

has already been found difficult enough to bring litigation in this country to a termination, and, if we were to grant this injunction, I am very much afraid that advantage would be taken of the precedent to prolong litigation very much further.

In my opinion, the plaintiffs have failed to establish any right to bring this suit for an injunction, and I think the judgment of Mr. Justice Caspersz was erroneous. We, therefore, reverse the decree of the lower appellate Court and dismiss the suit with costs throughout.

Doss J. I agree.

S. M.

*Appeal allowed.*

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## ORIGINAL CRIMINAL.

*Before Mr. Justice Woodroffe.*

EMPEROR

v.

TARANATH ROY CHOWDHRY.\*

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May 18.

*Confession*—Admissibility of statement alleging, whether truly or not, that it was not voluntary—Evidence Act (I of 1872) s. 24.

A statement in writing by the accused, which contains an allegation from which it is to be inferred that the statement of which it forms a part was not made voluntarily, is inadmissible.

THE accused was originally tried at the Ordinary Criminal Sessions of the High Court by Brett J., with a Special Jury, on the 5th May 1910, charged, under sections 19 (f) and 20 of the Arms Act (XI of 1878), with having in his possession or under his control arms and ammunition in contravention of section 14, and with keeping them secretly. The Jury disagreed, three being for conviction and six for acquittal. They were thereupon discharged, and the accused remanded pending a re-trial which was directed by the learned Judge. The case was re-tried, on the 17th May, before Woodroffe J. and a Special Jury on the same charges.

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The facts of the case, as alleged by the prosecution, were as follows. In September or October 1907, the accused was employed by Ganendra Nath Sircar, residing at No. 4 Raja's Lane, as a private tutor to his brother, Bhupendra Nath Sircar, and lived in his house till about March or April 1908, occupying the *baitakhana*. He then left and went to his brother's house, 67 Maniktolla Street, but continued to visit Ganendra occasionally. In the first week of May 1908, he took a tin box to Ganendra and asked him to keep it for a few days, alleging that it contained printing materials. The box was locked and the key was with the accused. The box was kept upstairs in Ganendra's room. The accused went there, on the 18th May, opened the box and took out two revolvers and some cartridges, and then left taking the key with him. Bhupendra witnessed the incident and mentioned it to his brother. The latter then consulted Shashi Bhushan Dey, a police officer of the Criminal Investigation Department, who advised him to inform Mr. Halliday, the Commissioner of Police, and accompanied him the next day to the office of the latter. On the 19th May Inspector Purna Chunder Lahiri of the same department searched the house at 4 Raja's Lane under a search warrant, and seized the box which, on being opened, was found to contain 1,200 cartridges, revolvers, daggers and instruments for making cartridges. Ganendra was arrested and kept in custody, and released the next day on bail. The accused then absconded, but was ultimately arrested at Benares on the 19th December 1909, and brought down to Calcutta on the 21st and lodged in the Presidency Jail.

He was then placed before Mr. D. Swinhoe, Offg. Chief Presidency Magistrate, who held an inquiry into the case preliminary to commitment. A number of witnesses for the prosecution were examined on the 31st January 1910; and thereafter, on the 14th March, the prisoner made a statement to the Magistrate which was taken down as follows:—

“The accused says:—I am not guilty, but will make a statement. I inform the Court virtuously that on the 16th May 1908, on Monday, when I returned home to 67 Maniktolla Street after visiting my uncle.”

Q. What is his name ?

A. Nundo Lal Roy, peshkar of the Chandpur Sub-Deputy's Court, when he was ill and under treatment in No. 3 College Square, I met one Pabitra Churn Dutt, the manager of the Chatro Bhandar student's school at 4 College Square. He requested me as a friend that a tin box containing types and other press materials was with him which he wished me to keep for him for a day or two on condition he would take it back after that time. After some discussion, though I first refused him, I consented to keep the box with me on condition as I said before. Afterwards I walked with him to his house. He took a coolie and brought down the box from upstairs, and he came with me as far as College Square, and then went off to his office. I met Ganendra Nath Sircar at 4 Raja's Lane and told him I wanted to keep the box in his house, and he inquired what the contents of the box were. I replied that there were press materials inside belonging to a friend of mine which will be taken back by him within a day or two. About 9 A.M. on the 16th, I made over the box to Ganendra in his house downstairs in the presence of another man whom I personally do not know. I know him by sight. Then I left Ganendra's and returned home. The key of the box was not with me, but with Pabitra. This is the box (*Exhibit I*). Then I was unemployed. I was so busy looking out for work that I forgot all about the box. On the 18th May 1908, at 7-30 P.M., Pabitra and another man met me at my house at 67 Maniktolla and asked me to return the box. I said the box was in a house near his house, I would point it out and return it. Pabitra, I and the other young man came near Raja's Lane. Pabitra gave me a key and asked me to go in and open the box and take away two revolvers. On hearing this I begged with folded hands and said "kindly take away your box." Then I said "*gohmal* is going on in Calcutta. You are throwing me in such a condition when there is no friend of mine here." Then Pabitra said, "I have heard that my house will be searched, so I do not like to take away the box to-day. I shall take it the next day." Then I became angry and remonstrated with him. Then I took the key from Pabitra who instructed me and went to Ganendra's house upstairs, into Ganendra's mother's room, where the box was. I opened it and took out two revolvers covered with paper. At that time I did not see the contents of the box, and up to the present moment I do not know what it contains. I made over the two revolvers to Pabitra in his office room at 4 College Square. Then I returned home. I came to know in this Court what the contents were.

[The accused then related about his going to the Police Court on the 19th in connection with the case of Phanindra Nath Mitter, the editor of the "*Jugantar*," and about his arrest there, and continued:]

"On the 20th May I came to learn that Ganendra had made a statement against me. On the 21st I came to the Court to surrender, and inquired of Manoj Mohan Bose, pleader, if there was any warrant against me. He said he did not know, and when a warrant was issued I should surrender. In this way I was hiding myself in Calcutta. At that time I was informed that Pabitra Dutt, Kartick Dutt and Narendra Nath Bose and others held a meeting and

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decided that they would kill me, and Kartick stood forward to do so. On hearing this I ran away and left Calcutta."

[The accused then gave an account of his first stay at Benares, his flight from there under fear of assassination, and his ultimate return to the city, and continued:]

"In Chaitro 1315 I returned to Benares. I fell ill and was bedridden in the house of my sister, Harimati Dabi. On the 19th December 1909, Chandi Das Mukerjee arrested me in her house and brought me down to Calcutta. We reached here on the 21st when I was placed before the Court.

I was told by Purna Babu that my sister has been cited as a witness in this case and a subpoena has been sent against her to Benares. On hearing this, that a Hindu Brahmin *pardanashin* young lady would be dragged into Court, I became anxious and saw the Commissioner and Deputy Commissioner of Police, and Purna on that very day, fell at their feet and requested them not to drag my sister into Court. The Commissioner and the Deputy Commissioner told me that if I made a true statement they would request the Magistrate to show leniency and mercy on me. On Thursday last the Deputy Commissioner and Purna saw me in the Presidency jail, and there I fell at their feet and requested them not to cite my sister. They could rather kill me. I wrote out a statement addressed to the Commissioner of Police with a forwarding letter. On Friday, at noon, the Deputy Commissioner and Purna saw me in the jail and got that written statement signed, and said they would send a telegram to Benares stopping the service of a subpoena issued against my sister. They also saw me in the Central Lock-up. I fell at their feet and wanted to know whether my sister had been informed not to attend. They said my sister had not been informed as yet. After my statement was recorded she would be informed. I ask for mercy.

Q. Is the statement made by you voluntarily?

A. I would not have made this statement had I not been pressed by Purna Babu that he would cite my sister as a witness and drag her into Court and expose her, and he also threatened me he would institute two other cases against me. He said, if I made my statement in this case he would not do so. I did no act of lawlessness or sedition. Only for six months I served as manager of the "*Jugantar*." I had no connection with the association of any conspirators or any society or club belonging to any conspiracy.

(Sd.) D. Swinhoe,—14-3-10.

Accused asks that this statement should not be shown to his counsel, or pleader for the prosecution, or to the press, as, if it gets out he has made such a statement he will be killed."

(Sd.) D. Swinhoe,—14-3-10.

(Sd.) Taranath Roy Chowdhry,—14-3-10.

On the 16th March the accused retracted the above statement altogether, and filed another statement before the Chief Presidency Magistrate, alleging that on the 21st December 1909 Purna Chunder Lahiri asked him to make a statement and

promised to save him, but he refused to do so ; that on the 12th January 1910 Lahiri again told him that if he made a statement they would consider whether another case against him under section 121 of the Indian Penal Code, would be proceeded with or not, but he again declined ; that on the 17th January Lahiri saw him in the Presidency Jail and tried to induce him to become an approver just like one Panna Lal Chatterjee who has been given Rs. 3,000, and that on his refusal Lahiri threatened him. The accused further stated that on the 9th March Lahiri informed him that his sister had been cited as a witness, and would be brought down and kept under police custody until the case was over ; that on the 10th he was taken to Lahiri, the Deputy Commissioner being then present, and Lahiri told him to write out his statement, and he did so on condition his sister was not cited as a witness ; that Lahiri dictated and he made notes from which his statement was subsequently written out ; that on the 11th he saw Lahiri and the Deputy Commissioner at No. 2 Corridor, and added some words to the statement at the request of the former, who also asked him to make the same statement before the Magistrate ; and that on the 14th Lahiri asked him to make the statement according to his instructions, and to request the Magistrate not to supply any one with a copy of it, and that the summons on his sister would then be cancelled. He concluded by saying that he never saw the tin box before he came to Court, and that he falsely identified it on the former occasion under Lahiri's direction.

Some other prosecution evidence was taken and the prisoner was subsequently committed to the High Court.

Purna Chandra Lahiri was examined at the trial and admitted that he saw the prisoner on the 21st December 1909, the 12th and 17th January 1910 alone, and on the 9th, 10th and 14th March with the Deputy Commissioner, but he denied that he ever promised or induced or threatened him, and stated that the Deputy Commissioner also never did so as far as he knew. He said that a subpoena was taken out against Hari-mati Debi on the 8th February 1910, but that neither he nor

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the Deputy Commissioner at any time held out hopes to the prisoner that she would not be called as a witness if he made a statement. In cross-examination he stated that on the 21st December he asked the prisoner to make a statement, and told him that if he did so it would "simplify" the case, which he explained as meaning that he desired to know "how far he was guilty in the whole conspiracy." He further said that he might have told the accused, on the 12th January, that there was a case under section 121 of the Indian Penal Code against him, but did not promise to refrain from proceeding with it. To the Court he said that the accused appeared to him to be under the impression that, if he made a statement, his sister would not be called as a witness.

Mr. Teggart, Deputy Commissioner of Police, who was also examined at the trial, denied that any inducement, threat, or promise had been made to the prisoner. He said that the prisoner had requested him, on the 9th and 14th March, not to cite his sister as a witness, but that he (witness) told him that he had no power in the matter.

The statement of the accused, taken by the Chief Presidency Magistrate on the 14th March, was tendered in evidence and objected to.

*Mr. N. C. Sen*, for the prisoner. The statement is inadmissible, as the Magistrate did not comply with the provisions of sections 164 and 364 of the Criminal Procedure Code. There is no certificate. Even if it is not a confession it is inadmissible. A statement by the accused, not amounting to a confession, can only be taken at the close of the evidence for the prosecution, not in the middle of it: see section 209. Sections 209 and 342 only enable the accused to explain circumstances in the evidence against him, and not to make incriminating statements. If the accused makes a confession during the inquiry, it can be recorded under section 164, otherwise the Magistrate should tell the accused to wait till the prosecution has closed and then to make the statement. If the accused pleads guilty in an inquiry preliminary to commitment, the Magistrate can-

not accept the plea till the end of the prosecution case : *Queen-Empress v. Bhairab Chunder Chuckerbutty* (1) at pages 713, 716, 717. The confession is not voluntary. It appears on the face of the document that it was made in consequence of inducement relating to the proceedings against him : see section 24 of the Evidence Act, *Empress v. Asghar Ali* (2) and *Queen-Empress v. Uzeer* (3). Section 287 of the Code refers to statements taken under sections 209 and 342, but this statement was not made under the latter sections. If it is inadmissible, it ought to be rejected now, and not put to the jury : *Reg v. Garner* (4).

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*The Standing Counsel* (Mr. Ali Imam), for the Crown, instructed by Mr. Hume, *Public Prosecutor*. The statement is admissible under section 287 of the Code. It is not taken under sections 209 and 342, but under section 255, and is admissible under section 287. The evidence of Mr. Teggart and Purna Chunder Lahiri shows that no inducement, threat or promise was made. The statement was made voluntarily.

WOODROFFE J. I am not satisfied that the provisions of the Criminal Procedure Code allow the statement made by the accused to be admissible. Apart from that, I am not clear that the statement can be taken to be a voluntary statement, for the same document contains an allegation (whether true or not need not now be considered) that the statement is not voluntary. I must, therefore, reject it upon the objection of the learned counsel for the defence.

E. H. M.

(1) (1898) 2 C. W. N. 702.

(3) (1884) I. L. R. 10 Calc. 775.

(2) (1879) I. L. R. 2 All. 260.

(4) (1848) 1 Den. C. C. 329.