

**REVISIONAL CRIMINAL.***Before Young C. J. and Rangī Lal J.***DIAL SINGH (CONVICT) Petitioner***versus***THE CROWN—Respondent.****Criminal Revision No. 631 of 1934.**

1934

*Nov. 26.*

*Indian Evidence Act, I of 1872, section 30 : Confession by one accused implicating himself and his co-accused—made at close of case for prosecution—whether admissible.*

*Held*, that a confession, made at the close of the prosecution by one of several accused persons, who are being jointly tried, implicating himself and such other persons, can be taken into consideration against such other persons under the provisions of section 30 of the Indian Evidence Act. The section does not justify a distinction between a confession made by an accused person before the trial and in the course of the trial.

*Emperor v. Mahadeo Parshad* (1), *Marudamathu Padayachi v. Emperor* (2), and *Govinda Naidu v. Emperor* (3), dissented from.

*Ganpat v. Emperor* (4), and *William Cooper v. Emperor* (5), followed.

*Petition for revision of the order of K. B. Sheikh Din Mohammad, Sessions Judge, Jhelum, dated 7th April, 1934, affirming that of Lala Mangat Rai, Magistrate, 1st Class, Jhelum, dated 28th February, 1934, convicting the petitioner.*

MUHAMMAD ALAM, for Petitioner.

DIWAN RAM LAL, Government Advocate, and  
DES RAJ SAWHNEY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

RANGI LAL J.—Dial Singh, Allah Bakhsh and Harbans Singh were tried together and convicted

(1) (1923) I. L. R. 45 All. 323. (3) 1929 A. I. R. (Mad.) 285.

(2) (1929) I. L. R. 54 Mad. 788. (4) (1930) 134 I. C. 686.

(5) 1930 A. I. R. (Bom.) 354.

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under section 379 of the Indian Penal Code, and sentenced to undergo  $1\frac{1}{2}$  years' rigorous imprisonment each. On appeal the learned Sessions Judge maintained the convictions but reduced the sentence passed on Harbans Singh to one year's rigorous imprisonment. Dial Singh and Allah Bakhsh, whose sentences were maintained, have come to this Court in revision. The petitions were admitted by Din Mohammad J. because he was of opinion that a confession made by Harbans Singh at the close of the prosecution case, implicating himself and the other accused, was wrongly admitted in evidence under section 30 of the Evidence Act. The petitions came up for hearing before Coldstream J. and he has referred them to a Division Bench because he was not inclined to agree with Din Mohammad J. on the law point mentioned above.

We have merely to decide whether a confession made at the close of the prosecution by one of several accused persons, who are being jointly tried, implicating himself and such other persons can be taken into consideration against such other persons or not. The practice of this Court has been to take such a confession into consideration but we do not find any discussion on the point in any of the published rulings cited before us. The Allahabad High Court has, however, held in *Emperor v. Mahadeo Parshad* (1), that section 30 of the Evidence Act does not cover such a confession and that it applies only to a confession made previously and proved at the trial as a part of the case for the prosecution. This view has been approved by the Madras High Court in *Marudamuthu Padayachi v. Emperor* (2) and *Govinda Naidu*

(1) (1923) I. L. R. 45 All. 323. (2) (1929) I. L. R. 54 Mad. 788.

v. *Emperor* (1), though the opposite view was taken in an earlier decision of that Court, namely, *Bati Reddi v. Emperor* (2). The Bombay High Court has fully considered the matter in *William Cooper v. Emperor* (3), and has not agreed with the view of the Allahabad Court. The Judicial Commissioner of Nagpur has also taken the same view as the Bombay High Court in *Ganpat v. Emperor* (4). In *Empress v. Ashootosh Chuckerbutty* (5), the point did not arise but, in the course of arguments, Garth C. J. made a casual remark to the effect that the word "proved" in section 30 of the Evidence Act must refer to a confession made beforehand. This ruling is, therefore, of no help in deciding the case before us.

In the Allahabad case referred to above the question was discussed at length by Walsh J. The decision, however, mainly proceeds on the ground that section 30 of the Evidence Act creates an exception to the fundamental principles upon which criminal law is administered in England and must be construed with reference to those principles. Those principles are, *firstly*, that an accused is entitled to know what the evidence against him is before he is called upon for his defence at all; *secondly*, that the prosecutor cannot re-open his case and make additions to it, except such voluntary additions as the accused may make himself; *thirdly*, that evidence cannot be received against an accused person which he has no power to submit to cross-examination and, *fourthly*, that an accused person cannot himself give evidence. It is clear that the Indian Legislature desired to depart from these principles in enacting section 30 of

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(1) 1929 A. I. R. (Mad.) 285.

(3) 1930 A. I. R. (Bom.) 354.

(2) (1913) I. L. R. 38 Mad. 302.

(4) (1930) 134 I. C. 686.

(5) (1878) I. L. R. 4 Cal. 483.

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the Evidence Act. Still the section has to be interpreted according to the ordinary canons of interpretation of statute law. It may be permissible to refer to the principles mentioned above if there is any ambiguity in the language used by the statute and adopt the interpretation which is in conformity with those principles. Walsh J., however, realized that the interpretation he was placing on the section involved the addition of the words "as part of the case for the prosecution" which did not exist therein. He went on to say that that addition would have been superfluous in view of the principle that the only thing that an accused person has to meet in a criminal trial is the case for the prosecution, his own statement and the defence evidence. Finally, the learned Judge remarked that a confession could be "proved" only by tendering evidence to show that it was made on a previous occasion. We have to point out with great respect that, in arriving at this conclusion, the learned Judge and the learned Judges of the Madras High Court overlooked the definition of "proved" in section 3 of the Evidence Act. That definition is: "A fact is said to be proved when, *after considering the matter before it*, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." If a confession is made before the Court itself it is "a matter before it" and the Court must believe it to exist. It must, therefore, be said to be "proved." A fact can be proved not only by "evidence" as defined in section 3 of the Evidence Act but also by other matters before the Court. A confession recorded by the Court itself would not be "evidence," but would be a "matter before the Court." We are, therefore, of opinion that the language of section 30

of the Evidence Act does not justify a distinction between a confession made by an accused person before the trial and in the course of the trial. A confession made before the Court even at the close of the case for the prosecution can, therefore, be said to be a confession "proved" within the meaning of section 30 of the Evidence Act. This being so, it could legally be taken into consideration, that is to say, used as evidence. It is, however, clear that this evidence would be of the weakest kind, but we are not concerned here with the value to be attached to such evidence. This would be a matter for determination in each particular case.

In view of the interpretation which we place on section 30 of the Evidence Act it is unnecessary to consider the reasoning of Walsh J. It is certainly very cogent, but we are not at liberty to read into the section words which do not exist there. The legislature has made a departure from certain fundamental principles and the Courts cannot stretch the language of the statute in order to give effect to those principles. In practice the section need not create any difficulty. It is always for the Court to consider what value to attach to such evidence. It has to be borne in mind that, if such a confession is made before a Magistrate at the close of the case for the prosecution, the accused whom it affects has an opportunity of nullifying its effect by his defence evidence and also by cross-examining the prosecution witnesses after the charge. For these reasons we hold that the confession of Harbans Singh was admissible in evidence against Dial Singh and Allah Bakhsh.

(The rest of the judgment is not necessary for the purpose of this report. Ed.)

A. N. C.

*Revision dismissed.*

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