

CRIMINAL REFERENCE.

Before Sanderson C. J. and Pantoni J.

EMPEROR

v.

GANESH CHANDRA GOLDAR.*

1922

June 15.

Confession—Confession to a panchayet—Whether a panchayet is a “person in authority”—Improper inducement by a panchayet—Confession shortly thereafter to a Magistrate—Admissibility of such confession—Evidence Act (I of 1872), ss. 24 and 28.

A collecting and an assistant *panchayet* are “persons in authority” within section 24 of the Evidence Act, when they have taken an important part in the enquiry into the circumstances of the commission of the offence.

The belief of an accused that the persons to whom he made a confession were “persons in authority” is not sufficient to bring them within the term.

A confession is inadmissible under the section when, in answer to the enquiry of the accused whether he would be saved from the consequences if he confessed, the assistant *panchayet* assured him that he would be let off if he disclosed everything, and when the confession was made as a result of such assurance.

Where an accused made a confession to the assistant *panchayet*, before arrest, on 1st January 1922, and he was thereupon kept in custody by the villagers till the arrival, next day, of the police, who formally arrested him, and sent him before a Magistrate, and the latter recorded his confession on the 4th instant :—

Held, that the improper influence employed by the assistant *panchayet* continued to the time of the recording of the confession by the Magistrate, and that such confession was also inadmissible.

THE accused was tried before the Sessions Judge of Faridpur with a Jury on charges under sections 120B and 302 of the Penal Code. The Jury found the

* Criminal Reference No. 39 of 1922 by G. C. Saukey, Sessions Judge of Faridpur, dated April 22, 1922.

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accused not guilty, whereupon the Sessions Judge referred the case to the High Court under section 307 of the Criminal Procedure Code.

On the 31st December the deceased, Kali Kumar Mozumdar, of Rahuthar, went to an adjoining village, and when returning home, some time after midnight, he was attacked on the road, near the house of one Kailash Chunder Sarkar, by a body of armed men. Kali Kumar went immediately after his assailants had run away to the house of Kailash and woke him up. He was then almost collapsing, and was laid on the verandah and died soon after. At daybreak (on 1st January 1922) Pran Nath Mozumdar, the deceased's cousin, Amrita Lal Basu, the collecting *panchayet* Mahadeo Biswas, the assistant *panchayet*, Dinabandhu Thakur, and others assembled at the house of Kailash. The accused, Ganesh Chandra Goldar, was suspected and sent for. When shown the corpse he, it was said, trembled and turned pale and could hardly speak or stand up. On being questioned about the occurrence he at first denied all knowledge, but a little later he desired to be taken aside and promised to state what he knew. He was conducted to another part of the compound, and in the presence of the two *panchayets*, and of Dinabandhu and others he enquired whether, if he spoke the truth, he would be saved from the consequences. Mahadeo, the assistant *panchayet*, Dinabandhu, and others replied that he would be let off if he disclosed everything. He then made a confession implicating himself and others. He was thereupon detained in custody by the villagers till the arrival, next day (2nd January), of the police when he was arrested and sent to the Gopalgunj Court office where he arrived on the 3rd. He was put up, the next day, before a Sub-Deputy Magistrate, and made a confession which was duly

recorded under section 164 of the Criminal Procedure Code.

He was, after a preliminary investigation into the case, committed to the Court of Session on the above charges. At the trial he denied having made the first confession on the 1st January, and retracted his confession to the Sub-Deputy Magistrate.

Babu Atulya Charan Bose, for the accused. The two *panchayets* were "persons in authority," and the confession was, therefore, inadmissible under section 24 of the Evidence Act: *Nazir Jharudar v. Emperor* (1). The confession to the Magistrate was inadmissible under section 28 of the Act.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. A *panchayet* is not a "person in authority"; *Emperor v. Mohan Lal* (2). The accused was free from influence when he made the confession to the Magistrate.

SANDERSON C. J. This is a reference by the learned Sessions Judge of Faridpur in a case in which Ganesh Chandra Goldar was charged with murder and with conspiracy. There is no doubt that the deceased man, Kali Kumar Mozumdar, was murdered on his way home about the middle of the night after having attended an arbitration, and the case for the prosecution was that the accused person and others attacked him as he was passing a clump of trees and injured him severely. Although he was able to drag himself to the nearest house, which belonged to a man named Kailash Chandra Sarkar, he died very shortly afterwards without being able to give any indication as to the persons who had attacked him.

The case against the accused depends almost entirely upon certain confessions which the accused is

(1) (1905) 9 C. W. N. 474.

(2) (1881) I. L. R. 4 All. 46.

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alleged to have made. Certain of the neighbours assembled at the house of Kailash in answer to a summons from Kailash, including the two *panchayets*, Amrita Lal Basu who was the collecting *panchayet*, and Mahadeo Biswas who was the assistant *panchayet*, and a man called Dinabandhu Sarkar, who described himself as a cultivator, but who seems to be one of the men who took a lead in what took place subsequently, and he described himself as a "Thakur." It was after these people had assembled that the accused person, who was known to have been animated by feelings of enmity against Kali Kumar Mozumdar, was summoned to the house. This was in the early morning after the night when the attack upon Kali Kumar Mozumdar was made, and the evidence is that he was brought into the presence of the corpse, that he was trembling and pale and could hardly speak or stand up. When asked to say what he knew about it, after some little time he is supposed to have said that he could not say anything. Eventually he asked to be taken aside and said that then he would state what he knew. Thereupon he was taken to another part of the compound, and in the presence of Banamall Biswas, Manikya Bala, Dinabandhu Thakur, Mohendra Nath Biswas, Mahadeo Biswas, Amrita Lal Basu and perhaps one or two others he is alleged to have made a confession that he was concerned in the murder of the deceased man with others whose names he mentioned. This confession is spoken to by the witnesses to whose evidence the learned Judge has referred. The accused was detained by the villagers. The sub-inspector arrived on the next day and committed him to custody. On the following day he was taken before a Magistrate who, after warning him and after satisfying himself that the statement he was about to make was to be made voluntarily, recorded his confession, which

amounted to a statement that he had been concerned with others in the murder of this deceased man. At the trial that confession was withdrawn, and the accused person said that he had never made the statement, which was spoken to by the *panchayet*, the assistant *panchayet* and Dinabandhu and others shortly after the murder.

The jury were unanimous in their verdict of acquittal, and they added that they were not satisfied that the confessions of the accused were true or that they had any evidentiary value. The learned Judge came to the conclusion that there was no doubt that these confessions were proved, and there was a certain amount of corroboration, and that he was convinced that the accused was guilty and clearly ought to be convicted.

There is one point in this case which does not seem to have been noticed by the learned Judge and that is that Amrita Lal Basu, when he was giving evidence before the Committing Magistrate, said as follows:—"He," that is to say, the accused "was then taken in another part of the compound, and in the presence of Banamali Biswas, Manikya Bala, Dinabandhu Thakur, Mohendra Biswas and one or two other persons he stated that he was ready to speak out the truth if he was saved from the consequences. Dinabandhu and others told him that he would be let off if he disclosed everything." That evidence was given in February, 1922. This witness while giving evidence at the trial said: "None of us told the accused that they would let him go if he spoke the truth. I did not say before the committing Magistrate that Dinabandhu and others told him that he would be let off if he disclosed everything." Therefore he contradicted the statement which he had made before the committing Magistrate. He went so far as to say

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that he did not say what appeared in his deposition. In my judgment, however, it must be taken for the purpose of this reference that he did say before the committing Magistrate that which appears in his deposition, which I have read. It is significant that the statement was made in February and his renunciation of it was made in April. I do not know what influence may have been brought to bear upon him in the interval. Dinabandhu was cross-examined on behalf of the accused and he said, "We did not tell the accused that he need not be afraid and that no harm should come to him." That statement was made in April at the trial. For the purpose of my judgment, I propose to assume that that which appears at page 27 of the paper-book in the evidence of Amrita Lal Basu before the committing Magistrate is true, that the accused did ask whether if he spoke out the truth he would be saved from the consequences, and that he was assured that he would be let off if he disclosed everything, and that in consequence of that assurance he made the statement.

Now, the question is whether that statement is admissible in evidence; and that depends upon the provisions which are to be found in section 24 of the Evidence Act, which provides: "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him." I have no doubt that the

inducement was given to the accused. I have no doubt that it was sufficient to give the accused grounds which would appear to him reasonable in supposing that he would gain an advantage in reference to the proceedings; and the only question which causes any difficulty in my mind is whether the inducement was one which proceeded from a "person in authority." It has been suggested by the learned *vakil* on behalf of the accused that the collecting *panchayet* and the assistant *panchayet* were both "persons in authority" within the meaning of the section. There is no definition in the Indian Evidence Act of a "person in authority." The words have been construed in England, and the test which has been applied is this: Had the persons authority to interfere in the matter? As far as the accused is concerned, I have no doubt that he thought that the persons, or some of them, to whom he addressed the question whether he would be saved from the consequences if he spoke out the truth, were "persons in authority," but that would not be sufficient to justify us in holding that they were "persons in authority." In my judgment, having regard to the position of the collecting *panchayet* and the position of the assistant *panchayet* and the part which they were taking in holding the enquiry into the circumstances of the murder, it must be held, on the facts of this case, and I confine myself to the facts of this case, that they must be taken to have been "persons in authority."

Then the next question is: Did the inducement proceed from either of these two men whom I have held to be "persons in authority" on the facts of this case? There is no sufficient evidence, in my judgment, to show that the inducement proceeded from the collecting *panchayet*, Amrita Lal Basu, but I think there is just sufficient evidence to justify us in

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holding that the inducement proceeded from Dinabandhu and others who would, in my opinion, include Mahadeo Biswas—the assistant *panchayet*. Consequently I am prepared to hold that the inducement did proceed from the assistant *panchayet* and others and that, under the circumstances of this case, the assistant *panchayet* was a “person in authority”. Consequently, in my judgment, the confession, which the accused is alleged to have made after he had been assured that he would be saved from the consequences, was not admissible by reason of the provisions of section 24 of the Evidence Act. If that be so, the real ground upon which the learned Judge referred this case to this Court disappears.

It is true there is the confession which the accused made before the Magistrate. That was a retracted confession, and it would not be admissible in evidence unless it were shown that the impression which was made upon the accused’s mind by the inducement, which was held out to him in the way which I have described, had been entirely removed from his mind before he made his confession before the Magistrate. That matter has not been considered by the learned Judge, and there is no finding by the learned Judge upon this point. It is difficult for this Court to come to the conclusion that, if the accused was induced by the promise which was made to him by Dinabandhu and others to make the first confession, that inducement was not, to some extent, the cause of his making the confession before the Magistrate.

For these reasons, in my judgment, this Reference ought not to be accepted, and the accused should be discharged and released from custody.

PANTON J. I agree.

E. H. M.