

1937

*Present : Abrahams C.J.*THE KING *v.* W. MUDIANSSELAGEY RANHAMY *et al.*32—*P.C. Kurunegala, 47,716.**Confession—Made to Police Magistrate—Duty of Magistrate—Confession must be voluntary—Criminal Procedure Code, s. 134.*

It is the duty of a Police Magistrate to satisfy himself that a confession made to him in pursuance of the provisions of section 134 of the Criminal Procedure Code is actually voluntary.

**T**HIS was an order made in a trial before the first Midland Session at Kandy.

*F. C. Loos, C.C., for the Crown.*

*A. P. Van Reyk, for first accused.*

*Nicholas, for the second accused.*

Third, fourth, fifth, and sixth accused undefended.

May 27, 1937. ABRAHAMS C.J.—

I do not desire in this matter to lay down any general rules for the guidance of Magistrate in recording confessions although I think certain rules of prudence might very well be formulated for them by the authority who has the power to do so. In my opinion, it is not possible to lay down any hard and fast rule as to what should satisfy a Magistrate that a confession made to him in pursuance of the provisions of section 134 of the Criminal Procedure Code is actually voluntary and the wording of that section is sufficiently wide to support me in that view. Nevertheless, I am of opinion that the section should be interpreted more in favour of the accused person than against him.

In this instance the Magistrate put certain questions which I can only describe as perfunctory. He asked the accused whether anybody had promised him anything, whether anybody had threatened him and whether the confession was made by him of his own accord.

The Commentary on section 24 of the Indian Evidence in the 8th Edition of Woodroffe and Ameer Ali's book says this, and it will do duty as much for the corresponding provision in the Ceylon Evidence Ordinance as it does for the Indian section :—

“Assuming that the prisoner has been induced to confess he will not unlikely assure the recording Magistrate that his confession is quite voluntary, knowing that he will leave the Magistrate's presence in the custody of the Police and remain in their charge for many days to come.”—Page 263.

I certainly do not think that the Magistrate's investigation into the state of the accused's mind when he made the confession was sufficiently adequate. There are other and more subtle methods of persuading prisoners to confess than by beating them and making promises. It is not, unknown for a policeman to take advantage of an apparently repentant mood on the part of the prisoner when he knows very well that the prisoner is under the impression that he will be treated as a witness and not as an accused person.

In this instance the accused had been in the custody of the Police for a short time and during that time he had travelled well over a hundred miles in a car. That fact was unknown to the Magistrate, just as it was unknown to him that the accused had been arrested in Kurunegala and not in Colombo.

Further, in view of the thorough-going nature of the statement which he made, it certainly seems to me that the Magistrate should have probed with the greatest care into the motives which led the accused to make this statement. He might have ascertained whether or not the accused actually believed that proceedings would not be taken against him in view of the fact that he had implicated several other persons.

As I have said, I do not desire to lay down any hard and fast rule, but I think the facts sufficient in this case to give it as my opinion that the Magistrate ought not to have been satisfied in this instance that the confession was voluntarily made and I must rule it inadmissible.

---