Present : Branch C.J.

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WEERAKOON *v.* RANHAMY *et al.*

38, 38 A—P. C. Kalutara, 13,216.

Confession—Statement to Police Vidane—Inference of guilt—Evidence Ordinance, ss. 17 and 25.

A statement made by an accused person to a police officer is inadmissible where it would have the effect of bringing the charge home to the accused or of strengthening the case for the prosecution.

APPEAL from a conviction by the Police Magistrate of Kalutara. The facts appear from the judgment :—

J. S. Jayewardene, for appellants.

February 24, 1926, BRANCH C.J.—

In this case the first accused was convicted of voluntarily causing hurt, and the second accused was convicted of aiding and abetting the commission of the offence. I am asked to set aside the conviction and to order a new trial on the ground that inadmissible evidence was received against the accused. The most important piece of evidence objected to was that given by the Police Vidane in his examination-in-chief. After relating the story told him by the injured man, Aron, the Police Vidane continued : " The accused denied the cutting. They said that Aron went to take the knife from his father and got cut accidently." The Police Vidane was the first witness called, and after his evidence had been taken the charge was framed against the accused. On the charge being read to the accused they made statements, and substantially their case was the same as that set out in the Police Vidane's evidence.

Section 25 of the Evidence Ordinance is as follows : " No confession made to a police officer shall be proved as against a person accused of any offence." By section 17 (1) an admission is defined to be " a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned." By the next sub-section a confession is defined as " an admission made at any time by a person accused of an offence stating or suggesting the inference that he has committed that offence."

The evidence as set out above given by the Police Vidane was, I think, inadmissible. It placed the accused on the spot and gave what was stated to be their explanation of how the wound was

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inflicted, an explanation which may have created an unfavourable impression on the mind of the Magistrate. I do not think that their subsequent statements to the Magistrate avoid the result that should in a case like the present follow the admission of this evidence. It may be that nothing said by the Police Vidane influenced the accused as regards the nature of the defence set up by them, but I cannot say this with certainty. It is possible that the accused may have desired in the first instance to prove an *alibi* or give some other account of the matter, but after hearing the evidence of the Police Vidane they thought it useless to do anything else but accept his evidence and so fashioned their defence thereon. The legislature desired to prevent the reception of any evidence by police officers as to statements made to them by accused persons which would either bring home the charge to the accused or strengthen the case for the prosecution and full effect must be given to that intention. In *Appuhamy v. Palis*[1] Wood Renton C.J. set aside the conviction in a case where the accused was charged with dishonestly retaining a stolen sledge hammer belonging to his employer, and the Magistrate admitted in evidence a statement said to have been made by the accused to a constable to the effect that he had bought the hammer that morning. "It was for the accused," said the learned Chief Justice, "to explain his possession. But it was not for the police constable to put before the court any explanation of it that the accused may have given to him . . . . If the accused wished to offer his explanation he should have been left to do so himself." In *King v. Kalubanda*[2] the accused was charged with voluntarily causing grievous hurt to one Bulahamy, and he set up the defence that he was acting in self-defence. The prosecution led evidence that the accused had made a certain statement to a police officer, but that in that statement he had not charged Bulahamy with having attacked or threatened him. Lascelles C.J. held that this evidence was inadmissible and that it was in substance a confession by the accused.

It may easily happen that the evidence of a police officer as to statements made to him by accused persons may at the commencement of the trial appear entirely innocuous, but during its subsequent course that evidence may clinch a charge against the accused or it may influence a man in setting up a defence which cannot be sustained. There can be no doubt as to the kind of mischief the enactment seeks to avoid, and I do not understand why in the face of the numerous Ceylon decisions on the point statements of the nature of the present one made to police officers by accused persons are not infrequently admitted in evidence. It may be that the lower courts occasionally follow some of the Indian decisions in which a distinction which is not permissible in Ceylon

[1] *4 C. W. R. 355.*

[2] *(1912) 15 N. L. R. 422.*

has been drawn between admissions and confessions. See, for instance, *The Queen v. McDonald*[1] followed in the *Empress v. Dabee Pershad*.[2] In construing the section corresponding to section 25 of the Ceylon Evidence Ordinance certain later Indian cases seem to read " confession " in a less strict technical sense, but however this may be, *The Queen v. McDonald* (*supra*) and similar cases have not been followed here. See in this connection the remarks of Pereira J. at page 427 of *King v. Kalubanda* (*supra*) and compare *Appuhamy v. Palis* (*supra*) with *Empress v. Mahmed Mahir*.[3] Any relaxation of the strictness with which statements such as those now in question have been excluded in Ceylon would, I think, be followed by abuses which the Legislature intended to guard against.

The conviction and sentence are set aside, and the case sent back for a new trial before another Magistrate.

Set aside.