1941 *Present :* **de Kretser J.**

INSPECTOR OF POLICE *v.* KANAPATHYPILLAI.

*277—M. C. Trincomalee, 104.*

*Confession—Threat or inducement from person in authority—" Would like to know about it "—Evidence Ordinance, s. 24.*

Sergeant M, a storekeeper, whose assistant the accused was, learnt that part of a consignment of cement in bags had been improperly sent from the railway station in carts whereas it was the duty of the accused, who was responsible for the despatch of the cement from the station, to have sent the bags of cement in lorries specially employed for the purpose. Not being able to get information at the station from the accused, who denied all knowledge of the matter, or from any other person, and not being able to trace the cement, the sergeant went back to the station and in the course of conversation remarked to the accused that he would like to know by the following morning where the bags of cement were. He then left the station. That night the accused made a confession to M.

*Held,* that the words used by M did not amount to a threat or inducement or promise of advantage proceeding from a person in authority within the meaning of section 24 of the Evidence Ordinance.

APPEAL from a conviction by the Magistrate of Trincomalee.

*J. E. M. Obeyesekere* (with him *W. Mutturajah*), for accused, appellant.

*H. W. R. Weerasooriya,* C.C., for complainant, respondent.

*Cur. adv. vult.*

July 10, 1941. DE KRETSER J.—

Three objections to the conviction were taken—

(*a*) that the Magistrate had erred in admitting the confession since it was irrelevant under section 24 of the Evidence Ordinance ;

(*b*) that the carter was an accomplice, whose evidence required corroboration ;

(c) that the Magistrate should not have assumed jurisdiction under section 152 (3) of the Criminal Procedure Code.

On the evidence which the Magistrate accepted, what happened was that Sergeant Michael, the storekeeper, whose assistant the accused was, learned that part of a consignment of cement in bags had been improperly sent from the railway station in carts whereas it was the duty of the accused, who was responsible for the despatch of the cement from the station, to have sent the bags of cement in lorries specially employed for that purpose. Not being able to get information at the station from the accused, who denied all knowledge of the matter, or from any other person, and not being able to trace the cement, the Sergeant went back to the station and in the course of conversation remarked to the accused that he would like to know by the following morning where the bags of cement were. He then left the station.

That night the accused made the confession now objected to and was asked to come next morning. He did not turn up and was eventually arrested by the Police.

There is no evidence as to what authority, if any, the storekeeper had over the accused nor have his exact words been quoted. The storekeeper was anxious to trace the cement: he had previously suspected certain other persons and not, as far as one can see, the accused, and had placed a watch at the station and that was how he received the information which took him to the station. He must thereafter have suspected the accused or at least have held him guilty of negligence. I do not think his words can be construed as a threat or inducement to the accused to confess or that accused had any grounds for supposing from that remark alone that he would gain an advantage or avoid some evil of a temporal nature by making a confession. Ameer Ali in his book on Evidence discusses this section and he quotes the case of *R. v. Sarah Reason*[1], where the words "I must know more about it" were held not to invalidate the confession. In *R. v. Reason*, which was a case tried at the Warwickshire Spring Assizes in 1872, a child had been found drowned in a canal and a constable who was about to apprehend the prisoner put certain questions to her. In the course of the conversation he said "I must know more about it" after which she made a confession. Keating J. (after consulting with Quain J.) said, "I have thought it right to consult with my brother Quain, and he is very clear that it would be quite an over-refinement to exclude this admission. I agree with him, and indeed did not feel much doubt in my own mind. In my time it used to be held that a mere caution given by a person in authority would exclude an admission, but since then there has been a return to doctrines more in accordance with the common-sense view. The real question is whether there has been any threat or promise of such a nature that the prisoner would be likely to tell an untruth from fear of the threat, or hope of profit from the promise. In the present case the Police Constable was stating his reason from making further inquiries, and it would be straining the rule to an unnatural extent to exclude the admission, especially as it was a statement made in the course of a narrative".

The object of the section is to make sure that a confession is really voluntary and that again is due to the desire to prevent an untrue

[1] (*12 Cox 228*).

admission being made when the power of the prisoner's mind is overcome by awe or hope of favour. In England it is in great part due to the desire to prevent harassing and oppression by the Police. Taylor deals with the matter fully.

There has been some difference of opinion as to whether it is the duty of the prosecution to prove that the confession was really voluntary or the duty of the prisoner to justify his retraction of it. The question whether it is voluntary or not is a matter for the Judge to decide and in case of doubt he will probably reject the alleged confession. The accused did not give evidence and he did not allege that he made a false admission because of the Sergeant's remark. He did not make his admission at once. The Sergeant's first visit to the station was at midday and it was on his second visit about 4 P.M. that he made the remark. Accused ought to have known by then that inquiry was on foot. He did not go to see the Sergeant till 9 P.M. and he did not then refer to the Sergeant's remark but tried to move him with tears. There is thus nothing in the remark itself or in the accused's conduct to indicate that he was influenced by the remark and not by the trend of events.

The carter cannot be considered an accomplice. The evidence is that carters go to the goods-shed in the hope of obtaining hires, that they do get employment, and the mere fact that such cement was ordinarily removed in lorries was not sufficient to make the carter seek to know or be suspicious when he was employed. His evidence alone was sufficient to convict the accused. There was also the evidence of the passbook which the Magistrate has not considered. It was a book kept by the accused and, while there is no direct evidence as to the person who made the tell-tale alteration, there is no evidence that it ever left the accused's custody till the Sergeant took charge of it, and the Sergeant says the figures are in accused's writing. To my mind the entry points to an attempt by the accused to make out that he had despatched the cement correctly and that it had been stolen elsewhere. That was his defence at the trial. The original entry suggests to my mind that owing to the system prevailing it was either difficult to check the quantity in the stores or it was not attempted, and so while the passbooks at the two ends would agree there was ample scope for goods to be stolen.

I do not think the Magistrate can be said to have assumed jurisdiction wrongly. I deprecate too frequent use of the provisions of section 152 (3) but I think that the circumstances justified the course adopted by the learned Magistrate. I think the offence of the prisoner was a very serious one and perhaps the Magistrate had not entirely shaken off his magisterial office when he imposed the sentence he did, but I hesitate to interfere and therefore confine myself to dismissing the appeal.

*Affirmed.*