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Balmakund Vs. Emperor

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Court : Allahabad

Decided On : May-22-1930

Reported in : AIR1931All1; 129Ind.Cas.258

Appellant : Balmakund

Respondent : Emperor

Judgement :

Mears, C.J.

1. The question referred to this Bench is stated as follows by the Division Bench before whom the appeal came for hearing:

The appellant in this case made a confession. As regards the fact of the murder, we have no doubt that he killed his wife, but in a, confession he alleges certain reasons which, if true, would have an important bearing upon the nature of our decision. The matters alleged by him in justification appear to us so unworthy of belief that no Court could act upon them.

We are however told that the case of Jagdeo v. Emperor [1917] l8 Cr.L.J. 356 compels us to accept the confession as a whole, and that we are not able to choose that part of the confession which appeals to our reason and reject that which strikes us untrue and absurd.

This is a matter of considerable importance, and it is desirable to have this question settled by a Pull Bench.

2. The present Full Bench was accordingly appointed to decide the question 'whether the authority quoted above was correctly decided.' If is important to note first that in this case there was no evidence bearing on the guilt of the accused other than the confession.

3. The confession may be described as comprising two elements: (a) an account of how the accused killed the woman; and (b) an account of his reasons for doing so; the former element being inculpatory and the latter exculpatory; and the question we have to answer may be stated as follows:

Can the Court, if it is of opinion that the inculpatory part commands belief and the exculpatory part is inherently incredible, act upon the former and refuse to act upon the latter?

4. In the present case, if the answer is in the affirmative, the accused would properly be convicted of murder. If the answer is in the negative, the conviction would have to be for culpable homicide only.

5. It will be seen that if the Court is bound to accept the confession as a whole and cannot reject a part of it as inherently incredible, the result would be that the offence of the accused would be minimized, although the Court believed that the extenuating circumstances did not exist.

6. We have had a large number of authorities quoted to us and an examination of them shows that they actually establish no more than this, that (a) where there is other evidence, a portion of the confession may, in the light of that evidence, be rejected while acting upon the remainder with the other evidence; (b) where there is no other evidence and the exculpatory element is not inherently incredible, the Court cannot accept the inculpatory element and reject the exculpatory element.

7. The latter rule may have been justified in some cases on the ground that the prosecution putting before the Court for its consideration the confession of an accused person cannot, in the absence of evidence showing that any portion of it

is false, ask the Court to believe that portion of the confession which establishes the guilt of the accused, and to reject that portion of the confession which establishes his innocence or reduces the gravity of the offence; or it may have been justified in other cases on the principle that a confession is analogous to a plea of guilty and must be accepted as a whole. But, be the particular reason what it may, this rule of practice has been established and acted on for the last 100 years, beginning with the case of Rex v. Sarah Jones and Mary Jones [1827] 2 Carrington and Payne 629. While in all the cases which we have examined the exculpatory part of the confession has in fact in no single case been inherently incredible, the possibility of any distinction based upon whether the exculpatory element in the confession was or was not in itself inherently incredible does not seem to have been present to the mind of the Court. We have to decide now whether effect should be given to such a distinction.

8. In view of the fact that the two rules above stated have been applied during the last 100 years without, so far as the reports show, any attempt to engraft on those two rules the exception in question, and in view of the extreme caution with which a confession must be weighed in every case and particularly in a case where there is no other evidence to bring home guilt to the accused, we do not think that it would be expedient now to introduce that exception.

9. Our answer, then, to the reference is that where there is no other evidence to 'show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. With this answer let the reference be returned.

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