

1929

EMPEROR
v.
WAHIDUDDIN
(No. 1)

K. Kemp J.

But as far as regards the nature and character of the association, I am unable to see that there is any substantial difference in the distinction thus attempted to be drawn between evidence tending to show the character of the accused himself, and evidence tending to show the character of the persons with whom he is alleged to have associated, and the nature of the association. It seems to me that in each case the inference is one against which the law sets its face. To take what is perhaps an extreme case, it would, I think, be highly unreasonable to argue that proof of association with the express object of committing petty thefts renders highly probable the existence of a conspiracy to commit murder; and yet it seems to me to be a conclusion that would follow from the acceptance of the contention here put forward. I, therefore, disallow the evidence tendered on this point.

B. K. D.

ORIGINAL CRIMINAL.

Before Mr. Justice K. Kemp.

EMPEROR v. WAHIDUDDIN HAMIDUDDIN (No. 2).*

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November 26.

Indian Evidence Act (I of 1872), section 157—Witness—Former statements made before police—Corroboration—Proof—Criminal Procedure Code (Act V of 1898), sections 1 (2), 162—City of Bombay Police Act (Bom. Act IV of 1902), section 63.

During the course of the case the facts of which are reported at page 525, the prosecution tendered in evidence oral statements which were recorded in a panchnama, of what a witness said before a competent police officer on the occasion of an identification parade held by the police in the course of investigation of the offence. The statements were tendered in corroboration of what the witness had deposed at the trial. On an objection being raised as to the admissibility of those statements:—

Held, that, in the City of Bombay, such statements were admissible in evidence by virtue of provisions of section 63 of the Bombay City Police Act (Bom. Act IV of 1902).

THE facts of the case are set out in the report of the case at page 525. The facts relevant to this report are set out in the head note.

*Case No. 2: Criminal Sessions No. 4 of 1929.

Azad, for accused No. 10, objected to the evidence. He referred to section 162, Criminal Procedure Code.

Velinker, for the Crown:—The evidence tendered is admissible under section 157 of the Indian Evidence Act to corroborate the witness. Section 162, Criminal Procedure Code has no application to the police in the City of Bombay. Investigation by the police in the City of Bombay is governed by the City of Bombay Police Act and not by the Code of Criminal Procedure. Chapter XIV of the Criminal Procedure Code does not apply to the Police in the town of Bombay. Section 63 of the Police Act is like section 162 of the Code of Criminal Procedure before its amendment in 1923. Referred to *Emperor v. Hanmaraddi*.⁽¹⁾ It may be an anomaly that the law on this point in the City of Bombay is different from the law in Bandra which is only ten miles away. That is a matter for the legislature. See *Queen-Empress v. Visram Babaji*.⁽²⁾

K. KEMP, J. :—Mr. Velinker tenders, in corroboration of the evidence of a certain witness for the prosecution, oral evidence of what that witness had said on the occasion of an identification parade held by the police in the course of the investigation. The previous statement relied on is recorded in a Panchnama written on that occasion in the presence of a competent police officer. It is objected that evidence, whether oral or written, of that statement is not admissible. The position is that a witness may, under section 157 of the Indian Evidence Act, be corroborated by proof of any former statement made by him at or about the time when the fact deposed to took place or before any authority legally competent to investigate the fact. Here there is no question of the first alternative but the statement objected to was certainly made before an authority legally competent to investigate. The

⁽¹⁾ (1914) 39 Bom. 58.

⁽²⁾ (1896) 21 Bom. 495.

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power to investigate, however, would ordinarily rest on the powers conferred on the police by Chapter XIV of the Criminal Procedure Code, and it is argued that the terms of section 162 of that Code, as amended in 1923, exclude the evidence now tendered. There is no doubt as to the effect of the amended section, and I need only refer in this connection to the case of *Emperor v. Vithu Balu*.⁽¹⁾ This does not, however, conclude the present case, as the investigation with which I am concerned was one conducted by the Bombay Police. I had understood that the distinction was recognised, but I find there is no direct decision on the point. Section 1, sub-section (2), of the Criminal Procedure Code, specifically lays down that nothing contained in the Act shall apply to the police in the town of Bombay, and it cannot, therefore, be said that the provision in section 162 of the Code excluding statements "made to a Police Officer in the course of an investigation under this chapter" applies to any statement made to a Bombay Police officer. Such a statement remains unaffected except in so far as it may be excluded by anything in the City of Bombay Police Act, 1902. The objection of the defence must, therefore, be based on section 63 of that Act, and the terms of that section have remained unamended, being still identical with the terms of the corresponding section in the old Code. As such they have been judicially interpreted, by decisions which it is now too late to question and which are certainly binding on me, to mean that, although the use of the written record of the statement of the witness is prohibited, the general provisions of the Indian Evidence Act as to proof of such statement by oral evidence are not overridden, and the statement can be proved by oral evidence and is admissible under section 157 of the Act. I, therefore, allow the evidence.

B. K. D.

⁽¹⁾ (1924) 26 Bom. L. R. 965.