

Present: Bertram C.J.

1920.

THE KING v. HAWADIYA *et al.*

5—P. C. Kurunegala, 5,034.

(*Second Criminal Sessions, Midland Circuit.*)

Statement made by accused implicating himself and others—Inducement offered by Police Officer—Criminal Procedure Code, s. 134—Evidence Ordinance, s. 24.

When the fourth accused was arrested before the Sub-Inspector of Police, he addressed him and said: "Tell the truth without fear. One need not be afraid to tell the truth." The accused then made a statement implicating himself and others. He then escaped, and was re-arrested. The Sub-Inspector asked him why he ran away, and he said: "Through fear I ran away, thinking I would go to jail," and thereupon the Sub-Inspector said: "Why should you fear if you are speaking the truth." Subsequently accused made the statement before the Magistrate.

Held, that the statement was not admissible in evidence.

The word "voluntary" in section 134 of the Criminal Procedure Code must be interpreted as meaning a statement not only made without any fear of menaces, but also a statement not induced by any promise or observation in the nature of a promise proceeding from a person in authority.

Barber, C.C., for the Crown.

Rajaratnam (with him *Ilangatilleke* and *Rambukwelle*), for defence.

June 1, 1920. BERTRAM C.J.—

In this case a question has arisen with regard to the admissibility of a statement made by the fourth accused. His name had been given by the Sub-Inspector, who inquired into the case, with several others, as being implicated in the crime. When he was arrested he was brought before the Sub-Inspector. According to the evidence of a police constable, who was present at the time, the Sub-Inspector

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addressing the prisoner said: "Tell the truth without fear," and, again, "One need not be afraid to tell the truth." The constable puts the expression afterwards in another way: "There is no reason why you should be afraid if you are telling the truth." The Sub-Inspector, who gave his evidence with complete frankness, said that he had no recollection of saying anything about fear to the man, but that, as he remembers it, he simply told him to tell the truth if he knew anything about the case. He did not dispute, however, that the constable's recollection might be correct. The prisoner then made a long statement implicating himself and several others. He was taken from the village where he made the statement to the police station at Kurunegala. Here he escaped. After his recapture the Sub-Inspector asked him why he ran away. He said: "Through fear I ran away, thinking I would go to jail." The Sub-Inspector said: "Why should you fear if you are speaking the truth." He was, thereupon, taken before the Magistrate. He there offered to make a statement to the Magistrate. The learned Magistrate, in order to satisfy himself that the statement was voluntary, said to the man: "If any one has been frightening you tell me." I should add that the constable when asked what he understood to be the meaning of what the Inspector said to the prisoner before the first statement was made replied: "I understood that to mean that people who tell the truth are sometimes pardoned." The Sub-Inspector is in no way to be criticised for the observations which he made to the prisoner. I think he made them simply as a moral exhortation, and that they are not an infringement of section 133 of the Criminal Procedure Code. But the question is, How would they impress the mind of the prisoner? In my opinion section 134 of the Criminal Procedure Code was intended to give effect to the principle embodied in section 24 of the Evidence Ordinance. The word "voluntary" must be interpreted there as meaning a statement not only made without any fear of menaces, but also a statement not induced by any promise or observation in the nature of a promise proceeding from a person in authority. Section 24 is intended to give effect to the English principle that confessions must be voluntary in the sense I have explained. It has been repeatedly held in England that if a person in authority says: "It might be better for you to tell the truth and not to lie," or "You had better tell the truth, it may be better for you," no statement so induced is admissible in evidence. I think the prisoner would regard the observations made by the Sub-Inspector, both before his original statement and after his recapture, as being all connected, and that he would draw the inference that it would be better for him when he was produced in the Court to make a statement to the Magistrate. In these circumstances, I feel bound to exclude that statement.