APPELLATE CRIMINAL.

Before Mr. Justice Mockett.

1936, October 16.

IN RE ELUKURI SESHAPANI CHETTI (ACCUSED), PETITIONER.*

Indian Evidence Act (I of 1872), sec. 25—Confession—Statement of fact merely, or—Prosecution—Proof of knowledge on part of accused—Absence of—Filling up the gap by a statement of accused—Permissibility—Confession of one offence made in course of investigation of a different offence—Admissibility of.

In the course of an investigation of a case relating to receipt of stolen goods, the police went to the shop of the accused. No stolen goods were found there, but there was a tin which, the accused told the police officer, contained rupees and other coins for his use in weighing the silver and gold purchased or sold by him. The accused was charged with an offence under section 266, Indian Penal Code, for being in possession of a false weight (rupee). The prosecution failed to prove that the accused knew the rupee to be false and the gap was filled up from a statement put in by the accused in which he stated that two days before the police officer came to his shop the rupee had come into his hands and he knew it to be false.

Held that the moment one of the articles was shown to be false, the statement made by the accused to the police officer would be a confession and as such inadmissible in evidence. A confession made to the police in the course of investigating crime A, although it relates to another crime B, is equally inadmissible.

Emperor v. *Kangal Mali*, (1905) I.L.R. 41 Cal. 601, and *Kodangi* v. *Emperor*, A.I.R. 1932 Mad. 24, followed.

Held further, that at the close of the evidence for the prosecution, proof of "*scienter*" which is an essential ingredient of the offence was lacking, and the accused should have been discharged.

Mohideen Abdul Kadir v. *Emperor*, (1903) I.L.R. 27 Mad. 238, applied.

* Criminal Revision Case No. 220 of 1936 (Criminal Revision Petition No. 202 of 1936).

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Kurnool in Criminal Appeal No. 5 of 1936 presented against the judgment of the Court of the Stationary Sub-Magistrate of Kurnool in Calendar Case No. 553 of 1935.

Nugent Grant and *K. Srinivasa Rao* for petitioner.

A. Narasimha Ayyar for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

ORDER.

The petitioner has been convicted under section 266, Indian Penal Code, for being in possession of a false weight knowing it to be false. The facts are slightly unusual. It appears that the police were investigating in Kurnool a case relating to the receipt of stolen goods. In the course of that investigation they went to the shop of the petitioner who is a shroff. They did not find any stolen goods but the cupboard was not wholly bare. In a tin, which I think may be said to be in the possession of the petitioner, was found a rupee which has been produced. While having the appearance of a single rupee it is in fact two sides of two rupees joined together and it weighs more than an ordinary rupee. In order to convict the petitioner the prosecution were bound to prove the possession of a false rupee known to be false and intended to be fraudulently used. They proved it as follows: Before the Magistrate the prosecution called as their principal witness the police officer who went to the petitioner's shop

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He stated as follows—I have not the evidence before me but I am told that the evidence given corresponds to what was stated in the complaint—

> "I questioned him (petitioner) as to what the tin kept by his side contained and the accused told me that it contained rupees and other coins for his use in weighing the silver and gold purchased or sold by him. I opened the tin and found only the coins used for weighing as stated by the accused" (including the rupee).

That and the production of the rupee were all the evidence against the petitioner at the stage when the evidence for the prosecution had been called and I think it is clear that at that stage the Magistrate should have dismissed the case because the all-important ingredient, viz., that the petitioner knew the rupee to be false, was not present. But the petitioner put in a statement in which he stated that two days before the police officer came to his shop the rupee had come into his hands and he knew it to be false. This statement was used to fill up the gap in the prosecution evidence which the prosecution themselves had not proved. With regard to this I have been referred to the decision of WHITE C.J. in *Mohideen Abdul Kadir* v. *Emperor*(1). In that case, at the close of the case for the prosecution, the all-important element, viz., the publication of the defamatory statement, had not been proved and it was sought to be proved by an admission contained in the accused's statement under section 342, Criminal Procedure Code. That is a case exactly in point and I think on that ground this criminal revision case should succeed. It is quite clear that at the close of the

(1) (1903) I.L.R. 27 Mad. 238.

evidence for the prosecution proof of "*scienter*" an essential ingredient, was lacking, and the accused should have been discharged. Instead, as in *Mohideen Abdul Kadir* v. *Emperor*(1), the evidence was supplied by questioning him.

But there is another ground to which I attach far greater importance. There is no doubt in my judgment that the statement made by the accused to the police officer should not have been admitted in evidence because it is clearly a confession. The accused told him, he says, that the tin contained rupees and other coins for his use in weighing the silver and gold purchased or sold by him. The moment one of these is shown to be false it seems to me that that is a confession and not, as the Public Prosecutor has argued, a mere statement of fact. I respectfully agree with the statement as to what is a good test, whether a communication to the police is a confession or a mere statement of fact, contained in *Emperor* v. *Kangal Mali*(2). The learned Judges, after distinguishing between admissions of fact and confessions of guilt, go on to say:

> "In fact a useful test as to the admissibility of statements made to the police is to ascertain the purpose to which they are put by the prosecution. If the prosecution rely on the statements of the accused to the police as being true, then they may, and probably in many cases will, be found to amount to confessions. If, on the other hand, as in the case of the statements to which we have just referred, the statements of the accused are relied on not because of their truth but because of their falsity, they are admissible" (as admissions).

In my judgment this is clearly a confession, as I have already said, and, as has been pointed out by JACKSON J. in *Kodangi* v. *Emperor*(3), a confession

(1) (1903) I.L.R. 27 Mad. 238. (2) (1905) I.L.R. 41 Cal. 601, 612.
(3) A.I.R. 1932 Mad. 24.

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made to the police in the course of investigating crime A, although it relates to another crime B, is equally inadmissible. The whole spirit of section 25 of the Indian Evidence Act is to exclude confessions to the police and, the moment a statement is found to amount to a confession, I do not think it matters in the slightest of what crime it is said to be a confession. A consideration of this case shows that this conviction rests on (i) a statement by the accused at a stage when there was no *prima facie* case against him and (ii) confession to a police officer. By reason of these grave infirmities in the prosecution case I am constrained to allow this criminal revision case.

The conviction and sentence are set aside and the fine, if collected, will be refunded.

V.V.C.

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

1936, November 27.

IN RE KANDA MOOPAN *alias* GOPAL NAICKER (ACCUSED), PETITIONER.*

Code of Criminal Procedure (Act V of 1898), sec. 35—Sentences of imprisonment awarded in default of payment of fines—Concurrent, if can be.

Under section 35, Criminal Procedure Code, a criminal Court is not competent to direct that sentences of imprisonment imposed for default in payment of fines should run concurrently.

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* Criminal Revision Case No. 801 of 1936 (Case Referred No. 54 of 1936).