APPELLATE CRIMINAL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

STATE *v.* ABDUL GAFUR MIYA MAHAMAD, AND ANOTHER (ORIGINAL ACCUSED.)* 1951 Nov. 21

Criminal Procedure Code (Act V of 1898) ss. 342, 256 and 292 (c)—Statement of accused—Whether depositions of witnesses given in the committing Magistrate's Court may be adopted as part of the written statement of the accused in the Sessions Court.

The Code of Criminal Procedure, 1898, makes no provision for the adoption by an accused of a previous statement made by a witness in another Court as his own statement under s. 256 or s. 342 of the Code.

Md. Salia Rowther v. *Emperor*,[1] distinguished.

Emperor v. *Tuti Babu*,[2] referred to.

The term "document" as used in s. 292 (c) of the Code of Criminal Procedure, 1898, cannot be extended so as to mean and include a statement of a witness made by him in another Court; for instance, the committing Magistrate's Court.

Appeal against the order of acquittal passed by V. R. Shah, Additional Sessions Judge, Surat.

On March 20, 1950 between 8-30 and 9 p. m. one Majlabhai was assaulted and killed. It was the case for the prosecution that the deceased was held by accused No. 2 and a knife blow on the neck was given to him by accused No. 1. The two accused were placed for trial before the City Magistrate, Surat, who committed them to the Sessions on the charge of murder. The jury arrived at an unanimous verdict of 'not guilty' in favour of both the accused. The Additional Sessions Judge, Surat, accepted the verdict and passed an order of acquittal in favour of both the accused.

The State appealed to the High Court against the order of acquittal.

H. M. Choksi, Government Pleader, for the State.

V. T. Gambhirwalla (appointed), for accused No. 2.

J. J. Gidwani, for accused No. 2.

Accused No. 1 dead.

Vyas J.—[His Lordship, after narrating the facts, proceeded.]

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* Criminal Appeal No. 915 of 1951.

[1] (1928) A. I. R. Mad. 1135. [2] (1945) 25 Pat. 33.

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The learned Government Pleader appearing on behalf of the State conceded at the outset that the learned Additional Sessions Judge had dealt with the facts, evidence and circumstances of the case fairly and fully and that this was a case of an unanimous verdict of the jury who had considered all the evidence and circumstances of the case very carefully. Nevertheless, he said that there was one glaring illegality committed by the learned Additional Sessions Judge in his charge to the jury, and he addressed his arguments to us on that point. Now, that point is this: During the committal proceedings in this case certain three witnesses Ramji, Magan and Pancham were examined for the prosecution before the committing Magistrate. When the case went before the Sessions Court for trial, the learned Public Prosecutor, who was in charge of the case, made an application to the Court stating that he did not wish to examine as prosecution witnesses Ramji, Magan and Pancham as they had turned hostile and were not expected to give evidence in favour of the prosecution. The learned Additional Sessions Judge allowed that application and permitted the prosecution not to examine those three witnesses, although they had been examined as witnesses for the prosecution during committal proceedings. The next stage was reached when the defence made an application to the learned Additional Sessions Judge praying that the above mentioned persons be examined as Court witnesses. The learned Judge rejected that application and said that it was perfectly open to the accused to examine these persons as witnesses in their defence. Thereafter when the stage arrived for the accused persons to make statements under s. 342 of the Code of Criminal Procedure, accused No. 1 stated that he wished to use, as a part of his own statement, the statements made by the above mentioned three persons Ramji, Magan and Pancham when they were examined as prosecution witnesses in the Court of the committing Magistrate, and this is how the learned Judge dealt with that request:

> "The accused wants to produce documents.
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> The documents are allowed to be produced subject to the condition that if they are not legally referable as part of record, the parties will not be allowed to do so. *This point will be considered tomorrow.*"

The point to be noted is that the learned Judge did not pass a definite order in the matter on the date on which accused

No. 1 stated that he wished to use, as a part of his own statement, the statements of the above mentioned three persons made by them when they were examined as prosecution witnesses in the committal proceedings. The learned Judge in fact never passed any clear order on that point, and yet while charging the jury he referred to the statements of the above mentioned three persons Ramji, Magan and Pancham, made by them when they were examined as witnesses before the learned committing Magistrate, as if they were a part of the statement of accused No. 1 himself made in the learned Judge's Court. It would be appropriate to refer to the actual observations of the learned Additional Sessions Judge made by him in his charge to the jury on this point. This is how he dealt with the matter in his charge:

"Accused No. 1 has tendered, as part of his statement, the depositions of three witnesses taken in the Magistrate's Court. They were read over to you both by the learned Assistant Public Prosecutor and by the defence. *You have to consider them as part of the statement of the accused.* You will understand that all the rest of the evidence that was given in this Court was given on solemn oath and the witnesses were examined and cross-examined. The depositions of the three witnesses that have been tendered before you as parts of the statement of the accused No. 1 have not been given by the witnesses themselves in this Court; they have not been cross-examined before you; and you have had no opportunity to see whether those witnesses were true witnesses or not. You will also consider that the prosecution have alleged that they are not truthful witnesses. You will also consider that the defence were allowed an opportunity to examine them if they chose but they have not done so. *You should treat them as part of the accused's statement.....*"

Now, the objection taken by the learned Government Pleader before us is to the above stated observations of the learned Additional Sessions Judge in which he directed the jury that they should treat the statements made by Ramji, Magan and Pancham during committal proceedings, wherein they were examined as prosecution witnesses, as a part of the statement of accused No. 1. In our opinion, the objection of the learned Government Pleader is correct and must be upheld. If we turn to s. 256 of the Code of Criminal Procedure, it says that "if the accused puts in any written statement, the Magistrate shall file it with the record." Now, the contention of the learned Government Pleader, which, in our opinion, is a valid contention, is that by no stretch of imagination could a *statement made by a witness* in another Court be looked upon as a *statement of the accused* made under s. 342 in a

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different Court. The direction of the learned Judge that the jury should treat the above mentioned statements of the three persons Ramji, Magan and Pancham as a part of the statement of accused No. 1 himself was obviously wrong and illegal. It is perfectly clear that the statements made by Ramji, Magan and Pancham during committal proceedings could not even by any amount of stretching be looked upon as a part of the statement of accused No. 1 himself in the Sessions Court. Such statements of witnesses cannot be equivalent to a written statement of an accused person within the meaning of s. 256 of the Code of Criminal Procedure. These three statements were made by persons who were not even examined as witnesses in the Sessions Court and the statements themselves were therefore not even a part of the Sessions case papers. A written statement of an accused person is a statement which the accused himself, and none else on his behalf, is legally privileged to make to explain the circumstances appearing against him in the evidence recorded in the case. The important point is that these very persons Ramji, Magan and Pancham were sought to be examined by the defence as Court witnesses and even an application was made to the Sessions Court to that effect. The learned Additional Sessions Judge, however, rejected that application and said that the accused themselves might examine these men as their witnesses. Having passed such an order on the application of the accused, it was surprising that the learned Judge should have allowed the previous depositions of Ramji, Magan and Pancham to be produced in the Sessions trial conditionally, should not have passed a definite order as to whether they were to be treated as a part of the statement of accused No. 1 or not and yet should have ultimately directed the jury to treat those statements as a part of the statement of accused No. 1. In our opinion, the statements made by these three persons during committal proceedings, wherein they were examined as witnesses, can, under no circumstances, be looked upon as a part of the statement of accused No. 1. At no stage of the case were they his own statements, and the Code of Criminal Procedure makes no provision for the adoption by an accused of a previous statement made by a witness in another Court as his own statement under s. 256 or s. 342 of the Code.

Mr. Gidwani appearing on behalf of the original accused No. 2 has drawn our attention to a decision in *Md. Salia*

Rowther v. *Emperor*[1] in which it was held that it was open to an accused person to file in Court along with his statement a document written by him, whether it be a letter or any other document, and even if there was no witness to speak to the actual writing of the document, the Court was bound to consider the document along with his statement. It is to be noted that this was a judgment of a single Judge and, besides, that case stood on its own footing. It was a case in which the accused person sought to file in Court along with his own statement a *document written by himself* and a question arose whether the Court was bound to consider it along with his statement. In our present case, however, the question is not at all in respect of a document written by accused No. 1 himself or a statement made by himself at some other stage. The point has arisen in relation to statements, not made by the accused at all, but by three other persons when they were examined as witnesses in the Court of the committing Magistrate. Therefore, the observations contained in the above cited Madras case could not possibly apply to the present case. Besides, it is to be noted that the above mentioned decision in *Md. Salia Rowther* v. *Emperor* was considered in *Emperor* v. *Tuti Babu*[2] and was disapproved in the following terms:

"Documents should not therefore, be tendered with the written statement but should be tendered separately for admission in evidence and it will then be open to the court to decide whether such documents require proof before they can be accepted in evidence, but the Court should not accept other documents as part of the written statement."

It is, therefore, quite clear, in our opinion, that the statements made by Ramji, Magan and Pancham when they were examined as witnesses in the committing Magistrate's Court could not legally be used as a part of the statement of accused No. 1 made by him in the Court of the learned Additional Sessions Judge.

Mr. Gidwani drew our attention in this connection to the provisions of s. 292 (c) of the Code of Criminal Procedure which lay down:

"The prosecutor shall be entitled to reply—...

(c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence."

[1] (1928) A. I. R. Mad. 1135. [2] (1945) 25 Pat. 33.

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In our opinion, the term "document" as used in s. 292 cl. (c), cannot be extended so as to mean and include a statement of a witness made by him in another Court, in this case, for instance, the Court of the committing Magistrate. The net result, therefore, is that we agree with the submission of the learned Government Pleader that the learned Additional Sessions Judge was wrong in law in allowing the statements of the persons Ramji, Magan and Pancham made by them when they were examined as witnesses in the committing Magistrate's Court to be used as a part of the statement of accused No. 1 himself in the Sessions Court.

[The rest of the judgment is not material to the report.]

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar

1951 Dec. 11

THE MADRAS ELECTRIC TRAMWAYS, LTD. APPELLANTS *v.* 1 M. K. RANGANATHAN 2. THE LABOUR APPELLATE TRIBUNAL RESPONDENTS.*

Industrial Disputes Act (XIV of 1947), s. 10 (1) (c)—Labour Appellate Tribunal—Office in Bombay—Neither the parties to the dispute nor subject-matter within jurisdiction of the Bombay High Court—Constitution of India, art. 226, 227—Writ of certiorari*—No jurisdiction to issue the writ against Labour Appellate Tribunal.*

Article 226 of the Constitution confers power upon every High Court to issue writs throughout the territories in relation to which the High Court exercises jurisdiction. The High Court ordinarily exercises territorial jurisdiction when the subject-matter is situated within its jurisdiction or the parties reside within its jurisdiction.

Even under art. 227 the High Courts' power is limited to exercising the power of superintendence over Tribunals situated in a territory in relation to which the High Court can exercise jurisdiction.

The Labour Appellate Tribunal is an All-India Tribunal acting as an appellate authority from the decisions of various Labour Tribunals all over the country. The mere fact that it has an office in Bombay is not sufficient to confer jurisdiction upon the High Court of Bombay to issue a writ of *certiorari*. Where neither the parties to the petition nor the

O. C. J. App. No. 93 of 1951.

* Misc. Application No. 189 of 1951.