

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Napier.

Re MADDELA RAMANUJAMMA (ACCUSED), PETITIONER.*

1916,
March
15 and 23.

Criminal Procedure Code (Act V of 1898), sec. 164—Difference between statement and confession—Statement taken on affirmation, under section 164 from a complainant, not a confession—Admissibility in evidence of statement, to prove perjury.

A complainant's sworn statement charging another with an offence was recorded by a Magistrate as a "statement" under section 164 of the Criminal Procedure Code :

Held, the fact that the statement happened also to amount indirectly to a confession of the complainant's own guilt of some other offence but not recorded as such by the Magistrate in accordance with the provisions of section 364 of the Code, is no bar to its admissibility in evidence against the complainant on a charge of perjury.

Semble:—Whether a statement is to be regarded as a confession or not depends on the connection in which and the purpose for which it was made. A statement recorded as such cannot be used as a confession; nor a confession, as a statement.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898) praying the High Court to revise the judgment of J. C. FERNANDEZ, the Sessions Judge of Guntur, in Criminal Appeal No. 32 of 1915, preferred against the order of J. N. ROY, the Joint Magistrate of Ongole, in Calendar Case No. 44 of 1915.

The accused in this case laid a complaint under section 373, Indian Penal Code, before the police that one *M. S.* bought from her her daughter who was a minor for purposes of prostitution. The police took her (the complainant) to a Magistrate who recorded from her on solemn affirmation a "statement" to that effect under section 164, Criminal Procedure Code. As during the subsequent criminal trial against *M.S.* she deposed to a totally different version and completely denied the guilt of *M.S.* in every way, *M.S.* was discharged for want of evidence. She was then charged for perjury for having made two contradictory statements, one before the Magistrate at the time of the complaint [Exhibit A] and another during the trial held thereon. The Magistrate convicted the accused under section 193, Indian Penal Code, and sentenced her to undergo rigorous imprisonment for one year.

* Criminal Revision Case No. 757 of 1915 (Criminal Revision Petition No. 612 of 1915).

Rs RAMANU- JAMMA. The Sessions Judge on appeal confirmed the conviction and sentence. Thereupon the accused preferred this Criminal Revision Petition to the High Court.

T. Prakasam for the petitioner.

The Acting Public Prosecutor for the Crown.

AYLING J. **AYLING, J.**—Petitioner has been convicted on an alternative charge of perjury in connection with two contradictory statements made on affirmation (Exhibits A and D). The conviction was confirmed in appeal and the sole ground argued before us on petitioner's behalf is that Exhibit A recorded by the Sub-Magistrate of Ongole under section 164 of the Criminal Procedure Code is inadmissible in evidence.

It is urged that this statement is of a confessional nature, that it was not recorded in the manner provided in section 364 of the Criminal Procedure Code and that for this reason it is inadmissible in evidence: *vide, Queen Empress v. Viran*(1).

It appears that Exhibit A was recorded in the course of an investigation by the police of a charge under section 373 of the Indian Penal Code against one M. Subba-Rao. This man was said to have practically purchased a certain minor girl, Venkamma, for purposes of prostitution and to have had her kannarikam ceremony performed, thereby dedicating her to that profession.

Petitioner is the mother of Venkamma and in Exhibit A she undoubtedly makes statements which strongly suggest the inference that she was herself guilty of an offence under section 372 of the Indian Penal Code. If she were on her trial for such an offence, Exhibit A would have to be regarded as a statement of a confessional nature; and, not having been recorded in the manner proscribed by section 364 of the Criminal Procedure Code, it would be inadmissible in evidence.

The question is whether it is admissible in the present proceedings (a prosecution for perjury against the person making it) for the purpose of proving that she did make the statement therein recorded? or, to put the difficulty somewhat differently, whether the Magistrate who recorded it was entitled to administer an affirmation before recording it? Both questions turn on the same considerations and both must, in my opinion, be answered in the affirmative.

Section 164 of the Criminal Procedure Code distinguishes sharply between statements of witnesses and confessions of accused persons. The former may be made on affirmation and recorded in such of the manners prescribed for recording evidence as to the Magistrate seems best fitted. The latter has to be recorded as prescribed by section 364 of the Criminal Procedure Code and before recording it the Magistrate must follow the procedure laid down in clause (3) of the section, but of course, administers no affirmation or oath.

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Now it seems to me that the same utterance or series of utterances made by any individual to a Magistrate might be regarded as a "statement" from one point of view and as a "confession" from another point of view—using both terms in the sense contemplated by the section. It all depends on the connection in which and the purpose for which it is sought to be used. As succinctly expressed by ABDUR RAHIM, J., in the *Tinnevely case of Muthukumaraswami Pillai v. King-Emperor* (1) "whether a statement is to be called a confession or not depends, not merely on the nature of the statement itself, but on the use that is sought to be made of it."

A Magistrate setting out to record under section 164 of the Criminal Procedure Code what any person has to say to him may adopt one of two alternatives: he may record it as a "statement" or as a "confession," using the appropriate procedure in each case. In either case the record may be used, as allowed by law, for the purpose for which it was taken but its use for any different purpose may be open to diverse objections. For example, a "confession" could not be used as the basis of a prosecution for perjury. A "statement" could not be used as a "confession" that is, as an admission of the truth of the facts set out in it, in a criminal prosecution based on those facts, either against the person making it or against other persons with whom he may be jointly tried.

Now in the present case, as far as I can see, until the argument we are now considering was advanced in this Court, the idea of Exhibit A being a "confession" never occurred to any one. No prosecution for an offence under section 372 has ever been instituted against petitioner, nor, so far as appears, has ever been contemplated. When the case against M. Subba Rao

(1) (1912) I.L.B., 35 Mad., 397 at p. 490.

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 AYLING, J. broke down in consequence of petitioner and others resiling in Court from their earlier statements, the police took steps to prosecute petitioner not for an offence under section 372 but for one under section 193 of the Indian Penal Code. Before taking her to the Magistrate on 7th September 1913, the police actually treated her as a *complainant* and recorded a statement from her (Exhibit J) as provided in section 154 of the Criminal Procedure Code. Exhibit A itself was undeniably recorded as a "statement" and was used by the prosecution in the case against Subba Rao for purposes of contradiction when allowed to cross-examine her. Throughout those proceedings she was treated as a witness and Exhibit A as the statement of a witness.

I can see no reason why its admissibility in the same sense in the present case should be affected by the fact, that, if it had been differently recorded, it might have been used as a confession in a prosecution for a totally different offence.

Our attention has been drawn to the judgments both of the Special Bench and of the Full Bench in the Tinnevely case—*King Emperor v. Nilakanta*(1)—and reliance is placed on the fact that the majority of the Full Bench held that section 25 of the Indian Evidence Act precluded the admission as evidence in that case of the statements of the approvers to the Police Inspector. The circumstances there were entirely different and the statements were sought to be used for an entirely different purpose, i.e., to corroborate subsequent statements of the approvers in Court as to the same facts and thereby to establish the said facts. Here no attempt is made to do anything of the kind: the prosecution do not try to prove that the averments in Exhibit A are true, but only that petitioner made those averments.

I may also be permitted to remark that although the majority of the Full Bench held that section 25 of the Indian Evidence Act applied, yet of the eight Judges of this Court, who had to consider the point, four took the contrary view (the CHIEF JUSTICE, MILLER, J., ABDUR RAHIM, J., and myself). I am not sure therefore that if the point had to be considered it should even now be treated as finally settled.

In my opinion Exhibit A was properly admitted in evidence. I would therefore dismiss the petition.

NAPIER, J.

NAPIER, J.—I agree.

N.R.