

In Re: Govinda Naidu

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SooperKanoon Citation : sooperkanoon.com/817412

Court : Chennai

Decided On : Oct-29-1928

Reported in : 118Ind.Cas.512

Judge : Waller, J.

Appellant : In Re: Govinda Naidu

Judgement :

ORDER

Waller, J.

1. The petitioner has been convicted of house breaking and theft. As far as I can see, there is no evidence whatever against him except two confession al statements made by his co-accused at the trial. It is argued that such statements are not covered by a. 30 of the Evidence Act and should, therefore, not have been taken into consideration against him. On this point the High Court of Madras is in direct conflict with the High, Court of Allahabad. Ayling, J., in In Re: Vempalli Bali Reddy 22 Ind. Cas. 157 : 38 M. 302 : 14 M.L.T. 453 : 15 Cri.L.J. 13 held that there was no reason why confessional statements made at the trial itself should not be taken into consideration under Section 30 of the Evidence Act. Walsh, J., in Mahadeo Prasad v. Emperor : AIR1923 All322 thought that what that section contemplated was formal proof by the prosecution of a confession made before the trial. The same view was expressed obiter by Garth, C.J., in Empress v.

Ashootosh Chuckerbutty 4 C. 483 : 3 Cri.L.R. 270 : 1 Shome L.R.Cr. 79 (F.B.). With great respect, I think that this construction of the language of Section 30 is the more correct. The section does not in my view refer to statements made at the trial, but to statements made before and proved at the trial. As Walsh, J., points out: 'an accused person is entitled to know what the evidence against him is before he is called upon for a defence at all, and the closing of the case for the prosecution is no mere form but, with certain exceptions, closes the door to any further evidence against him'. If a prior confession is to be proved, he can attack it by cross-examination of the witness who proves it. Against a confession made from the dock after the prosecution case has closed, he has no protection whatever. I do not, however, propose to give effect to my view or to refer the matter to a Bench. It is enough to point out that, where as here there is nothing against an accused person but a confession made by a co-accused from the dock at the trial, a conviction cannot be supported. As to the value attaching to confessions made before and, proved at the trial, I need express no opinion. The conviction is set aside. Bail bond is cancelled.