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JWALA PRASAD, J.

In the result I would affirm the decision of the Subordinate Judge in so far as it has decreed the plaintiff's suit for Rs. 101-8-0 as price of the bamboos taken by the defendant, and would leave the question of the customary right of the parties in the trees standing on the tenant's nakdi lands open. As the plaintiff has principally succeeded, I would dismiss the application with costs.

DHAVLE, J.—I agree.

Rule discharged.

REVISIONAL CRIMINAL.

Before Wort, J.

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July, 1.

MANMOHAN RAI

v.

KING-EMPEROR.*

Approver—statement of, to police during investigation—accused entitled to copy—Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 162.

Where a person accused of an offence which is under investigation makes a statement to the police during the investigation the defence are entitled to a copy of that statement if the maker of it is about to be examined as an approver in the trial of the offence.

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

S. Sinha (with him *D. L. Nandkeolyar*), for the petitioner.

Sir Sultan Ahmad, Government Advocate, for the Crown.

WORT, J.—This rule was granted with regard to a trial which is now proceeding against certain persons, being forty-two in number, for an offence punishable under section 400 of the Indian Penal Code.

*Criminal Revision no. 362 of 1929, from an order of Mr. R. Ghose, Sessions Judge of Purnea, dated the 7th June, 1929.

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WORT, J.

Two of the accused persons had made statements to the police and it appears that they are now about to give evidence under the provisions of section 337 of the Indian Penal Code, that is to say, they are assisting the prosecution and giving evidence on behalf of the prosecution.

Mr. Sinha on behalf of the applicant contends that the other accused are entitled to copies of the statements made by these persons to the police in the course of the investigation. I have used the expression 'in the course of the investigation', but, according to the argument of the learned Advocate, one of the questions to be determined in this case is whether those statements were made in the course of an investigation under Chapter XIV of the Criminal Procedure Code. It is contended by Mr. Sinha on behalf of the applicant that under the provisions of section 162 of the Criminal Procedure Code the accused are entitled to be furnished with copies of these statements, so that any part of such statements, if duly proved, may be used to contradict such witnesses in the manner provided by section 145 of the Indian Evidence Act. The argument is based on sections 160, 161 and 162 which I have already mentioned. Chapter XIV of the Criminal Procedure Code commences with section 154, and, briefly stated, provides that every information relating to the commission of cognizable offences shall be reduced to writing, and then the later section makes provision for an investigation into that information by the police. We can pass over sections 154, 155 and 156 up to section 160 which, I say, together with sections 161 and 162, are the important sections to be considered.

Most of the argument by the Crown is based on the contention that neither under section 160, nor under section 161 can an accused person (as these statements were made by persons who were in custody and were accused persons) be forced to attend, nor is the police officer entitled to question such accused

person under either of those sections, section 160 or section 161. Section 161 provides—

> "Any police officer making an investigation under this Chapter or any police officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case."

The earlier section, that is section 160, provides that the police officer may order in writing the attendance of a person who can give information and it also provides that such person shall attend as so required.

It is argued that quite clearly section 162 cannot apply to the facts of this case for the reason that neither under section 160 nor under section 161 is an accused person contemplated, and that, in any event, under section 160 no accused person can be required to attend.

The case which was relied upon for its contention by the learned Sessions Judge is the case of *Queen-Empress* v. *Saminada Chetti* (1). That was a case, as the Chief Justice of the Madras High Court points out, in which the accused person was charged for disobeying a summons under section 160 requiring him to attend and to answer a charge of kidnapping. The Court decided that section 160 did not authorise a police officer to require the attendance of any accused person with a view to his answering the charge, and then it goes on to add the provisions which are contained in section 161 of the Criminal Procedure Code.

The learned Sessions Judge quite clearly was wrong in coming to the conclusion that in the case quoted above it was held that an accused person could not be compelled under section 160 to attend after ordered to do so by a police officer. What the case decided and decided alone was that under section 160 an accused person could not be called upon by a police

(1) (1884) I. L. R. 7 Mad. 274.

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officer to attend and answer a charge. It is equally clear that that case does not assist this Court either one way or the other as regards this argument.

WORT, J.

Another case was relied upon, the case of *King-Emperor* v. *Maung Tha Din*.(1) That was a case which related to a statement which was made by the accused, and the question was whether section 162 of the Criminal Procedure Code overrode in any way section 27 of the Indian Evidence Act. It is unnecessary to set out the details, but the real question can be shortly stated as being whether this particular statement was admissible in evidence. It is not contended on behalf of the Crown that this case was an authority on the point which is before me, but it is referred to because of the reasoning which was adopted by the Court in coming to the conclusion on the question then before it. In the course of the judgment in that case Rutledge, C.J. stated "It has, in my opinion, been rightly held that a police officer has no power to require the attendance of, or to examine under sections 160 and 161, a person accused of the offence under investigation"; and certain cases were relied upon in favour of that view, one of which is the case of *King-Emperor* v. *Rattan Satharam* (2). The question there also was whether a certain statement made was admissible under the Evidence Act and the comment which I have made on the Rangoon case (1) equally applies to this case, that is to say that only the reasoning adopted by the learned Judges can be used to throw any light upon the matter which is before us.

It was faintly contended, as I understood the argument on behalf of the Crown, that if the statement could be used in evidence under the Evidence Act, it would necessarily follow that it could not be a statement which is contemplated by section 162 of the Criminal Procedure Code, that is to say, a statement taken in pursuance of an investigation as

(1) (1926) I. L. R. 4 Rang. 72. (2) (1900) I. L. R. 27 Cal. 295.

contemplated by that section. The argument seems to be this that section 162 makes provision of the manner in which such a statement can be used, and it is contended that it can be used only in that way. However, if that argument is still adhered to, it seems to me to be sufficiently answered both by the provisions of section 162, that is to say, the proviso thereto, and by the decision in the case of *Grandha Venkatasubbiah* v. *King-Emperor* (1). But in my judgment, neither of the cases which are quoted nor the proposition which is put forward really deal with the point which is before me.

Before I come to state my view of the matter, I should add that there is another authority which is relied upon, an authority of this Court in the case of *Jagwa Dhanuk* v. *King-Emperor*.(2) But although the value of that decision may be great as regards the point therein decided, it seems to me that the comment which I have already made as regards the other cases is one which holds as regards this. The question before the Bench of this Court in that case was whether a certain statement was admissible in evidence or not, and the questions which we have to construe in this case were only incidentally referred to, as I have already stated, as a part of the reasoning in coming to a decision on the main question.

The argument by the Crown seems to me to depend upon this consideration, that sections 160 and 161 are necessarily bound up with the provisions of section 162, that is to say, when a statement referred to in section 162 is mentioned, it is a statement which is taken by reason of the powers given to the police under either section 160 or under section 161. In my judgment that does not necessarily follow. Chapter XIV deals with the investigation of the police; it makes certain provisions relating thereto, and it states that the police have certain powers in

(1) (1925) I. L. R. 48 Mad. 640.
(2) (1926) 7 Pat. L. T. 396.

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an investigation, notably the powers under sections 160 and 161. It is quite clear that the provisions of section 161 are not relevant to the facts of this case. There was no such order, as far as I am aware, under section 161, nor was there an order contemplated by section 160. But the question that must be asked is, assuming that to be so, that is to say, the statement was not made to the police by reason of their exercise of the powers under sections 160 and 161, is the statement which was made to the police, a copy of which is required by the accused, any less a statement made by any person to a police officer in the course of an investigation under this Chapter? It is admitted, and of course it must be so, that as regards the police powers of investigation—and they are statutory powers be it noted—there are no provisions in the Criminal Procedure Code other than the Chapter referred to. I am not unmindful of the provisions of the Police Act. I do not suggest for a moment that the cases referred to are not rightly decided, but to my mind the question of whether an accused can be summoned to attend under Chapter XIV is beside the point. The police may and do investigate cases and take statements and put them in writing otherwise than by reason of their powers under sections 160 and 161 (a person may be present of his own accord and make a statement). The question, therefore, comes to this, are the statements in this case the statements made to the police in the course of an investigation, have they been made " by any person ", using the expression in the section, and have they been reduced to writing? There appears to be one answer and one alone to those questions, and that answer must, in my judgment, be in the affirmative. If the police had statements made to them by accused persons and those accused persons were not to be witnesses, then of course section 162 would not apply. This reminds me that a further question should be asked in this case. Is the person making the statement to be a witness in the case? That also

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must be answered in the affirmative and it makes no difference that it so happens that that person at one time was an accused. If these questions, each and every one, have to be answered in the manner in which I have stated, then there can only be one answer to the contention which is placed before this Court by Mr. Sinha on behalf of the accused that they are entitled to copies of these statements, that answer also being answered in the affirmative. There will be an order accordingly.

Rule made absolute.

APPELLATE CIVIL.

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July, 1.

Before Kulwant Sahay and Macpherson, JJ.

RAI JAGDISH PRASAD

v.

JAMUNA PRASAD.*

Bengal Tenancy Act, 1885 (Act VIII of 1885), section 30 (b)—tenant, food crops not grown by—holding converted into orchard—landlord, whether can claim enhancement.

The mere fact that the tenant did not grow food crops upon the holding but used it as an orchard, cannot prevent the landlord from claiming enhancement under section 30(*b*), Bengal Tenancy Act, 1885.

Raja Reshee Kesh Law v. *Chintamani Dalai*(1), followed.

Jeonath Jha v. *Mahanth Bishambhar Das*(2), not followed.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Janak Kishore, for the appellant.

*Appeals from Appellate Decrees nos. 787, 858 and 859 of 1927, from a decision of Babu Kamala Prasad, Subordinate Judge of Patna, dated the 22nd of April, 1927, reversing a decision of Maulavi Abdul Aziz, Munsif, 1st Court of Patna, dated the 24th of May, 1926.

(1) (1922-23) 27 Cal. W. N. 962.
(2) (1927) 8 Pat. L. T. 495.