

## APPELLATE CRIMINAL.

*Before Mr. Justice Mackney.*

1937

July 20.

MAUNG MYA AND ANOTHER

v.

THE KING.\*

*Confession of a co-accused—Use against other co-accused—Confession, careful weighing of—Confession as corroboration of approver's statement—"Tainted evidence"—Evidence Act, s. 30.*

S. 30 of the Evidence Act provides that the Court may take the confession of a co-accused person into consideration against the other co-accused, that is to say, that the Court can only treat a confession as lending assurance to other evidence against a co-accused.

*Emperor v. Lali Mohan Chuckerbutty*, I.L.R. 38 Cal. 559, referred to.

In each case it has to be considered whether the confession of an accused person is a true one, or whether there are any circumstances which suggest that it is false, or that some of the statements made therein are false. A confession may be used for corroborating the statements of an approver.

Meaning of "tainted evidence" discussed.

*Aung Hla v. King-Emperor*, I.L.R. 9 Ran. 404; *Aung Pe v. King-Emperor*, [1937] Ran. 110, referred to.

*Kale* for the appellant.

*Lambert* (Government Advocate) for the Crown.

MACKNEY, J.—The two appellants have been convicted, Nga Mya under section 395 read with section 109 and Po Hlaing under section 395 of the Penal Code and sentenced each to suffer five years' rigorous imprisonment.

The prosecution story is that Maung Mya induced an agent of the Bombay Cotton Mill to go out into the country with a large sum of money and then instigated his friends to attack the cart in which the agent was travelling and remove the money from him.

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\* Criminal Appeal No. 627 of 1937 from the order of the Sessions Judge of Meiktila in Sessions Trial No. 8 of 1937.

Po Hlaing is alleged to have been one of the actual dacoits. Maung Mya himself was in the cart when it was dacoited.

The evidence for the prosecution included the evidence of Aung Baw to whom was granted a conditional pardon and who gave evidence on oath in the case. Aung Baw is the brother-in-law of Maung Mya. Maung Mya himself made a confession which was duly recorded by a Magistrate, although he has since retracted it. There was a certain amount of evidence to show that on the day before the dacoity Maung Mya had interviewed Po Hlaing and that on the night of the dacoity at lamp-lighting time Aung Baw and Po Hlaing were seen leaving the village together. There was no reason forthcoming as to why Aung Baw and Maung Mya should falsely implicate Po Hlaing.

It was alleged that the witnesses who gave evidence as to the movements of Maung Mya and Po Hlaing were on bad terms with Po Hlaing and there seems to be a certain amount of truth therein.

The most relevant evidence, however, is that of Maung Khon who saw Aung Baw and Po Hlaing leaving the village together. Although it is true that he is at enmity with Po Hlaing this does not necessarily show that he has given false evidence, although it may explain why he has given evidence at all. The truth of his statement is to some extent confirmed by the fact that on hearing of the arrest of Maung Mya he informed the headman, who happened to be his brother-in-law, of what he had seen. It would be very remarkable that in giving false information to the headman, he should have happened to give information which both Aung Baw and Maung Mya had given to the Magistrate.

Maung Mya put up the usual plea that the confession had been extorted from him, but there is no evidence to support this allegation.

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Po Hlaing brought evidence of *alibi* which, as the learned Sessions Judge has pointed out, is quite unsatisfactory.

As regards Maung Mya I can see no reason why he should not be convicted on his own confession. The approver stated that before Maung Mya and he made the confessions they were in custody together and they consulted together. He says

“Mg. Mya and I had a consultation before we made our confessions and Mg. Mya suggested that we should make it . . . . We had a consultation that night and we agreed to confess.”

I can see nothing suspicious in this statement so far as concerns the effect which Maung Mya's confession can have on himself ; nor, in the circumstances of this case, do I see any reason why Aung Baw's statement against Maung Mya should not be believed. Aung Baw is Maung Mya's brother-in-law and if Aung Baw himself took part in the dacoity, which, in view of the articles which were found in his possession, seems to be certain, I can see no reason why he should falsely implicate Maung Mya. It appears to me that Maung Mya was rightly convicted.

As regards Po Hlaing, as I have already remarked, there is good corroboration of the statement of Aung Baw in the evidence of Maung Khon. It has not been shown that Aung Baw had any enmity against Po Hlaing and *prima facie* there is no reason why his evidence against Po Hlaing should be disbelieved.

Section 30 of the Evidence Act permits the Court to take into consideration against Po Hlaing the confession of Maung Mya. It might have been (but not I think in the circumstances of this case,) Maung Mya and Aung Baw being brothers-in-law and having consulted together before they made their confessions,

that the confession of Maung Mya does not very considerably strengthen the case against Po Hlaing ; but the fact that Maung Mya has made a confession does tend to show generally that there is truth in the evidence of Aung Baw.

I have been referred to certain cases relating to the effect of an accused's confession and the amount of corroboration, if any, which a confession can be considered to give to an approver's evidence. In the latest case *Aung Pe v. King-Emperor* (1) it was pointed out that the evidence of one approver is not corroborated by the evidence of another approver as evidence which is tainted cannot be corroborated by further evidence which is also tainted. The consideration of the confession of a co-accused was however, expressly omitted in this case. The only observation which was made is that it is governed by section 30 of the Indian Evidence Act, 1872.

In *Aung Hla v. King-Emperor* (2) it was pointed out (obiter) that section 30 of the Evidence Act plainly provides that a confession of a co-accused might be taken into consideration against the accused, but it was remarked that such evidence, being derived from a tainted source equally as the evidence of the approver, was open to grave suspicion.

It is not quite clear to my mind what is the exact meaning of "tainted evidence" :—whether it means that the person giving the evidence is tainted morally ; or whether it means merely that he is a person on whose word reliance cannot be placed. As regards an approver there is the fear that he is giving evidence in order to save his own skin and therefore that he is liable to make statements which are not true if he thinks they

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(1) [1937] Ran. 110.

(2) [1931] I.L.R. 9 Ran. 404.

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will be for his benefit. But as regards the confession of a co-accused, I do not think we can call this tainted evidence for the same reason. A person making a confession does so deliberately and after having been warned solemnly by the Magistrate of the consequences of making a confession and knowing that he may be convicted thereon : if he still persists in his purpose and makes a confession I cannot see how the statements that he makes can be considered to be tainted statements, unless it be that they are tainted because he is an immoral person who has committed a criminal offence. But all immoral persons are not necessarily and always liars.

I do not think it is possible to lay down any general rules which could bar out consideration of the confession of Maung Mya in the present case. It is only a matter of common sense. No reasonable person ever would argue that because the confession is admissible, therefore it must be believed. In each case it has to be considered whether the confession is a true one, whether there are any circumstances which suggest that it is false, or that some of the statements made therein are false. In the present case there is nothing to suggest that any of the statements made by Maung Mya in his confession are false and, in my opinion, there is no reason, whatsoever, why the confession should not be taken into consideration in conjunction with Aung Baw's evidence against Po<sup>o</sup> Hlaing : and the existence of this confession does, to my mind, make the case against Po Hlaing stronger ; or, as we may say, it corroborates the statement of Aung Baw.

In *Emperor v. Lalit Mohan Chuckerbutty and others* (1) a special Bench of the Calcutta High Court

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(1) (1911) I.L.R. 38 Cal. 559.

laid down the principle that all that section 30 of the Evidence Act provides is that the Court may take the confession of a co-accused person into consideration against the other co-accused ; that is to say, that the Court can only treat a confession as lending assurance to other evidence against a co-accused.

It seems to me, with great respect, that this is a fair interpretation of the wording of section 30, and I believe that in my consideration of the present case I have not departed from that principle.

The appeals are dismissed.

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### SPECIAL BENCH (CIVIL).

*Before Sir Mya Bu, Offg. Chief Justice, Mr. Justice Bagulky, and Mr. Justice Sharpe.*

#### U SEIN v. U SAN AND ANOTHER.\*

1937  
 Aug. 27.

*Limitation—Suit on registered mortgage—Personal decree for balance—Period of six years—“ Compensation ”—Limitation Act, Sch. I, arts. 116, 66.*

Where a suit is brought on a registered mortgage and the sale proceeds of the mortgaged property are insufficient to cover the total amount payable a personal decree can only be passed (when the mortgage contains a personal covenant to pay) if the suit has been filed within six years of the date upon which the mortgage money is payable.

The article of the Limitation Act applicable in such a case is art. 116 and not art. 66. The term “ compensation ” as used in art. 116 includes a claim for a definite sum payable under the terms of a contract.

*Behi Maharam v. The Collector of Etawah*, I.L.R. 17 All. 198 ; *Collector of Mirzapur v. Dewan Singh*, I.L.R. 30 All. 400 ; *Dinker v. Chhaganlal*, I.L.R. 38 Bom. 177 ; *Rahmat Karim v. Abdul Karim*, I.L.R. 34 Cal. 672 ; *Ratnasabapathy v. Devasigamony*, I.L.R. 52 Mad. 105 ; *Sahu Radha Krishna v. Tej Saroop*, I.L.R. 52 All. 363 ; *Tricomdas v. Gopinath*, I.L.R. 44 Cal. 759, followed.

*Ganesh Lal v. Khetra Mohan*, I.L.R. 5 Pat. 585 ; *Ram Din v. Kalka Pershad*, 12 I.A. 12, distinguished.

\* Civil Second Appeal No. 381 of 1936 from the judgment of the District Court of Sagaing in Civil Appeal No. 27 of 1936.