

1918.

Present : Shaw J. and De Sampayo J.

THE KING v. SIDDA *et al.*

D. C. Colombo (Crim.). 4,764.

(Special Case.)

Confession of guilt by accused before Police Magistrate—Retraction of confession at the trial—Conviction based on retracted confession—Evidence.

The accused in this case were charged with house-breaking and theft. At the inquiry before the Police Magistrate they made the following statement : " I am guilty, and I beg for pardon. "

At the trial in the District Court the accused pleaded " not guilty. " and gave evidence denying that they had pleaded guilty.

The District Judge convicted the accused, remarking that the rest of the evidence was of such a nature that he would not have convicted on it had it stood alone.

Held, that the conviction was right.

" Under our law confessions, whether judicial or extra-judicial, are evidence against the person making them, so long as they are not irrelevant under the provisions of sections 24 to 26 of the Evidence Ordinance, and, like all other relevant evidence, are sufficient on which to base a conviction, even if uncorroborated by other proof. "

THIS case was referred to the Supreme Court by the learned Additional District Judge of Colombo (W. Wadsworth, Esq.), under section 353 of the Criminal Procedure Code.

Garvin, S.-G. appeared for the Crown on notice from the Supreme Court.—The statement of the accused does not cease to be a confession because it was made before a Magistrate. If it is a confession it can be proved against him at the trial, even if he retracts. Confessions to the police are made inadmissible under our law. But there is no law which places confessions to the Magistrates on the same footing. According to *Taylor* the admissibility of confessions is not a question of law, but a question of prudence under the circumstances of each case. Counsel cited *Taylor*, ss. 866 to 868 (p. 608); *Queen Empress v. Gangia*; ¹ *Queen Empress v. Charya*; ² *Queen Empress v. Raman*; ³ *Queen Empress v. Marku Lal*.⁴

Cur. adv. vult.

¹ I. L. R. 23 Bom. 316.

² I. L. R. 19 Bom. 728.

³ I. L. R. 21 Mad. 83.

⁴ I. L. R. 20 All. 133.

January 28, 1918. SHAW J.—

This case raises a point of law referred by the Judge of the Additional District Court of Colombo for the opinion of the Supreme Court.

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Two accused were charged with house-breaking and theft. At the inquiry before the Police Magistrate the charge was read over and explained to the accused, and their statements were recorded under the provisions of the Criminal Procedure Code. Each accused made the following statement: " I am guilty, and I beg for pardon. "

At the trial in the District Court the accused pleaded " not guilty. " and gave evidence denying that they had pleaded guilty in the Police Court.

The Magistrate who recorded their statements in the Police Court, and who is a Sinhalese gentleman who understands the language of the accused, was called in the District Court and gave evidence that the statements were taken as the law directs, and that the accused made the statements in the words recorded.

At the trial in the District Court, in addition to the confessions of the accused contained in their statements, there was only some slight circumstantial evidence of the guilt of the accused, which was of such a nature that the District Judge says he should certainly not have convicted on it had it stood alone. The Judge had some doubt how far retracted confessions of this character could be taken as proof of the charges against the accused, or whether the retracted confessions could be considered as additional evidence to the other evidence placed before the court. He has, however, given weight to the confessions as admissions of guilt, and has convicted the accused.

In my opinion the Judge acted correctly in giving weight to the confessions as evidence of the guilt of the accused.

Under our law confessions, whether judicial or extra-judicial, are evidence against the person making them, so long as they are not irrelevant under the provisions of sections 24 to 26 of the Evidence Ordinance, and, like all other relevant evidence, are sufficient on which to base a conviction, even if uncorroborated by other proof, and this appears also to be the law in England (see *Taylor on Evidence*, ss. 866 to 868). Confessions, however, as pointed out by Taylor, section 862, should always be received with great caution, and this is specially so where the confession has been subsequently retracted by the person making it.

Under the provisions of our Criminal Procedure Code the statements of an accused made before the Magistrate are expressly made evidence at the trial, and the fact that such a statement is subsequently retracted can make no difference to its admissibility and relevancy, although the circumstances and reasons given for the retraction may be such as to render it proper to regard the statement with great caution.

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In numerous Indian cases, of which I may cite as an example *Queen Empress v. Charya*,¹ it has been held that a retracted confession, if proved to be voluntarily made, can be acted upon along with the other evidence in the case, and that there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The weight to be given to such a confession must, as stated by the Court in its judgment in the case of *Queen Empress v. Raman*,² depend upon the circumstances under which the confession was originally given, and the circumstances under which it was retracted, including the reasons given by the prisoner for his retraction.

The two cases above cited were both cases similar to that under consideration, where accused made statements amounting to confessions before the Magistrate and subsequently retracted them at the trial.

In my opinion the conviction in the present case is justified by the evidence, and I would consequently affirm it.

DE SAMPAYO J.—I agree.

Affirmed.

¹ I. L. R. 19 Bom. 728.

² I. L. R. 21 Mad. 83.