

[ASSIZE COURT]

1956

Present : Gunasekara, J.

THE QUEEN *v.* S. H. CICILIN

S. C. 1 (Southern Circuit, 2nd Criminal Sessions)—M. C. Balapitiya, 14, 832

Confession—Criminal Procedure Code—Section 134 (3)—“Voluntarily”—Evidence Ordinance, s. 24.

A confession is made “voluntarily” within the meaning of section 134 (3) of the Criminal Procedure Code if it is made in circumstances that do not render it inadmissible by reason of the provisions of section 24 of the Evidence Ordinance.

ORDER made in the course of a trial before the Supreme Court.

E. H. C. Jayatilaka, Crown Counsel, for the Crown.

Siva Rajaratnam, with *Douglas Wijeratne*, for the accused.

Cur. adv. vult.

September 26, 1956. GUNASEKARA, J.—

The accused woman is being tried on a charge of having committed the murder of a woman named Sirimal Nona on the 26th February last at Hirikumbura-Meegaspitiya in the judicial division of Balapitiya. The learned counsel for the defence objected to the admission of the document P16, which is a record of a proceeding under section 134 of the Criminal Procedure Code, in which the accused made a confession to the Magistrate of Balapitiya. I overruled the objection and said that I would give my reasons later.

The section provides in subsection (1) that any magistrate may record any statement made to him at any time before the commencement of an inquiry or trial, and in subsection (3) that no magistrate shall record any such statement being a confession unless upon questioning the person making it he has reason to believe that it was made voluntarily. The ground of the objection was that the magistrate did not probe sufficiently the accused's motive for making the confession before he concluded that it was made voluntarily. It was contended that if the magistrate in his questioning of the accused had investigated her motive in the light of the facts that were already before him it might well have turned out that her confession was not voluntarily made.

These facts, so far as they had been elicited in evidence at the time of my order, were as follows. The homicide was reported to the magistrate by the Uragaha police on the 26th February, and he visited the scene at 3.15 p.m. on the same day. The deceased's body lay in a pool of blood on the floor of her house with a cut wound on the nape of the neck. The magistrate recorded the available evidence and directed that the case should be called before him on the next day. On the same afternoon the police took into their custody the accused's father Kaluneris and her husband Addin (or Edwin) as persons suspected of the murder. They were produced before the magistrate on the 27th and remanded to the custody of the fiscal until the 6th March. On the 27th the police also produced before the magistrate what they alleged was a bloodstained shirt that had been found in Addin's house, a specimen of the deceased's blood and scrapings from the floor of the room in which her body was found. These things were ordered to be sent to the Government Analyst for a report, by the 19th March, as to whether the shirt was stained with blood of the same group as the deceased's and whether it was also stained with a substance of the same kind as a substance alleged to be present in the scrapings. In the early hours of the morning of the next day the accused was arrested in her parents' house at Hirikumbura and taken to her own house and thence to the Uragaha police station, a few miles away. Later, at 9.30 a.m. she was produced before the magistrate at the court-house in Balapitiya by an assistant superintendent of police, who told the magistrate that she wished to make a confession.

It was as a result of information given to the police by a brother of Kaluneris, a man named Charlis, that the accused was arrested. It appears that on the night of the 27th February, at some time after 8.30 p.m., Charlis interviewed her at the house of her parents, where she was staying after her husband's arrest, and then went to the Uragaha police

station with a brother of hers and made a statement to the effect that she had confessed to him that the deceased had been killed by her. Charlis's statement was recorded by a sub-inspector of police, Ibrahim, at 11.40 p.m. The sub-inspector then went to the accused's parents' house at Hirikumbura, which he reached at 1.45 a.m., and arrested her there. It appears from evidence given by Mr. Ibrahim before me, in the absence of the jury, that before he took her into custody he questioned her and she made a long and circumstantial statement to him in which she confessed that she had killed the deceased.

According to Charlis's evidence the accused made a confession to him in reply to a question as to whether she knew anything about Sirimal Nona's death. He denied that he had said anything to her with the object of inducing her to confess. But according to Ibrahim, in the statement that Charlis made to him at the police station Charlis said that he had asked the accused "to speak the truth if she had committed the murder", and had said that if she spoke the truth he would "save her from that". Charlis denied that he had said such a thing in his statement to the police. I accept Ibrahim's evidence on this point, but there is no evidence of the truth of what Charlis stated to him. There is no evidence that Charlis asked the accused to speak the truth if she had committed the murder or that he said he would save her if she spoke the truth.

It was suggested to Charlis in cross-examination that he had advised the accused "that she should confess to this murder", and had told her that if she did so her father and her husband would be released, instead of being hanged for murder, and she, being a woman, would be sentenced to a year's imprisonment, and also that he himself and Kaluneris and Addin would "save her". These suggestions were denied by Charlis and there is no evidence that contradicts his denial. The burden is on the prosecution, however, to show that the making of a confession that it seeks to prove has not been caused by such an inducement, threat or promise as is referred to in section 24 of the Evidence Ordinance, and I am not satisfied with Charlis's denial. It seems to me that it is not unlikely that Charlis did seek to induce the accused to make a confession by pointing out to her the advantages of such a course and by telling her that he and her father and her husband would "save her". But Charlis was not "a person in authority" within the meaning of section 24 of the Evidence Ordinance. Therefore an inducement or promise proceeding from him cannot render the confession obnoxious to this section unless it proceeded from him "in the presence of a person in authority and with his sanction".

The suggestions to which I have referred were made in the cross-examination of Charlis on his evidence about the confession alleged to have been made to him on the night of the 27th February, and they relate to what passed between him and the accused before the latter was interviewed by sub-inspector Ibrahim. There is no evidence that he offered any inducement or made any threat or promise to the accused in the presence of any person in authority. It was not even suggested in cross-examination that any such thing happened; although both he and Ibrahim admitted

that he was present when the accused's statement was taken by Ibrahim, and he further admitted that he had gone to the magistrate's court later that morning with the accused in the police van that took her there. According to the evidence of the sub-inspector, from the time when he met the accused at 1.45 a.m. on the 26th February until he produced her before the magistrate at about 9.30 a.m. she was within his view practically all the time, and no one offered her any inducement or threat or promise. In the absence of any evidence or even a suggestion to the contrary I see no reason to doubt the truth of what Ibrahim has said on this point. On the material before me I am of opinion that the making of the confession was not caused by such an inducement, threat or promise as would render it inadmissible in terms of section 24 of the Evidence Ordinance.

Mr. Rajaratnam contended that an adequate probing of the accused's motive for making the confession might well have revealed that what moved her to confess was a belief that if she did so her father and her husband would be released and she herself would be dealt with leniently. I agree with this contention, but I do not agree that a confession so motivated would not be one made "voluntarily" within the meaning of section 134 of the Criminal Procedure Code. The learned counsel was not able to refer me to any authority on the question of the meaning of the term as used in this section. In my opinion a confession is made "voluntarily" if it is made in circumstances that do not render it inadmissible by reason of the provisions of section 24 of the Evidence Ordinance, which enacts a principle of the English law that a confession is admissible in evidence only if it is made voluntarily. In the only case that was cited to me, *R. v. Rankamy*¹, there appears to be nothing that conflicts with this view. It was held upon the facts of that case that a magistrate who purported to record a confession under section 134 of the Criminal Procedure Code "should have probed with the greatest care into the motives which led the accused to make this statement"; apparently for the reason that there was a possibility that the hope of a conditional pardon had been held out to him by the police to induce him to make a confession. A confession which might well have been procured by such an inducement would have been inadmissible by reason of the provisions of section 24 of the Evidence Ordinance. It does not appear from the report of the case whether any evidence was led at the trial to exclude that possibility. In the present case, as I have already said, I am of opinion that the confession is not obnoxious to section 24 of the Evidence Ordinance.

For these reasons I admitted the document P16 in evidence.

Objection overruled

¹ (1937) 2 C. L. J., R. 121.