

1940

Present : Soertsz J.

THE KING v. RANHAMY.

39—M. C. Puttalam, 27,598.

Confession—Statement containing admission of complicity qualified by plea of exculpation—Statement made before commencement of inquiry—Right of accused to raise the question whether the statement was made voluntarily—Criminal Procedure Code, s. 155—Evidence Ordinance, s. 24.

A statement containing an incriminating circumstance, namely, the admission that the accused struck the deceased a blow and felled him to the ground, amounts to a confession although it is qualified by a plea of exculpation.

When the Crown moves to prove a confession the accused is entitled to give evidence to enable the Court to decide the question whether the statement was made voluntarily or in consequence of some inducement, threat or promise.

The fact that the Magistrate certified that he believes that the statement was voluntarily made is not decisive.

If the Court, after hearing the accused, holds that the statement is admissible Counsel may call the prisoner again to go into the circumstances before the jury, with a view to determining the value of the statement in fact.

The inquiry contemplated by section 134 of the Criminal Procedure Code is the preliminary inquiry for which provision is made by section 155 of the Criminal Procedure Code.

The King v. Karaly Muttiah (41 N. L. R. 172) followed.

CASE heard by a Judge and jury before the Western Circuit.

R. R. Crosette-Thambiah, C.C., for the Crown.

S. Thirunavakarasu, for the accused.

December 5, 1940. SOERTSZ J.—

Crown Counsel led before me and the jury the evidence of Sub-Inspector Veero, to show that the accused in this case was conducted by a Constable on May 19, 1940, to the residence of Mr. Muttucumaru, who was acting as Magistrate of Puttalam on that day, in the absence of the permanent Magistrate, and that the Sub-Inspector took charge of the accused at the entrance to the Acting Magistrate's residence, and led him to his office room in order that he might record a statement which, it is alleged, the accused desired to make of his free will. Thereupon, after the Sub-Inspector had left the room the Acting Magistrate purporting to act under section 134 of the Criminal Procedure Code satisfied himself that the statement which he treated as a confession, was going to be made by the accused voluntarily and recorded it, and made at the foot of the recorded statement a memorandum in the terms set forth in sub-section (3) of section 134 of the Criminal Procedure Code.

Crown Counsel now asks that he be allowed to read in evidence the depositions in the Court below of the Acting Magistrate and of his Interpreter under section 33 of the Evidence Act, on the ground that both the Acting Magistrate and his Interpreter are dead. Crown Counsel also moves that the confession recorded by the Acting Magistrate be read in evidence.

Counsel for the prisoner opposes this application.

I desire to hear argument on this point and I request the jury to retire.

I have now heard both Crown Counsel and Counsel for the prisoner.

The questions that arise for decision on the discussions that took place at the Bar are :—

- (1) Was the statement sought to be read a confession ?
- (2) Was it recordable in the circumstances of this case under section 134 of the Criminal Procedure Code ?
- (3) If it is so recordable, is the accused entitled to be heard in the witness-box on the question whether the statement contains a confession made voluntarily or, as alleged in the course of the argument, obtained from him by threats made before he was taken before the Acting Magistrate ?

(4) If it is not a statement that could have been recorded under section 134 of the Criminal Procedure Code, is it admissible in evidence as a relevant admission under section 21 of the Evidence Act ?

(5) Is it admissible in evidence as a confession under section 24 and 26 of the Evidence Act ?

The first question for consideration is whether the statement sought to be read in evidence is a confession. At one stage of his argument, Crown Counsel contended that the statement was not a confession, and that it was not, therefore, affected by section 24 of the Evidence Act, and that he could read it in evidence under section 21 of that Act as a relevant admission of a material fact, namely, that the accused struck the deceased a blow. Section 134 of the Criminal Procedure Code makes provision for the recording before the commencement of the inquiry or trial of two kinds of statements, non-confessional statements and confessional statements. Non-confessional statements may be made by the person then accused, or by a witness whose statement the Investigating Officer considers it desirable to obtain in this manner so that it may not suffer from the infirmities attaching to statements made under Chapter XII. to a police officer or inquirer.

In this instance it is clear from the method adopted by the Magistrate to record the statement of this accused that the Magistrate regarded it as a confession by a person who would place himself in the position of an accused the moment he made the statement. But quite apart from the fact that the Magistrate treated the statement as a confession, it seems clear that, in reality, this statement is such a confession as is contemplated by section 134 of the Criminal Procedure Code and sections 24, 25, and 26 of the Evidence Act.

The material part of the statement is in these terms: "I reached Paulu's house about sunset. From outside the house I called out to my daughter. Then Paulu, the deceased, came from inside the house with a light and a katty with a long handle and addressing me said, 'Who asked you to come here, you son of a whore?' As he said so, he rushed out of the house. Fearing he would cut me with the katty he had in his hand, I picked up a club that was near where I was standing and struck him with it. Paulu fell down on receiving the blow. When he fell I dropped the club on the spot and went back to Karadipooval where I live".

This statement contains an admission that the accused dealt a blow which felled the deceased. It also sets up a plea of self-defence for the implication of the statement is that the deceased came at the prisoner with a katty, and he anticipating an attack, struck the deceased. This plea, if accepted, may result in complete exculpation, but nevertheless, in my opinion, at the stage at which I am considering this question, the statement must be regarded as a confession inasmuch as it contains an incriminating circumstance, namely, the admission that the accused struck the deceased a blow and felled him to the ground. That admission, *prima facie*, suggests an inference of guilt especially in view of the fact that section 105 of the Evidence Act casts the burden of

establishing the plea of self-defence in the person setting it up. Melville J. said in the case of *Rex v. Pandarinath*¹ in regard to a statement containing a material admission of complicity but qualified by a plea of exculpation—"It is true that the statement in question was probably not intended as a confession of guilt but was rather made by the prisoner in self-exculpation, but it is, nevertheless, an admission of an incriminating circumstance on which the prosecution mainly relies and forms, indeed, the most important part of the evidence against the accused". The statement made by the accused in this case must, therefore, be treated as a confession, and in my view it is not open to Crown Counsel to ask that it be treated as nothing more than an admission of a relevant fact.

The next question is whether this confession was one that could have been recorded under section 134 of the Criminal Procedure Code. This question arises on the submission by Counsel for the prisoner that this was a statement made after the commencement of the inquiry into this case and was, therefore, not recordable under section 134 which provides for the recording by any Magistrate of any statement "made to him at any time before the commencement of an inquiry or trial". The point for determination, then, is what the correct interpretation of the words "Commencement of Inquiry" is. Does an inquiry commence when investigation is set on foot under Chapter XII. or, when the Magistrate begins to act under Chapter XV. of the Criminal Procedure Code whether or not the accused is before him, or only when under Chapter XVI. he addresses himself to the case on the accused appearing or being brought before him? In the case of *The King v. Karaly Muttiah and others*², Moseley J. said: "Crown Counsel contended that the inquiry contemplated by section 134 of the Criminal Procedure Code was the preliminary inquiry for which section 155 of the Criminal Procedure Code makes provision. With that view I am inclined to agree". But he decided the question raised in that case on another ground, so that the observation I quoted was *obiter*. I have, therefore, examined this question myself with great care, and I have reached the conclusion that the view Moseley J. was inclined to take is, if I may say so with respect, the correct view. It is true that in section 2 of the Criminal Procedure Code the word "Inquiry" is said to include every inquiry conducted under this Code before a Magistrate's Court or Inquirer. But for the purpose of section 134, the word "Inquiry" must mean the inquiry commencing on the appearance of the accused. The fact that the word "Trial" follows the word "Inquiry" supports that view. If the word "Inquiry" in this context is construed as including an investigation by an Inquirer under Chapter XII., the scope of section 134 will be reduced almost to vanishing point, for in that meaning of the word "Inquiry", directly an offence is reported and the investigation into it by an Inquirer commences, the Magistrate may not record any statement or confession.

Chapter XV. deals with the commencement of proceedings before Magistrates' Courts; Chapter XVI. deals with the preliminary inquiry in non-summary cases directly the accused appears or is brought before the Magistrate's Court and Chapter XVIII. with trials of summary cases

¹ I. L. R. 6 Bom., p. 34.

² 41 N. I. R. 172.

from the stage when the accused comes before the Court. Whatever happens before, the appearance of the accused is in the nature of ante-inquiry or ante-trial proceedings.

In this instance when the accused went before the Acting Magistrate on May 19 so that his statement might be recorded, all that had happened was that a serial report had been sent to the Magistrate by the District Mudaliyar under section 148 (b) of the Criminal Procedure Code saying that an offence had been committed, and although no person had been accused by name of having committed the offence, the Magistrate had under section 150 (1) examined on oath the mistress of the deceased man. In short, proceedings had been instituted, but inquiry into the case had not begun. It was, therefore, competent for the Acting Magistrate to record the statement as he did.

In regard to the third question, it seems to me that when Crown Counsel moves to prove this confession under section 24 of the Evidence Act, the prisoner is entitled to give evidence to enable the Court to decide the question whether the statement was made voluntarily or in consequence of some inducement, threat or promise. The fact that the Magistrate certifies that he believes that the statement was voluntarily made is not decisive of the matter. That was a point on which the Magistrate had to satisfy himself in order to equip himself with jurisdiction to record the statement, but when the statement so recorded is sought to be proved the Tribunal trying the case must be satisfied quite independently of the Magistrate's certificate that the statement was a voluntary statement. This view is in conformity with the decision given by the Court of Criminal Appeal in England in the case of *Rex v. William Charles Codill*¹, to the effect that when a dispute arises as to the admissibility of a statement by the prisoner, it is proper to allow the prisoner himself to be called as a witness if the justice of the case makes it desirable that this should be done on the issue of admissibility. If the Court, after hearing the prisoner, holds that the statement is admissible, Counsel may again call the prisoner to go into the circumstances before the jury with a view to determining the value of the statement in fact.

I therefore rule that this confession is admissible under section 134 of the Criminal Procedure Code subject to my consideration of the question as to how it stands in view of section 24 of the Evidence Act.

Further order was made as follows :—

SOERTSZ J.—

I have now heard the prisoner on the preliminary question of the admissibility of the evidence proposed to be led by Crown Counsel, and I have also heard Police Constable Silva who was called by the Crown in rebuttal. Having regard to the careful manner in which the Acting Magistrate addressed himself to the task of ascertaining whether or not the statement the accused was about to make was a voluntary statement, and having examined the evidence given by the prisoner before me and by the Police Constable and Sub-Inspector Veero, I am satisfied that

¹ 27 C. A. R., p. 191.

although the accused at the time he made that statement was in the custody of the Police, he made his statement free from any inducement or threat and of his free will.

I, therefore, rule that the evidence sought to be led by Crown Counsel is admissible, but as I have already indicated the question of the weight to be attached to this evidence is a matter for the jury and in due course I will draw their attention to that fact. It is not necessary in view of my finding on questions 2 and 3 to answer question 4. With regard to question 5 holding as I do, that the statement is a confession, that was recordable, and was duly recorded under section 134 of the Criminal Procedure Code, I hold that it is admissible under sections 24 and 26 of the Evidence Act, because it was a voluntary confession and was made in the presence of the Magistrate himself.
