[COURT OF CRIMINAL APPEAL]

1971 *Present :* H. N. G. Fernando, C.J. (President), Sirimane, J., and Weeramantry, J.

S. MUTTIAH, Appellant, *and* THE QUEEN, Respondent

C. C. A. NO. 98 OF 1970, WITH APPLICATION NO. 152

S. C. 671/69 M. C. Colombo, 11022/A

Evidence—Criminal Procedure Code, ss. 121 (2), 134, 148—Scope of s. 134.

By section 134 (1) of the Criminal Procedure Code—

"Any Magistrate may record any statement made to him at any time before the commencement of an inquiry or trial."

Held, that where a person is produced in custody before a Magistrate, together with a report of the Police purporting to be made under section 121 (2) of the Criminal Procedure Code, the Magistrate has jurisdiction at that stage to record any statement made by the accused person.

The Queen v. Gnanaseeha and others (73 N. L. R. 154) partly considered.

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

K. Kanag-Iswaran (assigned), for the accused-appellant.

N. Tittawella, Senior Crown Counsel, for the Crown.

Cur. adv. vult.

July 2, 1971. H. N. G. FERNANDO, C.J.—

We dismissed this appeal after hearing argument, and reserved our reasons only because of one matter which we shall discuss before concluding this judgment.

Counsel for the appellant submitted that his client had been prejudiced by the undue publicity which this case received in the Press. The case no doubt was of somewhat unusual interest, and was even the subject of salacious speculation ; but that was only because of the identity of the young couple, an assault on whom was the subject of the charges of attempted abduction and murder. We do not agree however that the publicity caused prejudice against the appellant at his trial.

1*——K 7334—2,255 (9/71

Counsel submitted that the summing-up of the learned Commissioner did not refer in correct terms to the third limb of Section 294 of the Penal Code that culpable homicide is murder—

"If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

Even if the terms of the relevant directions were not strictly correct the learned Commissioner made it quite clear that a person who causes death by some act has "the murderous intention", only if the act is done either with the intention of causing death, or with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death.

Counsel also submitted that the confession of the appellant which was proved at the trial had not been made voluntarily. The substantial ground for this submission depended on the identity of the particular Magistrate who recorded the confession. The same Magistrate had in 1966 recorded certain confessions, the manner of recording which was the subject of comment in the case of *The Queen v. Gnanaseeha Thero and others* [1] (73 N. L. R. p. 154). The submission in the present case in effect was that, because the Magistrate had not exercised due care in recording the confessions in the earlier case, a similar stigma should attach to the recording by him of the confession in the instant case. Counsel did not however draw our attention to any matters which might establish any irregularity in the recording of this confession. In any event, this confession was recorded on 3rd May 1969, by which time the Magistrate had become aware of the criticisms made in the former case as to the manner in which he had recorded the confessions in that case. We see no reason to doubt the ruling of the trial Judge that the appellant's confession was made voluntarily.

In the instant case, the appellant was produced in custody to the Magistrate, together with a report of the Police purporting to be made under s. 121 (2) of the Criminal Procedure Code. A day or two earlier, another person arrested by the Police on suspicion of being involved in the commission of the same offences had also been produced before another Magistrate. No point was taken in this appeal that the Magistrate who recorded the appellant's confession was not vested with the territorial jurisdiction to record it. But Counsel for the appellant relied on the head-note to the report of the judgment in *The Queen v. Gnanaseeha Thero and others* which reads as follows :—

"Held, that section 134 can be acted upon by Magistrates only after commencement of proceedings in a Magistrate's Court and before the commencement of an inquiry or trial in those proceedings. A Magistrate has no power to record statements (confessional or otherwise) at a stage prior to the institution of proceedings in a Magistrate's Court in any of the forms stated in section 148 (1) of the Criminal Procedure Code."

[1] *(1968) 73 N. L. R. 154.*

According to this head-note, the ruling in that case was that a Magistrate has no jurisdiction under s. 134 of the Code to record a statement at any time before the institution of proceedings under s. 148 of the Code. If that were in fact the ruling, we think it would need re-consideration by this Court. Section 134 empowers a Magistrate to record a statement made by an accused person "*at any time*" before the commencement of an inquiry or trial. Its scope appears to be wider than that of the corresponding section in the Indian Criminal Procedure Code (Section 164) which empowers a Magistrate to record such a statement " in the course of an investigation " by the Police under Chapter 14 of that Code.

Prima facie at least, s. 134 does not reveal an intention to fix any terminal point before which a statement concerning some alleged offence may not be recorded by a Magistrate. But if such an intention must be assumed, then it would be necessary to consider which point is the intended terminal; and upon such consideration, one is immediately struck by the fact that a Magistrate is called upon to function as such, long before proceedings under s. 148 are instituted. Once the Police commence inquiries under Chapter XII of the Code, s. 121 (2) provides for a report being sent to the Magistrate's Court, and when the investigation cannot be completed within 24 hours, s. 126 A (1) provides for a report of the case to the Magistrate with a summary of the statements made by each witness. At that early stage, the Magistrate is called upon to enlarge a person on bail or remand him. Often, lawyers appear for the accused at that stage, and when the accused is not produced with the report, there are instances when he surrenders to Court through a lawyer who may move that his statement be recorded. There is no good reason to think that a Magistrate is powerless to record such a statement at that stage at least. One can think of instances in which such an application may be made even before the Police become aware that an offence has been committed.

Proceedings under s. 148 of the Code are usually instituted after investigations by the Police have been completed (save perhaps such formalities as the receipt of the Government Analyst's report, the preparation of a sketch, etc). The institution is commonly referred to as " filing the plaint ".

As soon as such proceedings are instituted, the accused is charged from a charge sheet if there is to be a summary trial, or the charge is read over to him under s. 156 in the case of a non-summary inquiry, and thus the proceedings commence immediately. In practice, there is very often no interval of time between the filing of a plaint under s. 148 when the accused is before Court, and the commencement of the inquiry or trial. If then the first terminal point for the purposes of s. 134 is the time of the filing of the plaint, there would in the majority

of cases be no interval of time during which a statement can be recorded under that section, and there would remain little or no scope for the operation of that Section.

The cases where some time elapses between the plaint and the commencement of proceedings are generally those where the accused is not present, and the Court issues a summons. This procedure usually takes place in the case of trivial offences such as criminal trespass, mischief, causing simple hurt, etc. They are hardly the type of cases where an accused person would wish to make a confession.

Despite the statement in the Head-note to the report of *Gnanaseeha Thero and others*, we find the matter differently stated in paragraph 74* of the judgment in that case :—

"If the arrested person desires to make a statement he would have to make his statement to a Magistrate of that Court and there would be proceedings initiated and pending in that Court (sufficient to give a Magistrate power to act under s. 134) *either by reason of a report having already gone to that Court under s. 121 (2)* of the Code or by reason of the very act of bringing the arrested person in custody before the Court accused of having committed an offence—see s. 148 (1) (*d*)."

We find also in paragraph 81 of the judgment the observation of the Court that its conclusion as to the law in Ceylon as to the scope of s. 134 is "not substantially different" from the law in India. Since the law in India is that a Magistrate may record a statement in the course of an investigation by the Police, we understand from this observation that our s. 134 can commence to operate at some point prior to the time of the filing of a plaint.

In the instant case, there was a report under s. 121 (2) of the Code, made at the least when the appellant was produced before the Magistrate who recorded his statement, although it may well be that such a report had previously been made when another accused had been earlier produced before another Magistrate.

The condition stated in the judgment under consideration was in our opinion satisfied in this case, and we hold that the statement of the appellant was duly recorded under s. 134 of the Code.

We have now stated our reasons for dismissing the appeal.

Appeal dismissed.

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* See also paragraph 61 which states that a written report under *s. 121 (2)* can amount to the *institution of criminal proceedings* within the meaning of s. 148 (1) (*b*).—Editor.