1928.

MAGUNI PADHAN v. KING-EMPEROR.

I agree with the opinion expressed by Sir Jwala Prasad, J., that in the present case no notice to shew cause was necessary before proceedings were taken under section 211.

I would discharge the reference.

WORT, J.—I agree.

Reference rejected.

APPELLATE CRIMINAL.

Before Adami and Wort, J.J.

DEONANDAN DUSADH

v.

KING-EMPEROR.*

1928.

Feb., 16.

Evidence Act, 1872 (*Act I of* 1872), *section* 27—*voluntary information by husband who had killed his wife—corpse discovered in consequence of statement—whether statement is a confession of "a person accused of an offence."*

A husband who had fatally assaulted his wife immediately went to the police-station and stated, inter alia,

"I went into the west-facing room and finding my wife sitting, wounded her and she became senseless.

In consequence of this information the sub-inspector went to the house of the informant and found the corpse of the woman in the west-facing room.

Held, that as the informant had not, up to the time of making the statement set out above, been accused of an offence, he was not, at that time "a person accused of an offence" within the meaning of section 27, Evidence Act, and hence the statement was not admissible under that section.

Queen Empress v. *Babu Lal* (1), *Queen-Empress* v. *Kamali* (2) and *Legal Remembrancer* v. *Lalit Mohan Singh* (3), referred to.

*Criminal Appeal no. 235 of 1927, from a decision of J. A. Saunders, Esq., I.C.S., Sessions Judge of Muzaffarpur, dated the 2nd December, 1927.

(1) (1884) I. L. R. 6 All. 509. (2) (1886) I. L. R. 10 Bom. 595.
(3) (1922) I. L. R. 49 Cal. 167.

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

WORT, J.

The facts of the case material to the report are stated in the judgment of Wort, J.

B. P. Sinha, for the appellant.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

WORT, J.—The judgment in this case was reserved because there was a difficult question to consider, the question of the admissibility of what was alleged to be the confession by the accused. The matter was all the more difficult by reason of the fact that it was found by the learned Sessions Judge, and with that finding we agree, that apart from this alleged confession there was no evidence upon which the accused could have been convicted of the crime of murdering his wife for which he was convicted.

The learned Sessions Judge of Muzaffarpur has convicted the accused, as I have stated, for the murder of his wife on 18th August, 1927, and sentenced him to be transported for life. The facts of the case are briefly these.

For sometime, approximating to about a year before the date of the alleged crime, the accused had been working in Calcutta. There is a divergence in the evidence adduced by the prosecution as to the date upon which he returned. The divergence arises in these circumstances.

Certain witnesses, namely, the father and mother and the sister-in-law of the accused, were called before the Committing Magistrate, and in their evidence stated that the accused returned in the month of Asarh. When, however, they were called before the trial Court they stated that he returned in the month of Baisakh.

It is suggested by the prosecution that this difference in the statements as to the date of the return of the accused was made deliberately by the

witnesses in order to agree with the written statement and the defence or some of the facts of the defence which the accused stated through his Advocate at the Sessions trial.

The point to which I refer arises in the course of the remaining history preceding the date of the crime. It would appear that sometime, a few weeks at any rate, before the return of the accused, a panchayet had been held in the village owing to suggestions which had been made regarding the chastity of the wife of the accused, the deceased, and, according to the evidence, a second panchayet was held on his return. In the meantime it had been discovered that the deceased, the wife of the accused, had become pregnant, resulting from illicit intercourse with one Munda, the chaukidar of the village, and it was at the second panchayet that the family of the accused was declared to be outcast. Again on this point as to the panchayet there is some difference in the evidence which was called before the Committing Magistrate and that which was adduced before the Sessions Judge. One witness at least would have it that no panchayet was held and that the family had not been outcasted. This fact, however, is established by the evidence of the doctor that the deceased was pregnant at the time of her death on the morning of the 18th August, 1927.

The next part of the story relates to the confession or statement made by the accused himself. For the moment I will leave that and state the subsequent events.

During the morning of the 18th, that is before midday on the 18th August, the sub-inspector by reason of a statement made to him by the accused, went to the house of the accused and there found the dead body of his wife; he also found in the neighbourhood, or I should say close to the house, a sari which was blood-stained. But from the chemical report it is not established whether that was human

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

WORT, J.

blood or not. Also by reason of a statement of one of the witnesses who deposed for the prosecution the sub-inspector found a garansa buried. From the chemical report the bloodstains on this garansa were found to be those of human origin. That briefly is the statement of the facts concerning the death of the deceased. Exactly what happened we can gather only from the alleged confession which was made on the 18th August by the accused himself.

The sub-inspector in his evidence, in which he produced the written statement or confession signed by the accused and two witnesses, states that on that morning of the 18th August the accused came to the police-station and made the statement to which I have referred. It was not immediately taken down in writing, but the Inspector called two people, who were eventually witnesses, one a doctor, a sub-assistant surgeon, and another gentleman a zamindar, and in their presence the accused repeated his statement. The sub-inspector states that he took it down as near as possible in words in which the accused uttered. The statement was read over to the accused; it was signed, and then the witnesses to whom I have referred appended their signature.

Before I deal with the real point in this appeal, that is the admissibility of this confession, I will briefly state the evidence which was called in the case.

I have already mentioned the evidence of the sub-inspector; he produced the confession. He states that he found a sari, and a garansa, blood-stained as it was, was also found by him as a result of the communication made to him by the sister-in-law of the accused. There is one matter which is of some importance in this case to which I must refer.

In his cross-examination, after having stated the short history of the taking of the statement and the signing of it by the accused and the witnesses, the

sub-inspector stated: "I arrested him formally after I recorded the statement." The other witnesses were the Sub-Assistant Surgeon, and the zamindar, who was another witness to the statement, whose name is Tejnarain Singh, but no mention need be made of their evidence because they deposed to the fact of their witnessing the confession.

There is then the witness Gangia who states in her evidence that she returned to her house which was close to that of the accused, or forms a part of it. I am not quite sure which is the fact judging from the evidence, and as it was getting late she went to call the deceased and finding the door closed went in and there found the deceased with a wound which she described. She also states that she found a lunga and garansa, that she threw the lunga away, and also states that she buried the garansa. It is from this witness that the sub-inspector obtained the information which led to the discovery of this weapon.

The next witness called is the woman named Musammat Anuragia, who had been sent by Munda Dusadh, the person with whom the illicit intercourse is said to have taken place, to see whether Deonandan's wife, that is the accused's wife, was in fact pregnant, and she states that she found that to be the case.

The other witnesses, who are of any importance in the case, are, first the father and the mother of the accused, and they with the sister-in-law whose evidence I have already mentioned, go back on their statement made before the Committing Magistrate as to the date upon which the accused returned from Calcutta. The importance of this is, that, according to the written statement of the accused, it was the result of intercourse with him that his wife was pregnant. That is a complete denial of the statement which he made before the sub-inspector called the confession in this case, and the doctor's evidence

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

WORT, J.

being as it is that the woman had been pregnant for sometime approaching two months. It is suggested that the date of the arrival of the accused from Calcutta has been put back in order to fit it in with the suggestion which the accused made through his Advocate and in his written statement at the trial before the Sessions Judge. Apparently it is suggested in the argument which has been addressed to us that the reason for this is that if it could be established that the pregnancy was due to intercourse between the husband, the accused, and his wife, then the motive for this crime would disappear. From the brief outline of the evidence which I have given it is quite clear that the learned Sessions Judge is right in saying that on that evidence at any rate the crime with which the accused is charged is not brought home to him. It remains, therefore, to consider this confession.

For the purposes of convenience it has been divided into three parts, 1(*a*), 1(*b*) and 1(*c*). The first part 1(*a*) states briefly some of the facts as regards the accused's sojourn to Calcutta and his return and also his challenging his wife with the accusations which were then being made against her as to her unchastity, and he also states in that part of his confession that on his wife convincing him of her guilt he struck her with a pharsa on her left hand. This part of the confession is corroborated by the evidence of the doctor, who says that he found on her left arm a wound which was probably about two weeks old. The important part of the confession is, however, 1(*b*) and this states

"I went into the west-facing room and finding my wife sitting wounded her and she became senseless."

Then he goes on to state what is referred to as the third part 1(*c*), the confession as to the manner of his disposing of the garansa.

It has been argued by the learned Advocate for the appellant that the part which distinctly relates to his having wounded his wife and her becoming

senseless is inadmissible in evidence. The argument in regard to this of course is based on section 27 of the Evidence Act, and the learned Advocate refers us to the case of *Legal Remembrancer* v. *Lalit Mohan Singh* (1) as an authority for showing that in almost exactly similar circumstances this part of the confession to which he refers is inadmissible. In the case which I have just mentioned the facts are certainly similar and there is a similar division in the confession as in this case. The first part so far as the accused in that case was concerned, is quite unimportant but it is the second part which was objected to and the Court certainly decided that that second part, which particularly referred to the death of the deceased in that case, was inadmissible. But the case is distinguishable on this ground. Section 27 of the Indian Evidence Act provides

> "when any fact deposed to as discovered is in consequence of information received."

In the case of *Legal Remembrancer* v. *Lalit Mohan Singh* (1), the state of affairs was that at the trial the police officer, who purported to prove this confession and put it in evidence, had not deposed to any fact discovered, and in consequence the Court decided, and, if I may say so, rightly decided, that that part of the statement which led to the discovery of the fact could not be put in evidence for the reason which I have stated. That case, therefore, is clearly different from the one which is now before us and no help can be gathered from it.

But we must look at the earlier sections of the Evidence Act for the purpose of discovering whether in this case the confession which the accused made is inadmissible and particularly if this part of the confession is admissible. But before I refer to the earlier sections and leaving all other considerations aside for the moment, it seems to me that the point clearly for consideration is whether this part 1(*b*) as

(1) (1922) I. L. R. 49 Cal. 167.

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

WORT, J.

it is called is admissible, because it is from that part of the confession or rather the fact deposed to in this case that the dead body of the woman was discovered in the house, and if it were necessary or sufficient to decide the case on that part of the confession, I would hold that this confession or this part of the confession was admissible in evidence. But as I have already stated we must look also to the earlier sections, sections 24-26 which deal with confessions of this kind. First of all section 24 makes a confession which has been caused by any inducement, threat or promise, having reference to the charge against the accused, irrelevant, and therefore of course inadmissible in evidence. Section 25 clearly states that no confession made to a police officer shall be proved as against a person accused of any offence. The next section 26 provides that no confession made by any person, whilst he is in the custody of a police officer, unless it be made before a Magistrate, is admissible. We then come to section 27, the all-important section, and perhaps it would be as well to state its provisions in full:

> "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."

I have already stated that that part of the confession called 1(*b*) does distinctly relate to the fact which was discovered and which has been deposed to by the police officer and that was admissible. But there are other provisions which are to be noticed in the section which seem to me to conclude the matter in this case. The first is this. I refer to that part of the section which reads "in consequence of information received from a person *accused of any offence.*" We have therefore got to decide whether this part of the section has been complied with, or I should say whether the facts in this case comply with the provisions of the section. The first question I have to ask myself is whether this person has been, or was at the

time, accused of any offence. Now strangely enough when we come to look at the order committing the accused to trial, this point is disposed of by the statement which the learned Magistrate makes therein; and equally strangely the learned Committing Magistrate admits this confession on the very ground which I should hold made it inadmissible. He says in the course of his order

> "This statement though made before a police officer—he says this by reference to the earlier sections which make a confession made before a police officer inadmissible—is admissible, because when this statement was made Deonandan Dusadh was not an accused."

Therefore, quite clearly, it does not come within section 27, because the first provision of that section is not complied with, the person not being an accused person, and therefore, it is not a statement made by an accused person. If authority were needed for that we should find it in the case of *Queen-Empress* v. *Babu Lal* (1). True that there was some difference of opinion in the Full Bench in that case, one of the learned Judges deciding that section 27 referred to confessions made to persons other than police officers only; but it seems to me that that was not necessary for decision in *Queen-Empress* v. *Babu Lall*(1) and it is certainly not relevant in this case and, therefore, no comment need be made on that. But it was decided, in order to bring the statement within section 27, that the person making it must not only be in the custody of the police but that the statement must be of a person who was then an accused. I have already referred to the statement of the learned Magistrate in his order, and I think it is impossible to go behind that and the very facts of the case show quite clearly that at the time Deonandan made this confession he was not an accused person because until the statement was made the crime which he is alleged to have committed was unknown.

The next point of importance for consideration is whether the other part of the section is complied

(1) (1884) I. L. R. 6 All. 509.

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

WORT, J.

with. I make reference to the phrase " in the custody of the police officer." The question that I have to determine is whether the accused was " in the custody of the police officer." It is true that section 46 of the Criminal Procedure Code provides that a person may be under arrest although no physical force or anything of the kind is used; and the section in fact says

" unless there be a submission to the custody by word or action."

The suggestion here has been on behalf of the Crown that when the accused came to make this statement he was submitting to custody. In order to hold that it seems necessary to go back on the evidence of the sub-inspector who says that after the statement was signed he " then arrested the accused." If the accused had already submitted to his arrest it goes without saying that the sub-inspector would have been under no necessity of formally arresting him.

We are referred to the case of *Queen-Empress* v. *Kamali* (1). The learned Assistant Government Advocate says that the case there approximates, so far as the facts are concerned, to the facts in this case, but when we look at the judgment in that case, it is perfectly clear that the facts are very different. The second paragraph of the judgment says

" The Head Constable describes them as being among those Bhils whom the police patel collected on suspicion;"

and the state of affairs was that under section 46 of the Code of Criminal Procedure those people had been arrested within the meaning of that section. I say that in that case a very different state of facts existed from those in the present case.

In my judgment, therefore, the alleged confession upon which the conviction of the accused is based is quite clearly inadmissible; it does not comply, as

(1) (1886) I. L. R. 10 Bom. 595.

1928.

DEONANDAN DUSADH v. KING-EMPEROR.

I have stated, with section 27 of the Evidence Act inasmuch as it was not made by a person in the custody of the police officer. The Legislature in its wisdom has seen fit to make these safeguards against the admission of confessions in such cases. I have no doubt in my mind that the confession in this case was made but there being, what I describe these safeguards, this confession is inadmissible. It is for me to administer the law quite apart from what the results may be. I find in this case that there was no evidence against the accused apart from this confession and as the confession is clearly inadmissible, the conviction and sentence will have to be set aside and the accused discharged from custody.

WORT, J.

ADAMI, J.—I agree.

Appeal allowed.

Conviction and sentence set aside.

REVISIONAL CRIMINAL.

Before Adami and Wort, J.J.

TIKAIT KRISHNA PRASAD SINGH

v.

KING-EMPEROR.*

1928.

Feb., 22.

Chota Nagpur Tenancy Act, 1908 (*Bengal Act VI of* 1908, *sections* 63 *and* 215—*Levying money in excess of rent —penalty imposed by Subdivisional Officer—appeal—Code of Criminal Procedure*, 1898 (*Act V of* 1898), *sections* 1(2) and 4(0).

An appeal from an order imposing a penalty under section 63 of the Chota Nagpur Tenancy Act, 1908, for illegally exacting from a tenant payments in excess of his rent, is governed by the Act itself and not by the Code of Criminal Procedure, 1898, and lies to the officer indicated in section 215 of the Act.

*Criminal Revisions nos. 785, 798, 799, 800 and 801 of 1927, from the Order of G. Rowland, Esq., I.C.S , Judicial Commissioner of Chota Nagpur, dated the 27th September, 1927, rejecting the application against the Orders of S. A. Khan, Esq., Subdivisional Officer of Giridih, dated the 15th September, 1927.