police officer or *other person* shall offer any inducement to any accused person, by threat or promise or otherwise, to make any disclosure or confession, whether such person be under arrest or not.' Putting, therefore, this confession out of the question, there remains to be seen whether there is other evidence before the Court, independently of this confession, sufficient for the conviction of the accused at the bar. Against Poka and Subba there is only the evidence of accomplices."

Finding that the evidence of accomplices was not corroborated by any evidence proceeding from an independent and untainted source, the Session Judge acquitted both Poka and Subba.

With regard to the third prisoner, the appellant Rama, the Session Judge said: "Although the Court rejects the accused Rama's confession (as a confession merely) obtained unduly, still it takes it into consideration in relation to the facts which have been brought to light in consequence of it, and further in relation to what accused said at the time when he pointed out where the murder was committed, and did other acts which prove that his

confession in relation to them is true. * * * * *

Rama has disclosed such knowledge as precludes any other idea than that he was one of the murderers of the deceased. He may not actually have himself struck a blow, but he certainly must have been present, aiding and abetting others in committing the murder, and in every sense was as much an actual murderer as any of his accomplices."

The Session Judge, therefore, convicted Rama, and sentenced him to transportation for life.

Shamrav Vithal for the appellant.—The Session Judge has found that Rama's confession was made in consequence of an inducement offered to him by the police *patel*, and he has properly excluded it as evidence against Rama's fellow-prisoners. Having done this, he committed an error in law in admitting it against Rama himself. It must be either wholly excluded or wholly admitted. Under s. 24 of the Indian Evidence Act (1 of 1872,) the confession having been made under inducement by the police *patel*, if not by the police inspector; while Rama was in the custody of the latter, it must be excluded altogether. Section 24 is not qualified by the subsequent sections. Under it a confession made to any person, a Magistrate or not, is inadmissible if it appears to have been made by inducement, threat, or promise. Section 27, which renders admissible so much of the information received from an accused person as leads immediately to the discovery of a relevant fact, relates only to ss. 25 and 26, and not to s. 24. No discovery of such a fact has taken place in consequence of any information supplied by Rama. Under the authority of s. 27 only, the bare physical acts of Rama, and not the statements connected with them, could be proved. Confession otherwise inadmissible, cannot be made admissible by being attached to acts having some relevancy to the facts in issue. If the confession be excluded from the case, nothing remains but the evidence of witnesses whom the Session Judge has stigmatized as accomplices. The conviction must, therefore, be reversed.

Nanabhai Haridas for the prosecution:—I admit that the confession of Rama must, except as information verified by discoveries, be altogether excluded, and that the Judge was wrong

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in using it against Rama. But the Judge was wrong in regarding the other witnesses as accomplices. I also admit that there is no evidence to show that the corpse examined by the surgeon was that of Rama, the deceased man.

The judgement of the Court was delivered by

WEST, J.—There is no evidence in this case that the corpse examined by the civil surgeon was identical with that of the man, RÁMÁ PUTÁYÁ, alleged to have been murdered. This is a very serious defect, and one which should not occur, as it deprives the civil surgeon's testimony of all relevancy.

The confession mad to the Second Class Magistrate by the prisoner RÁMÁ has been rejected by the Session Judge as made under undue influence; and rejecting it, the Session Judge has acquitted the accused, Poká and Subbá. But thinking it corroborated by the external facts, with which it was connected, as against RÁMÁ himself, he has admitted it in the case of that prisoner as evidence, and on that evidence has convicted him.

If, however, the confession was admissible at all, it was admissible for the purpose of the Court's taking it into consideration, against RÁMÁ's co-accused, as well as affording the strongest evidence against himself. It was an error on the part of the Session Judge to suppose that it could first be entirely rejected as unduly obtained, and then brought in again to convict one prisoner. If circumstances made it wholly or partly admissible, it ought not be have been set aside at all, but weighed for all purposes with care and discretion.

The confession to the Magistrate, however, was not, in fact, taken until Sunday, the 27th January. It is not pretended that any discovery of facts, through information derived from RÁMÁ occurred after that statement was made. Its defect, as made under undue influence, therefore, was not and could not be counteracted in the only possible way. The confession ought, therefore, to have been wholly rejected.

But the prisoner Rama, besides the formal recorded confession, made confessions to the police officers before and during his pointing out particular places and particular articles said to have been

connected with the murder. The remarks made by this Court in the case of *Reg. v. Jora Hasji*(1) apply still more strongly to the statements thus sought to be introduced. A confession of murder, made to a police constable, is not at all confirmed by the prisoner's saying "That is the place where I killed the deceased," and when, starting from the pointing to a ditch or a tree, a long narrative of transactions, some of them altogether remote from any connection with the spot indicated, is allowed to be deposed to as confessed by a prisoner, the intention of the Evidence Act is not fulfilled but defeated. The true meaning of the sections which bear on this subject can best be learned from the beginning of Vol. II of Taylor on Evidence, and the reports of cases referred to in paragraphs 796, 797, 803, 807, 824, 825.

The Government prosecutor has not been able to point out to us any discovery made through information given by the prisoner Rama which would make his statement leading to it admissible, nor has he shown that any act done by Rama has been so explained by his statements as to receive from those statements a character which otherwise it might not have, and a character of importance for the case in hand so as to make those statements admissible as what is commonly called part of the *res gestæ* under s. 8 of the Indian Evidence Act. There is hardly any act that a prisoner could do to which a statement relevant to a crime charged against him could not, by a more or less forced connection, be attached. The Evidence Act does not intend to suggest or sanction such a process, but to make those statements admissible, and those only, which are the essential complement of acts done or refused to be done, so that the act itself or the omission to act acquires a special significance as a ground for inference with respect to the issues in the case under trial. It is important that this should be borne in mind, as otherwise prisoners will, by the exercise of the commonest ingenuity, be entirely deprived of the safeguard which the Legislature intended to throw round them in ss. 24 to 26 of the Evidence Act.

We reverse the conviction and sentence.

Conviction reversed.

(1, 11 Bom. H. C. Rep. 242.