

1940

*Present : de Kretser J.*THE KING *v.* EMANIS.64—*M. C. Colombo, 33,253.**Evidence—Statement by accused to Police Officer—Use of statement to contradict accused—Criminal Procedure Code, s. 122 (3).*

A statement made by an accused person to a Police Officer in the course of an investigation under section 122 (3) of the Criminal Procedure Code may be used to contradict him provided the statement is not a confession within the meaning of section 25 of the Evidence Ordinance.

**C**ASE heard before Judge and jury in the Western Circuit.

On an objection taken by Counsel for the defence to the production of certain statements made by the accused to the Police.

*C. S. Barr Kumarakulasingham* (with him *M. M. Kumarakulasingham*), for the accused.

*H. W. R. Weerasooriya, C.C.*, for the Crown.

*Cur. adv. vult.*

August 20, 1940. DE KRETSEK J.—

Crown Counsel proposes to confront the accused with certain statements made by him to the Sub-Inspector of Police which are contradictory of the statements he has made in this Court. Counsel for the defence states that if all that the Crown Counsel seeks to prove is a complaint made by the accused, then he has no objection, but if Crown Counsel is seeking to prove other statements under section 122 of the Criminal Procedure Code then

he objects to such proof and relies on the case of *Baby Nona v. Johanna Perera*,<sup>1</sup> in which case Mr. Justice Soertsz expressed an opinion, in passing, that the word "witness" in section 122 did not include an accused person who gave evidence on his own behalf.

I understand Crown Counsel is not seeking to prove anything in the nature of a confession but is seeking mainly to prove a complaint made by the accused that he was assaulted. Counsel for the defence has already elicited from the Inspector, in spite of a warning from me, that the accused made a complaint that he had been assaulted. The accused in the box has given details of the assault and Crown Counsel seeks to prove that he gave another version in his statement to the Police. The objection therefore will only be a matter of form, for although the statement was made in the course of the investigation it was also a complaint by the accused. The statement by the accused is, as I said before, not a confession and we have authority in the case of *King v. Cooray*<sup>2</sup>, as to what may or may not be a confession under section 25 of the Evidence Ordinance. In the case of *The King v. Graniel Appuhamy*<sup>3</sup>, a Divisional Bench had before it the question of the regularity of statements made to the Police being put to an accused person without the statements themselves being proved. The Divisional Bench accepted the position, apparently without any controversy, that the statements themselves might have been put to the accused, but not unless the prosecution was prepared to go further and prove such statements were made, in the event of the accused denying he had made the statements. Dalton J. said:—"There is no question now as to the inadmissibility of the evidence that Crown Counsel sought to extract from the accused. His Counsel concedes that the learned Commissioner was correct on overruling his objection". It seems to me that under section 122 a Police Officer may question "any person" who is considered to be in a position to be acquainted with the facts of the case and "any person" would include the person accused or suspected of an offence. Having provided for statements to be so taken, the Legislature provided the manner in which those statements should be used. The Legislature allowed this statement to be used to contradict a witness. That would be a person, who had already made a statement, when he came into the box as a witness. Section 120 (6) of the Evidence Ordinance states that an accused person may give evidence in the same manner and with the like effect and consequences as any other witness. In the case of *Rex v. Fernando*<sup>4</sup>, Soertsz J. dealt with a case of the Crown seeking to cross-examine an accused on the ground that the statement he had made to the Police was inconsistent with his evidence in Court. Counsel for the accused objected on the ground that the statement was in the nature of a confession, which was inadmissible under section 25 of the Evidence Ordinance. Soertsz J. held that the statement was capable of being construed as establishing a prima facie case against the accused and therefore it was not exculpatory. He did not rely on his previous opinion that an accused person could not be regarded as a witness. In both cases Soertsz J. seems to have been trying to prevent the provisions

<sup>1</sup> 8 C. L. W. p. 65.

<sup>2</sup> 28 N. L. R. p. 74.

<sup>3</sup> 37 N. L. R. p. 281.

<sup>4</sup> 16 C. L. W. p. 10

of section 25 of the Evidence Ordinance being circumvented. (The position with regard to section 25 is now made quite clear by the decision of the Divisional Bench in *Rex v. Kirivasthu*<sup>1</sup>, In the case of *Rex v. Fernando (supra)*, Soertsz J. quotes the Privy Council ruling in *Dal Sing v. King Emperor*<sup>2</sup>, that a statement which is in no sense a confession is admissible against the accused who made it to the Police. The provision in the Indian Code, as far as I remember, is very similar to that under section 122 of our Code. I think therefore the question may be put. I would request Counsel to restrict the questions, as far as possible, to those bearing on the case.

*Objection overruled.*



<sup>1</sup> 14 O. L. W. 25.

<sup>2</sup> (1917) 86 L. J. P. C. 14.