

QUEEN v. AMARIS APPOO.

D. C., Colombo (Criminal), 1,167.

1895.

October 23.

Evidence—Admissibility of a confession—Burden of proof—Inducement.

A statement amounting to a confession is inadmissible in evidence against an accused, unless it be proved affirmatively by the prosecution that the statement was not made under the influence of an improper inducement.

The mere fact that the statement was not made in answer to questions does not exclude the possibility of its having been made as the result of a threat or an exhortation to confess.

THE facts of the case are stated in the judgment of his Lordship the Chief Justice.

Dornhorst, for appellant.

Dias, C.C., for respondent.

23rd October, 1895. BONSER, C.J.—

This is a curious case. The appellant was tindal of a padda boat, and he and the prosecutor live somewhere near Chilaw. The appellant has been in the habit for a good many years past of

1896. **BOWSER, C.J.** bringing copperah down from the Chilaw District to Colombo for sale. In August last he brought a boat load of copperah to Colombo. The copperah belonged to a number of persons.

He took the copperah to Messrs. Freidenberg's mills, accompanied by the owners, and there sold it to Messrs. Freidenberg. They gave him a cheque for the whole amount, some Rs. 2,000. He went to the bank and got it cashed. Then the whole party went back to the boat, which was moored in the river at Grandpass, and dined and slept there on board the boat. In the morning, when they were to have settled all accounts and each person to have received his share, the appellant getting his commission, the appellant took from his waist the key of the box in which the money had been deposited the night before, unlocked it, and the box was found empty.

There seems to have been some little commotion and excitement about the loss of the money, and some one—it does not appear who—gave information about it at the Grandpass police station, whereupon the sergeant in charge sent a police officer to the boat to make inquiry. The police officer arrested the appellant and another man—a boatman—and took them to the Grandpass police station after searching the boat ineffectually for the missing money. There the owners of the copperah laid a charge against these two men of criminal misappropriation of the money. The appellant was then taken to the Kotahéna police station, and was searched by a police constable in the presence of a sergeant. A sum of Rs. 160 was found tied in a handkerchief round his thigh.

The accused were brought up the next day before the Magistrate on a report from the police, in which the names of the witnesses are given, which includes the police officer who searched the boat and the police officer who searched the appellant at the Kotahéna station. Evidence was taken by the Magistrate on the 22nd and 23rd August, and on the 23rd, on the conclusion of the hearing, the case was adjourned to the 27th, and the prosecutor's proctor put in a further list of witnesses, and that list included the name of the police sergeant at the Kotahéna station who was present when the appellant was searched. He was called on the 27th, and gave some very important evidence.

He stated that about 10 or 15 minutes after the money had been found on the appellant, and after the appellant had been locked up, the appellant told him that he had sent a sum of Rs. 1,000 to his village by one Podi Sinno, and that he had spent Rs. 90. He further deposed that the appellant did not make the statement in answer to any question put by him, but he does not explain how and under what circumstances the appellant came to make this statement.

This witness gave evidence at the trial before the District Judge, and that evidence gives quite a different colour to this alleged confession. After stating the circumstances of the discovery of the money on the person of the appellant, he proceeded thus :—

“ On this being discovered the accused voluntarily stated that he had sent a £100—no, Rs. 1,000—to his country by one Podi Sinno and that he had spent Rs. 90.” Now that conveys the impression that the appellant was so overcome by a sense of guilt at the discovery of this money concealed on his person that he at once made a clean breast of the whole matter. Of course that is not an improbable story in itself, but it is quite a different account of the matter from the account given to the Police Magistrate, and there is no doubt that the account given to the Police Magistrate is the true one, for the police constable says that about 10 or 15 minutes after the man had been locked up he called up the sergeant and had some conversation with him, but that he did not hear what was said. The police sergeant, I should remark, stated that this constable was present at the time the alleged confession was made. Of course, if that confession was really made and was admissible in evidence, the District Judge was quite right in finding the appellant guilty. But I feel serious doubt as to whether this alleged confession was properly admissible in evidence. It has been laid down by the English Judges that the onus is on the prosecution to show affirmatively that the statement was not made under the influence of an improper inducement. Now we are not told in this case how the man came to make the statement. All that the police sergeant states is that it was not made in answer to any question put by him. That does not exclude the possibility of its having been made as the result of a threat or an exhortation to confess.

1895.
BONNER, C.J.

That being so, I think that this confession was not admissible. Apart from that confession, what evidence is there against the appellant ?

There is the suspicious circumstance that the large sum of Rs. 160 is found concealed on his person. There is the statement made by the prosecutor Waas that when he woke up in the morning at 6 o'clock the appellant was not found in the boat. But no other witness speaks of his absence from the boat, and this witness does not say when he returned—and it might be that the appellant had a good explanation to give of his absence. It might have been a momentary absence to obey a call of nature, or it might have been an absence of some hours. As to that we are left in complete ignorance. On the other hand, there is in the man's favour the fact that he had been employed by these people in carrying on

1895. **BONNER, C.J.** their business of bringing down their copperah and selling it for the owners and accounting for the proceeds for many years, and that he had never before been found in default. It appears that some ten persons slept in the boat on the night in question ; and the fact that the key was found in the appellant's possession, and that he produced it and opened the box seems to me to a certain extent to tell in his favour. Had he stolen the money himself, one might have expected that he would have dropped the key overboard and protested that somebody had stolen his key and thus got at the money.

It appears to me that, apart from the alleged confession, there is really nothing tangible in the evidence to bring home guilt to the appellant ; and the fact that this confession was not produced till a late stage of the case renders me somewhat suspicious of its truth. Taking, therefore, the case as a whole, I think there is grave doubt as to the guilt of the appellant, and that effect should be given to that doubt by acquitting and discharging him.

WITHERS, J.—

I agree, and have nothing to add.
