[COURT OF CRIMINAL APPEAL]

1966 *Present :* **Sansoni, C.J. (President), Alles, J., and Siva Supramaniam, J.**

THE QUEEN *v.* K. KALIMUTTU

APPEAL No. 62 OF 1966, WITH APPLICATION No. 106

S.C. 3—M. C. Jaffna, 30692

Evidence—Confession—Admissibility—Summing-up—Misdirection—Evidence Ordinance, s. 24.

Where, in a trial before the Supreme Court, a confession made by the accused to the Magistrate has been put in evidence, the jury should be directed that the prosecution must prove beyond reasonable doubt that the confession was voluntarily made.

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

E. R. S. R. Coomaraswamy, with *Anil Obeysekera*, *G. C. Wanigasekera*, *N. Wijenathan*, *C. Chakradaran* and *S. S. Sahabandu* (Assigned), for the Accused-Appellant.

V. T. Thamotheram, Deputy Solicitor-General, with *T. A. de S. Wijesundera*, Senior Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 14, 1966. SANSONI, C.J.—

The appellant was convicted by the unanimous verdict of the jury of the murder of Thamayanti Rajamathandar, and the attempted murder of Rajaluxmy Devarajan. It was proved conclusively, apart from the admissions of the appellant himself when he gave evidence at the trial, that these two women were attacked by him with a club which he took with him to the house in which the women were living. Both women had been severely attacked and a number of injuries were inflicted on them.

The defence put forward by the appellant was that he had suffered grave and sudden provocation which reduced the offences to culpable homicide and attempted culpable homicide not amounting to murder, respectively.

The only point we need consider on this appeal is whether the learned trial Judge properly directed the jury as to how they should consider a confession made by the appellant to the Magistrate when they came to consider their verdict. It was submitted that the learned Judge's directions were inadequate in this respect.

At an early stage of the charge he said this when referring to the confession :—

> " Then the Crown also relies in this case on a statement which the Crown says is an alleged confession made by the accused to the Magistrate. Under our law, Gentlemen, before you can act on an alleged confession of this nature, firstly you will have to satisfy yourselves that the accused did make that alleged confession which the Magistrate says was made to him and it is found in P11. Then, Gentlemen, you cannot act on that confession unless you take the view that no inducement, threat or promise was held by any person in authority to the accused to make that statement."

Shortly afterwards he said this :—

> " First consider whether there was any inducement, threat or promise from a person in authority or by any other person in the presence of a person in authority in order to have this accused to make a statement of this nature and which gave him grounds for supposing that by making that statement he would gain any advantage or avoid any evil of some temporal nature in reference to the proceedings against him. For instance, if you take the view that the Inspector threatened him to make a statement and through fear he made this statement and if that was the state of affairs that existed at the time he made the statement to the Magistrate or if you take the view that he was induced to make a statement to the Magistrate then you cannot act on the alleged confession as such which is set out in P11, a copy of which will be given to you."

Towards the end of the charge there are the following passages :—

> " The accused made a long statement before the Magistrate and in this statement what the accused alleges now in this court that when he went there Mrs. Rajamathandar abused him, is not there. Gentlemen, would it not have been foremost in his mind the fact that Mrs. Rajamathandar abused him ? The fact that thereafter he was taken inside the kitchen and assaulted by Mrs. Devarajan, would it not have been a grievance foremost in his mind ? As I told you, this evidence was led to show that no inducement, threat or promise was made to him. On the other hand there is the accused's evidence that he was assaulted and promised that if he made the statement he would be pardoned. It is for you to consider whether inducement, threat or promise was made to the accused to make that statement, "

and a little further on

> " Then, gentlemen, the accused told you that he went there and asked Mrs. Rajamathandar, who was seated there. He got to the verandah and asked Mrs. Rajamathandar for his salary whereupon Mrs. Rajamathandar scolded him and called him a ' sakiliya ' and then said, ' why did you come here, get out '. Then he says he became very angry and lost his self-control and assaulted her. If you accept the confession as something which was made voluntarily to the Magistrate and if you take the view that no inducement, threat or promise was held out to the accused and if you act on that, you will note that he does not say in it that Mrs. Rajamathandar abused him."

It is urged that the learned Judge should have directed the jury that they should not act on the confession unless it was proved beyond reasonable doubt by the prosecution to have been a voluntary confession, that is to say, one which was not the result of any inducement, threat or promise made by a person in authority.

The most recent judgment of this court which dealt with this matter is *The Queen v. Martin Singho*[1], where Basnayake C.J. said—" that fact (that it was voluntarily made) has to be determined at the trial when it is sought to prove the confession in evidence. In such a case the burden is on the prosecution to prove beyond reasonable doubt (*Stuart v. The Queen* (101) C.L.R. 1) facts necessary to make the confession not irrelevant under section 24 (of the Evidence Ordinance). " It would appear that the view of the court there was that a confession should not be acted upon unless the prosecution has proved beyond reasonable doubt that it was voluntarily made.

The Court of Criminal Appeal in England seems to have taken the view in *R. v. Cave*,[2] that a jury should be directed that the burden was on the prosecution of proving beyond reasonable doubt that the

[1] *(1964) 66 N. L. R. 391.* [2] *(1963) Criminal Law Review 371.*

confession was voluntary. This view seems to go further than that previously held by that Court. For example, it decided in *R. v. Bass* [1] that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, and the judge should direct the jury that if they are not satisfied that it was made voluntarily, they should give no weight at all and disregard it. There is a similar reference to such a direction in *Sparks v. The Queen* [2], decided by the Privy Council. The trial Judge there had given the jury a direction that unless they were satisfied that a statement or confession was voluntary, they must reject and disregard it and give it no weight whatsoever. There was no criticism of this direction by the Privy Council.

It seems to us, however, that the better course for a Judge to follow in such a case would be to direct the jury that the burden lay on the prosecution to prove beyond reasonable doubt that a confession put before them in evidence had been voluntarily made. In the case before us this has not been done. The learned Judge has, however, directed the jury more than once that they were not to act on the confession unless they accepted it as one made voluntarily by the accused to the Magistrate, and not under the influence of any inducement, threat, or promise held out to him to make it. They were told at least twice that they were not to act on it unless they took the view that it was voluntarily made.

Whatever view of the law may be the correct one, we think that in the interests of uniformity the latest view taken by the Court of Criminal Appeal in England should be followed, and the jury should be directed that the prosecution must satisfy the court beyond reasonable doubt that the confession was voluntarily made.

We do not think, however, that in this case the verdict of the jury would have been any different, if they had been directed in those terms. No reasonable jury would have found the accused guilty of any lesser offences in view of the strong direct evidence led by the prosecution. The totality of the evidence satisfies us that the offences with which he was charged had been established beyond reasonable doubt.

We accordingly dismiss the appeal.

Appeal dismissed.

[1] *(1953) 2 W. L. R. 825.*

[2] *(1964) 2 W. L. R. 566.*