Emperor Vs. William Cooper

Emperor Vs. William Cooper

SooperKanoon Citation : sooperkanoon.com/331688

Court : Mumbai

Decided On : Mar-13-1930

Reported in : (1930)32BOMLR747

Judge : Mirza and ;Broomfield, JJ.

Appeal No. : Criminal Appeal No. 18 of 1930

Appellant : Emperor

Respondent : William Cooper

Judgement :

Mirza, J.

1. The appellant, original accused No. 1, was tried along with two others, original accused Nos 2 and 3, before the Chief Presidency Magistrate, Bombay, for offences under Section 468 read with Section 109, p. 420 read with Section 109, ands. 420 road with Section 120 B of the Indian Penal Code, was convicted of those offences and sentenced to eighteen months' rigorous imprisonment. In convicting the appellant the Magistrate has relied on a written statement which accused No. 3 put in after the close of the prosecution case in answer to the question put by the Magistrate : ' What do you wish to say with reference to the evidence given and recorded against you ' He said : ' I got these false Goa lottery tickets printed at No. 1's press. Cooper (accused No. 1) made all the tracings. I

have stated in full in my written statement the circumstances in which I got these tickets printed.' The written statement gives a full and detailed account of how the offences charged against the accused were committed by all the accused and one Coutinho who was not before the Court. Accused No. 3 pleaded guilty to all the charges and has inculpated himself and the other accused in the commission of the offences by his statement before the trial Magistrate.

2. The question we have first to consider is whether it would be permissible under the provisions of Section 30 of the Indian Evidence Act to take accused No. 3's statements into consideration against accused No. 1 and, secondly, if these statements are admissible in evidence, what value we should attach to them against accused No. 1. Section 30 of the Indian Evidence Act provides that-

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persona is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

3. This provision of the Indian Evidence Act is against the general rule of English law and also the rule which prevailed in India prior to the passing of this Act. The general rule of English law on this subject is that the confession of an accused person is evidence only against himself and cannot be used against others. On this account this section has always been strictly construed. It is clear in this case that this was a joint trial and if the statement made by accused No. 3 can be said to be a confession which was ' proved ' at the trial it would be permissible to take it into consideration against accused No. 1 under the provisions of Section 30 of the Indian Evidence Act. Mr. Thakor on behalf of the appellant relies upon a dictum of Garth C. J. in Empress v. Ashootosh Chuckerbutty ILR (1878) Cal. 483 for the view that a confession under Section 30 must not be one made at the trial. The learned Chief Justice has observed : ' The word ' proved' in Section 30 must refer to a confession made beforehand.' Mr. Thakor has also relied on Emperor v. Mahadeo Prosad ILR (1923) All, 323, where Mr. Justice Walsh has held that (p. 326; 'the expression 'proving a confession' is...inapplicable to the procedure where

the Judge asks questions and an accused person gives explanations under a special section provided for that purpose.' The questions which the Magistrate put to accused No. 3 were so put under the provisions of Section 342 of the Criminal Procedure Code. There is no indication in the language of that section that the answers given by one accused could be taken into consideration against his co-accused in their joint trial for the same offence. The learned Government Pleader has argued that although the language of Section 342 speaks of an accused person in the singular it must be held to apply equally to cases where the number of the accused is more than one. Although that is so there is no provision in Section 342 which would seem to allow the statement made by one accused person to be taken into consideration against the other accused in the same trial as contended for by the Government Pleader before us. For that provision of the law we can rely only upon Section 30 of the Indian Evidence Act.

4. In Re Bati Reddi ILR (1923) All. 323 Mr. Justice Ayling drew a distinction between a trial before a Sessions Court where a person pleads guilty at the outset and is convicted on his plea and cannot be tried jointly with others against whom the trial proceeds and the trial before a Magistrate. In the case before him all the accused were tried jointly before a Magistrate and some had confessed the crime and implicated their co-accused in statements made under Section 342 of the Criminal Procedure Code and after their statements had been recorded and the evidence for the prosecution closed had pleaded guilty under Section 255 (1) of the Criminal Procedure Code. The Court held that these statements could be taken into consideration against the other accused under the provisions of Section 30. In Empress v. Lakshman Bala ILR (1882) 6 Bom. 124 the judgment of this Court implied that if the statement of the accused implicating their co-accused had been made by them at the trial in the presence of the co-accused whom those statements implicated in the offence they could have been taken into consideration under the provisions of Section 30 of the Indian Evidence Act.

5. The language of Section 30 does not seem to me to justify a distinction between a confession made by an accused person before the trial and in the course of the trial, In my judgment, the statements made by accused No. 3 would be admissible under Section 30 although they were made in the course of the trial.

6. The next question is, what weight should be attached to these statements of accused No. 3 against accused No. 1. The statements of accused No. 3 were made after accused No. 1 had made his statement. It does not appear from the record that the learned Magistrate put any further questions to accused No. 1 with a view to enabling him to explain the allegations which were made against him in the statement of accused No. 3. Accused No. 3 on his own showing is guilty of the offences charged against him. He pleads guilty and prays for mercy. No doubt he has been convicted by the Magistrate and sentenced to twelve months' rigorous imprisonment in the same trial. But the circumstance under which accused No. 3's statements were made seem to detract considerably from the weight which the Court might otherwise have attached to them. The statements are not on oath. Accused No. 1 has had no opportunity of subjecting accused No. 3 to cross-examination on those statements. The statements admittedly are those of an accomplice made after the close of the case for the prosecution and after the statement of accused No. 1. In my opinion it would not be safe to attach any weight to these statements of accused No. 3 in so far as they inculpate accused No. 1.

7. Eliminating the statements of accused No. 3 from our consideration as being of no value we have next to consider whether the evidence in the case apart from these statements would justify the conviction of accused No. 1. The learned Magistrate has relied upon the evidence of the two witnesses for the prosecution, Motiram Chandu and Ramchandra Ramji. He has also relied upon certain circumstances in the case which seem to raise an inference of guilt against accused No. 1, viz., the unsatisfactory nature of the explanation given by accused No. 1 in his statement during the trial and the presence of accused No. 2 at the press at 8 p. m. on the night when the offence was committed. [After discussing the evidence of the two witnesses in detail, the judgment proceeded :]

8. There is nothing in the evidence of these witnesses which, beyond raising a suspicion against accused No. 1, would go to prove that he had participated in the offence with which he is charged. With regard to the unsatisfactory nature of accused No. l's statement, it is for the prosecution to make out a prima facie case against the accused in the first instance. If no such case is made out the accused

is not bound to give any explanation. The explanation given by accused No. 1 in his statement if true would appear to show that he is a gullible person who implicitly believed all the representations that were made to him by a comparative stranger like accused No. 3. This explanation does not appear to be inconsistent with the probabilities of the case. Accused No. 3 must be credited with possessing a sharp intellect and pushful manners to have committed an offence of this nature as admitted by him. It is by no means an impossible supposition that a man of this nature might by his plausible manners succeed in imposing on another who possesses a less acute intellect than he. The circumstance that accused No. 2 was present in the press that evening has not been satisfactorily explained by accused No. 1 in his statement. That again seems to create only a suspicion against accused No. 1 but is not sufficient by itself to raise a conclusive presumption of guilt against him. In my opinion on the evidence as it stands, if no value is to be attached to the statement of accused No. 3 in so far as it inculpates accused No. 1, the conviction of accused No. 1 should not be sustained. The conviction and sentence of accused No. 1 should be reversed and he should be acquitted and discharged.

Broomfield, J.

9. The prosecution in this case arose from certain information given by accused No. 3 to the police. Accused No. 3 was inculpated by the accused in another case in connection with the issue of forged lottery tickets which was decided in August 1929. On September 9, he went to Inspector Dyer and on that date and subsequently he made certain statements which were reduced to writing. It would have been possible presumably to produce accused No. 3 before a Magistrate, in which case these statements of his might have been formally put in evidence. This, however, was not done. What happened was that after the evidence for the prosecution had been recorded at the trial accused No. 3 was asked by the Magistrate what he wished to say with reference to the evidence recorded against him. He then said 'I have stated in full in my written statement the circumstances in which I got these tickets printed ', and thereupon a long written statement was placed upon the record purporting to give a detailed account of the whole affair and making various allegations against accused No. 1 in the case. A preliminary

question which we have to consider is whether this written statement of accused No. 3 so put in is a confession which can be taken into consideration under Section 30 of the Indian Evidence Act. In the commentary on Section 80 in Woodroffe and Ameer Ali's ' Law of Evidence' the opinion is given that ' a confession duly made at any time by one of several accused persons who are under trial jointly for the same offence can be taken into consideration under Section 30 as against the other accused persons'. The authority for this proposition, however, is a case in some unauthorised report which is unfortunately not available to us. The name of the Court is not given and it is impossible for us to say what weight should be attached to it. My learned brother has already referred to the dictum of Garth C. J. in Empress v. Ashsotosh Chuckerbutty ILR (1878) Cal. 483. That was an obiter dictum. The question whether a confession made at the trial was within the scope of Section 30 was not actually before the Court. On the other hand, in several reported cases it appears to have been assumed that Section 30 would apply to such a confession. In Empress v. Lakshman Bala ILR (1882). 6 Bom. 124 and in In the matter of the Petition of Chandra Nath Sirkar ILR (1881) Cal. 65 statements made at the trial by one accused were held inadmissible against another on the ground that they were not made in the presence of that other. The view of the Court in both cases appears to have been that apart from that irregularity the confessions would have been sufficiently 'proved' within the meaning of Section 30, although the point is not expressly decided. In Queen-Empress v. Pirbhu ILR (1895) All. 524 and Queen-Empress v. Paltua ILR (1895) All. 53 confessions at the trial by one accused incriminating another were held inadmissible on the ground that the accused making the confession had pleaded guilty. It was held, therefore, that the confessing accused was not being jointly tried within the meaning of Section 30. Apart from that circumstance, however, the view of the Court would apparently have been that the confessions would have been within the terms of the section. In Re Bati Reddi ILR (1913) Mad. 302, which has been referred to by my learned brother, we have a definite authority for the view that Section 30 does cover confessions made at the trial. I think there can be no doubt that the general practice has been to regard such confessions as admissible under Section 30, although I should say that statements made from the dock by one accused against another have not usually

been treated with much attention, and a case like the present in which a long written statement is put in from the dock must be quite exceptional. Since the commentary in Woodroffe and Ameer Ali was written there has been a decision of a Judge of the Allahabad High Court in Emperor v. Mahadeo Prasad ILR (1923) All. 323 to the effect that (p. 326) 'the expression 'proving a confession' is...inapplicable to the procedure where the Judge asks questions and an accused person gives explanations under a special section provided for that purpose'. In the course of his judgment in that case Walsh J., after referring to the fundamental principles of English criminal law that an accused is entitled to know what the evidence against him is before he is called upon for his defence and that when the prosecution case is closed it cannot be re-opened or added to, observed as follows (p. 325):-

Every Judge in such a case in England, where statements are made from the dock after the case for the prosecution is closed, warns the jury that they must not take into account anything which one accused in the dock may say about the other. To use, therefore, a statement made in the dock by one accused against the other in a joint trial, offends against at least two of the fundamental principles of the criminal law. The Legislature in India saw fit to create an exception which is contained in Section 30 of the Evidence Act. In my opinion that must be construed with reference to the fundamental principles to which it creates an exception. If the section is carefully read, I think nobody, bearing in mind the fundamental principles which I have just mentioned, ought to have any difficulty in coming to the conclusion that what is contemplated is formal proof by the prosecution of a confession previously made.

10. I think it must be admitted that the reasoning in this case is very cogent. Section 30 of the Indian Evidence Act must certainly have contemplated a confession 'proved' as part of the prosecution case, to which the accused has an opportunity of replying, and not a statement made by a co-accused from the dock in reply to questions by the Court or a written statement handed in at that stage. The language of Section 30, ' when a confession is proved ' is clearly not very appropriate to statements made or put in from the dock. If statements made by an accused in reply to questions under Section 342 of the Criminal Procedure Code

were intended to be admissible as evidence or to be taken into consideration against other accused one would have expected that the section would provide for it. But it does not do so. On the other hand, there is no reason for regarding the language of Section 30, when it speaks of a confession and of proving a confession, as being in any way technical. The statement of accused No. 3 in this case is undoubtedly a confession. It was produced by accused No. 3 himself and it appears to have been read out in Court, that is to say, it would seem to have been ' proved ' in the sense which was regarded as sufficient in Empress v. Lakshman Bala and in other cases to which I have referred. I should not be prepared to go so far as to say that the language of Section 30 is not wide enough technically to cover a confessional statement so put in.

11. At the same time I have no hesitation in holding that under the circumstances of this case the statement of accused No. 3 is quite worthless and ought not to be relied upon in the least. If the statement had been proved as part of the prosecution case, if there had been an opportunity of comparing it with previous statements made by accused No. 3 to Inspector Dyer, it might then have been said to have some value. Even in that case it would have been obviously inferior to the evidence of an accomplice as not being given on oath and not subjected to cross-examination. Even in that case we should have to consider that the statement is not corroborated by any other evidence as to some of the most material particulars, for instance, as to the alleged preliminary conspiracy, and that on the other hand it is contradicted, for instance as to the time taken over the printing of the tickets, by the evidence of the prosecution witnesses. But as it is, the statement having been simply put in after the prosecution case was completed, and accused No. 1 not having even been questioned about it, it has, in my opinion, no value at all.

12. The evidence of the important witnesses Motiram and Raiuahander has been fully discussed by my learned brother....These witnesses are no doubt the accused's servants and, as the Magistrate says or implies, they may possibly have tried to shield him, but their evidence must be taken as it is.

13. The facts which have been proved and admitted in the case undoubtedly raise the strongest suspicion against accused No. 1. It is certainly not a case in which it can be said that he is left without a stain on his character. It is proved and admitted that he exercised a general supervision over the printing operations. It seems on the face of it unlikely, therefore, that the printing of the numbers on the tickets can have escaped his notice. But it is admitted that he was not present all the time, and the evidence of Motiram and Ramchander does not clearly show that the printing of the numbers was done while he was there. Nor would even his knowledge of the facts of the printing of the numbers necessarily imply his guilt, unless he could be fixed with the knowledge that the numbers were the winning numbers in a lottery which had been already drawn before that date. We know now that the lottery for which these tickets were printed on June 6 had already been drawn on June 3. But if the statement of accused No. 8 is discarded, as it must be, there is no convincing evidence that accused No. 1 was aware of that fact. The printing operations were all carried through at night. That, however, is not a very unusual circumstance in the case of urgent work. The explanation offered by the accused is that there was special urgency about the matter owing to the death of the Governor of Goa about that time. But it appears also that there was a perfectly good reason for the printing of the tickets at night in this case. Accused No. 1 did not possess the perforating machine which was required for the production of these tickets. He had to borrow one from the proprietor of a neighbouring printing press. The witness Ignatuis Monteiro, and this witness has stated that he was not able to lend the machine until after 6 o'clock in the evening and that he required it again the next morning. If, therefore, accused No. 1 was to print the tickets at all it had to be done at night.

14. The Magistrate has given various reasons in his judgment for coming to the conclusion that accused No. 1 must have known the nature of the work which was carried under his general supervision. He has pointed out quite properly that accused No. 1 had no previous acquaintance with accused No. 3, had no particular reason to place reliance on his statements, and yet nevertheless appears to have made no inquiries. That is true and it is undoubtedly suspicious. On the other hand, accused No. 3 is by his own admission a criminal and a scheming criminal. It is very possible that he is a persuasive and plausible person

and it does not seem to be beyond the bounds of reasonable probability that accused No. 1 may have been taken in by him. It has been pointed out also that the printing of a thousand copies of these tickets seems to be inconsistent with accused No. l's own statement that it was merely a trial order. Accused No. 1 has stated that the original idea was that only twenty or twenty-five impressions were to be taken, but when the work was about to commence accused No. 3 said that he had received a telegram asking if there could be a trial run of a thousand copies to show the speed of the machines. Here again accused No. l's story can hardly be said to be probable, but it is not incredible, and in this respect also a great deal obviously depends on the question whether he knew that the lottery had already been drawn. Ii it were clear that he had that knowledge, the printing of a thousand tickets might be taken as fairly conclusive evidence of the fraudulent nature of the business in which he was taking part. Without satisfactory proof of that knowledge I do not think that the conclusion is altogether obvious. Then again the presence of accused No. 2 at the press that night has not been very satisfactorily explained. But as accused No. 1 employed some of his own hands the employment of accused No. 2, who is a printer lay occupation, is not necessarily suspicious. The conduct of accused No. 3 has also been said to be inconsistent with the theory that accused No. 1 was ignorant of the real nature of the operations. Accused No. 1 has stated that after the printing was over accused No. 3 helped to take the bundles up to his office, where a certain number of tickets was packed into a portmanteau and the rest of them were left in the office until accused No. 3 returned to fetch them after some hours. It is urged, not without force, that under the circumstances it is difficult to believe that accused No. 1 did not know all about these forged tickets. Still it cannot be said that there is any actual proof that accused No. 1 knew anything more than this, viz., that he had printed for accused No. 3 a thousand tickets for a lottery in Goa. That he knew they were false tickets is after all only a matter of inference, once the statement of accused No. 3 is discarded. The case has caused us considerable difficulty, but on the whole I am not satisfied that it is a necessary inference from the evidence. I think it is a matter of some importance that the evidence as to the disposal of these tickets has not touched accused No. 1 in the very least. The evidence being what it is I think it may be said that there is a reasonable doubt in the case, of

which the accused must have the benefit. I, therefore, agree with my learned brother that the conviction should be set aside.

15. The conviction and sentence are set aside. The accused is discharged and acquitted and ordered to be set at liberty.