

In Re: Abibulla Rowthan Alias Kabil Rowthan and ors.

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Court : Chennai

Decided On : Apr-29-1915

Reported in : AIR1916Mad407; 30Ind.Cas.447

Judge : John Wallis, C.J. and; Coutts-Trotter, JJ.

Appellant : In Re: Abibulla Rowthan Alias Kabil Rowthan and ors.

Judgement :

1. There was no evidence before the Sessions Court against accused Nos. 2, 6 and 7 other than their own admissions in the Court below and the Sessions Court itself. The admissions in the Court below were made in answer to an invitation from the Committing Magistrate to say what they had to say. At the time when these statements were made in the Court of the Committing Magistrate the prosecution had given no evidence at all involving any one of these accused, as appears from an examination of the record of the evidence given in that Court. Section 342 of the Code of Criminal Procedure only gives the Magistrate the right to question the accused for the purpose of enabling him to explain any circumstance appearing in the evidence against him. We think that where no evidence has been given implicating the accused, the Magistrate has no right under the Statute to put questions to the accused or invite him to make a statement. We further think that if a statement is made by the accused in such circumstances, it is not admissible evidence against the accused on his subsequent trial. This is in agreement with the decision of White, C.J., in *Mohideen Abdul Kadir v. Emperor* 27 M.k 238 and the same principle was applied by Erie, J.,

in Reg. v. Berriman 6 Cox. C.C. 388 to a statement elicited from a prisoner improperly questioned by an examining Magistrate in England. The same objection applies to the answers elicited from the accused by the learned Judge at the trial; and we feel constrained to say that the learned Judge subjected the accused to a cross-examination which far outstripped anything enjoined or permitted by Section 342 of the Code. We set aside the convictions of accused Nos. 2, 6 and 7.

2. With regard to the 4th accused, there is some evidence against him, but it is practically the word of Prosecution Witnesses Nos. 1 and 2 against that of the 4th accused. The surrounding circumstances throw no light on the probabilities of the matter and we do not think it would be safe to convict on the evidence of two interested persons. We set aside this conviction and sentence also.

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