

We hold, therefore, that the appellant was rightly convicted under ss. 419 and 465 of the Indian Penal Code and dismiss this appeal.

QUEEN-
EMPRESS
v.
APPASAMI.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

against

COMMER SAHIB.*

1888.
Nov. 23.

*Evidence Act, ss. 26, 27—Confessional statements made in the custody of police—
Test of admissibility.*

The test of the admissibility under s. 27 of the Evidence Act of information received from an accused person in the custody of a police officer, whether amounting to a confession or not, is:—"was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact?"

THIS was a case of which the records were called for by the High Court under s. 439 of the Code of Criminal Procedure.

The prisoner was charged with the offences of theft in a building and house-breaking by night under ss. 380 and 457 of the Penal Code, and was tried by H. H. O'Farrell, Acting Sessions Judge of Tanjore, and a jury. There was evidence tracing the stolen property to the possession of the prisoner, and also evidence of certain statements with reference to it made by him while in the custody of the police. Upon the latter point the Acting Sessions Judge directed the jury in paragraph 7 of his charge as follows:—

"There is no doubt that the prisoner was taken to the village of Kasapuram on the 10th and 11th August, and there this property was produced on his demand by the prosecution witnesses Nos. 3 to 8. Any statements made by the prisoner that these cloths had been previously deposited with the witnesses are confessional statements made while the prisoner was in the custody of the police, and you must entirely dismiss them from your minds. They are entirely inadmissible as against the prisoner, and only so much of them is admissible for the purpose of corroborating the

* Proceedings of the High Court, No. 1079, Judicial.

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fact that the property was found with these witnesses as distinctly alleges that matter. In other words you must take the bare fact that the prisoner said that certain articles were found with certain persons; not that he said that he had himself left them with these persons."

With regard to these directions the Acting Sessions Judge referred to *Adu Shikdar v. Queen-Empress*(1) and *Empress of India v. Pancham*(2).

The High Court (Muttusami Ayyar and Parker, JJ.) passed the following

PROCEEDINGS.—The High Court is of opinion that the law was not correctly laid down to the jury by the Acting Sessions Judge in paragraph 7. The general rule applicable to confessions made by prisoners whilst in the custody of a police officer is contained in s. 26 of the Indian Evidence Act, and the proviso contained in s. 27 refers to an exception to that rule. The material words are "so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved." The reasonable construction is that in addition to the fact discovered, so much of the information as was the immediate cause of its discovery is legal evidence.

The statement made by the prisoner in this case, viz., that he had deposited the cloths produced with the witnesses who delivered them up on demand was the proximate cause of their discovery and was admissible evidence. If he had proceeded further and stated that they were cloths which he stole on the day mentioned in the charge from the complainant, that statement would not be evidence, for it would be only introductory to a further act on his part, viz., that of leaving the cloths with the witnesses, and on that ground it would not be the immediate cause of, or the necessary preliminary to, the fact discovered. The test is: "was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact." This appears to us substantially the principle on which the cases reported in *Adu Shikdar v. Queen-Empress*, *Empress of India v. Pancham*, and *Reg v. Jora Hasji*(3) were decided.

(1) I.L.R., 11 Cal., 635.

(2) I.L.R., 4 All., 198.

(3) 11 Bom., H.C.R., 242.