

1921.

Present : Schneider A.J.

VIDANE ARACHCHI OF KALUPE v. APPU SINNO.

452—P. C. Balapitiya, 49,273.

Confession to a Mudaliyar—Is it admissible ?

A confession to a Mudaliyar of a district who arrested the accused was held to be inadmissible.

THE facts appear from the judgment.

Ameresekera, for first accused, appellant.—The conviction is based on a confession to a Mudaliyar, which is inadmissible, inasmuch as the Mudaliyar on this occasion performed the duties of a Police Officer in arresting the accused. In *Nugo Kanny v. Pables Perera*¹ Wood Renton C.J. held that a Mudaliyar, who held an inquiry at the request of a Government Agent into a departmental petition presented by the complainant against a Police Vidane, was a Police Officer, and that a confession made to him by the accused would be inadmissible in evidence against him.

It is incumbent on the prosecution to prove that the coral stones were collected within a prohibited area.

Eliminating the evidence of the Mudaliyar as being inadmissible by virtue of the provisions of section 25 of the Evidence Ordinance, there is no evidence to prove that the coral stones were collected within a prohibited area.

May 30, 1921. SCHNEIDER A.J.—

This is an appeal by the first accused, who, together with another, was convicted of having removed coral from a prohibited area in contravention of the provisions of the Seashore Protection Ordinance, 1911. The evidence of the Mudaliyar of the district, which the Magistrate has accepted, and which I see no reason for not accepting, is that he met the two accused at 10 P.M. removing coral in a cart at a spot on a main public thoroughfare where the sea had washed away a portion of the thoroughfare at a place called Weeralana. He found the coral wet and presenting the appearance of having been just collected from the sea. He put his tongue to some of the coral and it tasted salty. He questioned the accused, who admitted to him that they had collected the coral within a prohibited area close by. He therefore arrested the accused, and handed over the coral and the cart and bulls to the Vidane Arachchi and one Janis.

¹ (1908) 1 Tam. Rep. 25.

At the trial the accused denied their confession to the Mudaliyar, and stated that they had procured the coral at a place inland called Uduwaragoda, which is stated by witnesses variously as being 1½ or 3 miles distant from the scene of the arrest. On appeal two objections were submitted against the conviction. It was first contended that the confession to the Mudaliyar was inadmissible by virtue of the provisions of section 25 of the Evidence Ordinance, inasmuch as the Mudaliyar must be regarded as a Police Officer.

In support of this contention the case of *Nugo Kanny v. Pables Perera*¹ was cited. In that case Wood Renton J. held that a Mudaliyar who held an inquiry at the request of a Government Agent into a departmental petition presented by the complainant against a Police Vidane was a Police Officer, and that a confession made to him by the accused would be inadmissible in evidence against the accused. In the course of his judgment he said: "It is of great moment that both the spirit and the letter of that section should be maintained, and I think it applies to headmen of all grades as well as Police Officers within the strict meaning of the term."

In this case the Mudaliyar says he "arrested" the accused. He appears in so doing to have assumed the duties of a Police Officer, and it seems to me that the confession was made to him in his capacity as Mudaliyar. For the reason given by Wood Renton J. in the case cited, I would, in this case, hold that the confession of the accused to the Mudaliyar is inadmissible in evidence against the accused. The next contention was that, apart from the confession, there was no evidence to support the conviction. It, therefore, remains to be considered what other evidence there is to support the conviction. There is the evidence which I have already referred to, viz., that the Mudaliyar had observed that the coral was wet and had seemingly been just fished out of the sea. Besides this, there is evidence that the coral from Uduwaragoda is quite different in appearance to the coral fished out of the sea, and the learned Magistrate, from his own observations of specimens produced before him came to the conclusion that the coral dug from land away from the sea was different to coral dug from the sea. But this evidence does not prove anything more than that the defence is false as to the place from where the coral had been obtained. It does not prove, what it was incumbent on the prosecution to prove, that the coral had been collected within a prohibited area.

I would, therefore, set aside the conviction of the accused (appellant) and acquit him. Acting in revision I would make the same order as regards the conviction of the second accused.

Set aside.

1921.

SCHNEIDER
A.J.

Vidane
Arachchi of
Kalupe v.
Appu Sinno

¹ (1908) 1 Tam. Rep. 25.