

1931

Present : Maartensz A.J.

THE KING v. PACKEER TAMBY

483—D. C. (Crim.) Puttalam, 14,206

Evidence—Person suspected of offence—Detained by police officer pending inquiry—Statement made as a result of inducement—Fact discovered following upon statement—Evidence Ordinance, ss. 25, 26, 27.

Where a person was detained by a police officer pending an inquiry into an offence of which he was suspected and, as the result of an inducement offered by the police officer, made a statement which led to the discovery of a certain fact,—

Held, that evidence of so much of the information as relates to the fact thereby discovered may be proved.

CASE reserved for the consideration of the Supreme Court by the District Judge of Puttalam.

M. F. S. Palle, C.C., for the Crown.

April 1, 1931: MAARTENSZ A.J.—

These proceedings came up for consideration of a point of law reserved by the District Judge of Puttalam under the provisions of section 353 of the Criminal Procedure Code.

The accused was convicted of house-breaking by night by entering into the house of one Pavulu Perera and of theft from the said house of, among other things, a coconut husker on or about November 21, 1930.

It was proved at the trial of the accused that the house had been broken into and the articles mentioned in the indictment stolen.

The thief or thieves were not identified ; but next morning footprints were discovered leading from the house broken into to the house of the accused ; and in his complaint to the Police Pavulu Perera stated that he suspected the accused.

On November 22 a constable held an inquiry but obtained no further information.

On November 23 on the orders of the Inspector of Police Sergeant Jansen went to the village to make further inquiries ; on the way he met the accused at a boutique and, according to his evidence at the trial, arrested him. The Sergeant's evidence is—" I arrested him (the accused) at the boutique. I took him to the scene and I made my investigation ". In answer to the question as to why he arrested the accused when there was only suspicion against him he said " To make inquiries ". Later on he said " I detained accused in my custody until I completed my inquiry ".

The Sergeant was then asked " As a result of anything the accused said did you discover anything ? ". The answer was " Yes ". The accused's proctor objected at this stage to evidence as to what was discovered as the accused was not under arrest. The objection was overruled and the Sergeant said " As a result of what accused said I discovered P1 ". P1 is the coconut husker.

On being recalled, the Sergeant at a later stage of the trial said " On November 23, 1930, I told accused ' if you show me the property we will allow you to settle the case ' ".

The questions of law submitted for the consideration of this Court are :—

1. Do the facts of this case show that at the time the accused pointed out the coconut husker P1, he " was a person accused of any offence in the custody of a police officer " within the meaning of section 27 of the Evidence Ordinance.

2. If not, can section 27 be regarded as being a proviso to section 24 ?
3. If not, does section 24, read with section 100 of the Evidence Ordinance, bring in the rule of the English law which allows the statement of an accused, who has been improperly induced to confess by a person in authority, to be admitted in evidence when such statement leads to the discovery of the stolen property or any part thereof ?

Under the first of these questions two questions fall for decision, viz., (1) was the accused in the custody of a police officer and (2) was he a person accused of any offence within the meaning of section 27 of the Evidence Ordinance, No. 14 of 1895.

These questions involve an examination of the group of sections 25 to 27 of the Ordinance relating to confessions made to police officers. Section 25 excludes a confession made to a police officer by an accused person. Section 26 excludes a confession made by any person to any person other than a police officer while he is in the custody of an officer, unless it is made in the immediate presence of a Police Magistrate.

Section 27, enacted in the form of a proviso, provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Sections 25, 26, and 27 of our Ordinance reproduces the sections bearing the same numbers of the Indian Evidence Act.

Whether section 27 is a proviso to section 26 or to both sections 25 and 26 was considered by a Bench of Five Judges in the case of *Queen Empress v. Babu Lal and another*¹ and they held (one Judge

¹ (1884) *Indian Decisions* (N. S.) 6 All. 510.

Mahmood J. dissenting) that section 27 of the Indian Evidence Act is a proviso not only to section 26 but also to section 25.

One of the Judges, Oldfield J., held that section 27 qualifies section 25 when the accused person is in the custody of the police : therefore confessions to police officers by persons who are accused but not in custody, or are in custody but not accused, or are neither accused nor in custody, do not fall within section 27.

At page 217 of the 8th edition of *Woodroffe and Ameer Ali's Commentary on the Law*, a confession is defined as an admission made at any time by a person charged with a crime, stating, or suggesting, the inference that he committed the crime.

A person charged with an offence is described in sections 24 to 26 as an accused person. Section 27 describes him as a person accused of any offence.

The Evidence Ordinance does not define an accused person. Must the person be charged with the crime before he makes the confession or do the sections apply to persons subsequently charged with the crime ?

In practice, a confession by a person charged with a crime after he has made his confession is held to be inadmissible.

If an accused person means a person charged with a crime whether before or after the information was given which led to the discovery of any fact, then the evidence as to what the accused said which led to the finding of the coconut husker is clearly admissible as a statement by an accused person. But, in my opinion, the accused in this case was an accused person before he gave the information, for in the original complaint he was mentioned as a suspected person.

The next question is whether the accused was in the custody of a police officer.

The case of *Queen Empress v. Babu Lal and another* (*supra*), deciding as it does that section 27 is a proviso to section 26,

enables me to consider the cases decided in India on the words "in the custody of a police officer" in section 26.

In the case *Queen Empress v. Kamalia and another*¹ the Magistrate who tried the case believed the witnesses who deposed that "the accused admitted the theft, and that the property was discovered in consequence of such admissions".

In appeal it was held that the Magistrate's judgment showed clearly that the identity of the property recovered with that stolen was not proved to the Magistrate's satisfaction except by these admissions.

One of the questions was whether the prisoners were in police custody. The evidence on that point was that the prisoners were among the persons whom the police *patel* "collected" on suspicion.

It was held that the two prisoners were in some sort of police custody at the time. On the principle laid down in this case, with which I agree, the accused in the present case was in police custody when he gave the information which led to the discovery of the coconut husker.

I accordingly answer the first question submitted for decision in the affirmative.

I do not quite follow why the second question should arise if the first question is answered in the negative. It arises whether the first question is answered in the affirmative or negative, if the information given by the accused followed

¹ (1886) *I. L. R.* 10 *Bombay pp.* 595-596.

upon a statement to him by the Sergeant that if he showed him the property he would be allowed to settle the case.

The Indian authorities are clear on the point. The law is thus stated by Woodroffe and Ameer Ali:—"This section (27) qualifies section 24 (*R. v. Misri*)¹. Therefore, whatever the inducement that may have been applied, or made use of, towards the accused, there is nothing in the law which forbids policemen or others from, at any rate, going so far as to say 'In consequence of what the prisoner told me, I went to such and such a place, and found such and such a thing'. Moreover, they may repeat the words in which the information was couched whether they amount to a confession or not, provided they relate distinctly to the fact discovered. Therefore, although a confession may be generally inadmissible, in consequence of an inducement having been offered within the meaning of the twenty-fourth section, yet if any fact is deposed to as discovered in consequence of such confession, so much thereof as relates distinctly to the fact thereby discovered may be proved under this section".

I answer the second question in the affirmative. This answer disposes of the third question.

I affirm the conviction.

Affirmed.

¹ (1909) 31 *I. L. R.* *Allahabad* 592.