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Present: Garvin A.C.J., Dalton and Lyall Grant JJ.

KING *v.* COORAY *et al.*

13—P. C. Colombo, 18,147.

Confession—Statement to police constable—Inference of guilt—Contradicted by recorded statement—Use of information book—Evidence Ordinance, ss. 17 and 25.

The accused were charged with the murder of an Inspector of Police. At the trial the Presiding Judge, at the instance of the jury, called a witness, who, it was alleged, had heard the accused call to a police constable, travelling in a passing 'bus, to the following effect: "There, your Inspector is killed." When the witness denied that he heard such a statement, the Judge read out the statement made by him and recorded in the Police Information Book.

Held, that the statement did not amount to a confession within the meaning of section 25 of the Evidence Ordinance.

An admission, which is not a confession, does not become obnoxious to section 25 merely because it is found to be at conflict with a defence set up later.

Dal Singh v. King Emperor [1] followed.

King v. Kalu Banda [2] considered.

Observations as to the purposes for which a Court may use the Police Information Book during an inquiry or trial.

CASE referred on a certificate by the Attorney-General under section 355 (3) of the Criminal Procedure Code.

Thomas Cooray, the first accused, along with Elias Dabrera were charged and convicted of—the first, with the murder of Sub-Inspector Nambiar; and the second, with abetting the murder. The following defences were taken on behalf of the first accused:—

(*a*) That he did not commit the assault on the Inspector and was not on the scene when the Inspector was killed.

(*b*) That he killed the Inspector when acting under grave and sudden provocation and at a time when he was under the influence of liquor.

(*c*) That the intention essential to the offence of murder cannot be ascribed to him as he did the act in a state of intoxication.

At the close of the case for the prosecution the jury expressed a wish to hear the evidence of one Martin Cooray, to whom information of the accident was given by the driver of the omnibus in which

[1] *(1917) 86 L. J. 140.* [2] *(1912) 15 N. L. R. 422.*

Nambiar and the two accused were travelling. Martin Cooray was called, and stated that he saw the accused going in a 'bus in one direction and a police constable in another 'bus going in the opposite direction, but he did not hear the accused screaming out anything to the police constable. At this stage the Presiding Judge read the witness's statement recorded in the Police Information Book: " As the 'bus passed, Thomas and Elias screamed out ' There, your Inspector is killed,' and pointed at the constable. " The witness denied having made this statement. Counsel for the defence objected to the statement being read, submitting that the statement was in effect a confession and was inadmissible under section 25 of the Evidence Ordinance.

In view of the witness's denial, the Judge stated in open Court that there was no evidence that the accused made such a statement.

Hayley (with *Garvin* and *Crossette Thambiah*), for accused.—The grounds of objection could be formulated as follows:—

(1) If it is a confession under section 17 of the Evidence Ordinance, it would be obnoxious to section 25 of the same Ordinance as being irrelevant.

(2) If it was inadmissible, whether it was properly placed before the jury, and whether the jury were influenced in their verdict by the reading out of the statement.

(3) Whether the reading out of the statement was done under conditions contrary to section 122 (3) of the Criminal Procedure Code.

Section 17 of the Evidence Ordinance joins up " confession " with " admission. " Sub-section (2) of section 17 is not contained in the Indian Act, and is added in our Act to convey some particular meaning. Under this sub-section a " confession is an admission "; so that the definition of " admission " should be read into that of " confession. "

In *King v. Kalu Banda* (*supra*) it was held that any statement from which incriminating circumstances can be inferred would come under sections 17 and 25 of the Evidence Act.

Counsel submitted that if it is a statement read in opposition to accused's defence then it is a confession.

[GARVIN A.C.J.—If you eliminate the statutory statement, what is there incriminating in their statement? I cannot understand how a statement which, to begin with, is not a confession can later become a confession on the ground (1) that it is contrary to their statutory statement denying knowledge, and (2) that it is contrary to a defence subsequently put forward, viz., drunkenness.]

[GRANT J.—The police officer has not deposed to the statement.]

The method of proof is immaterial. It is the admission of it that matters.

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In every case where the statement, when looked at from the other facts of the case, showed that it was incriminating the evidence was rejected (*vide Erolis Appu v. Sedris*, [1] *Appuhamy v. Pelis*, [2] *Deonis v. Peris Appu*, [3] *Queen Empress v. Pandarinath*, [4] *Queen Empress v. Matthews* [5]). In *Silva v. Rangasamy* [6] the fact that an accused made no statement when in police custody to prove his innocence was held to be inadmissible.

Questions—no matter whether they are put by the Presiding Judge—must be limited to relevant facts (*vide King v. Rengasamy* [7]). Again, under section 165 of the Evidence Act anything which the law makes inadmissible does not become admissible by the mere fact that it is brought out by the Presiding Judge.

In *Queen Empress v. Hari Laksman*, [8] certain questions were put by the Presiding Judge with a view to institute criminal proceedings against a certain witness, and not with a view to bring out facts relevant to the case; it was held that the Judge had no power to put such questions.

As regards objection (3), section 122 (3) of the Criminal Procedure Code may be used only for two purposes: (1) to contradict a witness. (2) to refresh the memory of the person recording the statement. The purpose of the section is not to contradict a witness merely for the sake of contradicting him, but to contradict him on some fact relevant to the case. Also see section 145 of the Evidence Act.

Counsel cited in support of his submission *Queen v. Sircar* [9] and *Alimudin v. Queen Empress.*[10]

In *Hamid v. Karthan*, [11] where the information book was used for the purpose of corroboration, it was held that such use was illegal. Also see *Queen Empress v. Manu* [12] and *Dibble v. Corcoran.* [13]

The Judge in all cases is restricted to relevant questions.

Under objection (2). As regards section 355 of the Criminal Procedure Code the power of the Court under this section is discussed by Pereira J. in *King v. Pila.* [14]

In *King v. Henningway* [15] the Court elicited by mistake the fact of a prisoner's previous conviction. The conviction was quashed as it was held the jury was influenced.

Mr. Justice Banks in *9 Cr. Ap. R. 69, at 76*, speaking of a section similar to section 425 of the Criminal Procedure Code, says: "The rule is the Court will not act in cases where the jury may have been influenced."

[1] *Bal. Notes 32.*
[2] *4 C. W. R. 355.*
[3] *7 Tam. 28.*
[4] *6 Bom. 34.*
[5] *10 Cal. 1022.*
[6] *5 Bal. Notes 45.*
[7] *(1924) 25 N. L. R. 438.*
[8] *I. L. R. 10, Bom. 185.*
[9] *13 Sutherlands W. R. Criminal Rulings 18.*
[10] *I. L. R. 23 Cal. 361.*
[11] *4 C. W. R. 363.*
[12] *19 All. 390.*
[13] *Criminal Appeal Reports 155.*
[14] *(1912) 15 N. L. R. 453, at 464.*
[15] *A. Ap. Rep. 47.*

Similarly, in the case of *King v. Pila* (*supra*) the Court held that the conviction could not be sustained in cases where irrelevant matter is let in and it might have prejudiced the minds of the jury.

Counsel also cited *Ameer Ali* (*4th Ed.*) *160* and *Queen v. Das.* [1]

Obeyesekere, Deputy S.-G. (with *Fonseka, C.C.*), for the Crown.—Language used in a Statute must be construed in the light of the context in which it appears, and also must be interpreted in such a way that it may not lead to any absurdity.

Section 25 of the Evidence Ordinance constitutes an exception to the general rule that any statement made by the accused is admissible in evidence. Two things have to be proved: (1) that the statement was made to a police officer, (2) that the statement amounts to a confession. When a statement is said to be made by one to another it involves two things: (1) that certain words were uttered, (2) that these words were heard and received by the other. Can the words said to have been used by the accused amount to a confession?

Under section 21 of the Criminal Procedure Code the words may amount to information to the police. If it does not amount to this, it may very well be an exculpatory statement, in view of the alternative defence set up by the accused, viz., drunkenness.

In *Dal Singh v. King Emperor* (*supra*), where a statement was made by the accused to a police officer that in view of the enmity existing between complainant's party and himself it was likely that a false carge of murder would be brought against him, and the defence was that he was not there, it was held that this statement did not amount to a confession and was admissible.

Hayley.—The extracts read from *Dal Singh v. King Emperor* (*supra*) were mostly *obiter dicta*. This case has no bearing on the question of confession, because the point was never raised in Dal Singh's appeal. The only question was whether certain entries in the Police Diary were rightly admitted. It is not correct to say that the defence in the Indian case was that the accused was not present. It is true that there were certain inconsistencies on this point, but absence was not the defence.

Counsel also cited *King v. Sudhamma,*[2] and submitted that there was a string of decisions in his favour, and that there must be some finality on such an important question as the one raised in this case.

Cur. adv. vult.

June 29, 1926. GARVIN A.C.J.—

This case comes before us on a certificate by the Attorney-General under section 355 (3) of the Criminal Procedure Code. The history of the matter and the circumstances under which the point for

[1] *I. L. R. 27 Cal. 295, at 302.*

[2] *(1924) 26 N. L. R. 220.*

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adjudication arose are fully set forth in the written reference. The facts material to the point for decision appear in paragraphs 5 and 6 of that reference and are as follows:—

(5) At the close of the case for the prosecution, as the jury had expressed a wish to hear the evidence of one Martin Cooray, the Court called this person as a witness. His name was not on the indictment, but the driver of the omnibus had stated in his evidence that when the accident occurred he went off to give information of it to Martin Cooray, as he was the son of the owner of the omnibus. Martin Cooray lived about half a mile or more on the Cotta side of the spot where the accident took place. The Judge had previously asked for, and been given the Police Information Book.

(6) This witness in the course of his examination by the Court stated: "I saw both these accused at the turn to the road to Battaramulla from the Cotta road. They were going along the road in the direction of Cotta. Then a 'bus came in the direction of Borella and there was a police constable in it. I did not hear these accused screaming out anything to the constable." At this stage the following passage from the witness's statement to the police was read out by the Judge: "As the 'bus passed Thomas and Elias screamed out 'There, your Inspector is killed,' and pointed at the constable." The witness replied: "I did not say that I heard these accused screaming out to the constable. I saw something in the first accused's hands. I cannot say whether it was a knife."

The point for determination by this Court was whether the action of the Presiding Judge referred to in paragraph (6) was regular.

The main ground upon which it was thought to impeach the action of the Judge was that the statement "There, your Inspector is killed," was a confession to a police officer and as such obnoxious to the provisions of section 25 of the Evidence Ordinance. In point of fact no evidence was tendered of the alleged confession, and it is clear that the Judge stated in open Court that in view of the witness's denial there was no evidence that the accused made such a statement.

The gravamen of the complaint is that once the question was put, the mischief was done, and the jury would be left with the impression, despite the witness's denial, that the accused had in fact made the statement which Counsel submitted is a confession to a police officer. For the purpose of determining in the first instance whether or not the statement is a confession to a police officer, it may be assumed that evidence was tendered at the trial that the accused made the statement and that it was made to a police officer.

It is enacted by section 25 of the Evidence Ordinance, No. 14 of 1895, that " no confession made to a police officer shall be proved as against a person accused of an offence." The same Ordinance defines the terms " admission " and "confession " as follows:—

17. (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

(2) A confession is an admission made at any time by a person accused of an offence stating or suggesting the inference that he committed that offence.

The term " admission " is the genus of which " confession " is the species. It is not every statement which suggests any inference as to any fact in issue or relevant fact which is a confession, but only a statement made by a person accused of an offence whereby he states that he committed that offence, or which suggests not any inference but the inference that he committed that offence.

The law does not prohibit the reception in evidence of admissions to police officers so long as they are in other respects admissible in evidence. What is prohibited is the admission in evidence against an accused person of confessions made to police officers.

The words " There, your Inspector is killed," even if they were uttered by the accused persons or either of them does not state that they committed the murder of the Inspector for which they were later indicted, nor do they suggest the inference that the accused or either of them had murdered the Inspector. Had any person in the omnibus heard this, the inquiry induced by the information would surely have been " when and how was he killed? " and possibly, though not very probably, " by whom? " It is inconceivable that the normal mind would or could have inferred that there had been a murder, and that the person who called out was the murderer.

If the plain words of the Ordinance are to be the decisive test of whether or not a statement amounts to a confession, this statement clearly does not come within its terms or within the ambit of the prohibition against the admission of confessions to police officers.

It was argued that any statement by a person accused of an offence which suggested an inference adverse to the defence set up by him is a confession. For this proposition, and indeed for many extensions and variations of this proposition, we were referred to the much-quoted case of *King v. Kalu Banda* (*supra*) and the Indian cases of *Regina v. Pandarinath* (*supra*) and *Queen Empress v. Matthews* (*supra*). In the local case of *King v. Kalu Banda* a police headman was permitted to say in evidence at the trial that the prisoner who made a statement to him had not in that statement charged Balahamy " with having attacked or threatened to attack him with a knife or made any reference to the use

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of a mamoty by himself." The accused pleaded that he struck Balahamy in exercise of the right of private defence. It was sought to justify the reception of this evidence under section 8 as conduct of a person accused of an offence. The decision of the Court was that the evidence was not admissible under section 8. The three Judges before whom the matter was argued delivered separate judgments, but the effect of the judgments is that the prosecution may not invoke the aid of section 8 to enable a police officer to state what an accused person had not told him under circumstances which gave rise to the inference that the statement made to him was a confession.

Lascelles C.J. observes: " After hearing the arguments of Counsel and referring to the cases cited in argument, I am of opinion that when the headmen were allowed to prove the facts that the accused made statements to them and that he had not in these statements set up the plea of self defence, the headmen were allowed to give evidence of what was in substance a confession by the accused." And the reason given by Pereira J. for his decision is as follows: " It is, I think, clear that if evidence of an actual statement suggesting an inference adverse to the accused is inadmissible, *a fortiori*, would evidence be inadmissible which, in a way, is merely descriptive of a statement, and which carries with it the insinuation that an exculpatory circumstance relied on by the accused for his defence was no part of the statement. "

The prosecution did not seek to give the statement of the accused in evidence presumably because it was thought to be inadmissible. The view of the Court seems to have been that the method they adopted was calculated to produce exactly the same effect as if a statement containing a confession had been placed before the jury.

Wood Renton J., upon whose reference the decision in *King v. Kalu Banda* (*supra*) was given, summarizes in the later case of *Silva v. Rangasamy* (*supra*) his view of the effect of that decision: He says: " There was considerable divergence of opinion between the Indian Courts as to whether the fact that an accused person when he was in custody or in the presence of a police officer made no statement in circumstances in which it might have been expected that if he were innocent he would speak could be proved against him . . . . The Supreme Court . . . . held that the evidence was inadmissible."

In fact the case of *King v. Kalu Banda* (*supra*) was complicated by other circumstances and did not raise the issue in this simple form.

There can be no doubt that there have been decisions of this Court which indicate that the definition of confession contained in our Ordinance has been somewhat obscured by the frequent use of expressions such as " inference adverse to the accused; " " admission of incriminating circumstance," and " evidence which

has an incriminating effect," and indicate a tendency to sweep into the prohibition created by section 25 statements which had they been made to any other than a police officer might not have been regarded as confessions. A contributing factor to this result is the citation of early Indian decisions based upon an enactment which though almost identical in most respects with our Ordinance does not contain a definition of " confession." It was repeatedly argued, and with a measure of success, that the Indian Evidence Act made no distinction between an " admission " and a " confession. " In *Queen Empress v. Macdonald* [1] and *Empress v. Dabee Pershad*,[2] it was held that there was a distinction between an admission and confession. This was a step in a direction which in time has led to the adoption and application by the Indian Courts of the definition of " confession " in *Stephen's Digest of the Law of Evidence*, which is the same as the definition of confession contained in our Ordinance. In the interval, as may well be imagined, there grew up a mass of judicial decisions in which the expressions such as I have referred to frequently occur in the endeavour to ascertain a test for determining whether or not a particular statement was confession.

Many of the later decisions are not available to us, but the commentary on section 25 in Ameer Ali & Woodroffe's work on the Law of Evidence supported by numerous citations shows that the law of India is being stabilized on the basis of a definition of confession which is in accordance with the definition of that term in the Ceylon Evidence Ordinance.

The case of *Dal Singh v. King Emperor* (*supra*), which was carried to the Privy Council and decided in 1917 and was never previously cited in this Court, has a most important bearing on the question before us. Dal Singh was indicted for murder. Now, Dal Singh was the first person to give information to the police. He made a long and detailed statement, complaining that he had been assaulted by Mohan and Jhunni, as a result of which he became unconscious. Certain of his servants, he said, came to his rescue, whereupon his assailants ran away, while he himself was carried to his house. He added that Jhunni and Mohan had beaten " their old woman " and were making preparations to bring a false case against him.

This statement was given in evidence against Dal Singh at his trial for the murder of this woman. Lord Haldane, who delivered the judgment of the Bench of which Mr. Justice Ameer Ali was a member, held that the statement was " in no sense a confession."

Counsel for the appellant submitted that there was nothing in the case as reported in the *Law Journal* or the *Law Times Reports* to indicate that the point had ever been raised.

[1] *10 B. L. R. 2.* [2] *I. L. R. 6.*

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Since the argument, I observe from the report of the case in the *Indian Official Reports* [1] that the point was expressly taken by Counsel who appeared in the Privy Council.

The judgment on the point is this: "The report is clearly admissible. It is in no sense a confession." Lord Haldane recites the statement in full and proceeds "it will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."

The statement, though it was in conflict with the defence set up, and was used for the purpose of discrediting that defence, was held to be in no sense a confession and admissible against the accused who made it to the police. It was a self-exculpatory statement, not a confession, and it did not cease to be a confession because it was at conflict with the defence later set up and was used for the purpose of discrediting that defence.

This decision is fatal to the submission that an admission which is not a confession becomes obnoxious to section 25 if it is found to be at conflict with a defence later set up. This submission, if it is to be entertained, will lead to the result that an accused person may always exclude evidence of an admission made to a police officer by taking up a position which will bring his defence into conflict with the admission.

In the case before us the following defences were taken on behalf of the prisoner:—

(*a*) That he did not commit the assault on the Inspector and was not at the scene when the Inspector was killed.

(*b*) That he killed the Inspector when acting under grave and sudden provocation and at a time when he was under the influence of liquor.

(*c*) That the intention essential to the offence of murder cannot be ascribed to him as he did the act in a state of intoxication.

It is said that the statement suggests in regard to each of these defences an inference adverse to the accused. The words ascribed to the accused, it is submitted, imply that they were spoken by a person who had knowledge of the murder, and that suggest that the accused must have been present at the scene at the time of the murder. In regard to the other lines of defence, the contention is that this evidence militates against the plea of intoxication.

But it is very doubtful whether it could fairly be inferred that the person who called out "There, your Inspector is killed" must necessarily have been present at the scene when the Inspector was killed.

[1] *I. L. R. 44 Cal. 876.*

Assuming, however, that the statement does tend to produce such an effect, it is not inadmissible on that ground alone (*Dal Singh v. King Emperor* (*supra*)). The general rule in regard to admissions is that they may be given in evidence against the persons who made them. If every statement made by an accused person to a police officer is to be shut out because it conflicts with or tends to discredit a defence or any one of the defences—not always reconcilable with each other—taken on his behalf, then no admission by an accused person to a police officer may be given in evidence against him. This involves the extension and application to admissions of the rule of exclusion which the Legislature has limited to confessions. We must apply the law as it has been enacted. In no sense is this statement a confession.

It is not necessary, therefore, to consider the submission of the Solicitor-General that under all the circumstances in which the words were uttered they cannot fairly be said to be a statement "made to a police officer." The foundation of the plea that the action of the Presiding Judge was irregular is the contention that his question had the effect of placing before the jury evidence of a confession to a police officer. With the failure of that contention the whole foundation for the plea of irregularity disappears.

In the absence of a statement from the learned Judge it is impossible to say exactly what purpose he had in view when he addressed this question to the witness. But it is not difficult to conceive of many purposes for which the question may legitimately have been put.

The information book is the record of an investigation into a cognizable offence made by a police officer in charge of a station or a subordinate officer deputed by him for the purpose or by an inquirer. Statements made by persons to police officers or inquirers and so recorded may be used for the purpose of proving that a witness made a different statement at a different time or to refresh the memory of persons who recorded the statements. But any Criminal Court in a case under inquiry or trial in such Court may use such statements or information, not as evidence, but to aid it in such inquiry or trial.

A Court is entitled to use the information book to assist it in elucidating points which appear to require clearing up and are material for the purpose of doing justice (*Queen Empress v. Manu* (*supra*)). The information book may show that there exists a witness, whom neither side has called, able to give material evidence which a Judge may think should be placed before a jury. It may indicate lines of inquiry which should be explored in the highest interest of justice, or may disclose to a Judge that a witness is giving in evidence a story materially different from the story told by him to the investigating officer shortly after the offence.

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The story told by Martin Cooray as to his meeting with the accused was different to the story he told the police. The conduct of the accused as disclosed in the one story was materially different to their conduct as disclosed in the other. It was competent for a Judge to put such questions as he thought necessary on the point, and if need be to contradict the witness by his statement to the police.

The practice of individual Judges as to the use of the information book may vary. Some Judges may prefer not to see it at all; others may take the view that in the interests of justice the fullest use should be made of the book; others again may take the view that it should be resorted to only when in their judgment the circumstances of a particular case require such a course if justice is to be done.

But there can be no difference of opinion as to the existence of the power or the right to exercise it within the limits set to it by the law.

There is overwhelming evidence in this case of the guilt of the accused.

DALTON J.—I agree.

LYALL GRANT J.—I agree.

Conviction affirmed.