

Emperor Vs. Misri

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Court : Allahabad

Decided On : Jul-12-1909

Reported in : (1909)ILR31All592

Judge : George Knox, C.J.; Banerji,; Richards,; Griffin and; Alston, JJ.

Appellant : Emperor

Respondent : Misri

Judgement :

George Knox, C.J.

1. The question which has been referred for the consideration of the Full Bench is, whether under the circumstances which will be presently pointed out, evidence was admissible to show that an accused as a matter of fact did go to a certain place and there produce certain ornaments. The circumstances referred to are briefly these. One Musammat Misri has been found guilty by the Court of Session of the murder of a girl for the sake of her ornaments and sentenced to death. Part of the evidence against her consisted of the fact that she took the police and others to a certain place, and there pointed out and produced certain ornaments, which are proved to have been ornaments worn by the child immediately before it's disappearance. The learned Judges of this Court, on considering the case submitted to them, found as a fact that the police officer made, or caused to be made, a promise to the accused, prior to her pointing out the ornaments, to the effect that if she produced the girl's ornaments she would be let off. They also found that the discovery of the ornaments by the accused was caused by this promise. It will be seen that what we have to consider is not the admissibility of statements, if any, made by the accused person, but merely, whether evidence as to the conduct and acts of the accused, resulting from, or at any rate committed before the inducement from the police officer can be said to have been fully removed, is or is not admissible.

2. Mr. Dillon, who undertook, at the request of the Court, to argue the case on behalf of the accused person, relied upon Section 163 of the Code of Criminal Procedure. He pointed out, that this section was not merely directory, but imperative and prohibitive. While there was nothing in the Criminal Procedure Code to show what will be the result of any disobedience of the law, he contended that, by the general rules of interpretation of Statutes, it should be held that such illegality resulted in nullification of all that followed, or could be said to follow, directly from it. The Indian Evidence Act, which was brought upon the Indian Statute book at the same time as the Code of Criminal Procedure of 1872, and was to come into force on the same date, was an Act, as its preamble shows, for the consolidation, definition and amendment of the law of evidence. We are of opinion that it is to the Indian Evidence

Act, and not to the Code of Criminal Procedure, that we have to look as to whether the evidence in point is or is not admissible, the more so as there are to be found in the Criminal Procedure Code certain sections, in chapter XLI entitled 'Special Rules of Evidence.' If the Legislature had thought it necessary in criminal cases to depart from the general rules laid down in Act No. I of 1872, it is more than probable that any such exceptions would be found in the chapter in question. There are no exceptions to be found there on this particular point.

3. The law as to confessions is stated in Sections 24 to 30 of the Indian Evidence Act of 1872. The Act justly views all confessions with something of suspicion. In Section 24 it lays down that the 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 and sufficient in the opinion of the Court to give the accused person grounds, which would appear to him reasonable, for supposing that by making such confession he would gain any advantage, or avoid any evil of a temporal nature, in reference to the proceedings against him. Then follow sections which state that no confession made to a police officer is to be proved, as against the person accused of any offence, and that no confession made by any person whilst he is in the custody of a police officer, unless made in the immediate presence of a Magistrate, shall be proved against him. Last of all comes Section 27, which provides that when any fact is proved to be discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved. The object of this section was to provide for the admission of evidence which, but for the existence of this section, could not, in consequence of the preceding sections, be admitted as evidence. By its information, even if it amounted to a confession and was made to a police officer under any circumstances, could be proved as against the accused, or rather so much of it could be proved as related distinctly to the fact thereby discovered. The section does not profess to and does not deal with evidence as to the conduct or acts of the accused, which is admissible under Section 8 or any of the preceding sections of the Indian Evidence Act and is subject to no limitation so long as it is relevant.

4. The learned Counsel who appeared for the accused wished us to limit the force of Section 27 and to read it as qualifying only Section 26 and not Sections 24 and 25. We see no ground for such limitation, and we hold that that section is a qualifying section to the three sections which immediately precede.

5. Our answer to the reference then is that, under the circumstances set out by the referring Judges, evidence was admissible to show that the accused as a matter of fact did go to a certain place and there produce the ornaments in question.

6. The case was then laid before EICHAEDS and Alston, JJ. Their Lordships after dealing with the evidence passed the following order:

7. Of course in weighing evidence of this kind obtained under an inducement consideration must always be given to the fact that the evidence was in all probability secured by the promise held out. There may be cases where the circumstances are such; that the fact that the discovery was induced by a promise would raise a doubt as to the genuineness of the discovery and render the evidence almost worthless. In

the present case, however, we think there can be no doubt that the discovery was perfectly genuine.* * * * ?We dismiss the appeal, confirm the conviction and sentence and direct that the latter be carried into execution according to law.

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