

Present: Ennis J.

1913.

DEHERAGODA v. ALWIS.

96—P. C. Balapitiya, 37,196.

Charge under Penal Code, s. 177—Refusal to answer a question by a police officer—Question having a tendency to expose him to a criminal charge—Criminal Procedure Code, s. 122.

A person is not bound to answer a question put to him by a police officer (by virtue of the powers conferred on the police by section 122 of the Criminal Procedure Code) if it has a tendency to expose him to a criminal charge.

ENNIS J.—Exactly what degree of evidence is required to decide whether any question has a tendency to one thing or another is difficult to say, but in this case the question put to the brother of the person who is alleged to have stolen property as to whether he recovered that property and returned it to the complainant would, in my opinion, possibly have a tendency to expose him to a charge of attempting to compound the offence.

THE accused in this case was charged under section 177 of the Penal Code with having declined to answer questions put to him by a Sub-Inspector of Police when he was legally bound to speak the truth and answer such questions.

The only evidence in the case was that of the complainant (Sub-Inspector):—

James Deheragoda, sworn.—I am Sub-Inspector of Police, Ambalangoda. On January 31, in the course of my inquiry into a charge of theft brought against this accused's brother, in P. C. Galle, 4,166, I questioned accused as to whether the property alleged to have been stolen by that brother had been recovered by this accused from the person to whom the brother had given them and returned to the complainant in that case. Accused refused to answer. I asked him whether he recovered the things on June 26 from the boutique of Simon Silva or any other boutique at Ambalangoda.

Accused said he would reserve his answer. I said I must have a reply, then he refused. The answer to the question would not have incriminated accused.

I asked him whether Wickramanayaka came to his house on the 26th ultimo. Wickramanayaka was the complainant in the Galle case against accused. Accused said yes.

Cross-examined.—Accused left the Police Station when I was questioning him. He said he had much business. Accused did not say he will consult his lawyers before he answered. He said he might come next day. I have no right to administer an oath.

1913.
Deheragoda
v. Alwis

The learned Magistrate (H. J. V. Ekanayaka, Esq.) delivered the following judgment:—

I find the accused guilty. He has refused to answer a question which would in no way have incriminated him in connection with an inquiry into a charge against his brother. He, no doubt, wanted time to see what was best to say to protect his brother.

The efficiency of police investigation depends entirely on the promptitude with which statements are recorded so as to preclude possibility of concocting falsehoods in concert.

I fine the accused Rs. 100, or in default three months' simple imprisonment.

The accused appealed.

H. A. Jayewardene, for the accused, appellant.—The answer to the question put to the accused would have exposed him to a criminal charge. Section 122 of the Criminal Procedure Code specially enacts that a person is not bound to answer a question if the answer would tend him to a criminal charge of compounding the offence. The accused did not totally refuse to answer.

Bawa, K.C., Acting S.-G. (with him *Barber, C.C.*), for the respondent.—It is for the accused to show that the answer would incriminate him. There is no evidence that the question put to the accused was one which would have exposed him to a criminal charge. The powers given by section 122 of the Criminal Procedure Code would be useless if the person questioned is to be the judge of whether a question would have a tendency to expose him to a criminal charge or not. The question must, on the face of it, have a tendency to expose the person questioned to a criminal charge. The accused cannot say "I will not answer the question unless I know what bearing it has on the matter under investigation."

March 10, 1913. ENNIS J.—

I consider the conviction in this case cannot stand. In sub-section (2) of section 122 of the Criminal Procedure Code it is provided that a person is not bound to answer any question which may have a tendency to expose him to a criminal charge. It has been urged that the question put in this case to the accused by the Sub-Inspector of Police was one which had a tendency to expose him to a charge under section 211 of the Penal Code. Exactly what degree of evidence is required to decide whether any question has a tendency to one thing or another is difficult to say, but in this case the question put to the brother of the person who is alleged to have stolen property as to whether he recovered that property and returned it to the complainant would, in my opinion, possibly have a tendency to expose him to a charge of attempting to compound the offence.

I quash the conviction and sentence.

Conviction quashed.