

1943

*Present : Wijeyewardene J.*THE KING *v.* GOONEWARDENE.78—*M. C. Colombo, 44,694.**Confession—Made in answer to questions—Assuming the guilt of accused—Evidence Ordinance, s. 24.*

A confession made by an accused, which is otherwise admissible, does not become inadmissible merely because it is elicited in answer to questions, which are put to him in a leading form or which assume his guilt.

THIS was a case heard before Wijeyewardene J. and a Jury on the Western Circuit, 1943.

R. L. Pereira, K.C. (with him *W. S. de Saram, C. Suntheralingam* and *N. Rajaratnam*) for accused.

D. Janszé, C.C., for the Crown.

Cur. adv. vult.

February 23, 1943. WIJEYWARDENE J.—

In this case the question arises as to the admissibility of a confession alleged to have been made by the accused to Mr. Aiyangar, Agent of the Indian Bank, on April 7, 1942.

The accused was a ledger-keeper employed in the Indian Bank. He is charged under section 487 of the Ceylon Penal Code with having falsified three books, P 1, P 6, and P 5 by making certain false credit entries and debit entries. According to the Crown the irregularities were discovered on April 6, 1942.

¹ 66 *L. T.* 590.² 33 *T. L. R.* 98.

Mr. Aiyangar instructed the Accountant on April 7, 1942, to send the accused to his room on his arrival at the Bank. Accordingly, the accused was directed by the Accountant to meet Mr. Aiyangar that morning. When the accused entered the room of Mr. Aiyangar, the latter said "What! You have made false debits of Rs. 30,000 and Rs. 4,000 in Madavan's account!" The accused bowed his head and then Mr. Aiyangar put the question, "What are the other false debits you have made?". The accused is then said to have stated that he made a false debit entry in the account of the estate of Natchiappa Chettiar. Mr. Aiyangar then put the further question, "How have you withdrawn the money, Rs. 30,000 and Rs. 4,000?" The accused replied to this, "Through K. D. Peter".

The evidence given by Mr. Aiyangar regarding the alleged confession was recorded in the absence of the Jury. Mr. Suntheralingam cross-examined the witness at length. A good part of the cross-examination appeared to be intended to show that no fact was discovered in consequence of the information received from the accused. As Mr. Suntheralingam stated that it was necessary for the purposes of his argument to cross-examine Mr. Aiyangar on those lines, I permitted him to do so. No evidence was called to contradict the evidence of Mr. Aiyangar.

The question I have to decide is whether the confession is irrelevant under section 24 of the Evidence Ordinance. No doubt that section has to be read subject to section 27. I do not think, however, that section 27 would permit the confession to be admitted even if the Bank discovered some fact in consequence of the information given by the accused. When the accused made the alleged confession he was not in the custody of a police officer and therefore section 27 would not apply.

I have to ascertain whether the confession should be ruled out under section 24 of the Ordinance. There is no evidence whatever before me to show that any inducement, threat or promise having reference to the charge was made to the accused so as to give him any grounds to suppose that by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the charge against him. Nor am I able even to infer from the evidence that such inducement, threat or promise was made. No doubt questions put by Mr. Aiyangar are of the nature of leading questions and were based on the assumption that the accused had made false entries. This, however, is no ground for holding the confession irrelevant. In this connection, I would cite the following passage from "*The Law of Evidence*" by Ameer Ali (9th edition page 303) to which my attention was drawn by Mr. Janszé:—

"Much less will a confession be rejected merely because it has been elicited by questions put to the prisoner whoever (subject to the provisions of the twenty-fifth and twenty-sixth sections) may be the interrogator, and the form of the question is immaterial; it may be in a leading form or even assume the prisoner's guilt."

I hold that the confession is admissible. It is for the Jury to decide as to the probative value of this confession.

Appeal dismissed.