ORIGINAL CRIMINAL.

Before Bau J.

EMPEROR

v.

MAKHAN LAL DATTA.*

1939

June 15.

Evidence—*Document called for and inspected by a party, if must be put in as evidence—Indian Evidence Act (I of 1872), s. 163—Code of Criminal Procedure (Act V of 1898), s. 162.*

Section 163 of the Indian Evidence Act applies to criminal trials as well as to civil actions. Ordinarily, if a statement recorded by the police in Calcutta of a witness examined at the trial be called for by the counsel for the accused who cross-examines the witness with regard to such statement, the counsel for the Government is entitled to require the whole statement to be put in as evidence excluding only such portions as are not relevant to the case. Portions of the statement which are corroborative of the witness's evidence at the trial should go in, in addition to those brought on the record by counsel for the accused as being contradictory to that evidence. But portions relating to matters about which the witness has not deposed at the trial should be excluded.

Government of Bengal v. *Santiram Mandal* (1) approved of.

Suresh Chandra Ghose v. *Emperor* (2) distinguished.

When, however, in producing the police diary, the Government counsel stated that he would not "rely on strict technicality" by which the counsel for the defence might have got the impression, although the impression was perhaps unintended, that the Government counsel would not require the defence to put in the statement as evidence and when the document was produced without a formal notice or requisition, the Court would not insist on the putting in of the entire statement as evidence.

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The facts of the case were as follows: The accused Makhan Lal Datta and six others were committed to the High Court Sessions to stand their trial on charges under ss. 120B/420, 511/420, 116/420, 420, and 110/467 of the Indian Penal Code. The Sylvan Insurance Trust, Limited, whose head office was at Delhi had a branch in Calcutta. The accused Makhan Lal Datta was, at first, the Chief Agent of

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the company for Bengal, Bihar, Orissa and Assam, and then became the Secretary of the Calcutta branch. Some other accused were its agents and one of them was its Medical Examiner. On March 4, 1937, two proposals for the insurance of the life of one Hari Pada Sarkar were forwarded by the Calcutta branch to the head office with the necessary declarations and medical report. The age given of Hari Pada was 40 years and he was certified in connected papers to be of good health. According to the prosecution Hari Pada was considerably older and he was dangerously ill to the knowledge of the accused persons at the time when the proposals and the connected papers were forwarded. As a matter of fact, Hari Pada died shortly afterwards, on April 11, 1937. On September 22, 1937, a letter purporting to be written by Hari Pada, who was already dead, was also forwarded to the company. Later on, attempt was made to realise money on the policies on the allegation that Hari Pada died on December 21, 1937. The suspicion of the Managing Director of the company was roused. He came to Calcutta and informed the police. An investigation followed leading to the discovery of the fraud and the accused were put upon their trial as stated above. Facts relating to the production of the police diary and its use at the trial are fully stated in His Lordship's order.

The Government Counsel, A. K. Bose, for the Crown.

Santosh Kumar Basu for accused Nos. 2, 4 and 5.

Monindra Banerjee for accused Nos. 6 and 7.

RAU J. In the course of the examination of the prosecution witness Rati Pati Banerji, P. W. No. 2 in this Court, a question has been raised, whether the signed statement made by him to the investigating police officer on January 17, 1939, comes within the scope of s. 163 of the Evidence Act and whether the accused can be required to give it as evidence in the circumstances mentioned in that section. It may be explained at the outset that s. 162 of the Code of Criminal Procedure has no application to the case,

because the Code does not apply to the police in the town of Calcutta unless expressly made applicable to them, and there has been no notification making the section so applicable. See s. 1, sub-s. (*2*) of the Code.

The circumstances in which the question has arisen are briefly these: After the witness had been examined-in-chief and while he was under cross-examination by Mr. Banerji representing accused Nos. 6 and 7, learned counsel asked him whether he had made certain statements to the police, evidently intending to use the witness's statements during the investigation for the purpose of contradicting his evidence at the trial. One of the statements said to have been made by him during the investigation was specifically put to him, namely, that he heard on April 12, 1937, that Hari Pada had already died. This was put to him after counsel had inspected the police diary produced by the learned Government Counsel. Later, Mr. S. K. Basu, in cross-examination on behalf of the accused Nos. 2, 4 and 5, put to the witness another statement said to have been made by him before the police, the statement, namely, that on April 10, 1937, the witness had "a call through Dhanan Jay Naskar "of Sahebpur" to examine Hari Pada Sardar. This also was done after learned counsel had inspected the police diary. The two isolated statements put to the witness on behalf of the accused Nos. 2, 4, 5, 6 and 7 happen to be part of the witness's signed statement to the police, but the signed statement contains other statements not yet admitted in evidence.

It is contended by the learned Government Counsel that by virtue of s. 163 of the Evidence Act, he is now entitled to require counsel on behalf of these accused persons to give the whole of the signed statement as evidence, omitting only those portions which are not relevant.

Section 163 provides :—

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

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So far as the legal point is concerned, I think I am bound by the decision in *Government of Bengal* v. *Santiram Mandal* (1) in which it was held that s. 163 of the Evidence Act is applicable to criminal trials as well as to civil actions. I see no conflict between the decision in that case and the decision in the earlier case of *Suresh Chandra Ghose* v. *Emperor* (2) in which it was held that an accused person has the right to see the statements recorded by the investigating police under s. 47A of the Calcutta Suburban Police Act and use them for purposes of contradiction in accordance with s. 145 of the Evidence Act. Ordinarily, therefore, I would have ruled in the present case that the entire signed statement of the witness to the police excluding only such portions as are not relevant to the case should go in as evidence. This would have brought on the record those parts of the signed statement which were corroborative of the witness's evidence at the trial, in addition to those brought on the record by counsel for the accused as being contradictory of that evidence, but no others. For example, the signed statement contains an expression of the witness's opinion as to the age of the deceased Hari Pada Sardar. The witness not having been asked to express any opinion on this point at the trial, his previous expression of opinion to the police would not be admissible under any section of the Evidence Act. It is not corroborative, because there is nothing to corroborate. In other words, it should be treated as irrelevant. It is not contended by the learned Government Counsel that s. 163 of the Evidence Act attracts even those parts of the document which are not relevant to the case.

I have said that ordinarily I should have taken the course indicated above, but in this particular instance there has been some confusion. In the first place there was no formal notice or requisition from the accused calling for the document. Even if this defect be ignored on the ground that there was what was understood to be a notice or requisition, a further

(1) (1930) I. L. R. 58 Cal. 96. (2) [1924] A. I. R. (Cal.) 542.

fact has to be considered. The typed transcript of the Court's proceedings of June 14, 1939 shows (*vide* portion below Q. 135) that when the learned Government Counsel produced the police diary, he indicated that although counsel for the accused were not entitled to look at the diary, nevertheless, where, as on this particular occasion, a direct contradiction was sought to be made out, he would not "rely on the "strict technicality". This may have given the impression, although the impression was perhaps unintended, that he would not require counsel for the accused to put in the document as evidence.

In view of these special circumstances I rule that the accused cannot in this particular instance be compelled to give as evidence the signed statement in question, but this is, of course, without prejudice to the Government Counsel's right to re-examine the witness in accordance with law.

Accused not compelled to give as evidence signed statement.

A. C. R. C.