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Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, Mr. Justice Wendt, and Mr. Justice Middleton.

THE KING *v.* FRANCIS PERERA *et al.*

P. C., Kandy, 4,411.

(1st Kandy Criminal Sessions, 1906.)

Confession—Specimens of handwriting taken while in custody—Statement—Inference of guilt—Penal Code, ss. 456 *and* 459—*Evidence Ordinance* (*No.* 14 *of* 1895), *ss.* 17 *and* 26.

The accused, who were in police custody charged with forgery of a cheque under section 456 of the Penal Code, and with fraudulently and dishonestly using the said cheque as genuine under section 459, at the request of the Inspector of Police, wrote certain words on a paper.

At the trial of the accused this paper was tendered in evidence by the prosecution, but was objected to by the counsel for the defence on the ground that the words on the paper amounted to a confession. The objection was over-ruled and the paper was received in evidence.

Held, (on a case reserved), that the words written on the paper did not amount to statements within the meaning of section 17 of the Evidence Ordinance and were therefore not confessions within the meaning of section 26 of the Evidence Ordinance; and that they were properly received in evidence.

CROWN CASE RESERVED.

THE case reserved by Wood Renton J. was as follows:—

"1. The accused Francis Perera and David Perera were convicted before me at the Kandy Criminal Sessions on the 8th instant, the latter of having fraudulently and dishonestly used as genuine a forged cheque on the National Bank of India for Rs. 686, (Ceylon Penal Code, sections 456, 459); the former of having abetted the commission of that offence (Ceylon Penal Code, sections 102, 456, 459). I sentenced Francis Perera to ten years and David Perera to five years' rigorous imprisonment, but remanded them both to simple imprisonment, pending the decision of the Supreme Court on the following point of law, which I agreed, on the application of counsel for the defence, to reserve.

"2. With a view to connecting the accused with the forged cheque and with certain letters alleged to have been used by them in negotiating it, the Crown tendered in evidence specimen of handwriting taken from them respectively, while under arrest, by Inspector Daniels.

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" 3. Inspector Daniels' account of the circumstances under which these specimens were given is set out in full at pages 14 to 15 of the copy of my notes of the evidence, accompanying this case. For the present purpose it will suffice to say.—(1) that he asked the accused to write certain names and words occurring in the incriminating cheque and letters; (2) that, according to him, they did so voluntarily, although Francis Perera appears to have displayed considerable nervousness, to have asked for brandy, and to have had some difficulty in finding a suitable pen; and (3) that it was not suggested, either in Inspector Daniels' cross-examination or in the argument before me on the point of law, that any pressure had, in fact, been brought to bear upon the accused in the matter.

" 4. The specimens of handwriting above referred to are as follows:—

(i.) E1, a letter written by Francis Ptrera, to Mr. Daniels' dictation, in the same terms as the forged letter B2 in the record.

(ii.) E2, a letter written by Francis Perera, also to Mr. Daniels' dictation, in the same terms as the forged letter C in the record.

(iii.) H, containing one name written by David Perera (Rupe-Singhe) and several names written by Francis Perera.

" 5. Counsel for the defence objected that these specimens of handwriting were one and all inadmissible in evidence, inasmuch as they amounted to ' confessions ' made by accused persons to a police officer while in custody (Evidence Ordinance, section 26). No authorities in favour of, or against, this objection were cited to me, and I over-ruled it after argument.

" 6. I told the jury that, while I regarded it as a very bad practice on the part of the police to obtain evidence of this character from prisoners under arrest, the documents in question were not ' confessions ' under section 26, inasmuch as they were not ' statements ' within the meaning of section 17 of the Evidence Ordinance.

" 7. The question is whether my ruling on the point mentioned in the two last preceding paragraphs of this case was right.

" 8. Apart altogether from the documents objected to, there is ample evidence to support a conviction as regards each prisoner.

" 9. A certified copy of my notes of the evidence is submitted herewith."

A. Drieberg, for the accused.—These specimens of handwriting are statements, and suggesting, as they do, the inference of guilt

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they amount to confessions. [MIDDLETON J.—They do not suggest the inference that the accused did commit the offence, but only that they might have done so.] Even that inference is sufficient to bring them under the category of confessions. The words written by the accused ought to be taken in conjunction with the request made to them by the Inspector of Police.

VanLangenberg A. S.-G. (*E. W. Jayewardene* with him), for the Crown.—The specimens of handwriting cannot be considered as statements. Taken by themselves they mean nothing. It is only by comparison with something extraneous that any inference could be drawn. The words written by the accused do not suggest the inference of guilt, but rather the contrary inference.

Cur. adv. vult.

21st June, 1906. MIDDLETON J.—

In this case my brother Wood Renton has reserved for the opinion of two or more Judges of this Court, the question whether he was right in admitting in evidence against the accused, who were respectively convicted before him at the Kandy Criminal Sessions of—(1) fraudulently and dishonestly using as genuine a false cheque purporting to have been signed by Alex. Wardrop (sections 456 and 459, Ceylon Penal Code); (2) abetting the commission of the said offence (sections 102, 456, and 459) certain specimens of handwriting obtained from the accused while under arrest by the Inspector of Police, which were tendered in evidence with a view to connecting the accused with the forged cheque and with certain letters alleged to have been used by him in negotiating it.

It was argued before us that these were confessions made to a police officer under section 25 of the Evidence Ordinance, No. 14 of 1895, as being statements under section 17 suggesting the inference that the prisoners were the persons who committed the offence with which they were charged.

It appeared that the accused were asked by the Inspector to write the names of the payee of the cheque, and also to write from dictation the words of a letter which purported to have been written and signed by the alleged drawer of the cheque, whose name therein was spelt " Alex. Wardrop," and which letter was presented to the person who cashed the cheque by one of the accused.

In doing so one of the accused, Francis Perera, wrote the payee's name as " Wardro " not completing it with a " p " and spelt the payee's first name as spelt in the cheque " Hendrick " without a "c."

It was contended that these were statements by that accused from which an inference might be drawn that he was the person who forged the cheque and therefore might be the person who used it.

No cases on the point before the Court were quoted by either of the learned counsel who appeared.

In " The Imperial Dictionary " a statement is defined to be " an expression of fact or of opinion " and also, as in " Webster's Dictionary," as " a formal embodiment in language of facts or opinions."

It seems to me difficult to hold that in writing the names of persons or a letter from dictation the accused was making a statement within the meaning of the definition.

If, as was suggested by my Lord, the accused had been asked to blacken his thumb and make an impression of it on a piece of paper, could this be considered a statement from which it might be inferred that he had committed a burglary, because there was a thumb mark on a window pane of the house broken into?

It seems to me that the writing of these words and letter was merely the creation of facts, which standing alone were of no probative value, but which, when coupled or compared with some other facts in the case, might suggest an inference one way or the other, and until that comparison or conjunction was made no inference arose. In my opinion, therefore, the evidence was properly admitted.

At the same time I would desire to join with my brother Wood Renton in his severe condemnation of the action of the Police Inspector in endeavouring to obtain from an accused person under arrest evidence incriminating himself.

Having read through the evidence as recorded by my learned brother, I fully agree with him that, if documents H, E1, and E2 had not been admitted, there was ample evidence to support the conviction.

LASCELLES A.C.J.—

I concur with the judgment of my brother Middleton. I cannot bring myself to the conclusion that the accused, by supplying a specimen of his handwriting and spelling, made a statement within the meaning of the Evidence Code.

By a statement, I understand, some expression of a fact or opinion by means of words, writing or otherwise. Here the value of the papers produced consisted not in their meaning, not in the expression of any fact or idea, but solely in certain physical characteristics.

To regard such a paper, even if supplied at the request of a police officer, as a statement would be to strain unduly the language of the

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LASCELLES A. C. J.

Evidence Ordinance. I also agree with my brother's view of the action of the police in requiring the accused to write these papers. It is a sound principle that an accused person should not be compelled to furnish evidence against himself.

WENDT J.—

I agree with the rest of the Court in thinking that the documents in question cannot be regarded as constituting " confessions " within the meaning of section 17 of the Evidence Ordinance, not being " statements " at all. They are not the embodiment in language of any facts or opinions. The mere fact that they suggest an inference of guilt is not enough.