

Badan Ali Vs. Emperor

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Court : Kolkata

Decided On : Aug-28-1935

Reported in : 165Ind.Cas.127

Judge : Derbyshire, C.J. ;Costello and ;M.C. Ghose, JJ.

Appellant : Badan Ali

Respondent : Emperor

Judgement :

Derbyshire, C.J.

1. In this case a number of persons convicted of taking part in a dacoity and conspiring to take part in the dacoity were convicted under Section 395 of the Indian Penal Code and Section 395 read with Section 120-B of the same Code. They were convicted before the Sessions Judge and a jury at Chittugong. In all, 20 persons were charged and a number of them, 17 were convicted. Four of them have not appealed against their convictions and sentences and 13 of them have appealed. Those who have appealed are as follows:

1. Bakshu, 2. Abdul Sovan, 3. Ijjat Ali, 4. Makhalasar Rahman alias Bochaiya, 5. Ansur Ali, 6. Ahmadar Rahaman, 7. Sona Mia, 8. Manirajjaman, 9. Badan Ali. 10. Abdul Latif choukidar, 11. Abdul Sobhan Serang, 12. Abdul Kader alias Rabijarbap and 13. Noa Mian.

2. Badan Ali was represented before us by Mr. Hamidul Huq Chowdhury. The rest wereunpresented. The Crown was represented by Mr. Bhattacharji.

3. The ground of the appeal as put, forward by Mr. Huq is that the charge to the jury by take Sessions Judge was not a proper charge in law. The passage objected to read as follows:

I have told you, gentleman, that we have also on the record the confession of one of the accused persons, that is, of Bakshu Mia. At this stage I am screened only with the rules of law relating to the manner in which such confessional statement should be used. There is, firstly its use as against the maker, and secondly, as against his co-accused. In so far as you are concerned, the question which calls for attention is whether the confession is a true statement of facts and what value can be attached to it as a piece of evidence. It is no part of your duty to decide whether the confession was made voluntarily or, on the contrary, by reason of any inducement threat, promise or Police torture. It is for me to decide whether the confession was made voluntarily and once I have admitted it into evidence, no person here can urge before you that it was not voluntarily made. As I have said it is for you to examine the confession closely and carefully and to decide whether truth is to hi found in it. In this particular instance Bakshu has retracted; he has pleaded not guilty. Furthermore, in his statement before this Court he has set up an entirely different story. When such is the case, it is a rule of practice not to rely upon such a confession without corroboration end that corroboration must be in respect of material particulars. I have already addressed you, when dealing with the evidence of the approver, a to The corroboration necessary. By a substantive; rule of evidence, when more persons than one are tried jointly for the same offence and a confession made by one of them affecting himself and his co-accused in proved, you may take into consideration that confession not only as against the maker but as against those implicated by him. In this instance also gentlemen, around the substantive rule have grown up rules of caution and prudence. I have told you that even as against the maker a retracted confession requires corroboration. If you seek to use a retracted confession as against persons being tried jointly with the confessing accused, the fullest possible corroboration as to material particulars is necessary. You may take it that such a

confession carried practically no weight. Once again I refer you to that portion of my address relating to the evidence of an approver and you will remember what I stated as to the nature of corroboration.

4. The words objected to are:

It is no part of your duty to decide whether that confession was made voluntarily or, on the contrary, by reason of any inducement, threat, promise or Policy torture. It is for me to decide whether the confession was made voluntarily and once I have admitted it into evidence, no person here can urge before you that it was not voluntarily made.

5. In my view those words do not correctly set out the position of the law with regard to the functions of the Judge and of the jury in dealing with confessions which, it is alleged, were not voluntarily obtained. What the legal position is I will deal with-in a moment. We have, however, been through the evidence against each of the appellants in this case and there is, as regards each of the appellants, such evidence independent of this confession, and quite apart from it as would entitle a jury to come to the conclusion that each of them was guilty of the offences of which he has been convicted. More than that there is evidence independently of this confession which is called in question on which the jury must have come to the conclusion, in my view, that each of the appellants was guilty of the offences of which he was charged. We could therefore have dismissed this appeal on that ground but we were asked by the learned Advocate on each side to deal with the question of the functions of the Judge and the jury in cases where the voluntariness of confession is called in question. As I have said previously I am of opinion that the charge given by the learned Judge in the words that I have quoted is not the correct one. In my view the correct position of the law as regards confessions whose voluntariness is challenged with regard to the functions of the Judge and the jury respectively is set out in a judgment in an American case delivered by Mr. Justice Coleman in the case of *Burton v. State* 107 Ala. 108. There is no English case which deals with such a question. This case, however, in my view, states the position with such accuracy that I do not think that we could do better than cite it as an authority in a case of this kind. It reads as follows:

Whether voluntarily made or not, we hold, is a question of law, to be determined by the Court from the facts, as a condition precedent to their admission. Having been declared competent and admissible, they are before the jury for consideration. The jury have no authority to reject them as incompetent. But the jury are the sole Judges of the truth and weight to be given to confessions, as they are of any other fact. In weighing the confessions, the jury must take into consideration all the circumstances surrounding them and under which they were made, including those under which the Court declared as a matter of law, they were voluntary. In weighing confessions, the jury necessarily consider those facts upon which their admissibility, as having been voluntarily made, depends. While there is no power in the jury to reject the confessions, as being incompetent, there is no power in the Court to control the jury in the weight to be given to facts. The jury may, therefore, in the exercise of their authority, and within their province, determine that the confessions are untrue, or not entitled to any weight, upon the grounds that they were not voluntarily made. The Court passes upon (that is, considers) the facts merely for the purpose of determining their competency and admissibility. The jury passes upon (that is, considers) the same facts, and in connection with other facts, if there are other facts, in determining whether the confessions are true and entitled to any, and how much weight. The Court and jury each have a well-defined and separate province.

6. In my view that is a correct statement of the law with regard to the functions of the Judge and the jury in case 3 where the voluntariness of a confession which is sought to be put in evidence is called in question. As I have said in this case the evidence is such that the jury, in any event, must have come to the same conclusion, that they did.

7. Therefore the appeals are dismissed.

Costello, J.

8. I agree.

M.C. Ghose, J.

9. In this case the learned Advocate for the appellant is, in my opinion, right when he takes objection to this sentence in the charge, namely 'it is no part of your duty to decide whether the confession was made voluntarily or, by reason of any inducement, threat, promise or Police torture.' The learned Sessions Judge in directing the jury not to consider whether the confession was made voluntarily or not, committed an error of law. It is the function of the Judge to decide whether there is prima facie evidence for admitting the confession. When the confession has been admitted by the Judge it is the function of the jury to consider its credibility and weight and in considering the credibility and weight the jury are at liberty to consider all the circumstances of the case including those circumstances already proved before the Judge and to give evidence such credibility as they think it deserves. (See Taylor on Evidence, Section 24 p. 27.

10. I agree with the learned Chief Justice that on the facts and circumstances of this case, although the point of law is decided in favor of the appellants the convictions and sentences must stand.

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