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SULTAN ASAD JAN v. SECRETARY OF STATE.

BHIDE J.

accept the appeal and dismiss the suit. As the appeal has succeeded on a purely technical ground, I would leave the parties to bear their costs throughout.

COLDSTREAM J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CRIMINAL.

Before Coldstream and Din Mohammad JJ.

1936

Aug. 27.

ALLAH DITTA—Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 609 of 1936.

Indian Evidence Act, I of 1872, section 27 : statement of accused (leading to discovery of facts) — while accused was a mere suspect and had not been formally charged or arrested — admissibility of.

Held, that in order that a statement under section 27 of the Evidence Act be admissible in evidence:—

(*a*) the maker of the statement should be in the custody of the police, but that custody need not be a formal arrest;

(*b*) in the case of mere suspects, who have not been formally charged with any offence or arrested under any section of the Criminal Procedure Code, their presence with the police under some restraint amounts to the 'custody' which is contemplated by section 27 of the Evidence Act; and

(*c*) the statement made by a person in the above circumstances should lead to the discovery of some matter.

Case law, discussed.

Appeal from the order of R. B. Lala *Ghanshyam Das, Sessions Judge, Lyallpur at Sheikhupura, dated 24th March, 1936, convicting the appellant.*

SHABIR AHMAD, for Appellant.

V. N. SETHI. for Government Advocate, for Respondent.

DIN MOHAMMAD J.—* * * * *
* * * * * * * * * *

There only remains to be considered now whether the evidence of the recovery of the blood-stained *toka* and *chadar* at the instance of the appellant is sufficient to justify the inference of his guilt. Counsel for the defence has attacked this evidence on three grounds :—

(*a*) That this evidence is legally inadmissible.

(*b*) That it is self-contradictory, and

(*c*) That it is unreliable.

Counsel contends that the statement attributed to the appellant is said to have been made at a time when he was not in the custody of the police and that, therefore, it cannot be admitted under section 27 of the Evidence Act. The only other section that applies to a statement made to an investigating officer is section 162, Criminal Procedure Code, and as it bars the use of such statement for any purpose the information alleged to have been supplied by the appellant leading to the discovery of the *toka* and the *chadar* cannot be legally admitted. He has relied among other authorities on *Queen-Empress v. Babu Lal* (1), *Durlav Namasudra v. Emperor* (2) and *Deonandan Dusadh v. King-Emperor* (3). In *Queen-Empress v. Babu Lal* (1) nothing has been said which relates to the facts of the present case. In *Durlav Namasudra v. Emperor* (2), it was held by a Division Bench of the Calcutta High Court that an information not received from an accused person in the custody of a police

(1) I. L. R. (1884) 6 All. 509 (F.B.). (2) I. L. R. (1932) 59 Cal. 1040.
(3) I. L. R. (1928) 7 Pat. 411.

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officer or received from an accused person not in the custody of a police officer, even if it leads to the discovery of a fact relating to the crime, is inadmissible in evidence under section 27 of the Evidence Act. In the judgment delivered by Sir George Rankin it was even suggested that the law should be amended as it led to absurd results. In *Deonandan Dusadh v. King-Emperor* (1) a husband who had fatally assaulted his wife immediately went to the police station and stated among other things that he went into his room and finding his wife sitting there, wounded her. The question arose whether this statement was admissible against him. It was held by a Division Bench of the Patna High Court that as the informant had not, up to the time of making the statement set out above, been accused of an offence he was not at that time a person accused of an offence within the meaning of section 27 of the Evidence Act and hence his statement was not admissible under that section. It may be remarked here that in *Santokhi Beldar v. King-Emperor* (2) this decision was considered and although the point at issue before us was not at issue there the learned Judges appear to have remarked that if a person makes a statement to a police officer as such he submits to the custody of the officer within the meaning of section 46 (1) of the Criminal Procedure Code, and is then in the custody of a police officer as contemplated by section 27 of the Evidence Act.

As against this, counsel for the Crown has relied on *Rannun v. The Crown* (3), *Azimuddy v. Emperor* (4), *Mussammat Aishan Bibi v. The Crown* (5),

(1) I. L. R. (1928) 7 Pat. 411.
(2) I. L. R. (1933) 12 Pat. 241 (F.B.).
(3) I. L. R. (1926) 7 Lah. 84.
(4) I. L. R. (1927) 54 Cal. 237
(5) I. L. R. (1934) 15 Lah. 310.

Legal Remembrancer v. Lalit Mohan Singh (1) and *Sudam Chandra v. Emperor* (2) In *Rannun v. The Crown* (3) a Bench of this Court presided over by the late Chief Justice Sir Shadi Lal and Sir James Addison held that section 162, Criminal Procedure Code, did not apply to the statement of an accused person and that in its application it was confined to those persons only who were examined as witnesses by the investigating officer. This view was adopted by the Calcutta High Court in *Azimuddy v. Emperor* (4). In *Mussammat Aishan Bibi v. The Crown* (5) it was held that, in order to make statements admissible in evidence under section 27 of the Evidence Act, it was not necessary that the accused should be under formal arrest, and that as soon as an accused person or a suspect came into the hands of a police officer he was no longer at liberty and was, therefore, in custody within the meaning of section 27 of the Evidence Act. In *Sudam Chandra v. Emperor* (6), where a police officer interviewed an accused person and walked with him to the place where the accused pointed out the spot where an incriminating article might be found, although the accused had not been arrested by that time, it was held that he was in police custody within the meaning of section 27 of the Evidence Act. In *Legal Remembrancer v. Lalit Mohan Singh* (1) it was held that the submission of a person to the custody of a police officer within the term of section 46 (1) of the Criminal Procedure Code is 'custody' within the meaning of section 27 of the Evidence Act.

Counsel further contended that even if the statement could not be used as a confession it could be used as an admission as laid down in *Sucha Singh v.*

(1) I. L. R. (1922) 49 Cal. 167.
(2) 1933 A. I. R. (Cal.) 148.
(3) I. L. R. (1926) 7 Lah. 84.
(4) I. L. R. (1927) 54 Cal. 237.
(5) I. L. R. (1934) 15 Lah. 310.
(6) 1933 A. I. R. (Cal.) 148.

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Emperor (1). That case related to an oral confession made to a Magistrate which was held admissible under section 26 of the Evidence Act and is, therefore, not relevant to present case.

From the judgments referred to above the following principles can be deduced :—

(*a*) That in order that a statement under section 27 of the Evidence Act be admissible the maker of the statement should be in the custody of the police but that custody need not be a formal arrest;

(*b*) In the case of mere suspects who have not been formally charged with any offence or arrested under any section of the Criminal Procedure Code, their presence with the police under some restraint amounts to the ' custody ' which is contemplated by section 27 of the Evidence Act; and

(*c*) that if a statement made by a person in the above circumstances leads to the discovery of any matter, it is admissible.

I am in respectful agreement with these principles.

Besides, with all respect, I may say that some of the judgments relied on by counsel for the defence do not appear to have taken into consideration other provisions of the Evidence Act under which a statement followed by a discovery, not covered by section 27 of the Evidence Act, may be admissible. Even if a mere statement be ruled out of consideration on the ground that a person was not in the custody of the police, the act of his pointing out a place from which a certain incriminating article is discovered or the act of his

(1) 1932 A. I. R. (Lah.) 488.

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himself producing an incriminating article can in my view be proved under various other sections of the Evidence Act.

[*The remainder of this judgment is not required for this report. Ed.*]

DIN MOHAMMAD J.

COLDSTREAM J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CRIMINAL.

Before Din Mohammad J.

GHULAM QADIR—Appellant
versus
THE CROWN—Respondent.

1936

Sept. 18.

Criminal Appeal No. 749 of 1936.

Indian Penal Code, Act XLV of 1860, section 307 : Attempt to murder — Causing of injury — whether a necessary ingredient of an offence under the section.

Held, that in order to bring a case within the purview of section 307, Indian Penal Code, it is not necessary that the injury inflicted should in itself be sufficient in the ordinary course of nature to cause death.

Martu Vithoha Prabhu v. Emperor (1) and *Emperor v. Balli* (2), dissented from.

Held further, that section 307 may apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance.

Appeal from the order of Mr. D. W. M. Skeaf, Magistrate, 1st Class, exercising enhanced powers, Sialkot, dated 8th June, 1936, convicting the appellant.

S. M. IFTIKHAR ALI, for Appellant.

NAZIR HUSSAIN, Assistant Legal Remembrancer, for Respondent.

DIN MOHAMMAD J.—Ghulam Qadir has been convicted under section 307 of the Indian Penal Code, and sentenced to five years rigorous imprisonment.

DIN MOHAMMAD J.

(1) (1913) 21 I. C. 881. (2) (1935) 155 I. C. 1015.