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On the 11th July Ratan Singh then said that he was still unable to get the cost for his witnesses. However, he was offered and accepted what was known as *dasti* summons. The witnesses were to be produced by the 15th July and there the matter ended as no defence witnesses were produced and there was no further petition in the matter. This point evidently was not argued before the Sessions Judge at all; for his very exhaustive judgment is silent on the point. Above all before us and in the petition to this Court the petitioners do not refer to any particular witness, much less what he would prove in their favour. There is simply a general allegation that they did not get an adequate chance of summoning their witnesses; and I am satisfied that there is no substance in their objection. These are the points on which these two separate applications in revision were pressed and they must both fail.

As regards the compensation which was directed to be paid to the complainant, I do not consider that he deserves any compensation as he deliberately allowed himself to be fooled in this fashion, and he deserves no sympathy from a Court, and I would set that portion of the order aside.

COURTNEY TERRELL, C. J.—I agree.

Conviction and sentence upheld.

FULL BENCH.

Before Courtney Terrell, C. J., Scroope and Agarwala, JJ.

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Dec., 16, 19, 20, 23.

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Evidence Act, 1872 (*Act I of* 1872), *section* 24—" *person in authority* ", *meaning of—statement by a person that he has committed an act which amounts to an offence, whether*

* Criminal Appeal no. 337 of 1932, against the order of K. P. Sinha, Esq., Additional Sessions Judge of Bhagalpur, dated the 19th September, 1932.

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is a confession by an "accused person"—exculpatory statement by accused, whether admissible against co-accused—strength of evidence against the accused is a matter to be considered before but not after conviction.

The words "person in authority" occurring in section 24 of the Evidence Act, 1872, have reference to a person who has authority to interfere in the matter under enquiry as, for example, a person engaged in the apprehension, detention or prosecution of the accused, or who is empowered to examine him. The section excludes a confession procured by inducement, threat or promise having reference to the charge, only when the inducement, threat or promise is sufficient to give the accused person reasonable grounds for supposing that by making it he will gain any advantage or avoid any evil in reference to the proceedings against him. When the inducement, etc., is by a person who has no power to interfere in the matter under inquiry, it is not reasonable for the accused to suppose that he will benefit by confessing.

Where an extra judicial confession was made to a tahsildar who was a person of some influence in the village but had no interest in the prosecution of the accused other than the interest which every citizen has in the maintenance of law and order, and the confession was made in consequence of questions put, and a promise made by him,

Held, that the tahsildar not being a person empowered to examine the accused or one who could legitimately influence the course of proceeding, the confession was not excluded by section 24.

When a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence, and the statement is, therefore, a confession by an "accused person" within the meaning of section 24.

Deonandan Dusadh v. *King-Emperor*,(1) overruled.

Obiter: if such person makes the statement to a police officer, as such, he submits to the custody of the officer within the meaning of section 46(*1*) of the Code of Criminal Procedure, 1898, and is then "in the custody of a police officer" within the meaning of section 27 of the Evidence Act, 1872.

(1) (1928) I. L. R. 7 Pat. 411.

Legal Remembrancer v. *Lalit Mohan Singh Roy*(1), followed.

Semble that an exculpatory statement made by an accused is inadmissible against a co-accused.

The strength of the evidence against an accused person is a matter to be considered before, and not after conviction. Therefore, a Judge is wrong when, after he has convicted the accused of murder, he sentences him to transportation for life on the ground that the evidence was not of a sufficiently convincing character to justify the capital sentence.

The facts of the case material to this report are stated in the judgment of the Court.

Manohar Lal (with him *S. M. Gupta* and *Muhammad Yasin Yunus*), for the appellants.

Jaffer Imam, Assistant Government Advocate, for the Crown.

COURTNEY TERRELL, C. J. and SCROOPE AND AGARWALA, JJ.—Of these four appellants Chotka Sonar has been convicted under section 302 of the Indian Penal Code and appellants Santokhi Beldar, Dwarika Mahto and Mahabir Sanghai under section 302/149 by the Additional Sessions Judge of Bhagalpur in part agreement with the assessors and all four have been sentenced to transportation for life.

The material facts of the case are these: a dead body without the head was found in Kusumaha village which is about six miles north-west of Amarpur police-station in the Bhagalpur district on the 5th May last at a place in the village known as Bahiar. The news spread in the village and Asharfi chaukidar of Kusumaha went to tell Radhe, another chaukidar of the same village, about it. Radhe was not found at home; but his wife Musammat Kulho told Asharfi that her husband had gone out to village Pansalla during the night and had not returned home since. Asharfi then went to see the dead body and

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

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found that it was the dead body of this chaukidar Radhe. Musammat Kulho also went to the spot and recognized the corpse of her husband. She then went with Asharfi to Amarpur police-station and lodged the first information. The Sub-Inspector came to the spot that afternoon and saw the dead body and on a further search, the head was found; he also found a broken earthen pot lying in the Bahair which appeared to have blood stains as well as traces of burnt pieces of matting and bits of string. He stopped for the night in the village and early in the morning was told by Syed Abdul Aziz, the local tahsildar of the Banaili Raj in whose zamindari this village is, that his labourer Santokhi Beldar had confessed to him regarding the murder. The Sub-Inspector after examining Santokhi Beldar was then taken by the latter to his house where the Sub-Inspector examined the courtyard or *angna* which appeared to have been recently washed and Santokhi produced for him a *kuchia* or knife and a small pitcher or *labni* which smelt of toddy. Next Santokhi took him out to a field about 200 paces south-east from his house and there he showed him a mouse-hole which was covered with clods in a field. The Sub-Inspector took some earth and straw from this hole; these were sent to the Chemical Examiner and were found to contain human blood. He also pointed out to the Sub-Inspector a pot or *chuka* which was at a short distance from the hole and this likewise was subsequently found by the Chemical Examiner to have stains of human blood.

Accused Santokhi Beldar was sent to Banka and his statement was recorded there by a Sub-Deputy Magistrate on the 9th May. The sum and substance of this confession was to the effect that on the Wednesday night in question Radhe came to his house for a smoke and decided to spend the night in his house. The three remaining appellants and four other persons, who have been acquitted, came to the

house after that and said that they were going to kill Radhe. Santokhi interceded and remonstrated on his behalf but he received a cut in his hand from a bhujali and could do nothing. Then they surrounded Radhe and Chotka Sonar appellant cut his throat and they took away the dead body and cut the head off. He accompanied them through fear and on his return he scraped off the bloodstains from his courtyard.

His mother-in-law Surji was also sent up to the Magistrate in order to have her statement recorded under section 164 on the same day and she stated that she had seen the two appellants Dwarika Mahton and Mahabir Sanghai and some other men whom she could not identify numbering four or five killing Radhe in her house. It was about mid-night, there was a tatti door separating her room from the room in which Radhe and the appellants were; she peeped through it and saw all this.

In the trial that subsequently ensued eight persons altogether were placed on their trial, the four persons mentioned above being convicted and four others were acquitted and the evidence in the case can best be seen by taking the case of each accused individually.

As to Santokhi Beldar and indeed as regards the case of all the appellants the first question that arises is whether the above mentioned extra judicial confession to Abdul Aziz is admissible in evidence, indeed it is on this point the appeal has been mainly argued. The learned Sessions Judge has ruled it out on the ground that Abdul Aziz was a person in authority, that the confession was made under an inducement from him that Santokhi would be saved if he made a clean breast of the whole matter and that it is, therefore, inadmissible under section 24 of the Evidence Act. The position regarding this confession is peculiar, because the learned advocate for Mahabir

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and Dwarika had to refer to it for the purpose of showing that these two appellants were not mentioned at all in the confession, and that their names were subsequently introduced. So naturally it was to the benefit of his clients that the confession should be on the record, while counsel for Santokhi contended that it was not admissible at all, and the view, as has been said above, taken by the learned Sessions Judge was that it was not admissible at all under section 24 of the Evidence Act. There is no statutory definition of the words " person in authority "; but it is well established that the words have reference to a person who has authority to interfere in the matter under enquiry. The section excludes a confession procured by inducement, threat or promise having reference to the charge, only when the inducement, threat or promise is sufficient to give the accused person reasonable grounds for supposing that by making it he would gain any advantage or avoid any evil in reference to the proceedings against him. When the inducement, etc., is by a person who has no power to interfere in the matter under inquiry it is in our opinion not reasonable for the accused to suppose that he will benefit by confessing. The reported cases on the point show that, generally speaking, a " person in authority " within the meaning of section 24 is one who is engaged in the apprehension, detention or prosecution of the accused or one who is empowered to examine him. Abdul Aziz is a tahsildar of the Banaili Raj and appears to be a person of some influence in the village but he had no interest in the prosecution of Santokhi other than the interest which every citizen has in the maintenance of law and order; and although the confession was made in consequence of the questions put and the promise made by him, he was not a person empowered to examine Santokhi or who could legitimately influence the course of the proceedings. It was also argued that section 24 applies only to a confession by an " accused person " and it was pointed out that up to the time when

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Santokhi confessed to Aziz no one had accused him of the murder of Radhe. Reliance was placed on the decision in *Deonandan Dusadh* v. *King-Emperor*(1). That was a case in which a person reported at the police station that he had assaulted his wife in a particular room of their house and she had become senseless. After this statement had been made and recorded, the Sub-Inspector formally arrested the informant and then went to the house where he discovered the corpse of the woman in the room indicated in the information. The Sub-Inspector deposed that he discovered the corpse in consequence of this information and the question was whether the information was admissible against the informant. The decision of this question turned on section 27 of the Evidence Act which renders admissible so much of a confession made to a police officer as relates distinctly to a fact discovered in consequence of a confession by a "person accused of any offence" whilst "in the custody of a police officer". The Court in that case took the view that at the time when the informant made the statement to the Sub-Inspector he was neither a "person accused of any offence" nor was he "in the custody of a police officer". We are unable to agree with that opinion and it must be considered as overruled. When a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence; and if he makes the statement to a police officer, as such, he submits to the custody of the officer within the meaning of section 46(*1*) of the Code of Criminal Procedure, and is then in the custody of a police officer within the meaning of section 27 of the Evidence Act. This was also the opinion of Teunon and Ghosh, JJ. in *Legal Remembrancer* v. *Lalit Mohan Singh Roy*(2). We therefore decide that when Santokhi informed Aziz of the part he had taken in the murder of

(1) (1928) I. L. R. 7 Pat. 411.

(2) (1922) I. L. R. 49 Cal. 167.

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Radhe he accused himself of the offence of murder, and that evidence of the confession made to Aziz was admissible.

The burden of this confession in effect was that he was in the conspiracy to murder Radhe Dusadh because Radhe had incurred the hostility of himself, Chota appellant, Siswa and others who had illicit relations with one Chanchalia, his cousin sister. In this confession he goes on to describe how they decoyed Radhe to Santokhi's house and got him to drink toddy and eventually Chotka appellant, Siswa and Sudinwa and he himself joined in killing him; he sat on his legs whilst Chotka cut his throat and the others helped him. Then he goes on to describe how the body was taken away and disposed of and he accounts for the different articles to which we have already referred above. He varied this confession very much when his statement was recorded at Banka on the 9th May. To Chotka Sonar, Siswa Sonar and Sudinwa Kahar he added the names of Mahabir Sanghai and Dwarika Mahton appellants as well as Darbari Mahton and Tholai Mahton and made out, as we have shown above, that he was an unwilling witness to the murder and was compelled to help in disposing of the dead body. In fact for practical purpose this latter is an entirely exculpatory statement and must be ruled out so far as concerns the other appellants; moveover, both in the committing Magistrate's Court and in the Sessions Court he went back entirely even on this latter statement and made out that his confession to the Sub-Deputy Magistrate was the result of threats and torture.

* * * * * *

In our opinion there is adequate corroboration of the confession to Abdul Aziz and apart from it the exculpatory statement proves his complicity in the matter.

* * * * * *

In our opinion, therefore, his conviction under section 302 must be upheld. It is incredible that he would have implicated himself in this complete fashion in the murder had he not taken an active part in it.

As regards Chotka appellant the important evidence against him is the extra judicial confession to Saiyid Abdul Aziz because the later exculpatory statement of Santokhi is not admissible against him, and the statement of Surji in the committing Magistrate's Court wherein she says that about mid-night she got up and saw Dwarika, Mahabir and Chotka along with Sudinwa (who has been acquitted) killing Radhe conflicts too much with her other statements and we have already given reasons for discarding her evidence. We may note that so far as Chotka is concerned his name does not appear in her statement to the Sub-Deputy Magistrate under section 164. Also it must be remembered as regards Chotka that it was he who informed Musammat Kulho and Abdul Aziz about Radhe's dead body being found. The learned Sessions Judge thinks that he may have done so, so that no suspicion might fall on him; his conduct is no doubt open to two interpretations; but the only evidence remaining against him being the extra judicial confession of a co-accused which has been retracted, we think it would be unsafe to convict him.

As regards the remaining two accused Mahabir and Dwarika, the direct evidence against them is the original statement of Surji to which we have already referred and her statement in the committing Magistrate's Court which she retracted entirely in the Sessions Court and the two former statements differ as regards the persons who committed the murder. Admittedly they are not implicated in the extra judicial confession and the prosecution case requires us to believe that these Bhumihar Brahmins combined with these Sonars and Beldars to murder this chaukidar which is to our minds most unlikely. As

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regards the motive of this murder there are two running parallel through this case, namely, that the chaukidar was murdered either because of his interference with the woman Chanchalia in the matter of her misconduct with Santokhi, Chotka and Sisua or because of his giving evidence in a criminal case against Dwarika; and the full development of the prosecution evidence in the case which is reached in Surji's statement to the committing Magistrate would show that these two sets of persons not otherwise in any way connected, combined their separate motives to murder the chaukidar.

* * * * * *

Another piece of evidence relied on by the learned Sessions Judge as regards Dwarika and Mahabir was the exculpatory statement of Santokhi; but that cannot be used against them. There is evidence that the accused Mahabir who is the nephew of the accused Dwarika had come to call the deceased on Wednesday on the pretext of a punchaiti and on his refusal to go had threatened him. This incident may have occurred but it does not seem to be in accordance with a deliberate plot to murder the man on the same night. Dwarika and Mahabir may have been hostile to the chaukidar on account of the criminal case the details of which are unknown; but on the evidence as it stands the prosecution case against them goes no further and the evidence is far too weak to justify their conviction. We accordingly acquit them.

It is necessary again to draw the attention of the lower courts to the rule repeatedly laid down by us that the strength of the evidence against the accused is a matter to be considered before but not after conviction. The Sessions Judge having convicted the accused of a murder by assassination sentenced them to imprisonment for life instead of to death and stated his reason to the effect that the evidence was not of

a sufficiently convincing character to justify the latter punishment. This is utterly wrong and the Sessions Judge should have known it. We hope that no further occasion will arise for a comment of this nature.

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Thus the only conviction maintained is that of Santokhi and notice was issued on him and the others from this Court at the time of the admission of the appeal to show cause why the sentence of transportation for life should not be enhanced; but having regard to the time that has elapsed since his conviction by the Sessions Judge and as he appears to have more or less repented of his action by making a clean breast of the whole matter, we think that the justice would be satisfied with his sentence as it stands. We therefore discharge the rule.

The result is that the conviction and sentence of Santokhi Beldar will be maintained and that the three appellants Chotka Sonar, Mahabir Sanghai and Dwarika Mahto will be acquitted.

Order accordingly.

PRIVY COUNCIL

MAHANTH RAM CHARAN DAS

v.

NAURANGI LAL.

J.C. 1933.

Jan. 17.

On Appeal from the High Court at Patna.

Limitation—Adverse Possession—Religious Endowment—Sale or permanent Lease of Property of Math—When Possession becomes adverse—Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, article* 144.

Although an assignment or disposition of a math and its properties by the mahanth is void, either a sale or permanent lease by him of an item of property appertaining to the math

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* *Present:* Lord Blanesburgh, Lord Russell of Killowen, and Sir John Wallis.