

1970

*Present : de Kretser, J.*THE QUEEN *v.* J. A. GOONETILLEKE*S. C. 826/69—M. C. Kuliyapitiya, 44853**Evidence Ordinance (Cap. 14)—Section 24—" Person in authority ".*

Section 24 of the Evidence Ordinance reads as follows :—

" A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

Held, that, for the purposes of the Section, the Superintendent of an estate is a person in authority over an accused person who is employed under him as a watcher of the estate.

¹ (1965) 62 N. L. R. 573.² (1948) 49 N. L. R. 312.

ORDER made in the course of trial before the Supreme Court.

Tilak Marapana, Crown Counsel, for the prosecution.

Eardley Perera, with *B. Kurukularatne* and *E. Ratnayake* (assigned for the accused).

November 24, 1970. DE KRETZER, J.—

The Crown in this case seeks to lead in evidence the following passages which appear in the deposition of a witness who is the Superintendent of an estate of which the accused was the watcher :—

“ The closest watch hut to block No. 2 is also about a quarter of a mile. The accused came running up to me shouting out ‘ Mahattaya Mahattaya ’ and then I got out and asked him what happened. From the way he came I thought that something had happened at that time.”

“ I told the accused not to get excited and to tell me exactly what happened and that I will look after his interest. I said that because I thought that the accused was excited. I told that I will safeguard him and to tell me exactly what happened.”

“ I told the accused not to worry, tell me everything and I will see that you will not be charged. I am the person who is in charge of this estate and the accused is under me. The accused told me that he caught the deceased in the act of stealing coconuts.”

“ Subsequently I made a statement to the Police. I told the accused not to get excited and to tell exactly what happened and that I will safeguard him, and that he will not be charged because I am aware that if a thief is caught on a coconut estate and if he tried to assault the watcher the watcher is entitled to defend himself.”

The defence objects on the ground that the witness who speaks to the matter is the Superintendent under whom the accused is an employee and that the evidence is inadmissible in view of the provisions of Section 24 of the Evidence Ordinance which reads as follows :—

“ A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction and which inducement, threat, or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

Counsel for the Crown admits "there is ample material in the depositions that every inducement and promise had been held out to the accused to make the confession he did", but he submits that the Superintendent, for the purposes of Section 24, is not a person in authority, for he submits that the phrase has been interpreted to mean a person who has the power to interfere with the criminal proceedings. He submits that the Superintendent was not in a position, even if he wanted to, to avoid a prosecution being launched and that the proof of that is that a prosecution has in fact been launched.

It appears to me that it is necessary to recognize that a person in authority can, generally speaking, be as much one who has authority or control over an employee as one who has authority over proceedings or a prosecution against him, and it appears to me that an inducement given by one in authority in either of these capacities would render the resulting confession inadmissible.

In Ceylon in the case of *Seeni v. Alagana*¹, where the facts were that the Superintendent of the estate had told the accused who was a labourer on the estate that he would do his best to get the Magistrate to let him off with a fine if she pleaded guilty, Ennis, J. upheld the contention that the provisions of Section 24 applied and the confession was irrelevant for the making of it was caused by the inducement proceeding from the person in authority over the labourer, that is the Superintendent.

In the case of *Hodgson v. George*², where the confession was induced by the following words addressed to the accused, a tea-maker on the estate, by the Superintendent "you had better tell the truth and if you do, nothing will happen to you", Wood Renton, J. upheld the contention that the confession was inadmissible as it was induced by a person in authority over the accused.

The true test appears to me to be whether the prisoner might reasonably suppose that the person giving the inducement was capable of influencing the course of the prosecution and not whether the person offering the inducement was in fact capable of influencing the prosecution, and I can see no reason, in the absence of any definition of the words "person in authority" in the context of Section 24, to consider that they refer only to a person who has the power to interfere with the criminal proceedings. In the case of *King v. Weerasamy*³ Moseley, J. cited with approval the dictum of Sargeant, C.J. in *Rex v. Navaroge Dudabhai* "the test would seem to be had the person authority to interfere with the matter and any concern or interest in it would appear sufficient to give him that authority". I am of the view that the evidence the Crown seeks to lead is inadmissible in that it has been elicited by inducement given by a person in a position of authority over the accused.

Confession ruled inadmissible in evidence.

¹ (1916) 3 C. W. R. 271.

² (1909) 12 N. L. R. 273.

³ (1912) 43 N. L. R. 212.