

to a maximum of one-fourth of that seven years. The learned Sessions Judge has sentenced the accused to rigorous imprisonment for five years. At the most he can be sentenced to one year and three-fourths. We think that it will be sufficient if he undergoes rigorous imprisonment for one year and we reduce the sentence accordingly.

CHINNA
GANGAPPA,
In re.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice Reilly.

In re PERIYASWAMI MOOPAN AND ANOTHER (PRISONERS)
APPELLANTS.*

1930,
July 14.

*Indian Evidence Act (I of 1872)—Sec. 30—Confession—
Meaning of.*

“Confession” in section 30 of the Indian Evidence Act means confession of the very offence for which the accused persons are being tried—“offence” always including under the explanation to the section abetments of and attempts to commit the offence: *Shivabhai v. Emperor*, (1926) I.L.R. 50 Bom. 683, dissented from.

TRIAL referred by the Court of Session of the Madura Division for confirmation of the sentences of death passed upon the said prisoners in Case No. 17 of the Calendar for 1930.

The facts necessary for this report appear in the judgment of REILLY J.

E. Antony Lobo for first accused.

K. W. Rama Rao for second accused.

Ag. Public Prosecutor (K. N. Ganpati) for the Crown.

* Referred Trial No. 62 of 1930 and Criminal Appeal No. 232 of 1930.

JUDGMENT.

PERIYASWAMI
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WALLER J.

WALLER J.—I agree that Exhibit G is a statement that should not have been taken into consideration against the first accused. He and the maker of the statement were being jointly tried for murder and Exhibit G was not a confession of murder jointly affecting them both. The law on the point was correctly laid down by STRAIGHT J. many years ago in the Allahabad case, *Empress of India v. Ganraj*(1), cited by my learned brother. As regards *Shivabhai v. Emperor*(2) a statement by one of the accused that he *by himself* had burnt the clothes of a murdered man and would show the place was treated as a confession of participation in the murder and admissible under section 27 of the Evidence Act against him. To that extent, the decision seems to be correct, but when it goes on to put forward some circumstantial grounds on which the Judges held that the confession “indirectly affected” another accused not named in it and could therefore be used against him under section 30 of the Evidence Act, I find myself wholly unable to follow it.

[His Lordship then dealt with the evidence and concluded as follows :—] I agree in the order proposed by my learned brother.

REILLY J.

REILLY J.—In this case the appellants, accused 1 and 2, have been convicted by the Sessions Judge of Madura of murdering one Ramaswami Moopan, with whom it has been found they were dealing in sheep as partners.

The learned Sessions Judge has taken into consideration against accused 1 a statement, Exhibit G, made by accused 2 before the Sub-Magistrate of Dindigul. In that statement accused 2 does not admit that he took

(1) (1879) I.L.R. 2 All. 444.

(2) (1926) I.L.R. 50 Bom. 683.

any part in the murder of Ramaswami; he says that accused 1 killed Ramaswami and then compelled accused 2 by a threat to assist in disposing of the body. The learned Public Prosecutor has contended that Exhibit G is a statement which the Sessions Judge was at liberty to take into consideration against accused 1 under section 30 of the Evidence Act because it was a confession, not indeed of murder, but of causing the evidence of murder to disappear, which is an offence punishable under section 201, Indian Penal Code. In my opinion that contention is mistaken. Section 30 of the Evidence Act is a very exceptional, indeed, an extraordinary provision, by which something which is not evidence may be used against an accused person at his trial. Such a provision must be used with the greatest caution and with care to make sure that we do not stretch it one line beyond its necessary intention. It is true that the section provides only that the confession of one accused person may be "taken into consideration" against his fellow-accused. As I understand the section, the confession cannot take the place of evidence against the co-accused; nor can it be added to supplement evidence otherwise insufficient. As I understand the matter, the provision goes no further than this—where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in section 30 may be thrown into the scale as an additional reason for believing that evidence. But even for that limited purpose the confession must be of the kind intended by the Legislature when enacting section 30. What kind of confession is intended? The words of the section are "when more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is

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proved". In my opinion "confession" in that collocation of words cannot reasonably be interpreted to mean a confession of any offence in the world, nor even of any minor offence included in the offence for which the accused persons are being tried, nor of any offence connected with that offence, nor of any other offence which may be disclosed by the evidence, but only of the very offence for which they are being tried, "offence" always including under the explanation to the section abetments and attempts. That appears to me to be the plain meaning of the words. To interpret the word "confession" in the section in any wider sense is to accuse the Legislature of using loose language in a matter of great importance. In my opinion we must read the word "confession" as if it were followed immediately by the words "of that offence"; and that appears to me to be the plain meaning of the section as read by a reasonable man. And indeed, if that were not the meaning, why should the use of the confession be confined to cases where the accused persons are being tried for the same offence? But, keeping our attention for the moment on the words themselves, if we speak of persons being tried for the same offence and in the same sentence speak of one of them making a confession, how can we mean by "confession" a confession of any other offence unless we are most careless in the use of language? To my mind the words of section 30 of the Evidence Act leave no doubt that the confession mentioned is a confession of the offence for which the accused persons are being tried. If the words left us in any doubt, the nature and effect of the provision might be called in to help us. The provision allows a statement of an accused person, not made on oath, not tested by cross-examination, to be used against a person tried with him. What can be the justification of a provision

at first sight so startling? If, while confessing some minor offence, a man could implicate his fellow-accused in a far more serious offence for which they were being tried and the confession could then be used against his fellow-accused, would not that be offering to the confessing accused a plain temptation to make himself useful by throwing the serious blame on his fellow-accused while saving his own skin or exposing himself only to a minor penalty? To my mind it is inconceivable that the Legislature had any idea of offering to any accused person a temptation to such mean and immoral conduct. But, if the confession which may be used is confined to a confession of the very offence for which the accused persons are being tried, the position is different. Then at least the confessing accused has nothing to gain by his confession; on the contrary he exposes himself to the very penalty which he helps to bring down on his fellow-accused. To such a confession it is not entirely unreasonable to allow some weight, and the danger that it may be untrue is at least very greatly reduced. If we examine the effect and nature of the provision, we arrive again at the same result, that it is only such a confession which the Legislature can have allowed by section 30 to be taken into consideration. Lastly, if in this respect two interpretations of the section were grammatically possible, the ordinary canons of interpretation would compel us to adopt in the interest of accused persons the stricter and narrower construction, the construction which gives the less scope to this very exceptional extension of what may be used against an accused person at his trial. Examining the section in any or all these ways, in my opinion we must arrive at the same conclusion, namely that "confession" in section 30 of the Evidence Act means confession of the offence for which the accused persons are being tried.

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It appears to me surprising that any other interpretation of the section should now be put forward. The interpretation I have indicated as proper was adopted by STRAIGHT J. in *Empress of India v. Ganraj*(1), and his view has been followed in a great many later cases. The learned Public Prosecutor quoted in his favour *Shivabhai v. Emperor*(2). So far as that case deals with this point, I must say with very great respect that I neither agree with it nor understand it.

In Exhibit G, as I have mentioned, accused 2 does not admit that he took any part in the murder of Ramaswami Mooppan: he admits only that he helped to dispose of the corpse. That is not a confession of the offence of murder for which accused 1 and 2 were tried, and therefore in my opinion the learned Sessions Judge in dealing with accused 1 should have excluded Exhibit G entirely from consideration. If that is done, what is the evidence against accused 1?

[His Lordship then discussed the evidence and concluded as follows:—]

In my opinion the convictions and sentences of both the accused should be confirmed and their appeals should be dismissed.

B.C.S.

(1) (1879) I.L.R. 2 All. 444.

(2) (1926) I.L.R. 50 Bom. 683.