

to the question is the same as given by my learned brother MISRA, J.,

RAZA, J.:—I am in entire agreement with the opinion expressed by my learned brother Mr. Justice GOKARAN NATH MISRA. In my opinion also the receiver should be considered to be an officer of the court and any payments made to such officer should be treated as effectual as payments made directly into court. I see no reason why should the judgment-debtor suffer when he paid the money into court or out of the court to the decree-holder or otherwise as directed by the court. I would also answer the question referred to the Full Bench for decision, in the manner in which it has been answered by my learned brother Mr. Justice GOKARAN NATH MISRA.

BY THE COURT:—The answer to the question is that the loss should fall on the judgment-creditor.

1929

THAKUR  
JAI INDAR  
BAHADUR  
SINGH.  
v.  
MUSAMMAT  
BIRI INDAR  
KUR

1928,  
December, 17

1928  
December,  
22.

## APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice  
A. G. P. Pullan.

TAULE (APPELLANT) v. KING-EMPEROR  
(COMPLAINANT-RESPONDENT).\*

*Evidence Act (I of 1872), section 24—Zilladar of a big estate is a person in authority within the meaning of section 24 of the Evidence Act—Confession made to a zilladar of a big estate by a person residing in a village of that estate, admissibility of—Confession of guilt to villagers, weight to be attached to.*

*Held*, that a zilladar serving under a big estate is a person of great importance in the villages which belong to that estate and has great authority over those villagers and is therefore a person in authority within the meaning of section 24 of the Evidence Act. *Emperor v. Har Piri (1)*, relied on.

Where a confession was made to a zilladar of a big estate by a resident of one of the villages belonging to that estate

1929  
March 3.

\*Criminal Appeal No. 65 of 1929, against the order of Pandit Bishambhar Nath Misra, Additional Sessions Judge of Kheri, dated the 6th of February, 1929.

(3) (1926) I.L.R., 45 All., 57.

1929

TAULE  
v.  
KING-  
EMPEROR.

on the zilladar's assurance "to help him so far as it lay in his power," held, that to such a person as the accused the zilladar had great power and could even save him from the police, if he were so minded, and therefore his assurance was an inducement given by a person in authority and as such the confession must be ruled out of the evidence.

The evidence of admission of guilt to villagers may be sufficient to justify the conviction of an accused person but the evidence that such a confession has been made must be as closely scrutinised as all other evidence which is used to prove a case of murder. *King-Emperor v. Badal* (1) and *Sheoratan v. King-Emperor* (2), relied on.

Mr. *Kanhaiya Lal*, for the appellant.

The Government Advocate (Mr. *G. H. Thomas*), for the Crown.

RAZA and PULLAN, JJ. :—Taule Chamar has been convicted of the murder of his sister-in-law Musammat Bhajania and sentenced to death subject to confirmation by this Court. In his appeal he has restated the defence which he put up at the outset of the case, namely, that Musammat Bhajania was killed by dacoits who carried off his entire belongings. There is no doubt that Musammat Bhajania was murdered. She received some seven injuries from a *gandasa*, mostly on the neck and head. No less than three of the injuries were on her face. There is also no reason to doubt that the murder was committed sometime after midnight on the 25th of October, 1928. The first report was made by Taule himself, who was accompanied by the village chaukidar and his own father Dujai and his uncle Puran. The report was not made till 10 a.m. at a police station, which is not more than  $5\frac{1}{2}$  miles from the village in which the crime was committed. There was therefore considerable delay in making the report, and this delay has been accounted for by the fact that the father of the accused

(1) (1928) 5 O.W.N., 698.

(2) (1929) 6 O.W.N., 159.

was absent on the night of the crime, and nothing was done until he returned in the morning. The report is in some ways a curious one. The first thing to be noticed is that there is no direct reference to the murder or the manner in which Musammat Bhajania met her death. The accused stated that two men, one of whom was a Muhammadan of Kauriya and the other was Baldeo Chamar, pressed down Musammat Bhajania, who was the wife of Taule's younger brother. He went on to say that Niranjan Chamar of the village, Bakkas Musalman of Kauriya, Kandhai Arakh of Kauriya and a certain Natha, who was apparently a Teli by caste, came into the house and took the wristlets off both Taule's hands while he was sleeping. Then he woke up, saw them all and recognized them. They asked for the money and began striking him with the wrong, that is blunt side of a knife. On this he gave up Rs. 25 in cash which were buried; and the thieves took him outside to his maize field and left him there. Later on in the report he mentioned certain articles which had been stolen and said that he had received injuries from the wrong side of the knife on the left side of his body. But he did not mention the two cuts which were found on the back of his left leg.

On investigation the report as to the dacoity was found to be untrue. There was no sign that any dacoity had been committed. The floor had not been dug up, and there were numerous utensils lying by the bed of the murdered girl. Nor were her injuries such as could reasonably be expected to have been inflicted by dacoits. Such injuries, particularly cuts on the face inflicted upon a woman are generally the work of a disappointed lover; and it must have been evident to any one who saw the corpse that she had been murdered for some definite motive and not merely killed by dacoits in an attempt to rob the house.

1929

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TABLE  
OF  
KING-  
EMPEROR.

*Raza and  
Pullan, J.J.*

1929

TAULE  
v.  
KING-  
EMPEROR.

Raza and  
Fullan, J.J.

The Sub-Inspector before proceeding to the village sent Taule for medical examination and he did not arrest him until the following morning. Before making his arrest it appears that he had investigated the state of affairs existing in this family and he had also heard the statement of Puran, the uncle of the accused, who has now stated in court that immediately after the murder the accused confessed to him that he had himself committed the crime.

The lower court has based the conviction largely upon the confession made to Puran and a second confession said to have been made to one Thakur Karam Singh, who is a ziladar of the Kapurthala estate. He has made mention of a judgment reported in *King-Emperor v. Badal* (1), where it was held that the evidence of admission of guilt to villagers may be sufficient to justify the conviction of an accused person. This judgment had been reaffirmed lately by this court in *Sheoratan v. King-Emperor* (2), and it is not necessary for us to state again our reasons for holding this view. At the same time it must be remembered that the evidence that such a confession has been made must be as closely scrutinized as all other evidence which is used to prove a case of murder. In the present case one of the so-called confessions is in our opinion inadmissible in evidence, that is, the one said to have been made to Thakur Karam Singh, ziladar of the Landanpur Grant Circle of the Kapurthala Estate in which the village of Pipra is situated. We consider that a ziladar serving under a great estate such as that of Kapurthala is a person of great importance in the villages which belong to that estate and he is a person who has authority over the villagers. Indeed it is he to whom they look in every thing relating to their tenancy and all those matters which are important for their livelihood. In our opinion such a ziladar

(1) (1928) 5 O.W.N., 698.

(2) (1929) 6 O.W.N., 159.

is a person in authority within the meaning of section 24 of the Evidence Act. It was held by the Allahabad High Court in the case of *Emperor v. Har Piari* (1), that a village mukhia is a person in authority and various other village officials and persons in similar positions have from time to time been held by various courts to come within that definition. In our opinion a ziladar such as this person Karam Singh is a person of more influence and more authority than a village mukhia. Holding that he was a person in authority it is clear from his own statement that he offered an inducement to the accused to confess. His own account of the affair is as follows :—

“The accused met me at 4 or 4.30 p.m. on the 25th of October, and I asked him what was the matter and that no dacoity appeared to have taken place at his house and he should give a true account. The accused kept quiet and did not say anything. I asked him again but he kept quiet. When I asked him a third time he told me that if I helped him he would give me a correct account. I told him to give a true account and that I would help him so far as it lay in my power.”

To such a person as the accused the ziladar had great power and could even save him from the police, if he were so minded. We consider therefore that this was an inducement given by a person in authority and as such must be ruled out of the evidence. But there is another point which we must consider in connection with the statement of this witness and that is that in our opinion no such confession was ever made. We know that the accused was sent to the hospital by the Sub-Inspector before 1 o'clock. The hospital is at Gola and the Assistant Surgeon examined the injuries

1929

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 TAULÉ  
 r.  
 KING-  
 EMPEROE.

*Raza and  
 Pullan, J.J.*

1929

TAULE  
v.  
KING-  
EMPEROR.

Raza and  
Pullan, J.J.

of the accused at 4:30 p.m. It is therefore impossible that the accused can have reached the village before 6 p.m. at the earliest and as a matter of fact we find that, although the Sub-Inspector was in the village that evening, he did not see the accused at all until the following morning when he searched his person and arrested him. But the zilladar said that he met the accused in the village at 4 or 4:30 p.m. on the 25th of October, and that he then left the village but hearing that the Sub-Inspector had come he went to him in the village at 10 or 11 p.m. and told him what the accused had said. We know that the Sub-Inspector was in the village at least till 4 p.m. when he signed the *panchayetnama* and we must come to the conclusion that this whole statement is entirely false. It is unfortunate that investigating officers should allow such evidence to be produced in a court. No doubt the extra-judicial confession is of great importance, but it must be a true extra-judicial confession and not one fabricated in order to provide additional evidence for what rightly or wrongly the investigating officer considers to be a weak case.

The confession made to Puran stands on a different footing. We have read very carefully Puran's statement. He says that when he heard the cry raised by Taule he went and found him sitting outside his house. Taule then said to him that it was not a case of theft at all, that really he had tried to have sexual connection with his sister-in-law, and he had killed her for fear that she would tell about the matter and there would be a *panchayet*. It is true that in the morning Puran went to the police station with the accused, but, although he went there, he was clearly uneasy. He left the police station while the report was being made and he returned, after first of all going to his father-in-law's house, to the village. As soon as he was sent for by the police he admitted that Taule had confessed

to him. When we consider that no report was made until Taule's father returned from a fair, which he had been attending that day, we are of opinion that there must have been some considerable discussion in the family as to what report was to be made and it is most likely that Puran was partly persuaded by his brother and nephew to agree in their story about a dacoity. But he subsequently felt that he could not go on with this falsehood and told the truth. The two witnesses who are said to have overheard the confession do not impress us favourably. We cannot resist the feeling that they have been brought in merely to corroborate the statement of Puran and to make it appear that, while Taule was ready to confess to his uncle, he remained silent when he discovered that he was being overheard by other persons. Apart, however, from their evidence we consider that the evidence of Puran is not to be disregarded.

[Their Lordships then discuss the evidence apart from the so-called confession which consisted chiefly of the acts and statements of the accused himself together with the evidence as to the motive which he may have had for killing his sister-in-law after which they go on as follows.]

We have then to consider whether this evidence is sufficient to justify a conviction. There is no counter story before us for we discard the alleged dacoity as a pure invention of Taule and we have a clear motive why Taule himself may have committed the crime. We then have his whole conduct from the time of the murder until the present which shows that, although he knows the truth, he prefers to tell numerous falsehoods, and we also have the statement of Puran that at the very first he confessed the crime to his uncle. In our opinion the evidence is sufficient. It satisfied two of the assessors and the Sessions Judge and it satisfies us. As to the sentence there is only

1929

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TAULE  
v.  
KING-  
EMPEROR.

*Raza and  
Pullan, J.J.*

1929  
 TAULE  
 v.  
 KING-  
 EMPEROR.

one sentence possible in a case of this kind, and that is the sentence of death. We, therefore, dismiss this appeal, uphold the conviction and sentence, and order that Taule be hanged by the neck till he be dead.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan, Acting Chief Judge  
 and Mr. Justice Muhammad Raza.*

1929  
 March, 12.

AWADHRAJ SINGH (PLAINIFF-APPELLANT) v. MUSAMMAT DHARAMRAJI KUAR AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

*Court fee payable in a suit for possession by cancellation of certain documents.*

Where a Hindu widow, who held certain property under a compromise and a decree which followed that compromise, executed a mortgage-deed of the property after the decree and the plaintiff, who questioned the validity of the compromise and the decree as well as the mortgage-deed, brought a suit for possession of the property by setting aside the compromise and the decree and in the alternative for a decree for cancellation of the mortgage-deed, and paid a court-fee on five times the Government revenue, *held* that the suit was not a suit for a declaration with consequential relief and the court-fee paid was sufficient.

Where a plaintiff claims possession of a certain property and it is stated in the plaint that he sues for possession by cancellation of some document or documents, he cannot be considered to be asking for two reliefs separately. *Sarju and others v. Sheoraj*, (1) and *Tula Ram v. Dwarika and another* (2), *Ganga Dei v. Sukhdeo Prasad*, (3), distinguished.

Mr. *Ali Zaheer*, for the appellant.

Mr. *M. Wasim*, for the respondents.

\*Second Civil Appeal No. 309 of 1928, against the decree of Syed Asghar Hasan, District Judge of Gonda, dated the 18th of May, 1929, reversing the decree of Saiyed Shaukat Hussain, Subordinate Judge of Gonda, dated the 6th of November, 1925, decreeing the plaintiff's claim.

(1) (1925) 13 O.L.J., 124.

(2) (1928) J.L.R., 50 All., 610.

(3) (1924) I.L.R., 47 All., 78.