

Present : De Sampayo J.

JOSEPH v. PERIS et al.

232—P. C. Panadure, 78,014.

*Statement by one accused implicating the other accused made outside Court—Inadmissible as against other accused—Agreement by accused to pay compensation on the suggestion of the master of the accused—Implied confession—Is confession admissible against accused ?*

The complainant charged the two accused with theft of certain articles. The conviction of the first accused was based on two circumstances: (1) The second accused made a statement to the District Engineer implicating the first accused; (2) the first accused on the suggestion of the District Engineer offered to pay Rs. 45 to the complainant as compensation.

*Held*, (1) that the confession made by the second accused outside Court to the District Engineer was inadmissible in evidence against first accused (section 30 of the Evidence Ordinance); (2) that as the District Engineer was a person in authority over the first accused (servant), the implied confession of the first accused was inadmissible, as he supposed that by making the settlement with the complainant as suggested by his master he would gain an advantage or avoid an evil.

**T**HE facts appear from the judgment.

May 18, 1923. DE SAMPAYO A.C.J.—

I think this appeal by the first accused must succeed. He and the second accused were convicted of the offence of theft of some articles of clothing and cash belonging to one Joseph. The complainant, Joseph, was a watcher employed under the District Engineer. The first and second accused were also employed as coolies under the District Engineer. On March 23 last, the complainant lost from his room a box containing the articles of clothing and the cash referred to. The complainant suspected the first accused, because on the day previous the first accused happened to come into the room and had seen the box containing the articles. But the evidence against him is neither direct nor given by any witnesses. His conviction is said to be based on two circumstances, which, according to the Police Magistrate, when combined, establish his guilt. The first circumstance is that the second accused made a statement to the District Engineer implicating the first accused. But that statement was not repeated by the second accused in Court, although he gave evidence. As a matter of fact he said that he was coerced into making that statement by the complainant, and he denied the truth of what he is alleged to have stated. Consequently, there is nothing against the first accused in the sworn evidence of the second accused in Court.

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But the Police Magistrate utilized the statement the second accused made to the District Engineer outside the Court and under circumstances which does not bring the statement within the provisions of the law.

Mr. H. V. Perera, for the accused, points out section 30 of the Evidence Ordinance, which shows that statement to be wholly inadmissible. Section 30 enacts: "When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court shall not take into consideration such confession as regards such other person." I am bound to hold that, in view of that provision the confession made by the second accused to the District Engineer was inadmissible, and does not furnish any evidence against the first accused. The result of that ruling is that one of the circumstances, which, when combined with another, is said to form evidence against the first accused, disappears. The other circumstance is that the first accused offered to settle matters with the complainant. That happened in this wise: The District Engineer, who appears to be a good master to all his servants, took some interest in the incident of the complainant's loss and the suspicion as against the first accused, and suggested to the first accused that it was better for him to settle matters. The first accused then offered to pay the complainant Rs. 45, of which, on a subsequent occasion, he paid Rs. 25. From this is drawn an implied confession on the part of the first accused as against the charge made against him. In itself, I think that this circumstance cannot reasonably be utilized to found such a large inference; for even an innocent man might, under the moral pressure brought upon him by his master, consent to settle matters with the person who is making a claim against him. The Police Magistrate quite appreciates that weakness, but he says that when that circumstance is combined with the second accused's confession, it makes a sufficiently strong case against the first accused. But I have already shown that the second accused's confession must be eliminated. So we are left only with the other circumstances. Moreover, the provisions of section 24 of the Evidence Ordinance might be applied to cover the case of the first accused's act in settling matters with the complainant on the advice of his master, the District Engineer; for that section declares any confession to be irrelevant which is made by an inducement proceeding from a person in authority, and which inducement is sufficient in the opinion of the Court to give the accused person reasonable grounds for supposing that by making it he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him. In this case it is quite clear that the District Engineer acted through pure kindness, and not with a view to extracting a confession. Nevertheless, the suggestion proceeded from him,

who, with reference to the first accused, was a person in authority, and it is not difficult to understand that the first accused supposed that by making the settlement with the complainant as suggested by his master, he would gain an advantage or avoid an evil. In any case, this circumstance, the Police Magistrate himself states, is hardly sufficient to base any adverse inference against the first accused. The result of these considerations is that there is no evidence against the first accused, and he is, therefore, entitled to ask that he be discharged from the prosecution.

The conviction of the first accused is set aside.

*Set aside.*

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DE SAMPAYO

A.O.J.

*Joseph v.  
Petris*