

APPELLATE CRIMINAL

Before Mr. Justice Young and Mr. Justice Bennet

EMPEROR v. FAUJDAR AND OTHERS*

1933
February, 11

Criminal Procedure Code, section 162—Evidence Act (I of 1872), section 27—Statement by accused person to police officer—Part of statement relating to discovery of stolen articles—Admissibility in evidence—Criminal Procedure Code, sections 1(2) and 4(2)—Special law—Evidence Act not affected by Criminal Procedure Code, except where specifically provided.

Section 162 of the Criminal Procedure Code, as amended by Act XVIII of 1923, does not alter the provisions of section 27 of the Evidence Act; and a statement, or part of a statement, made by an accused person to a police officer which is admissible in evidence by virtue of section 27 of the Evidence Act is not rendered inadmissible by the amended section 162 of the Criminal Procedure Code.

Section 162 is not intended to apply to statements made by accused persons, which are governed by section 164 and by sections 24 to 27 of the Evidence Act; there is, therefore, no contradiction between section 162 of the Criminal Procedure Code and section 27 of the Evidence Act. Further, by virtue of section 1(2) of the Criminal Procedure Code, any provision of the Evidence Act, which is a "special law" as defined by section 4 of the Code, cannot be affected by the Criminal Procedure Code in the absence of a specific provision to the contrary made in that Code; and there is no such specific provision modifying or altering section 27 of the Evidence Act.

The Government Advocate (Mr. Muhammad Ismail), for the Crown.

Mr. Jawahir Lal, for the accused.

YOUNG and BENNET, JJ. :—This is an appeal by Government against the acquittal of three *doms* Faujdar, Sita, and Balli, of the offence of dacoity, and also the appeal of four persons who have been convicted of the offence of dacoity, Ishri Kurmi, Shiva Gobind Ahir,

*Criminal Appeal No. 461 of 1932, by the Local Government, from an order of H. P. Verma, Sessions Judge of Ghazipur, dated the 23rd of February, 1932.

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Damri Gond, and Dudhnath Dusadh. These four persons have been sentenced to six years' rigorous imprisonment by the Sessions Judge of Ghazipur.

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Considerable argument was made over certain points of law which are not really very important for the purpose of this case, but as the matter has been argued before us we may state our findings on the points. As already noted, the pointing out of property by the *doms* is not, in our opinion, clearly proved, but the learned counsel, Mr. *Jawahir Lal*, argued on the supposition that if we were to accept the evidence of the Sub-Inspector on the point, this evidence would not be admissible. The evidence of Sub-Inspector Rafiullah Khan is as follows: "Then Sita took us to the house of Jebodh and he asked Jebodh to hand over the clothes which he had given to him." It was contended by learned counsel that this evidence was not admissible because of the provisions of section 162, Criminal Procedure Code. On the other hand, it was contended that the evidence was admissible under section 27 of the Indian Evidence Act which states as follows: "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." There is no doubt that section 27 as it stands does cover evidence of this nature. This has been held by a Full Bench of this Court in the case of *Queen-Empress v. Babu Lal* (1) by a majority of four Judges against one. But the argument of learned counsel is that subsequent to that Full Bench ruling the wording of section 162 of the Criminal Procedure Code has been altered and this section now runs as follows: "No statement made by any person to a police officer in the course of an investigation under

this chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made." The argument of learned counsel is that under this section a "statement made by any person to a police officer" includes a statement by an accused person to a police officer, and that such a statement cannot be used for any purpose. Therefore he argues that a statement such as one under section 27 of the Indian Evidence Act is now barred from being given in evidence if it is made to a police officer, and he argues that the statement would only be admissible in evidence if it was given to a person other than a police officer. There are, in our opinion, two defects in the argument of learned counsel for the defence. In the first place section 161 of the Criminal Procedure Code deals with the examination by a Sub-Inspector of any person supposed to be acquainted with the facts and circumstances of a case. The next section, in our opinion, deals with the use of the statement made to the Sub-Inspector and it is not intended to include statements by accused persons. It is true that the words "no statement made by any person" are general and if they stood alone would include accused persons, but the statements of accused persons are governed by section 164 which follows, and there are also provisions in sections 24—27 of the Indian Evidence Act in regard to statements made by accused persons. Section 163 repeats certain provisions of section 24 of the Indian Evidence Act and section 164 makes provision for recording statements or confessions by witnesses or accused persons by a Magistrate. Now we have to consider whether in regard to statements made by accused persons the Criminal Procedure Code intended in section 162, as amended by Act XVIII of 1923, to alter the provisions of section 27 of the Indian Evidence

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Act. We consider that if the legislature had intended to alter the provisions of section 27 of the Indian Evidence Act, the legislature would have repealed that section or amended it. We do not think it at all probable that the legislature would have proceeded to enact provisions in section 162 of the Criminal Procedure Code which would be contrary to what was laid down in section 27 of the Indian Evidence Act. Learned counsel on his view argues that there is a contradiction between the two sections, but if we read section 162 of the Criminal Procedure Code as not applying to the statements of accused persons there is no contradiction between the two sections. The first proviso in section 162 deals with the calling of a witness for the prosecution, and, further, section 162, sub-section (2) deals with the provision in section 32, clause (1) of the Indian Evidence Act which is a provision relating to statements by a deceased person as to the cause of his death in cases in which the cause of the death comes into question. We note that in section 162 there is a reference to two sections of the Indian Evidence Act, sections 145 and 32, clause (1). Therefore, in enacting section 162 of the Criminal Procedure Code the legislature had in mind the provisions of the Indian Evidence Act.

But there is another quite separate ground which vitiates the argument of learned counsel; that is, that in section 1, sub-section (2), Criminal Procedure Code it is provided: "but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force." Now a special law is defined in section 41 of the Indian Penal Code as a law applicable to a particular subject. The Indian Evidence Act, therefore, is such a special law, as it is a law specially applicable to the subject of evidence. Section 4, last paragraph, of the Criminal Procedure Code says: "All words and

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expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code." Therefore the provision in the Criminal Procedure Code is that in the absence of a specific provision to the contrary in the Criminal Procedure Code nothing in that Code shall affect anything in the Evidence Act. If, therefore, the legislature had desired to modify or alter the provisions of section 27 of the Indian Evidence Act by anything provided in section 162 of the Criminal Procedure Code, the legislature would have made a specific provision to that effect. There is no such specific provision to that effect, and, therefore, the conclusion is that the legislature did not intend to modify section 27 of the Indian Evidence Act by anything provided in section 162 of the Criminal Procedure Code. We are, therefore, of opinion that evidence of the nature stated is admissible in cases like the present.

On the merits of this case we consider that Ishri, Shiva Gobind, and Damri have been properly convicted, as there is against them their own confession and evidence that they gave up property. Accordingly, we dismiss the appeals of Ishri, Shiva Gobind, and Damri and uphold the convictions and sentences passed upon them under section 395 of the Indian Penal Code. As regards the appellant Dudhnath he did not make any confession and no property is shown to have been produced by him or by any one on his behalf. He was identified by Mst. Sukharani only, but we have held that her identification evidence is of no weight. The mere fact that the complainant pointed out in court Dudhnath as having taken part in the dacoity is of no weight. There is also, no doubt, the fact that he was named in the three retracted confessions, but that alone is not sufficient for a conviction. Accordingly, we allow the appeal of Dudhnath and acquit him of the offence under section 395 and set aside the sentence and direct that he be set at liberty.

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In regard to the appeal of the Local Government against the acquittals of Faujdar, Sita, and Balli we consider that the evidence against them is not sufficient for conviction and we agree with the learned Sessions Judge on this point. Accordingly, we dismiss the appeals against these three persons and we direct that they be released forthwith.

FULL BENCH

Before Sir Lal Gopal Mukerji, Acting Chief Justice, Mr. Justice King, Mr. Justice Niamat-ullah, Mr. Justice Bennet and Mr. Justice Iqbal Ahmad

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RAM SARUP (PLAINTIFF) v. TOTI AND ANOTHER
(DEFENDANTS)*

Stamp Act (II of 1899), section 5 and article 62(c)—Transfer by one deed of the interests secured by several bonds—Consideration a single sum without any apportionment—Stamp duty chargeable—"Distinct matters"—General Clauses Act (X of 1897), section 13—Whether applicable to Stamp Act, article 62(c).

A person, who was the obligee of each of 29 bonds and mortgage deeds executed by different persons in his favour, transferred his interest in all these bonds and mortgage deeds to another person by executing one instrument comprising them all; the consideration was one lump sum, without any specification or apportionment as between the several items. On the question of the proper stamp duty payable,—

Held (NIAMAT-ULLAH and BENNET, JJ., dissenting) that section 5 of the Stamp Act, dealing with instruments comprising or relating to several distinct matters, did not apply to the case, and that under article 62(c) of the Stamp Act, read with section 13 of the General Clauses Act, the stamp duty chargeable on the deed in question was Rs.5.

[*Per* NIAMAT-ULLAH, J. :—Section 5 of the Stamp Act does not apply to the case; but under article 62(c) itself the proper

*Miscellaneous case No. 600 of 1932.