

MAY OUNG, J.—Section 436, Code of Criminal Procedure, formerly section 437, now contains the words “any person accused of an offence”, instead of “any accused person”, and hence does not include persons against whom proceedings were taken under Chapter VIII. The decision in *Ebrahim v. King-Emperor* (1) has thus been superseded *pro tanto*.

The order directing further inquiry is accordingly set aside.

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FULL BENCH (CRIMINAL).

Before Mr. Justice Young, Officiating Chief Justice, Mr. Justice Heald, and Mr. Justice May Oung.

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Whether a village headman is a police-officer—Confession to a village headman, admissibility of—Evidence Act (1 of 1872), section 25.

Held, that a village headman is not a police-officer, and section 25, Evidence Act, does not exclude a confession made to him by an accused person.

Per YOUNG, OFFG. C.J.—“The mere bestowal of the same powers of arrest as are given to a police-officer does not make the village headman a police-officer, any more than it makes a Magistrate a police-officer.”

Per HEALD, J.—“There can be no doubt that the Legislature when it enacted the Village Act did not regard the headman as a police-officer since it provided separately in the same section of the Act for the appointment of village headmen and the appointment of one or more rural policemen for a village-tract.”

Per MAY OUNG, J.—“Where a village headman is shown to have taken an active part in the investigation of an offence in conjunction with the police, a confession alleged to have been made to him in the course of such investigation should be received with the utmost caution.”

Crown v. Nga Po Hlaing, I, L.B.R., 65—reaffirmed.

This matter arose out of the order of reference reported below and made for reconsideration of the

(1) (1902) 2 L.B.R., 80.

* Criminal Reference No. 66 of 1923 arising out of Criminal Revision No. 416-B of 1923 of this Court.

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ruling in *Crown v. Nga Po Hlaing*, 1 L.B.R., 65, by May Oung, J. in Criminal Revision No. 416-B of 1923 which came up before him for the review of the order of the District Magistrate of Yaméthin passed in his Court's Criminal Regular Trial No. 25 of 1923.

"An important item in the evidence for the prosecution in this case was the statement of the village headman, who deposed to an admission alleged to have been made by the accused to the effect that he had hit the complainant with a stick because the latter had coupled his (accused's) name with that of another man's wife. For the defence the question of the admissibility of this evidence was raised and it was urged that a headman appointed under the Burma Village Act is a police-officer within the meaning of section 25, Indian Evidence Act. The learned District Magistrate, relying on the case of *Nga Kya Thein v. King-Emperor* (1), found himself unable to agree that the evidence was inadmissible. He also said, "There have been many other cases of this kind before the courts on appeal where confessions to headman have not been refused."

"In *Lu Bein v. Queen-Empress* (2), and again in *Maung Wun v. Queen-Empress* (3), the Court of the Judicial Commissioner of Lower Burma held that a confession made to a village headman is inadmissible. In the latter case, Mr. Hosking said:—

'The *ywathugyi* is the head of the rural police, and has police duties to perform. He is to all intents and purposes a police-officer, though he may not be so designated. The material point is not whether he is called a police-officer, but whether he discharges the duties of a police-officer. The spirit of the law and not the letter of the law is to be considered.'

(1) 8 L.B.R., 95.

(2) Selected Judgments (L.B.) 479.

(3) Printed Judgments-(L.B.), 22.

“This decision was dissented from by a Bench of the Chief Court of Lower Burma in *Crown v. Nga Po Hlaing* (4) wherein it was held that section 25 of the Evidence Act does not forbid the proving in evidence of a confession to a *ywathugyi*.”

Reference was made to *Reg. v. Hurribole Chunder Ghose* (5) and other Indian cases, and the learned Judges said:—

“The question seems to reduce itself to this, namely, whether a village official, because he controls some rural policemen (persons who are themselves hardly to be regarded as technically police-officers except in the wider sense which, following the Calcutta decision, we should probably consider applicable), and because he is empowered to exercise certain powers of investigation of offences and of arrest, must be held to be a police-officer, though not called so and not regarded as such.’

“In *Po Sin v. King-Emperor* (6), it was definitely held that a ten-house *gaung* a (rural policeman) is a police-officer within the meaning of section 25, Indian Evidence Act.

“Both the Chief Court decisions were based on the provisions of the Lower Burma Village Act, 1889. This statute was, however, superseded in 1907 by the Burma Village Act, which is now in force, but the question has not apparently been re-examined since that year.

“In the case quoted by the learned Magistrate, a confession made to a *thugyi* was excluded under section 24, Indian Evidence Act, on the ground of inducement, but the applicability of section 25 was not discussed.

“A village headman is appointed by the Deputy Commissioner under section 5 (2) of the Act of 1907,

(4) (1901) 1 L.B.R., 65. (5) (1876) 1 Cal., 207. (6) (1906) 3 L.B.R., 283.

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and his general duties are laid down in section 8, including the investigation of offences and the arrest of offenders and suspects in certain cases. In addition to this, under section 29, the Local Government is empowered to confer on headmen any powers or privileges which may be exercised or are enjoyed by police-officers under any enactment for the time being in force. Similar powers or privileges may also be conferred on rural policemen. The following (among other) rules have been made under section 29 (General Department Notification No. 450, dated the 9th December 1908):—

“1. Headmen of village-tracts are empowered to search for and arrest any person who is liable to be arrested by a police-officer under any of the circumstances mentioned in section 54 of the Code of Criminal Procedure, 1898.

“2. The powers and privileges exercised or enjoyed by a police-officer under the Police Act, 1861, and the Code of Criminal Procedure, 1898, shall be exercised and enjoyed by rural policemen in Lower Burma.

* * * * *

“5. The powers, privileges and duties above described shall be exercised, enjoyed and performed by every rural policeman in subordination to the Deputy Commissioner, Subdivisional Officer, District Superintendent of Police *and headman of a village-tract.*

“In Upper Burma there are, apparently, no rural policemen. The *ywagaung* is an ordinary villager appointed by the headman as his agent and has no statutory powers. The headman is therefore the only village official who exercises powers of arrest and the like.

“It would seem, therefore that a village headman though not designated a police-officer, has very

extensive powers of search and arrest and that rural policemen are subordinate to him. It is common experience, also, that the headman almost invariably takes an active part in assisting the district police in the investigation of offences, e.g., dacoities and murders.

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"In these circumstances it is, in my opinion, difficult to avoid the conclusion that a village headman is, so far as criminal cases are concerned, a police-officer, not in the strict technical sense of the term, but according to its more comprehensive and popular meaning. The question is not, however, free from doubt and should, I think, be re-considered.

"I therefore submit the proceedings to His Lordship the Chief Justice with the recommendation that the ruling of the Chief Court of Lower Burma in *Crown v. Po Hlaing* be further considered by a Bench or Full Bench of this Court."

The reference was heard in due course by a Full Bench of the High Court (Young, Offg. C.J., Heald, J., and May Oung, J.) with the result reported below.

HEALD, J.—The question whether a village headman is a police-officer and whether therefore proof of a confession made to him is prohibited by section 25 of the Evidence Act has been referred to us as a Full Bench.

The wording of the section itself is clear and unambiguous. It says, "No confession made to a police-officer shall be proved as against a person accused of any offence." If a village headman is a "police-officer" that section prohibits proof of any confession made to him. If he is not a police-officer, that section does not apply. We have therefore to decide merely whether or not a village headman is a police-officer.

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The ruling which is at present binding on the courts in Lower Burma is a decision of a Bench of the late Chief Court on a similar reference in the case of the *Crown v. Po Hlaing* (1). It seems never to have been suggested in Upper Burma that a village head man is a police-officer.

The learned Judge who made the reference said that the decision of the Bench of the Chief Court was based on the provisions of the Lower Burma Village Act of 1889, and he went on to say "This statute was however superseded in 1907 by the Burma Village Act which is now in force, but the question has not apparently been re-examined since that year." He also said that in his opinion it was difficult to avoid the conclusion that a village headman is, so far as criminal cases are concerned, a police-officer not in the strict technical sense of the term but according to its more comprehensive and popular meaning, but that as the question was not free from doubt it should be reconsidered.

The first point for consideration is whether or not there has been any material alteration in the law since the date of the Chief Court's decision which might affect the decision as to whether or not a village headman is a police-officer.

Section 3 of the old Lower Burma Village Act said "The Deputy Commissioner shall appoint a headman in every village. In appointing a headman the Deputy Commissioner shall have regard so far as circumstances admit, to any established custom which may exist respecting the right of nomination or succession or otherwise and to claims based thereon."

The corresponding provision of section 3 of the old Upper Burma Village Regulation (XIV of 1887) were identical except that for the word "village" the words "village or group of villages" were substituted.

(1) B.L.R., 65.

The wording of the corresponding section of the present Act which applies to both Upper and Lower Burma is the same except that "village-tract" is substituted for "village" and "village or group of villages."

Section 5 of the Lower Burma Act and section 4 of the Upper Burma Regulation, which imposed certain duties on village headmen in respect of the communication of information to the nearest Magistrate or to the officer in charge of the nearest police-station or military post, were identical and are reproduced in section 7 of the present Act except that the reference to military post is omitted.

Section 6 of the Lower Burma Act and section 5 of the Regulation which imposed certain public duties on village headmen were identical with the exception that in Upper Burma the headman was not allowed to allot lands for cultivation, the wording of the Regulation, which was originally identical with that of the Act, having been altered by the omission of two words in 1896.

Section 8 of the present Act, apart from verbal alterations, is similar except that the reference to "military posts" has been omitted, that provision was made for the supply of carriage or means of transport for a journey of more than 12 hours, that the duty of allotting land whether for cultivation or house building was taken away and that the duties of regulating the slaughter of cattle and of disarming persons found in possession of prohibited weapons at *pwès* and the power to arrest persons committing offences under section 510 of the Indian Penal Code were added.

Under section 22 of the Lower Burma Act and 8B of the Regulation the Local Government was given power to make rules conferring on headmen

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any powers or privileges which may be exercised or are enjoyed by police-officers under any enactment for the time being in force.

The rules made under those powers which were in force in Lower and Upper Burma respectively at the time of the Chief Court's decision are contained in Local Government Notification Nos. 337 of 1895 and 283 of 1896. Both these notifications merely empowered village headmen to search for and arrest any person who was liable to be arrested by a police-officer under any of the circumstances mentioned in section 54 of the Code of Criminal Procedure.

Section 29 of the present Act reenacted the provisions of section 22 of the old Act and 8B of the Regulation, and the rules under the present Act are identical with those under the old enactments.

It seems therefore that the only alteration in the law which could possibly be regarded as affecting the question whether or not a village headman is a police-officer is that which gives him the power to arrest a drunken person who is guilty of misconduct either in public or in a place in which he is a trespasser, and I do not think that it could reasonably be argued that such an alteration could convert a headman into a police-officer if he was not a police-officer before.

But it is possible that the Chief Court's decision that he was not a policeman under the old law was mistaken and as doubts as to its correctness have been suggested, it is perhaps desirable that the question should be considered afresh.

We have the following facts.

A headman is a villager chosen by the Deputy Commissioner, having regard to custom, rights of nomination or succession, to exercise certain powers and to perform certain duties. He has power to take cognisance of certain minor offences committed within

his jurisdiction and to pass certain very light sentences. He can be empowered to try under certain circumstances certain civil suits in which the amount in dispute does not exceed Rs. 20. He has many public duties connected with the collection of revenue, the maintenance of communications, the protection of his village, sanitation, vital statistics, and the like which have no connection whatever with the Police. He has however to report to the nearest Magistrate or police-station certain information affecting the maintenance of order or the prevention of crime, and he has to investigate certain specified offences if they occur in his village-tract, namely murder, culpable homicide not amounting to murder, dacoity, robbery, offences under the Arms Act, and any other offence respecting which the Deputy Commissioner by general or special order, made with the previous sanction of the Commissioner directs. He is bound to search for and arrest any person whom he has reason to believe to have been concerned in the commission of such an offence and to recover if possible any property taken by such person. He has power to arrest any person found lurking within the limits of his village-tract who cannot give a satisfactory account of himself and any intoxicated person who misconducts himself in public or whilst trespassing. He may also arrest any person who has been concerned in any cognisable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking; any person who has been proclaimed as an offender either under the Code of Criminal Procedure or by order of the Local

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Government ; any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ; any person who obstructs a police-officer while in the execution of his duty or who has escaped ; or attempts to escape, from lawful custody ; any person reasonably suspected of being a deserter from Her Majesty's Army or Navy or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service ; any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; any released convict committing a breach of any rule made under section 565, sub-section (3) of the Code of Criminal Procedure and any person for whose arrest a requisition has been received from a police-officer, provided that the requisition specifies the person to be arrested and the offence or cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested with a warrant by the officer who issued the requisition. He is bound to forward any person arrested by him or made over to his custody together with any weapon or other article likely to be useful as evidence to the nearest police-station as soon as possible.

It is clear therefore that a headman has certain powers of arrest which are identical with those

possessed by police-officers, and that he has also duties of investigation in respect of certain offences which are in some respects similar to those of police-officers, and the question to be decided is whether, because he has those powers and duties, he must be held to be a police-officer.

There can be no doubt that the Legislature when it enacted the Village Act did not regard the headman as a police-officer since it provided separately in the same section of the Act for the appointment of village headmen and the appointment of one or more rural policemen for a village-tract. We have not been referred to any rulings later than those which were considered by the learned Judges who decided the question in 1901, and I can find none in the commentaries on section 25 of the Evidence Act. I have considered those rulings and I am not prepared to hold that the decision of the Chief Court was mistaken. To the best of my knowledge and belief a village headman is not popularly regarded as a police-officer, and he is certainly not so regarded in the Village Act. For over 20 years it has been regarded as settled law in this Province that a Village Headman is not a police-officer and that confessions made to him are not excluded from proof by the provisions of section 25 of the Evidence Act, and I am not satisfied that, that view of the law is mistaken.

I would therefore accept the decision of the Bench of the Chief Court in the case of the *Crown v. Po Hlaing* as good law, and answer the reference accordingly.

MAY OUNG, J.—The case of *Crown v. Po Hlaing* dealt with a statute in force in Lower Burma and was decided by the Chief Court of Lower Burma, which could not and did not take into consideration

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conditions prevailing in Upper Burma. The Burma Village act, 1907, was enacted for both parts of the Province, and it was therefore necessary to re-consider the ruling in question, more specially because the case out of which this reference arose occurred in Upper Burma.

As to the legal position under the Act, I have had the advantage of reading the judgment written by my brother Heald, and I agree that the village headman was never intended to be a police-officer. In Lower Burma, he is carefully distinguished from the rural policeman, usually called a tea-house *gaung*; the latter, it is true, is his subordinate, but this fact in itself does not place the head of the village within the category of a police-officer. In Upper Burma, there is no rural policeman, and it seemed to me at first sight that the headman would, of necessity, be called upon to perform the functions of that officer. This does not, however, appear to be the case. Since the hearing, I have referred to the Upper Burma Village Headman's Manual, which defines the *ywa-thugyi's* duties, powers and privileges, and these are identical with those of the same official in Lower Burma.

The most important point, however, in this connection is the fact that, so far at least as the more important crimes, homicide, dacoity, robbery, and so on, are concerned, the headman must not only communicate information to the nearest Magistrate or police-station, but must enquire into the offence, search for and arrest any person believed to have been concerned, and recover, if possible, any property taken by such person.

All this is clearly the work of a police-officer, and experience shows that even after the Police have arrived at the scene of crime, the headman almost

invariably forms one of the police party responsible for the investigation of the crime. He is usually an active assistant of the Police up to the time the final report is submitted. In these circumstances, I consider that it would be unsafe in such cases to attach much credence to an alleged confession made to a headman. Were it not for a consideration which I set forth below, I should strongly be inclined to rule out such a confession altogether. Moreover, it is not in all criminal cases that the headman acts as if he were a police-officer, and all that can be laid down is that—where a village headman is shown to have taken an active part in the investigation of an offence in conjunction with the Police, a confession alleged to have been made to him in the course of such investigation should be received with the utmost caution.

The consideration which, to my mind, disposes of the matter is one which was not dealt with in *Crown v. Po Hlaing* and which was not brought out in argument, and it is the fact that the Legislature itself has given a clear indication of its intention in the matter—Section 26, Indian Evidence Act, a cognate section bars a confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate. The Explanation added by Act III of 1891, lays down that the word 'Magistrate' in this section does not include the head of a village discharging magisterial functions * * * * in Burma * * * unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

Here the village headman is ruled out as an individual in whose presence a confession can lawfully be made by a person in police custody, but he is thereby clearly distinguished from a police-officer, and

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the Legislature evidently did not intend that he should be classed as one.

I therefore concur in the view that a village headman in Burma is not a police-officer within the meaning of section 25, Indian Evidence Act.

YOUNG, OFF. C.J.—I have had the advantage of reading the judgments of my brothers Heald and May Oung in this case and have little to add.

A village headman has very multifarious duties and would seem to be for certain defined purposes a civil judge, a magistrate, and a revenue officer besides having the duties of a health officer. It is now sought to classify him also as a police-officer because he is given practically the same powers of arrest without a warrant as are given to a police-officer, but these powers are also given to a Magistrate under Criminal Procedure Code, section 65 and it is not contended that a Magistrate is a police-officer. The mere bestowal therefore of the same powers cannot constitute the headman a police-officer: they would seem rather to be an addition to his magisterial powers, given expressly because he is a magistrate only for certain purposes, and has no power to issue a warrant.

The order appointing him is careful to specify him as a headman not as a rural policeman and I would hold that the mere bestowal of the same powers of arrest as are given to a police-officer does not make him a police-officer any more than it makes a magistrate a police-officer.

A confession therefore made to him is not inadmissible in evidence but the weight to be attached to such will depend on the circumstances of the case and the part he has taken in the elucidation of the crime.