1960 [IN THE COURT OF CRIMINAI APPEAL]

Present: **Basnayake, C.J. (President), Sansoni, J., and H. N. G. Fernando, J.**

REGINA *v.* J. ANANDAGODA

APPEAL 114 OF 1960, WITH APPLICATION 136

S. C. 14—M. C. Anuradhapura, 17176

Evidence—Admissions—Confession—Statement made by an accused to a police officer—Admissibility—" Fact in issue "—" Relevant fact "—Evidence Ordinance, ss. 5, 17 (1) and (2), 25.

The exclusion of evidence on the general ground enunciated in *The King v. Kalubanda* (15 N. L. R. 422) and later applied in *Weerakone v. Ranhamy* (27 N. L. R. 267)—namely, that a statement made by an accused person to a police officer which clearly or by implication shows that a defence taken may be false, or which even permits an inference to be drawn, prejudicial to the accused, is a confession within the meaning of section 17 (2) of the Evidence Ordinance—should no longer be regarded as valid. A statement made to a police officer by a person accused of an offence would be inadmissible in evidence only if it is either an admission of the commission of the offence by the accused or else suggests the inference that the accused committed the offence.

In a prosecution for murder—

Held, that admissions made by the accused person to a police officer of facts which could establish, on the part of the accused, motive, or opportunity, or knowledge of the death of the deceased, were admissible in evidence and did not constitute a confession within the meaning of sections 17 (2) and 25 of the Evidence Ordinance.

APPEAL against a conviction in a trial before the Supreme Court.

The appellant was convicted of having murdered one Adeline Vitharane on 14th March 1959 at a place called Timbiriwewa near the 27th mile-post on the road between Puttalam and Anuradhapura. In addition to other testimony, the prosecution led in evidence certain admissions which were alleged to have been made by the appellant to Police Officers. Inspector Goonetilleke testified that the appellant stated to him that he was intending to marry some young woman, who was *not* Adeline Vitharane. Inspector Dharmaratna testified to the following admissions made to him by the appellant :—(*a*) That Adeline Vitharane had been his mistress for two or three years and had a child by him ; that Adeline was insisting that he marry her but that he had been putting it off ; that Adeline had become an unbearable nuisance to him ; and that Adeline had come to see him at Kalutara on 2nd March 1959, and that he had kept her in a house at Kalawellawa. (*b*) That on 14th March he had started in his car with Adeline and the 2nd accused for Anuradhapura *via* Puttalam, and that they had reached a hotel at Puttalam between 8 and 9 p.m. (*c*) That he had taken a motor car from Avis Motors on 15th March and

2——J. N. R 13892—1,995 (10/60).

had gone to Anuradhapura *via* Puttalam, and that at about 3 p.m. on that day, he had passed the body of Adeline, and had slowed down and noticed people and Police Officers there.

The admissions had the effect of inducing the jury to believe (*a*) that the appellant had a strong motive for desiring the death of Adeline Vitharane, (*b*) that the appellant was in her company when she was last seen alive by witnesses in the case, and had an opportunity to be in her company at the time when her death was caused, (*c*) that he had planned to use a hired car, and not his own car, for the trip with Adeline on the day of her death, and (*d*) that his subsequent conduct tended to show that he may have had knowledge that her body lay at the place where it was ultimately discovered.

It was contended for the appellant that the admissions, taken together, constituted a confession and that, having been made to Police Officers, they were led in evidence in contravention of section 25 of the Evidence Ordinance.

T. W. Rajaratnam, with *R. L. R. Kulawansa* and *Kulan Ratnesar* (retained) and *J. C. Thurairatnam* (assigned), for the accused-appellant.

A. C. Alles, Acting Solicitor-General, with *V. S. A. Pullenayegum*, Crown Counsel, and *N. Tittawela*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 4, 1960. H. N. G. FERNANDO, J.—

The appellant and two others were indicted on two counts, (1) with conspiracy to commit the murder of one Adeline Vitharane, and (2) with the murder of Adeline Vitharane on 14th March 1959 at a place called Timbiriwewa. Prior to the summing-up of the learned Trial Judge, the 3rd accused was discharged on application made by the Crown to withdraw the indictment against him, and the jury ultimately found the 2nd accused not guilty on both counts. The appellant was unanimously acquitted on the first count of conspiracy, but he was convicted on the second count of murder upon a verdict of six to one. The appellant's appeal to this Court was dismissed on 4th August 1960, but we reserved our reasons because one ground of appeal, which was ably argued by counsel appearing before us for the appellant, raised an important question of law requiring decision by a considered judgment. It is in our opinion unnecessary to refer to the other grounds which were taken.

Late at night on 14th March 1959, the dead body of a woman was discovered lying at Timbiriwewa near the 27th mile-post on the road between Puttalam and Anuradhapura. A post-mortem examination conducted on 16th March 1959, revealed that the woman was between 20 and 25 years of age, that she had been about seven months advanced in pregnancy, and that her body bore numerous injuries consistent with her having been run-over by a motor car. The case for the prosecution was that the dead body was that of Adeline Vitharane, that her death

had been caused by a motor car being deliberately driven over her body at least twice, that the consequent injuries were the cause of her death, and that death had occurred between 11 p.m. and midnight on 14th March 1959. It was not contended in appeal that it was in any way unjustifiable for the jury to decide upon the evidence either that the identity of the dead woman had been proved, or that she had been killed in the manner and at the time and place asserted by the prosecution.

The prosecution called witnesses who deposed to the following matters, *inter alia* :—

(*a*) That the appellant had, under a name different to that by which he was ordinarily known, been acquainted with Adeline, an intelligent and attractive young woman, from about November 1956 ; that he was the father of an illegitimate child born to Adeline in August 1957 ; that he had thereafter promised to marry her, and that he had communicated with her under his assumed name and received letters from her at an "accommodation address" furnished by him.

(*b*) That the appellant had been on friendly terms with a family of better social status than that of Adeline's relatives ; that he occasionally stayed at the home of that family, and that it was apparent that he proposed to contract a marriage with the young daughter of that family.

(*c*) That the appellant had been the owner of a Fiat car No. 1 ශ්‍රී 6265, and that, although there was a change of registration in January 1959, he had continued thereafter to be the actual user and the virtual owner of that car.

(*d*) That Adeline, on 19th January 1959, after discovering the true identity of the appellant, wrote to the Headmaster of the school at Kalutara at which the appellant was employed as a teacher, alleging that the appellant was the father of her child and had promised to marry her, and expressing her intention to represent matters to the Director of Education ; that this letter was shown thereafter to the appellant by the Principal of the school.

(*e*) That Adeline left her home at Katugastota on 2nd March 1959, having expressed her intention to see her father and to meet the appellant at Kalutara in order to obtain some money from him.

(*f*) That on 2nd March 1959 a young woman, apparently pregnant, was seen near the fence of the school at Kalutara, that a message given by the young woman was delivered to the appellant in the school, and that he afterwards came in a car and took her away ; that a young woman identified as Adeline was seen later on the same day at the village of Kalawellawa and had resided for a few days in that village with the family of one Alo Singho ; and that the appellant himself had been seen in his car in that village, at least on one occasion with Alo Singho and on another in the village bazaar.

(*g*) That the appellant on one occasion stopped his car close to Alo Singho's house and sounded his horn, whereupon Alo Singho came up to the car and after speaking to the appellant returned to his house ; that shortly thereafter Adeline came to the car dressed in a saree and left in the car with the first and second accused, taking with her a black hand-bag and an umbrella. There was little room for doubt, having regard to his evidence, that the witness who deposed to these facts spoke of an incident which took place on Saturday, 14th March 1959.

(*h*) That the 2nd accused, a person well-known to the appellant was a brother of Alo Singho, who has been referred to above.

(*i*) That the appellant drove a car similar to the car No. 1 ශ 6265 to a petrol station at Horana in the afternoon of 14th March with the 2nd accused and a woman, and purchased petrol there ; that on the night of 14th March at about 9 or 9.30 p.m. the 1st, 2nd and 3rd accused had come to a hotel in Puttalam in the company of a young woman dressed in a saree and that dinner had been served to them.

(*j*) That the appellant had, probably on 12th March 1959, tried to obtain a car on rent from a hire service in Colombo for use on the 14th and 15th of March, and that because a car was not available for the 14th, the appellant had rented a car for 15th March and used it on that day to make a journey of 277 miles, thus rendering it possible that he could on the 15th have made a trip to the place where the body was found.

(*k*) That despite the fact that the appellant's car had been " serviced" on 16th March and the undercarriage cleaned with penetrating oil, four hairs similar to (though not shown to have been identical with) Adeline's hair were found adhering to the under-carriage when the car was later examined.

In addition to the testimony which has been summarised above, the prosecution led in evidence certain admissions which were alleged to have been made by the appellant to Police Officers. Inspector Goonetilleke testified that the appellant stated to him that he was intending to marry some young woman, who was *not* Adeline Vitharane. Inspector Dharmaratna testified to the following admissions made to him by the appellant:—

(*a*) That Adeline Vitharane had been his mistress for two or three years and had a child by him ; that Adeline was insisting that he marry her but that he had been putting it off ; that Adeline had become an unbearable nuisance to him ; and that Adeline had come to see him at Kalutara on 2nd March 1959, and that he had kept her in a house at Kalawellawa.

(*b*) That on 14th March he had started in his car with Adeline and the 2nd accused for Anuradhapura via Puttalam, and that they had reached a hotel at Puttalam between 8 and 9 p.m.

(c) That he had taken a motor car from Avis Motors on 15th March and had gone to Anuradhapura via Puttalam, and that at about 3 p.m. on that day, he had passed the body of Adeline Vitharane, and had slowed down and noticed people and Police Officers there.

Appellant's counsel's principal argument has been that these admissions, taken together, constitute a confession, and that having been made to Police Officers, they were led in evidence in contravention of section 25 of the Evidence Ordinance. It has to be borne in mind in considering this argument that by section 17 (2) of the Evidence Ordinance 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 committed the offence ", that is to say, an admission, which (a) states that he committed the offence, or (b) suggests the inference that he committed the offence.

Counsel relied chiefly on the decision in *The King v. Kalubanda* [1]. In his statutory statement made on a charge of causing grievous hurt to one Balahamy, the accused in that case said that he had struck Balahamy with a mamoty but did so whilst defending himself against an attack by Balahamy with a knife. In rebuttal, Crown Counsel elicited from two Headmen that the accused had made statements but had not stated that Balahamy had attacked or threatened him with a knife, or that the accused himself had used a mamoty. A Bench of three Judges answered in the affirmative the question whether the Headmen gave evidence of an admission stating or suggesting the inference that the accused had committed the offence. The following observations in the judgments indicate the opinion of the Bench that the Headmen virtually stated that the accused had made a confession :—

" The effect on the mind of the jury could hardly have been different if the Headmen had been allowed to give evidence of what the accused had actually said. "

" The Headmen were allowed to give evidence of what was in substance a confession. "

(per Lascelles, C.J.)

" The evidence was as much open to objection as it would have been had it been evidence of the actual contents of the statements alleged to have been made by the accused. "

(per Pereira, J.)

" The Police Officer's evidence was to the effect that a statement made by the accused differed from one made to the Magistrate and, in my opinion, leads to an inference that the accused had made a confession. "

(per Ennis, J.)

The *ratio decidendi* to be derived from these passages is that evidence tending to suggest that an accused person must have admitted to a Police

[1] *(1912) 15 N. L. R. 422.*

Officer that he had committed the act charged must be excluded on the ground that to inform the jury that a confession had been made was as much an evil as to inform them of the content of the confession. There are nevertheless other expressions of opinion in the judgments which may justify the argument that a different *ratio decidendi* was also adopted by the Court :—

> " Statements made by accused persons to Police Officers, although intended to be made in self-exculpation, may nevertheless amount to admissions of incriminating circumstances, and so being (? *be incapable*) of proof under section 25. "
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> " The effect of this disclosure (by the Headmen) being such as to suggest the inference that the defence on which the accused relied was not set up by him at the time when, if true, it would naturally have been set up, and that it was therefore false. "
>
> (per Lascelles, C.J.)
>
> " The Police Officer's evidence would, in effect, have wiped out the only exculpatory circumstance in the statutory statement made by the accused, leaving that statement as an unqualified admission of fact that the accused had struck Balahamy with a mamoty. "
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> " The evidence in question in this case was calculated to have in the mind of the jury the effect of eliminating from the statutory statement of the accused the only circumstance he relied on in that statement as a defence, namely, the circumstance that he himself had been attacked."
>
> (per Pereira, J.)

These opinions led Bertram, C.J. to express himself *obiter* in *The King v. Ukkubanda* [1], thus :

> " What I take *Rex v. Kalubanda* (*supra*) to have decided is this : That if the Crown at the trial of a prisoner tenders in evidence a statement made by the prisoner, whether self-inculpatory or self-exculpatory in intention, with a view to an inference being drawn by the Court from that statement against the prisoner, that statement becomes *ex vi termini*, as defined by section 17 (2), a " confession ", and that if it was made to a Police Officer it cannot be received in evidence. "

It will be seen that the Judges who decided *The King v. Kalubanda* [2] clearly stated two different grounds for holding that the evidence given by the Headmen was inadmissible :—*firstly*, the special ground that to permit the Court to be informed of the mere fact that an accused person had made a confession to a Police Officer was tantamount to leading evidence of the content of the confession ; and *secondly*, that a statement made by an accused person to a Police Officer which clearly or by implication shows that a defence taken may be false, or which even permits an inference to be drawn, prejudicial to the accused, is a confession within the meaning of section 17 (2). This second ground will for convenience be referred to in this judgment as the " general ground of exclusion ".

[1] *(1923) 24 N. L. R. 327.*
[2] *(1912) 15 N. L. R. 422.*

The first limb of the argument addressed to us by counsel for the appellant has been that the admissions made by the appellant should have been excluded on the general ground of exclusion, and in considering this argument it is useful to summarise many of the relevant decisions, although all of them were not referred to by counsel.

The general ground of exclusion was utilized in *Weerakone v. Ranhamy* [1]. A Police Officer who was the first witness called was allowed to give this evidence :—" The accused denied the cutting. They said that Aron (the injured man) went to take the knife from his father and got cut accidentally ". This was ruled inadmissible by Branch, C.J. in the following terms :—

> " It placed the accused on the spot and gave what was stated to be their explanation of how the wound was inflicted, an explanation which may have created an unfavourable impression on the mind of the Magistrate . . . . 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.* "

Branch, C.J. in that case cited the decision in *Hamid v. Karthan* [2], where the charge was one of theft of rubber. In this case it was held that a statement made by the accused while in Police custody, that he had actually effected the sale of a portion of the rubber, was a confession and therefore inadmissible. No reasons were given in the judgment, but there have been at least two later decisions on similar lines. In *Dionis v. Peris Appu* [3], a statement by an accused to a Constable that he had bought a cow some years previously was held to be inadmissible at the trial of the accused upon a charge of retaining possession of the cow knowing it to have been stolen. In *Nambiar v. Fernando* [4], where the accused was charged with dishonestly retaining a stolen shirt, the prosecution proved a statement made by him to a Constable that he had the shirt stitched by a tailor at Beruwela. The accused admitted in Court that he made the statement, but alleged it was untrue and made through fear. Purporting to follow *The King v. Kalubanda* [5], Jayawardena, A.J. held the statement to be inadmissible.

The three decisions just referred to above, do not reveal the grounds upon which they were based. The statements in each of them were not strictly confessions because they do not contain an admission of the commission of the offence; nor on the other hand was it expressly decided that the " general ground of exclusion " applied for the reason that the statements admitted incriminating circumstances or suggested adverse inferences. A more appropriate ground for rejecting an admission by an accused person to a Police Officer that he had been in possession of a stolen article may be that, since the burden is on the prosecution to prove the fact of possession, an admission of that fact may

[1] *(1926) 27 N. L. R. 267.*
[2] *(1917) 4 C. W. R. 363.*
[3] *(1908) 7 Tambiah 28.*
[4] *(1925) 27 N.L.R. 404.*
[5] *(1912) 15 N. L. R. 422.*

be construed as suggesting the inference either that the article had been stolen by the accused or that he had knowledge that it had been stolen.

In the leading case of *The King v. Cooray*[1], Garvin, A.C.J. observed that the definition of confession has been somewhat obscured by the frequent use of expressions such as "inference adverse to the accused", "admission of incriminating circumstances", and "evidence which has an incriminating effect", and that there had been a tendency to sweep into the prohibition created by section 25 statements which, had they been made to any other than a Police Officer, might not have been regarded as confessions. He referred to the Indian decision in *Dal Singh v. King Emperor*[2], where a statement which was in conflict with the defence and was used for the purpose of discrediting the defence was held to be in no sense a confession. The decision in *Cooray's* case itself was that a statement by an accused person, which suggests an inference adverse to the defence set up by him, is *not* on that ground a confession.

In *The King v. Fernando*[3], the prosecution proposed to lead, as evidence in rebuttal of the version given by the accused, a statement made to a Police Officer which included the following material :—" I had proceeded about four or five yards from the latrine towards the house when I fired. I fired as I was running into my house. After firing I got into my house and slept. Later a Police Constable told me that I had killed a man ; till then I did not know that I had shot anyone ". Soertsz, J. refused to allow this statement to be proved since it was " an admission by the accused that as a result of his firing the gun a man was shot and that he died in consequence ". While the statement in question in that case was not clearly an admission that the accused had shot and killed the deceased person, there is little doubt that it suggested the inference that the death was caused by the accused firing the gun. Reference is also made in the same judgment to a submission by Crown Counsel that the object of eliciting the statement was to show that " the accused did not set up his present defence ". Although mention was made in the judgment of the fact that the decision in *Kalubanda's* case ruled against such a course, it was not necessary to depend on that decision, since as Soertsz, J. stated, it was possible to regard the statement as a confession. The general ground of exclusion was not the *ratio decidendi* of this case.

In *Gunawardena*[4], the appellant had made a statement to a Police Constable which was not inculpatory but which could establish that the accused had met the injured person at the relevant time. In the course of cross-examination at the trial the appellant denied that he had made such a statement and it was subsequently led in evidence in rebuttal, in order to discredit the defence set up by him. Howard, C.J., in delivering the judgment of this Court holding the statement to be admissible, said :—

" If the decision in *Rex v. Kalubanda* has the far-reaching effect accepted by Bertram, C.J. in *Rex v. Ukkubanda* and contended for

[1] *(1926) 28 N. L. R. 74.*
[2] *(1917) 86 L. J. 140.*
[3] *(1939) 41 N. L. R. 151.*
[4] *(1944) 42 N. L. R. 217.*

in this case and in *Rex v. Cooray*, it can, having regard to the decision in *Dal Singh v. King Emperor*, be no longer regarded as good law."

This passage from the judgment in *Gunawardena's* case was cited without disapproval in the case to be next considered.

In *Obiyas Appuhamy*[1], Crown Counsel elicited from a Police Officer the fact that the appellant came to the Police Station and made a statement and that thereafter the appellant was arrested and taken into custody. This evidence was held to have been improperly received, on the ground that it clearly suggested that the statement volunteered by the appellant at the Police Station was a confession. " It is not solely evidence of the actual terms of the confession that can be obnoxious to this provision (section 25 (1)), but any evidence which if accepted would lead to the inference that the accused made a confession to a Police Officer and so 'prove a confession'." Here again there was no call for reference to the general ground of exclusion.

In *Seyadu*[2], the accused stated in evidence at his trial that the deceased person had first attacked him with a knife, that he succeeded in wresting the knife, and that he thereafter stabbed the deceased in self-defence or in the course of a sudden fight. In rebuttal the prosecution proved a statement made to a Police Officer :—" I took the knife which I had in my waist and stabbed the deceased with it. " In delivering the judgment of this Court, holding that this statement was a confession and inadmissible, Gratiaen, J. observed :—

" The test whether an admission amounts to a confession must be decided by reference only to its intrinsic terms. "

The statement in this instance was quite clearly a " confession " in the basic sense. (Reference has to be made later to another sentence in the judgment of Gratiaen, J., upon which counsel for the present appellant has relied strongly in a different connection.)

In *Batcho*[3], the accused gave evidence at his trial for murder and sought to bring himself within the exception of grave and sudden provocation by stating that the deceased had insulted and humiliated him to such an extent that he completely lost his self-control and did not know what he did thereafter. In cross-examination he was asked whether he had told a single Police Officer that the deceased had insulted him in that way. When he said in reply that he had stated so to one Mr. Nathan, Crown Counsel remarked " I am giving you a chance of thinking it over, because Mr. Nathan can be called as a witness. " Later Crown Counsel moved, *in the presence of the jury*, to call Inspector Nathan as a witness in rebuttal of the accused's evidence concerning his alleged statement to Mr. Nathan. Although the Trial Judge did not permit the Inspector to be called, this Court pointed out that " the jury must have received

[1] *(1952) 54 N. L. R. 32.*
[2] *(1951) 53 N. L. R. 251.*
[3] *(1955) 57 N. L. R. 100.*

the impression that the Crown was seeking to prove that the appellant, *in the course of a narrative in which he admitted to the Police that he killed the deceased,* did not state the circumstances of mitigation on which he relied at the trial ". In view of the citation in the judgment of this Court certain observations of Lascelles, C.J., in *The King v. Kalubanda* [1], it has been argued before us that *Batcho's* case [2] is an example of the application of the general ground of exclusion. But considering that reliance was clearly placed on the decisions in *Seyadu* [3] and *Obiyas Appuhamy* [4], and particularly because the judgment in *Batcho* [2] expressly refers to the information impliedly given to the jury that the accused had admitted the killing of the deceased, we do not think that the judgment should properly be regarded as one approving the general ground of exclusion stated in *The King v. Kalubanda* [1].

Having regard to the decisions which have been reviewed above, it will be seen that *Weerakone v. Ranhamy* [5] is the only case in which evidence of an admission to a Police Officer has been held to be inadmissible, *solely upon the general ground of exclusion.* The statement in question in that case did place the accused on the spot, for it purported to explain that the injured man had got cut accidentally. It surely cannot be said that such a statement is either an admission of the commission of the offence or else suggests the inference that the accused committed the offence. If such a statement can be said to assist the prosecution in any way it assists only to prove the presence of the accused at the scene, a fact which is perfectly " neutral " and cannot be regarded as being an incriminating circumstance. Can it properly be said that every person who informs a Police Officer that he was an eye witness of some stabbing incident thereby makes an admission of an incriminating circumstance, and that therefore such an admission should not subsequently be used against him ? If indeed he is subsequently charged with having participated in the stabbing, justice does not in our opinion require, nor can section 25 read with section 17 (2) be construed to require, that such a statement cannot be used against him. We would therefore strongly endorse the opinion expressed by Howard, C.J. in *Gunawardena's* case [6] and hold that the general ground of exclusion enunciated in *The King v. Kalubanda* [1] and later applied in *Weerakone v. Ranhamy* [5], should no longer be regarded as valid.

We pass now to the second limb of counsel's argument, which was that all the admissions alleged to have been made by the appellant to Police Officers, when taken together, suggested the inference that he caused the death of Adeline Vitharane, *or was sufficient to establish a prima facie case that he caused her death.* The language italicised above was employed by Gratiaen, J. in *Seyadu's* case [3] and had previously occurred in the judgment of Soertsz, J. in *The King v. Fernando* [7]. It will be recalled that in the latter case, the accused had admitted that he fired a shot and

[1] *(1912) 15 N. L. R. 422.*
[2] *(1955) 57 N. L. R. 100.*
[3] *(1951) 53 N. L. R. 251.*
[4] *(1952) 54 N. L. R. 32.*
[5] *(1926) 27 N. L. R. 267.*
[6] *(1941) 42 N. L. R. 217.*
[7] *(1939) 41 N. L. R. 151.*

that later a Police Constable told him that he had killed a man. The relevant part of the judgment is as follows :—

" This as far as I can make out is an admission by the accused that as a result of his firing the gun a man was shot and that he died in consequence. Such a statement is capable of being construed as establishing a *prima facie* case against the accused, because the offence of murder is constituted *inter alia* by a man doing an act which is so imminently dangerous that it must in all probability cause death. I must regard the statement from that point of view, and looking at it that way I am doubtful that it can properly be described as an exculpatory statement."

We think it important to bear in mind the actual statement which was in contemplation, when it was referred to as one that might establish a *prima facie* case against the accused. Certainly the first type of statement referred to in section 17 (2) of the Evidence Ordinance, namely, an admission that the accused committed the offence, is one which could establish a *prima facie* case and which by itself may be sufficient to justify a conviction. But section 17 (2) includes also an admission *suggesting the inference that the accused committed the offence*. The statement with which Soertsz, J. had to deal was clearly one of this type. While not admitting that he shot the deceased person, the accused nevertheless had admitted that he had fired a shot which a jury may in the circumstances have regarded as the fatal shot, or in other words, the statement suggested the inference that he was the doer of the act charged. There is no room for doubt that, when Soertsz, J. referred to a confession as being an admission which establishes or is capable of establishing a *prima facie* case, he had in mind only the direct admission of the commission of the offence contemplated in section 17 (2) and the indirect admission of the commission of an offence, also contemplated in that section, *and actually made in the case before him*. It is apparent that he could not have had in contemplation any statement, the intrinsic terms of which did not directly or indirectly constitute an admission that the accused was or might have been the doer of the act charged. So also is it apparent that the observation of Gratiaen, J. to a similar effect in the case of *Seyadu*[1] was made with reference to the statement actually before him :— "I took the knife which I had in my waist and stabbed him." Manifestly, that statement could have established a *prima facie* case even more certainly than the statement in *The King v. Fernando*[2] could have done. These two decisions are therefore no authority for the proposition contended for by the present appellant, for the prosecution did not prove in the instant case that the appellant made any admission, directly or indirectly stating that he was the doer of the act charged.

The accused in the case of *Thuraisamy*[3] had given evidence that he had accidentally wounded the deceased by a gun shot and shot another

[1] *(1951) 53 N. L. R. 251.* [2] *(1939) 41 N. L. R. 151.*
[3] *(1952) 54 N. L. R. 449.*

person thereafter in self-defence. In cross-examination he denied that he had been on friendly terms with the deceased woman and that he had asked her to marry him shortly before her death. In rebuttal, the prosecution led evidence of an admission by the accused to a Police Officer that he had been in terms of intimacy with the deceased, that she had promised to live with him, and that later he became hurt and disappointed because she had asked him not to speak of any marriage or intimacy with her. In appeal, objection was taken that these admissions constituted a confession. Gunasekara, J. said of this objection :—

> " If the admission of these statements was obnoxious to section 25 (1) there can be no question that the conviction could not stand. If it was not, then it was open to the prosecution, under section 21, to prove them as admissions of relevant facts. "

He went on to decide that such an admission should, if provable, have been proved as part of the case for the prosecution and not in rebuttal. *Thuraisamy's* case therefore did not decide that a statement showing a motive and expressing feelings of hurt and resentment on the part of the accused must be regarded as a confession, as tending to suggest an inference that the accused committed the offence charged.

It will be seen that, apart from that ground which has been earlier described as the general ground of exclusion stated in *The King v. Kalubanda* [1], and of which we have already disapproved, the decisions of the Courts of Ceylon pronouncing upon the inadmissibility of statements made to Police Officers, and of evidence concerning such statements, appear to deal with matters which fall within one or other of four different categories :—

(i) A statement directly admitting that the accused was the doer of the act charged is inadmissible. (*The King v. Kiriwasthu* [2]; *Seyadu's* case [3]). It makes no difference if, in addition to an admission of the act charged, there is also exculpatory or mitigatory matter, because the admission would prove the prosecution case and the burden of proving what is exculpatory or mitigatory is on the accused. (*The King v. Ranhamy* [4]).

(ii) A statement which though not an admission that the accused was the doer of the act charged, contains admissions, the intrinsic terms of which suggest the inference that he did the act, is inadmissible. (*The King v. Fernando* [5]). In the cited case, there was an admission of the shooting.

(iii) Evidence of Police Officers, or questions in cross-examination and/or statements by prosecuting counsel, which operate to inform the Court or create the impression that the accused had made a statement admitting that he was the doer of the act charged, is inadmissible. (*The King v. Kalubanda* [1] ; *Batcho* [6]).

1 (1912) 15 N. L. R. 422.
2 (1939) 40 N. L. R. 289.
3 (1951) 53 N. L. R. 251.
4 (1940) 42 N. L. R. 221.
5 (1939) 41 N. L. R. 151.
6 (1955) 57 N. L. R. 100.

(iv) In a case where the prosecution has the burden of proving possession by the accused of a stolen article, a statement that the accused had in fact been in possession thereof, is inadmissible. (*Hamid v. Karthan* [1]; *Dionis v. Peris Appu* [2]; *Nambiar v. Fernando* [3]). Similar statements admitting possession in cases where proof of possession is an essential ingredient of the offence charged (e.g., excise cases, cases of possession of prohibited articles) may probably fall into this category. But we must add that there has not yet been any authoritative approval of these decisions.

We were not referred to any decision which for instance has held that an admission indicating the existence of a strong motive for the commission of the offence charged cannot be proved in evidence, if made to a Police Officer. Nor, except in *Weerakone v. Ranhamy* [4], has it been held that an admission establishing presence at the scene of the offence, is a confession. Indeed the decision in *Gunawardena* [5] was to the contrary effect. The observations of Garvin, A.C.J. in *Cooray's* case [6] constitute disapproval in strong terms of the inclination to rule out statements made to Police Officers merely because their reception assists to prove the case for the prosecution.

The admissions which were proved against the appellant at his trial had the effect of inducing the jury to believe (*a*) that the appellant had a strong motive for desiring the death of Adeline Vitharane, (*b*) that the appellant was in her company when she was last seen alive by witnesses in the case, and had an opportunity to be in her company at the time when her death was caused, (*c*) that he had planned to use a hired car, and not his own car, for the trip with Adeline on the day of her death, and (*d*) that his subsequent conduct tended to show that he may have had knowledge that her body lay at the place where it was ultimately discovered. Counsel for the appellant had perforce to contend for the purposes of his argument *that each one of these admissions should not have been led in evidence.* The decisions we have considered, apart perhaps from *The King v. Kalubanda* [7] and *Weerakone v. Ranhamy* [4], do not support this contention, and it is unwarranted by the terms of section 17 of the Evidence Ordinance.

Subsection (1) defines an admission as a statement suggesting any inference (i) as to any fact in issue or (ii) as to any relevant fact. The illustrations to section 5 show that on a charge of murder the facts in issue are only whether the person charged did a particular act, whether that act caused the death, and whether that act was done with a murderous intention. Hence it is reasonable to assume that the first kind of statement referred to in subsection (1) of section 17 is an admission of

[1] *(1917) 4 C. W. R. 363.*
[2] *(1908) 7 Tambiah 28.*
[3] *(1925) 27 N. L. R. 404.*
[4] *(1926) 27 N. L. R. 267.*
[5] *(1944) 42 N. L. R. 217.*
[6] *(1926) 28 N. L. R. 74.*
[7] *(1912) 15 N. L. R. 422.*

one of these facts, *and of no other*. When subsection (2) is then examined, it becomes clear that the law declares to be a confession, only that kind of statement which is an admission of one of the self-same facts or an admission suggesting the inference that one of the self-same facts is correct. An admission by an accused of facts which can establish motive, or opportunity, or knowledge of a death, does not suggest an inference that the offence was committed by him ; the inference which such a fact suggests is only that he may have had a reason or an opportunity for, or knowledge as to the commission of, the offence. They are only relevant facts and are not facts in issue, and (to use the language of the judgments in *The King v. Fernando* [1] and *Seyadu* [2]) are not facts the intrinsic terms of which are such as to be capable of establishing a *prima facie* case. If then each of the admissions of the appellant, considered by itself, was relevant and admissible, all taken together were equally admissible. We need only add that what has just been stated should not be construed as an expression of opinion that an admission of an intention to commit some offence, or an admission as to the cause of the death of a deceased person, is a confession within the terms of section 17. No question of that nature arises for decision in this appeal.

Reference must also be made to the Indian case of *Narayana Swami* [3] The judgment of the Privy Council in that case formed the basis of a submission to us that the occurrence in our section 17 (2) of the words " suggesting the inference that he committed the offence ", (the words are not in the corresponding section of the Indian enactment), has the effect of including within the scope of the term " confession ", admissions of the kind which were received in evidence in the present case. The interpretation we have already placed on these words sufficiently indicates that in our view they do not have such effect. There is nothing in the opinion of Lord Atkin which indicates that the decision of their Lordships in that particular case would have been different if the Indian section had been in terms identical with those which occur in our section 17 (2). Even if the Courts in India have construed the meaning of such words, any opinion they may have expressed thereon would be *obiter dicta*, and in the circumstances of little assistance to us.

Lastly, we would express our agreement with the observation made by the Solicitor-General, who had conducted the prosecution at the trial of the appellant, that the Crown had ample evidence with which to prove its case, even if evidence of the challenged admissions had not been received. The testimony, of which a summary has been set out at the commencement of this judgment, was quite sufficient to justify the conviction of the appellant.

Appeal dismissed.

[1] *(1939) 41 N. L. R. 151.*

[2] *(1951) 53 N. L. R. 251.*

[3] *(1939) A. I. R. (P.C.) 4.*