APPELLATE CRIMINAL.

Before Mr. Justice McDonell and Mr. Justice Field.

QUEEN EMPRESS *v.* UZEER.*

1884 *May* 15.

Confession—Inducement to confess—Criminal Procedure Code, Act X of 1882, s. 163—Evidence Act—Act I of 1872, s. 24.

A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement, the following words which, after excluding the Police Officers from his presence, he had verbally addressed to the accused: "After excluding from my presence the Police Officers who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth."—*Held* that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him.

IN this case one Uzeer was charged with murder. It appeared that when brought before the Deputy Magistrate by the police, the accused made a statement to the following effect, *viz.*, that owing to a refusal on the part of his wife to get him a light, he had dragged her by her hair into an inner room and slapped her, and that on his getting a light and seeing that his wife was insensible, he, in his fright, cut her throat with a *dao*, and told the neighbours that she had committed suicide. This statement was prefaced with the following note by the Deputy Magistrate: "After excluding from my presence the police officers who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth."

The accused was subsequently committed to the Sessions Court on two charges: (*a*) murder, s. 302 of the Penal Code; (*b*) culpable homicide, s. 304 of the Penal Code. The Judge differed from the assessors; and mainly relying upon the confession, found the accused guilty under s. 302; but sentenced him to transportation for life, as it had not been established that the accused had any intention at the time to cause death; although he knew that he was likely to cause death.

* Criminal Appeal No. 198 of 1884, against the order of H. Muspratt, Esq., Sessions Judge of Sylhet, dated February 8th, 1884.

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The prisoner appealed to the High Court. No one appeared on the appeal.

The judgment of the High Court (McDONELL and FIELD, JJ.) was delivered by

FIELD, J.—The appellant in this case, Sheikh Uzeer, has been convicted of the murder of his wife, and has been sentenced under s. 302, Indian Penal Code, to transportation for life.

We have read the proceedings of the Sessions Judge, and we are of opinion that the conviction cannot be supported. The prisoner and his wife were sleeping alone in their homestead on the night of the occurrence; the woman's throat was cut, and she died from the injury thus inflicted, and the consequent loss of blood. The theory of the prosecution is, that the prisoner cut his wife's throat. The medical evidence does not support this theory. On the contrary the native doctor considered that the wound might have been self-inflicted. It may be said that the opinion of a native doctor on a question of this kind is not of very great value, but this is the medical evidence whatever it may be worth. There is no testimony of a medical expert to support the theory of the prosecution that the wound was inflicted by the prisoner, and the only medical evidence on the record is against that theory, and in favor of the statement made by the accused on more than one occasion. The Sessions Judge permitted the witness Sarai Bibee to say that the accused said to the darogah that his wife refused to give him water when he wanted to go out and ease himself, so he struck her once and she fell insensible, and then he cut her throat. This evidence being inadmissible, the Sessions Judge should not have recorded it. The conviction is mainly based upon a confession alleged to have been made by the accused to the Deputy Magistrate. This confession is prefaced with the following note: "After excluding from my presence the police officers who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth." A Magistrate of the first class ought to know that to tell a prisoner that he had better tell the truth is a violation of the provisions of the law. (*See* s. 163 of the Code of Criminal Procedure.) The use of this language has been repeatedly decided to render a confession

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inadmissible, and we think that in consequence of this inducement having been held out to the prisoner, the confession in the present case must be rejected. We may observe that it is no part of the duty of a Magistrate to tell an accused person that anything he may say will go as evidence against him. Putting aside the inadmissible confession and the evidence of a further confession made to the police, there remains no legal evidence upon which the prisoner can be convicted. We therefore set aside the conviction and direct that the appellant be acquitted and released. A copy of this judgment should be sent to the committing Magistrate.

Appeal allowed.

PRIVY COUNCIL.

MOUNG HMOON HTAW (DEFENDANT) *v.* MAH HPWAH (PLAINTIFF).

P. C.*
1884
February 9.

[On appeal from the Court of the Recorder of Rangoon.]

Act XVII of 1875, s. 4—Buddhist law in British Burmah—Wife's claim upon husband for maintenance.

By the Buddhist law of marriage, as administered in the Courts of British Burmah, it is the duty of the husband to provide subsistence for his wife and to furnish her with suitable clothes and ornaments. If he fails to do so, he is liable to pay debts contracted by her for necessaries; but it appears that this law would not be applicable where she has sufficient means of her own. No authority has been found for saying that, where the wife has maintained herself, she can sue her husband for maintenance for the period during which she has done so.

A wife, married according to Burmese rights and customs, claimed from her husband in a Court in British Burmah, a certain sum for her expenses of necessaries and living for a past period during which she had maintained herself. *Held*, that this was a question "regarding marriage," within the meaning of the Burmah Courts Act XVII of 1875, s. 4, and that, therefore, the Buddhist law formed the rule of decision. The law, as stated above, was accordingly applicable.

Semble, that if this had been a case in which, by the above Act, a Court would have had to act according to the rule of justice, equity, and good conscience, there would have been no ground for making the husband

* *Present:* LORD FITZGERALD, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.