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mortgage from Lalji Mal of his interest as mortgagee, and who have since purchased that interest, and they set up their prior mortgage and purchase against the plaintiff's claim to sell the interest of Lalji Mal mortgagee.

The Court of first instance allowed the contention of Badri Das and Har Prasad, and dismissed that part of the claim. The Subordinate Judge has on the other hand decreed the claim to bring to sale the interest in suit, but subject to the prior charge which Badri Das and Har Prasad had on it. The latter persons have appealed to this Court, and we are of opinion that the decree of the Court of first instance should be restored.

The appellants are holders of a prior sub-mortgage from Lalji Mal of the interest which he had as mortgagee, and have since purchased that interest, and they are at liberty to resist a sale at the instance of plaintiff, a subsequent mortgagee, by virtue of their holding a prior mortgage, unless their mortgage-debt be first satisfied, and the fact that they purchased the interest mortgaged to them will not extinguish their mortgage, which must be held to subsist for their benefit after the purchase. In this view we are supported by the decision of this Court in *Gaya Prasad v. Salik Prasad* (1) where the question now raised was fully considered and determined. We allow the appeal with all costs, and restore the decree of the first Court.

*Appeal allowed.*

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January 10.

## APPELLATE CRIMINAL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.*

EMPRESS OF INDIA v. PANCHAM.

*Confession made to a Police officer—Act 1 of 1872 (Indian Evidence Act), ss. 25, 26, 27.*

*P*, accused of the murder of a girl, gave to a Police officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder and would point them out. On the following day he accompanied the Police officer to the place where the girl's body had been found, and pointed out the anklets.

*Held* that such statements, being confessions made to a Police officer, where-  
by no fact was discovered, could not be proved against *P*.

(†) I. L. R., 3 All. 682.

Observations on the use of confessions made to Police officers.

*Reg. v. Jora Hasji* (1) and *Empress v. Rama Birapa* (2) referred to.

ONE Pancham, convicted by Mr. W. Duthoit, Sessions Judge of Allahabad, of the murder of a girl called Parugia, and sentenced to death, under an order dated the 31st October, 1881, appealed to the High Court. The appeal came for hearing before Stuart, C. J., and Brodhurst, J. It was contended before them, *inter alia*, that certain confessions made by the appellant while in the custody of the police had been used as evidence against him contrary to the provisions of s. 25 of the Indian Evidence Act, 1872. The learned Judges differed in opinion as to the propriety of the appellant's conviction, Stuart, C. J., being of opinion that it should be affirmed, while Brodhurst, J., was of opinion that it should be quashed on the ground that the evidence was insufficient for a conviction. In consequence of this difference of opinion the case was referred to Straight, J. For the purposes of this report, it is only necessary to set forth the judgments of Stuart, C. J., and Straight, J., so far as they relate to the question of the admissibility as evidence of the confessions above-mentioned. The judgment of Brodhurst, J., is not set forth, as that learned Judge did not decide that question.

Mr. Colvin, for the appellant.

The *Junior Government Healer* (Babu Dwarka Nath Banarji), for the Crown.

STUART, C. J.—On this subject we have first the evidence of Imam Ali, the head constable of Karari. He deposes, after explaining his finding on the 1st October the blood-stained clothes in Pancham's house: "On the 2nd October Pancham made a statement to the darogah and gave up this knife as the weapon with which the murder was committed. He took it out of his waistbelt and gave it to the darogah. This was in my presence. This was at 10 P.M. He also said that he had thrown down the anklets at the scene of the murder. As it was late at the time, he said he would point them out in the morning. On the 3rd October, soon after sunrise, he repeated this statement and conducted me and the sub-inspector and many other people to the *juar* field where I had

1) 11 Bom. H. C. Rep. 242. (2) I. L. R. 3 Bom. 12.

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found the body, and there at 8 or 10 paces to the south from the place where it had been, and after a slight (search), produced from under the leaves, which were strewed about, these anklets." Now the fact thus deposed to of Pancham giving up a knife to the darogah in presence of the witnesses as the weapon with which the murder was committed is of course inadmissible as evidence against him proving a confession or admission of his guilt. But there are other things in this deposition which appear to me to be not only not excluded as evidence, but which come fairly within the meaning of s. 27 of the Evidence Act, by which it is 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." This deposition is evidence therefore against the accused as proving that, on the 2nd October, he made a statement to the darogah and gave up a certain knife which he took out of his waistbelt; also as proving that he had thrown down the anklets at the scene of the murder: as it was late at the time, he said he would point them out in the morning; also as proving that soon after sunrise on the following morning the accused repeated his statement and conducted the witness and the sub-inspector and many other people to the *juar* field where the witness had found the body, and there at 8 or 10 paces to the south from the place where it had been, and after slight (search), produced from under the leaves, which were strewed about, the anklets. The deposition then of this head-constable, although not legal evidence of any confession, is I hold admissible as evidence of all the other circumstances referred to in it.

The next witness who speaks to a confession is Rameshur Dayal. This witness deposes that he questioned Pancham about the "silver things" and that Pancham "admitted that he had sent things for sale. But when I asked him whether they were the murdered child's ornaments, he remained silent. He admitted that he had sent silver for sale. He did not name any particular. This knife was produced by the accused from his waist and was given up by him to me on the 2nd October. I questioned him and told him to tell the truth, and he produced this knife and said this was the

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weapon used in the murder. He said he had thrown the anklets into the jungle and would point them out in the morning. Accordingly in the morning I and the head-constable and the villagers went to the jungle, conducted by the accused, and he searched and produced these anklets from under *juár* and other leaves. The place was 10 paces to the south of the place where the corpse had been found." Now all these statements, except as proving a confession of the murder, I hold to be admissible and relevant, not only under s. 27 of the Evidence Act, but also under s. 28, which expressly forms an exception to the law provided by s. 24. And even on general principles of evidence I hold that statements by a policeman going to prove such particulars as are referred to in this deposition are clearly admissible within the limits I have pointed out.

There are two other witnesses who speak to these admissions or confession, *viz.*, Nadir Ali and Hurde. Nadir Ali is described as a *karinda* in Muhammadpur and other villages, and he evidently was one of the villagers referred to in the depositions of Imam Ali and Rameshur Dayal. He corroborates the evidence of these two policemen, and with respect to the accused's confession he says: "On Sunday night the accused made a statement about the murder in my presence and took out the knife from his waist and threw it down, saying it was the weapon with which the murder was committed." This is a very distinct statement, and if it could be taken as proceeding from the witness' own independent knowledge, it would be clearly admissible as evidence of a confession of guilt by the accused. But, although not a policeman, it is quite clear that this witness Nadir Ali speaks to the confession or admission made in his presence and hearing by Pancham to the two policemen, Imam Ali and Rameshur Dayal, and I consider that it falls within the prohibitive scope and meaning of s. 25 of the Evidence Act, and therefore I would exclude it as proving any admission or confession by Pancham. But in other respects this witness fully corroborates all the relevant evidence given against the accused by the two policemen. And I should add that the presence of the villagers along with the policemen at the *juár* field, when Parugia's body and the anklets were found, is a circumstance

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which still further favours the relevancy and admissibility of that evidence in other respects than as proving a confession or admission by Pancham of his guilt, showing as it does that what Pancham did say was said freely and without any compulsion.

The other witness is Hurde. This man also is not a policeman but a cultivator of Muhammadpur and generally is in the same position as to his knowledge of the case as the last witness referred to, Nadir Ali. As his evidence appears to be taken down by the Judge at the trial, he might almost be supposed to speak of Pancham's confession as from his own knowledge; but he probably meant no more than what he stated before the Magistrate, and it simply amounts to this, that he was present when the accused was questioned by the darogah as deposed to by Imam Ali and Rameshur Dayal; in fact, he appears to have been one of those villagers mentioned by the two policemen as being present when the search was made by them in the *juar* field for Parugia's body and the anklets. These four depositions, *viz.*, of Imam Ali, Rameshur Dayal, of Nadir Ali and of Hurde, form the material statements to be found on the record with respect to Pancham's confession or admission of his guilt, and so far as they are relevant, they are admissible to the extent I have explained, *viz.*, as proving all the facts to which they refer, saving and excepting any express admission or confession on the part of Pancham. To every other effect they must in my opinion be weighed and considered, and so viewed, they appear to me very clearly to corroborate the other evidence I have examined as to the fact of the murder and of Pancham's guilt.

I might stop here, but I think I should say a word or two respecting the authorities that were referred to at the hearing in behalf of the accused. These were two cases heard and determined in the High Court of Bombay by West, J. and Pinhey, J. But so far as I understand them, they go to support the view of the law I have laid down. This is clearly so with respect to the case of *Reg. v. Jora Hasji* (1), where West, J., in delivering judgment, appears to have substantially expressed himself to the same effect as I have done in this case, showing that evidence proving a confession to a policeman is not wholly to be excluded, but may be referred to as proving other relevant facts detailed in it. The other Bombay

(1) 11, Bom. H. C. Rep. 242.

case, before the same Judges, that of *Empress v. Rama Birapa* (1), appears to be very much to the same effect, although the facts are very different from the present case, and the law laid down is, to my apprehension, a little obscure.

I should add that on this subject of the exclusion or admissibility of confessions made to a police officer, nothing can be more unreasonable, and I may add unjust, than the hard and fast line that is often attempted to be drawn in this country. §. 25 of the Evidence Act no doubt provides that "no confession made to a police officer shall be proved against a person accused of any offence." Now if this is meant to apply to all statements however voluntarily made to a police officer, nothing could be more impolitic or obstructive, and I trust that this provision is not to be understood in any absolute sense and under all circumstances whatever. It ought to be read and understood in connection with the other sections which follow it, particularly s. 28, for taken by itself and applied indiscriminately it is simply irrational and absurd. Such a naked application of the section is also plainly opposed to the law of evidence as applied by the Courts in England, a good illustration of which is supplied by what is called *Baldry's Case* as referred to in Roscoe's Evidence in Criminal Cases, 4th edition, by Power, 1858, p. 40. There we are told that "all the authorities upon this point (the prisoner's confession) were brought before the Court of appeal in the argument of the prisoner's counsel. The confession, which that Court unanimously held to have been rightly received in evidence at the trial, was made to the police constable, who, having apprehended the prisoner on a charge of murder, said to him that 'he need not say anything to criminate himself, as what he did say would be taken down and used as evidence against him,' and thereupon the prisoner made the confession." In this country I dare say it might be fairly argued that such a confession as was made in *Baldry's Case* did not come within the implied exceptions to s. 24, and was distinctly struck at by s. 25, however unreasonably. But I have no doubt in my own mind that statements by police officers embodying and including what may be understood as a confession or admission of guilt by an accused person are not wholly in-

(1) L. L. R. 3 Bqm. 12.

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admissible, but may be received and applied so far as they prove merely corroborative circumstances and not an absolute confession of guilt.

STRAIGHT, J.—(After discussing the facts and concurring in the conclusions arrived at on them by the Chief Justice, continued:) I have only one other matter upon which to remark. The learned Chief Justice in the course of his judgment, no doubt having in his mind certain arguments used by the counsel for the appellant at the hearing of the appeal, has made some remarks in reference to the admissibility of certain portions of the evidence of Rameshur Dayal, Imam Ali, Nadir Ali and Hurde, which detailed statements made by the appellant with regard to the knife and the anklets. I need only remark that, in my opinion, those statements amounted to confessions; that they were made to the police; that no fact was discovered in consequence of any information derived from such statements within the meaning of the proviso contained in s. 27 of the Evidence Act; consequently I consider that the proof of them was wrongly received, in contravention of the prohibition of s. 25 of the Evidence Act. As to the statement made by the appellant with respect to the knife, that is an obvious confession, and his remarks about the anklets bear a like construction. But with regard to these latter, it is obvious that the anklets were not discovered in consequence of what he had said, for on the contrary the appellant himself went with the police and pointed out the spot where they were lying. In short it was by his own *act*, and not from any *information* given by him, that the discovery took place. It seems to me that the obvious intention of the Legislature in passing the provisions contained in ss. 25 and 26 of the Evidence Act was to deter the police from extorting confessions, by rendering such confessions absolutely inadmissible in proof, unless made in the immediate presence of a Magistrate. It is manifest that the prohibition laid down in these two sections must be strictly applied, and any relaxation of it in accordance with the proviso to s. 27 should be sparingly admitted, and only to the extent of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it.