

1938

*Present : Keuneman J.*THE KING *v.* APPUHAMY.*P. C. Avissawella, 17,963.*

*Evidence—Signs made by a deaf and dumb person—Interpretation of signs by witnesses—Signs do not amount to oral testimony—Confession—Evidence Ordinance, s. 17.*

The interpretation by a witness of the signs made by a deaf and dumb person is not admissible evidence.

Such signs do not amount to an oral statement within the meaning of section 17 (1) of the Evidence Ordinance.

THIS was a reference to the Supreme Court by the Police Court of Avissawella, under section 288 of the Criminal Procedure Code.

*D. W. Fernando, as amicus curiae.*

*Marshall Pulle, C.C., for Attorney-General.*

*Cur. adv. vult.*

September 18, 1938: KEUNEMAN J.—

This is a reference by the learned Magistrate under section 288 of the Criminal Procedure Code. The accused in the case was deaf and dumb from birth and is unable to read or write, and it has not been found possible to make him understand the nature of the proceedings or to find anyone who can interpret to him the evidence in the case. The accused was undefended. The charge is causing mischief by fire. The evidence so far as it goes appears to negative insanity, but there is no medical evidence in the case. The accused has been committed for trial in the higher Court.

I set the matter down for hearing as I was not satisfied that there was legal evidence on which the committal could be made, and I am indebted to Counsel who appeared as *amicus curiae* and for the Crown for their help in elucidating this matter.

The only evidence to justify the committal, as far as I can see, is the evidence of Ukkuhamy, the elder brother of the accused. "On June 6, 1938, at about 1 A.M. this accused came to my house when I was asleep and put me tip by shouting loud and by means of signs he made me understand that he had set fire to the school, and called me to accompany him to the Kuruwita Police Station. He also made me understand that he had set fire to the school as the boys in the school were teasing him as his hair had been cropped very short . . . . Accused also made me understand that he set fire to the school owing to another reason, viz., because the Arachchi had failed to take any steps in the case where he had been assaulted. This is what I understood from his signs as far as I was able to do so".

The point for consideration is whether this evidence is admissible evidence. The only evidence tendered is that a particular witness interpreted the signs made in a particular manner, but there is no evidence that the witness reproduced those signs in Court, or that the Court made any attempt to interpret these signs. I do not think that the interpretation of the signs given by Ukkuhamy is admissible evidence. In *Alesandiri v. The King*<sup>1</sup>, Soertsz J. in dealing with a different matter, viz., signs made by a dying person in answer to a question put to him, ruled that evidence as to the signs made in reply to the question was admissible but that statements of witnesses as to what interpretation they put on the signs were not admissible. The Privy Council did not differ from or criticise the correctness of this finding.

The further question is whether evidence of signs made by the accused would amount to an "oral" statement within the meaning of section 17 of the Evidence Ordinance. Section 17 (1) speaks of an admission being a statement "oral or documentary". Section 17 (2) states that a confession is an admission.

In *Alesandiri v. The King* (*supra*) the Privy Council had to interpret not section 17 but section 32. They held that a sign made by a dying person in response to a question was a "verbal" statement under section 32. They added: "It is to be observed that in the section the word used is 'verbal' and not 'oral' which is used elsewhere in the Ordinance, e.g., in section 3 and section 119, in reference to evidence given in Court. It is unnecessary to decide whether the question put 'was it Alesandiri?' and the nod of assent would have constituted an oral statement made by the deceased, but their Lordships are clearly of opinion that it constituted a verbal statement made by her".

In *Queen Empress v. Abdulla*<sup>2</sup>, Petheram C.J. said: "'Verbal' means by words. It is not necessary that the words should be spoken. If the term used in the section was 'oral' it might be that the statement must be confined to words spoken by the mouth. But the meaning of 'verbal' is something wider".

<sup>1</sup> 38 N. L. R. 257.

<sup>2</sup> I. L. R. 1 All. 385.

In this case there is a complete absence of evidence as to what the "signs" made by the accused to his brother were. It does not appear likely that the statement of the accused was "oral" in the sense of "words spoken by the mouth". Even if "oral" can be given an extended meaning, there is no evidence of 'signs' which can come within such extended meaning.

Crown Counsel has referred me to section 8 of the Evidence Ordinance and argued that the 'signs' if proved may be conduct within the meaning of that section and admissible as such.

In this case I cannot see that the conduct of the accused is relevant, once the alleged 'statement' is shut out, or points with any reasonable certainty to his guilt.

I think the accused in this case is entitled to a discharge, and I order that he be discharged.

