

1920.

EMPEROR  
v.  
TUKA  
NANA.

accused came out of jail in 1909 or earlier, he has led an honest life for over ten years. That is, in my opinion, a special reason under the circumstances of this case for not punishing the accused under the section.

I would, therefore, discharge the Rule.

CRUMP, J.:—I agree. Whatever view I might be inclined to take were the matter *res integra*, I am, as it is, content to follow the decision of the Madras High Court cited by my learned brother. Section 23 (a) of the Criminal Tribes Act of 1911 is no doubt susceptible of more than one interpretation and there are perhaps more than one which are equally plausible. But in such a matter as this where one High Court has interpreted the section, I do not think that any advantage would be gained by adopting another interpretation, more especially as the interpretation which has found favour with the Madras High Court, is on the whole, I think, reasonable. As to the particular case I have nothing to add to the remarks of my learned brother.

*Rule discharged.*

R. R.

### CRIMINAL APPELLATE.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

1920.

EMPEROR v. DINANATH SUNDARJI RAVER<sup>\*</sup>.

October 20.

*Indian Evidence Act (I of 1872), section 24—Confession—Inducement proceeding from a person in authority.*

The accused, in making a confession before a Magistrate, admitted that he had been told to tell the truth by the Sahib who told him to tell the truth and he would be released:—

*Held*, that the confession so made was bad under section 24 of the Indian Evidence Act, 1872.

<sup>\*</sup> Criminal Appeal No. 401 of 1920.

THIS was an appeal from conviction and sentence passed by P. J. Taleyarkhan, Sessions Judge of Thana.

1920.

---

 EMPEROR  
 v.  
 DINANATH  
 SUNDARJI.

The accused was tried for the murder of a boy twelve years of age.

He made a confession of his guilt before the First Class Magistrate of Bassein ; but in doing so he stated that he had been asked to confess by a Sahib (meaning thereby the District Superintendent of Police), who asked him to tell the truth and he would be released.

At the trial, the learned Judge allowed the confession to go to the Jury, who took it into consideration along with other evidence in the case and returned a verdict of guilty but recommended the accused to mercy.

The accused was accordingly sentenced to transportation for life.

The accused appealed to the High Court.

MACLEOD, C. J.:—The accused was charged with the offence of murder before the Sessions Judge of Thana sitting with a Jury. There was an unanimous verdict of guilty under section 302, Indian Penal Code, and the accused was sentenced to transportation for life. In appeal it has been contended that the confession should not have been admitted in evidence and placed before the Jury, as it was not relevant under section 24 of the Indian Evidence Act. If the confession itself had been free of all defects, and then in the Sessions Court had been retracted, and the accused had made allegations that the confession had been made under inducement, then it would be a question for the Court to consider whether or not the confession was relevant ; and it seems as if the learned Judge in directing the Jury had considered himself free to consider whether the confession was relevant under section 24 of the Indian Evidence Act. But on reading the confession, it appears

1920.

EMPEROR  
v.  
DINANATH  
SUNDARJI.

that the accused told the Magistrate that he had been told to tell the truth by the Sahib who told him to tell the truth and he would be released. Obviously, then, the accused told the Magistrate that he was making a confession under an inducement, and it was quite useless for the Magistrate to continue further to record the confession. It makes no difference whether as a matter of fact the Police Superintendent had told the accused that he would be released if he told the truth. It is rather difficult to believe that any Police Superintendent would have been so foolish as to tell the accused that. But once the accused had told the Magistrate that he was making the confession under inducement it was no use whatever continuing to record the confession. Therefore we shall have to consider the record as if the confession had never been made. No doubt the Jury, in coming to the conclusion they did, under the direction of the Sessions Judge, took the confession into consideration and weighed it with the rest of the evidence, and it is impossible to say whether, supposing that the confession had never been placed before them, they would have convicted the accused on the rest of the evidence. It would be open for us to consider the evidence apart from the confession and see whether it would be sufficient to support the conviction. But in a case like this that is an extremely difficult course for the Court to pursue because no doubt we have read the record and it is almost impossible for us to exclude all consideration of the confession from our minds while looking at the rest of the evidence. Undoubtedly there is a considerable body of evidence apart from the confession which the Jury might or might not believe, though speaking for myself, I should find it extremely difficult to be able to come to a conclusion on that evidence with regard to the guilt or innocence of the accused. I think the best

course to pursue is to set aside the conviction and direct a retrial.

SHAH, J. :—I agree.

*Conviction set aside : retrial ordered.*

R. R.

1920.

EMPEROR  
v.  
DINANATH  
SUNDARJI.

---

APPELLATE CIVIL.

---

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

1920.

November  
15.

VITHAL RAMCHANDRA GULWADI (ORIGINAL PLAINTIFF), APPELLANT  
v. RAGHAVENDRA RAMRAO BAINDUR, SUBORDINATE JUDGE OF  
HONAVAR (ORIGINAL DEFENDANT), RESPONDENT\*.

*Judicial Officers Protection Act (XVIII of 1850)—Libel—Pleader—Judge—  
Defamatory statement made by a judge in the course of a suit—Discharge of  
judicial duty—Judge protected from being sued in a Civil Court.*

The plaintiff, a pleader, while conducting a suit in the defendant Subordinate Judge's Court applied for an adjournment. The defendant, considering that the application contained a statement which was false and was intended to deceive the Court, called upon the plaintiff to apologise and withdraw the alleged objectionable statement. The plaintiff having refused to apologise or to withdraw the statement, the defendant issued a notice to the plaintiff and reported his conduct to the District Judge.

The plaintiff alleged that both the notice and the report contained defamatory statements and therefore sued the defendant for libel.

*Held*, that the defendant in dealing with the conduct of the plaintiff pleader was acting as a Judge in discharge of his judicial duty, and was, therefore, protected from any liability to be sued in a Civil Court under Act XVIII of 1850.

\* First Appeal No. 195 of 1919  
(with First Appeal No. 170 of 1919).