

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

1902.
February 28.

THANDRAYA MUDALY (ACCUSED No. 1), APPELLANT,

v.

EMPEROR, RESPONDENT.*

Evidence Act—I of 1872, s. 24—Confession caused by promise—Village Magistrate—Person in authority—Appeal from conviction by Jury—Misdirection.

Two days after a dacoity had been committed in a certain village, T. went to the Village Magistrate of that village, who was enquiring into the dacoity and requested him to report that T. had not been concerned in the dacoity. The Village Magistrate replied that there was already a hue and cry against T., but that if T. spoke the truth he would consult the Head constable and arrange that T. should be taken as a witness. T. at first denied all knowledge of the dacoity, but ultimately made a confession. T. was charged, with others, with having committed the dacoity, and this confession was deposited to by the Village Magistrate. The Sessions Judge, in his charge to the Jury, made no reference to the relevancy or otherwise of the confession under section 24 of the Evidence Act, and he said that if the confession was true it was enough to warrant the conviction of the accused. The Jury returned a verdict of guilty, and the accused was sentenced. On an appeal being preferred on the ground of misdirection:

Held, that the Village Magistrate was a person in authority within the meaning of section 24 of the Evidence Act, and that as the arrangement promised by him before the confession was made was obviously intended to be one that would save the accused from prosecution if he would confess, the confession was irrelevant under that section. Also, that the misdirection was a material and important one, likely to lead to an erroneous verdict, and that a new trial must take place.

CHARGE of dacoity, under section 395 of the Indian Penal Code, against thirteen persons. The tenth witness for the prosecution, the Village Magistrate of Kalavai (where the dacoity was alleged to have been committed) deposed that on the second day after the dacoity the first accused had come and asked him to write a report to the effect that first accused had not been concerned in the dacoity. The witness replied that there was a hue and cry against the first accused, and that the report should have been written on the preceding day, and he added: "If you speak the truth we would consult the Head constable and arrange." The witness added that

* Appeal No. 36 of 1902, against a conviction by the Court of Session at North Arcot in Calendar Case No. 68 of 1901.

first accused then, after considering a little while, made the following confession :—“ I, some jogies and others, together committed the dacoity and I should be saved anyhow.” The first accused then informed the witness where the stolen property was. No objection was taken to the admissibility of this evidence, with reference to section 24 of the Evidence Act. The eleventh prosecution witness deposed that first accused first denied all knowledge of the dacoity and then the Monigar said : “ If you speak the truth, you might be taken as a witness.” The Sessions Judge, in his charge to the Jury, made no reference to the relevancy or otherwise of the evidence, with regard to section 24 of the Evidence Act, and he said, with reference to the case against first accused : “ If the confession is true, it is enough to warrant the conviction of the accused.” The Jury found the first and six other accused guilty, and the Judge, agreeing with that finding, sentenced them to imprisonment.

First accused preferred this appeal, on the ground of misdirection.

Mr. J. G. Smith and T. Venkatasubbier and Narayana Sastri for appellants.

The Public Prosecutor in support of the conviction.

JUDGMENT.—On behalf of the first accused, it is urged that there is a misdirection in the Judge's charge to the Jury, and we think that this is so. The tenth witness is the Monigar-Magistrate of the village of Kalavai. He says that on the 26th, that is on the second day after the dacoity, the first accused came and asked him to write a report saying that he (first accused) was not concerned in it; to which the witness replied, “ it should have been written yesterday; there is a hue and cry against you; if you speak the truth we would consult the Head constable and arrange,” and the witness adds that first accused then, after considering a little, made the following confession :—“ I, some jogies and some others together committed the dacoity and I should be saved anyhow,” and then proceeded to say where the stolen property was. Now, this witness, no doubt, says that when he spoke of arranging with the Head constable, he only meant to arrange to have a report written, but we do not think that this is true. We have no doubt that he meant to make some arrangement to save the first-accused from prosecution if he would confess. This is made clear from the evidence of the eleventh prosecution witness. His account is that the first

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accused denied all knowledge of the dacoity, and then the Monigar (tenth witness) said: "If you speak the truth you might be taken as a witness."

Now, we think that, in these circumstances the confession of the first accused was irrelevant under section 24 of the Indian Evidence Act, inasmuch as it was caused by an inducement or promise having reference to the charge against him and proceeding from a person in authority, viz., the Monigar, and sufficient to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain an advantage in regard to the proceedings by being taken as a witness instead of an accused person. There can, we think, be no doubt that the Monigar who was acting as such in regard to the enquiry into the dacoity was a "person in authority" within the meaning of the section and in the circumstances the Judge ought not to have allowed evidence of the confession to be recorded, or, if it was inadvertently recorded, he ought to have told the jury that the confession was irrelevant and should not be considered by them. It is true no objection was taken by the accused or his pleader to the confession under section 24 of the Evidence Act, but that does not render it any the more relevant or admissible. The Judge, in paragraphs 17 and 18 of his charge, dealt with another objection to the confession but made no reference to its irrelevancy under section 24 of the Evidence Act and told the Jury that if the confession was true it was enough to warrant the conviction of the accused. We think that the misdirection was a material and important misdirection likely to lead to an erroneous verdict. We do not wish to say more on the merits as we think the case is one peculiarly fit for a jury to decide and we wish not to embarrass them by any expression of opinion on other parts of the evidence. We may add that what we have said as to the irrelevancy of the confession under section 24 does not apply to any statement of the accused relating to the discovery of any fact which is relevant under section 27 of the Evidence Act.

With these remarks we set aside the conviction of the first accused and direct that he be retried according to law.
