1924.

Present : Jayewardene A.J.

THE KING *v.* SUDAHAMMA.

66—D. C. (Criminal), Colombo, 7,219.

Charge of forgery of a withdrawal form for drawing money from Savings Bank—Statement by accused in presence of Police Inspector that he handed the form to the Chief Clerk, and that witness B was the person who wrote the form for him—Are statements admissible ?—Confession—Evidence Ordinance, ss. 25 and 27.

The accused was charged with theft of a Savings Bank book and with the forgery of a withdrawal form. The Chief Clerk of the Savings Bank stated that when the Inspector of Police brought the accused to his counter he identified the accused, and that the accused said that he had handed the notice of withdrawal to him. Another witness B said that the Inspector came with the accused to the Bank, and that accused pointed B out as the man who wrote and filled up the application for him.

***Held*, that the first statement amounted to a confession and was not admissible, and that the second statement was admissible under section 27 of the Evidence Ordinance, although it amounted to a confession, as the witness B was discovered in consequence of the information.**

THE facts are set out in the judgment.

R. L. Pereira, for accused, appellant.

Vellava Rayan, C.C., for the Crown.

August 8, 1924. JAYEWARDENE A.J.—

In this case a young Buddhist priest of the Errewela temple was charged with the theft of a Savings Bank book in a building used as a human dwelling and with the forgery of a withdrawal form, offences punishable under sections 369 and 456 and 459 of the Penal Code. He has been convicted on both counts and sentenced to four months' rigorous imprisonment on each count, sentences to run concurrently. The Bank book belonged to a fellow priest who was temporarily resident at the temple. By means of a forged withdrawal form, the accused has drawn Rs. 150 from the Bank.

The Crown placed before the Court strong and ample evidence in proof of the accused's guilt, and the Judge has accepted and acted on that evidence. It was, however, contended for the accused that the Court had received in evidence certain statements amounting to confessions and made in the presence of or to a police officer, the reception of which is prohibited by section 25 of the Evidence

Ordinance, and vitiates the conviction. One of the statements objected to appears in the evidence of the witness Mr. Dassenaike, Chief Clerk of the Post Office Savings Bank, who stated that when Inspector Koelmeyer brought the accused to his counter he identified the accused. "Then the accused said he had handed the notice —(that is the notice 'F' to withdraw a sum of Rs. 150) to me."

This statement amounts to a confession, it was made to or in the presence of a police officer, its admission is prohibited by section 25. But the learned Judge says that the witness made this statement before he could stop him. He says it is inadmissible, and has not taken it in to consideration in deciding the case.

The Judge is a judge of great experience, and he has not been influenced by this statement in coming to a conclusion on the facts. Therefore its mere presence in the record does not necessarily vitiate the conviction.

The other statement objected to is a statement by the witness Bruin who said: "Inspector Koelmeyer came with the accused to the General Post Office, and accused pointed me out to Mr. Koelmeyer as the man who wrote (and) filled up the application for him."

This is a repetition of a statement made by the accused to a police officer. It was not objected to at the trial, and has been admitted in evidence and considered by the Judge. I think it is admissible under section 27 of the Evidence Ordinance which forms an exception or proviso to the prohibition in section 25.

Under section 27 "when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

Here the information given by the accused led to the discovery of the witness who filled up the application form for him. It related distinctly to the fact discovered. The fact that the discovery was made not in consequence of the information given by the accused, but by the act of the accused himself, does not make section 27 inapplicable.

A similar question arose in a case decided by a Full Bench of the Bombay High Court (*Queen Empress v. Nana* [1]). In that case the accused told the police that he had buried the property in the fields. He then took the police to the spot where the property was concealed, and with his own hands disinterred the pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was held that the statement of the accused that he had buried the property in the fields was admissible in evidence under section 27 which is identical with our section 27, as it put the police in motion and led to the discovery of the property.

[1] *(1889) 14 Bom. 280.*

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JAYEWARDENE A.J.

The King v. Sudahamma

This view has been adopted by the Calcutta High Court:—See *Legal Remembrancer v. Nashyai* [1] and *Arnisuddin and Ahmed v. King Emperor.*[2]

If, instead of pointing out the witness Bruin, the accused had described Bruin with such particularity as to enable the police to discover the man who filled up the application form for him, the information so given would have been admissible under section 27.

I accordingly hold that the witness Bruin who states that he filled up the application form at the request of the accused was discovered in consequence of information given by the accused within the meaning of section 27, and that the statement made by the accused to the Inspector and deposed to by Bruin, although it amounts to a confession, has been rightly admitted in evidence.

It was made a matter of complaint by counsel for the accused that two witnesses in the list on the back of the indictment were not called for the prosecution. They were W. D. H. Perera and his brother Francis. The accused is said to have shown the Bank book to Perera. As the case involved a serious charge against a priest, I directed that these two witnesses and the Inspector of Police should be summoned to give evidence before this Court. They were examined before me on the 6th instant. The evidence of these witnesses has not improved the case for the defence. I accept the evidence of Perera that the accused showed the Bank book to him and asked him how much money could be withdrawn without notice. Perera communicated this fact to his brother Francis who informed the complainant priest. There are certain discrepancies in the evidence of these witnesses with regard to dates, but I am not prepared to reject their evidence on that account. There is no reason why they should give false evidence against the accused. Independently of their evidence there is sufficient reliable and trustworthy evidence on the record to support the conviction.

Having considered the case anxiously and carefully, I have come to the conclusion that the accused is guilty, and that the conviction ought to be affirmed. As I said the accused is a young Buddhist priest. He is only twenty-two years of age. I have also carefully considered the question of sentence, and especially the question whether I should release him as a first offender. The offences committed by him are serious and are ordinarily tried before the Supreme Court. I think a term of imprisonment is necessary.

I would, however, while maintaining the term to which he has been sentenced, direct that the imprisonment be simple and not rigorous.

With this variation the appeal is dismissed.

Appeal dismissed.

[1] *(1897) 25 Cal. 413.*

[2] *(1917) 27 C. L. J. 148.*