

1955

Present : Weerasooriya, J.

PERERA, Appellant, and INSPECTOR OF POLICE,
GALAGEDERA, Respondent

S. C. 954 of 1953—M. C. Kandy, 18,971

Evidence Ordinance—Section 24—Confession caused by inducement or threat—Burden of proof.

When the question whether a confession had been caused in the circumstances of any inducement, threat or promise referred to in Section 24 of the Evidence Ordinance arises, the Court would have to decide that question on the basis that the burden is on the prosecution to satisfy Court that it was not so caused.

If objection is taken to the admission of a confessional statement it is the duty of the party who takes the objection to formulate the grounds of objection so that the Court may consider the grounds and adjudicate on them.

A PPEAL from a judgment of the Magistrate's Court, Kandy.

Colvin R. de Silva, with L. F. Ekanayake, for the accused-appellant.

N. T. D. Kanakarathne, Crown Counsel, for the Attorney-General.

Cur. a-lv. vult.

January 24, 1955. WEERASOORIYA, J.—

In this case learned counsel for the accused strenuously argued that the Magistrate had been under a misconception as regards the burden of proof when he admitted in evidence the document P13 which as held

by him amounted to a confession. In this connection learned counsel pointed out to the observations of the Magistrate, when the question of the admission of the document first arose, which read as follows: "The accused appears to me to be an educated young man and till such time as I can be convinced that the confession was not made perfectly voluntarily without any semblance of inducement, threat or promise held out either by the Superintendent or by the proprietor I will permit evidence on it being led." Learned counsel submitted that these observations indicate that the Magistrate took the view that the document would be admissible unless he was convinced that it was not a voluntary statement and it had not been the result of any inducement, threat or promise. It seems to me that these observations of the learned Magistrate do indicate that he thought that the burden of proving that the confession was inadmissible was on the defence.

There are several decisions which hold that in regard to a confession which the prosecution seeks to put in the burden is on the prosecution to show that it is an admissible one, vide the cases reported in *I N. L. R. page 209*, *42 N. L. R. page 368 at page 370*, and *page 553 at pages 556 and 557*; also *18 Cox's Criminal Cases page 717*. In this case when the question of the admissibility of this document first arose, the Court very properly asked defending counsel whether the defence objected to the document. Counsel for the defence was contented to state that he "formally" objected to it, an objection which I have come across on more than one occasion but is the kind of objection which passes my comprehension. If an objection is taken to the admission of a document, I think it is for counsel who takes the objection to formulate the grounds of objection so that the Court may consider the grounds and adjudicate on them. Having regard to the fact that counsel for the defence only "formally" objected to the document but did not formulate the grounds of objection, the burden that rested on the prosecution at that stage to show that the document was admissible could have been regarded as readily discharged, and I do not think it would have been open to counsel for the appellant to have made much of what the learned Magistrate had stated with regard to the admissibility of this document at that stage had nothing further happened, but in the course of the trial the accused gave evidence and made various allegations as to the circumstances in which P13 was obtained from him which it was the duty of the Magistrate to consider, and in the learned Magistrate's judgment when he reverted to the question of the admissibility of P13 he says, "I allowed P13 to go in. P 13 is in point of fact a confession of guilt and when I permitted its being led in evidence I did inform the defence that if at any time I was satisfied that it should not have been admitted I would have ruled it out."

This statement leads one to conclude that the document having been admitted, the learned Magistrate was of the view that it could be used as evidence against the accused unless and until he was satisfied that it should not have been admitted in the first instance. I do not think this is the legal position. Even if a confession has been admitted, and in the subsequent course of the trial as a result of further evidence that may be

elicited the question whether the confession had been caused in the circumstances referred to in Section 24 of the Evidence Ordinance arises, the Court would have to decide that question on the basis that the burden is on the prosecution to satisfy Court that it was not so caused.

It is not possible for me to state what view the learned Magistrate would have taken of document P13 had he directed his attention to it on the basis of the burden of proof as indicated above, and it is also not possible for me to state what view he would have taken of the other evidence against the accused, particularly the oral testimony of the witnesses, had he on a proper consideration of the question of the admissibility of P13 come to the conclusion that it should be rejected. In these circumstances it seems to me that I cannot avoid the course which I somewhat reluctantly adopt of setting aside the conviction and sentences and sending the case back for a fresh trial before another Magistrate on the three counts on which the accused has already been convicted.

Sent back for fresh trial.
