

1940

*Present : Moseley J.*THE KING *v.* KARALY MUTTIAH *et al.*1—*M. C. Mallakam, 19,107.*

[1ST MIDLAND CIRCUIT.]

Confession to Magistrate—Statement made before preliminary inquiry—Admissibility conferred by adoption in statutory statement—Confession to Superintendent of Prison—Criminal Procedure Code, ss. 134, 155, and 160 (Cap. 16).

A confession recorded by a Magistrate under section 134 of the Criminal Procedure Code is not inadmissible in evidence merely because it is recorded after the accused had been taken into custody.

The inquiry referred to in section 134 is the preliminary inquiry provided by section 155 of the Criminal Procedure Code.

Where a confession made by an accused person was not read over to him in order that he might adopt it but was read to Counsel who appeared for him and was in fact adopted by the accused, and, where the accused, when addressed subsequently under section 160 of the Criminal Procedure Code said: "I abide by the voluntary statement I have already made to the Magistrate".

Held, that the voluntary statement became incorporated in the statutory statement and was admissible in evidence.

King v. Mudianse (21 N. L. R. 48) followed.

A confession made to the superintendent of a prison is not inadmissible in evidence so long as it does not offend against the provisions of section 24 of the Evidence Ordinance.

THIS was a case tried before the 1st Midland Circuit at Kandy.

S. N. Rajaratnam, for the first accused.

A. D. J. Gunewardene, for the second accused.

F. W. Obeyesekere, for the third accused.

F. C. Loos, C.C., for the Crown.

January 8, 1940. MOSELEY J.—

After the jury had been empanelled, Mr. Rajaratnam, Counsel for the first accused, asked that they should be allowed to retire as he wished to make submissions relating to the admissibility of certain evidence which appear in the record of the case.

His first objection was to the admissibility of confessions said to have been made by the second and third accused to the Police Magistrate of Mallakam on December 18 and 20, respectively. These confessions purport to have been made under section 134 of the Criminal Procedure Code, sub-section (1) of which provides that "any Magistrate may record any statement made to him at any time before the commencement of an

inquiry or trial". Counsel's contention was that the inquiry had actually commenced on November 16, and that at the time when the second accused made his confession to the Police Magistrate he had already been in custody for some twenty-four hours, and he relied upon the wording of the sub-section which provides that the statement may be recorded before the commencement of the inquiry or trial.

Crown Counsel contended that the inquiry contemplated by section 134 was the preliminary inquiry for which section 155 of the Criminal Procedure Code makes provision.

With that view I am inclined to agree. On this point, however, I was referred to the case of *King v. Mudianse*¹. In that case the statement of an accused person was improperly taken on oath and it was held for that reason to be inadmissible against the accused at his trial, but the accused who had made that statement, when subsequently addressed under section 155 (the present section 160) of the Criminal Procedure Code, adopted the statement which he had previously made in irregular circumstances. In that case the statement was read out to him and was attached to the statement made under section 155. Shaw J. in that case expressed the opinion that the previous statement had become incorporated with the statutory statement under section 155 and was, therefore, not merely admissible, but must be put in at the trial under the provisions of section 233 of the Code.

Now, in the present case the confessions made by the second and third accused were not read over to them in order that they might adopt them, but they were in fact read to Counsel who appeared for all the three accused at his request, and were in fact adopted by each of the second and third accused. The second accused when addressed in accordance with section 155 said: "Not guilty. I abide by the voluntary statement I have already made to the Magistrate", and the third accused replied in like terms.

It seems to me, therefore, that even if the contention of the Crown Counsel be not accepted, namely, that the inquiry referred to in section 134 is the preliminary inquiry provided by section 155, that I am entitled to follow the decision in *King v. Mudianse*. (*supra*) and hold that the alleged confessions by the statutory statements of the second and third accused are incorporated therein. I would also refer to *King v. Mudianselagey Ranhamy et al.*² in which Abrahams C.J. held that a confession was inadmissible on the ground, *inter alia*, that the Magistrate had not probed sufficiently into the motives of the accused for making the confession. I was invited to follow the decision of Sir Sydney Abrahams for similar reasons, but on a perusal of the record made by the Magistrate of the manner in which these confessions came to be made I am satisfied that all that should have been done in that direction was in fact done.

Counsel further objected to the admissibility of the confession made by the first accused to the Superintendent of Prison. The Superintendent, he said, was not authorized to record such confessions and the proper course should have been to inform the Magistrate who would then have proceeded in the way laid down. It may be that the Superintendent is not expressly authorized by the legislature to act in this way, but I know

¹ 21 N. L. R. 48.

² 2 C. L. J. 104.

of no provision of law which prohibits him from so doing any more than any member of the public would be precluded from acting in such a way if requested by an accused person to do so.

The confession in my view is admissible so long as it does not offend against the provisions of section 24 of the Evidence Ordinance. It is quite clear from the depositions by the Superintendent of Prisons and by the Jailor who made known to the Superintendent the desire of the accused to make a confession, that no inducement, threat or promise was made to the accused which might have provided a motive for the confession.

Another ground of objection was that the confession was made in Tamil to the Superintendent who claims to have a knowledge of that language. It was, however, recorded in English and was read over by the Superintendent to the accused in Tamil. It does not seem to me that that procedure offends in any way against any provision in law. It may be open to Counsel to submit to the jury that mistakes may have been made in translating the confession from Tamil into English, and that further mistakes may have been made by the translation back into Tamil for the benefit of the accused. That is a submission which Counsel is clearly entitled to make, and it may be that such a confession recorded in such circumstances will be treated somewhat carefully, but as I have already said I can see no reason for holding a confession made in such circumstances to be inadmissible.

Objection was then taken by Counsel for the first accused to certain evidence which was given in the lower Court by Mr. Storer, who was Proctor for the first accused in another case. It may well be that that evidence if given in this Court will offend the provisions of section 126 of the Evidence Ordinance. Crown Counsel, however, has undertaken to lead only such evidence as refers to the payment of a certain sum of money or sums of money by the first accused to Mr. Storer and that evidence in my view is unobjectionable.

Counsel for the second accused supported the objections of Mr. Rajaratnam, and in particular urged that in the case of the first accused's confession there should be definite proof that no inducement had been offered to him. There is, in my opinion, definite evidence that no inducement was offered to the first accused.

Mr. Obeyesekere, Counsel for the third accused, also associated himself with the submissions of Mr. Rajaratnam and of Mr. Gunawardene, and drew my attention to the fact that the 3rd accused, for the purpose of making his confession, was taken to the Magistrate's bungalow by a police officer, and that a constable was actually present in the room at the time the confession was made. He cited a case (*King v. Bilinda*) in which Jayawardena J. referred to a provision in the Indian Criminal Procedure Code, similar to section 134 in the Ceylon Criminal Procedure Code, and he referred particularly to certain instructions issued under the Indian Act to the effect that no police officer should be present when such a confession was made by an accused person. He thought that such a rule might with advantage be adopted in this country. Such a rule has in fact not been adopted in this country, and in that particular case the confession was held to be

inadmissible on the ground that the presence of the constable in close proximity to the accused person might have had some influence upon the accused person while he was in the act of making his confession. In the case before me the police constable who was present at the time at which the confession was made was the motor driver, and it is not easy to imagine that the presence of such a person would influence an accused person in one way or another. However desirable it may be that an accused person should be protected from any police influence at the moment when he is making a confession, it does not seem to me that in this case any provision of the law was infringed or any harm done.

There was further objection to the evidence of two witnesses, Subramaniampillai and one Nannithamby, who in the lower Court had given evidence in regard to certain statements made to them by the deceased. Crown Counsel gave his assurance that he would not lead this evidence and Counsel's objection was withdrawn.

Objection overruled.
