

Ashotosh Dutt Vs. Emperor

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Court : Kolkata

Decided On : Jun-29-1921

Reported in : AIR1921Cal458,68Ind.Cas.413

Judge : Newbould and ;Suhrawardy, JJ.

Appellant : Ashotosh Dutt

Respondent : Emperor

Judgement :

1. This Rule is directed again 51 an order of tie Magistrate of Alipore convicting the petitioner, Ashotosh Dutt, under Section 379, Indian Penal Cede.
2. The point in this Rule in whether a certain statement made by the appellant was admissible in evidence having repaid to the provisions of Section 24 of the Evidence Act. The complainants story is that after the theft be went home and told his brothers what had happened and they decided that the best chance to get back the money was to get hold of the appellant coon and make him give it up so that they did not inform the Police. When they found the appellant he told them that if they did not beat him he would tell them where the money was and eventually gave them certain information. The learned Sessions Judge held that Section 24 wan not admissible, because the persons to whom the statement was made had no authority over the appellant. But it is settled law that the words 'person in authority' in Section 24 include the prosecutor.

3. As regards the question whether the making of the confession was caused by any inducement, the evidence on the record does not clearly show exactly what was said. But in the case of *Beg v. Thompson* (1893) 2 Q. B. 12 : 62 L. J. M. C. 93 : 5 B. 392 : 69 L. T. 22 : 41 W. Rule 525 : 17 Cox C. C. 641 : 57 J. P. 312. the Court of Crown Case Reserved held that it was the duty of the prosecution to prove that in case of doubt, the prisoner's statement was free and voluntary, and the following dictum in the case of *Reg. v. Warringham* (1851) 2 Den. C. C. 447 : 15 Jur. 318. was cited with approval that the Judge will require the prosecutor to show affirmatively to his satisfaction that the statement was not made under the influence of improper inducement and in the event of any doubt subsisting on this head will reject the confession. On this authority we hold that if in the circumstances of the case it appears to the Court that there is reason to suspect that if the confession was obtained by inducement so as to bring it under the provisions of Section 24, the prosecution must show that the confession was freely made. In this case having regard to the admission of the complainant that he was willing to drop the Police proceedings if he got his money back we are bound to suspect that some such offer was made to the accused and that it was this that induced him to confess. We also find that in cross-examination the complainant said, we spoke to him, that is, the appellant, in flattering terms, so he said he would realize the money after dawn. Having regard to the state of the evidence we think that the admission made by the appellant ought not to be proved as it was inadmissible under Section 24 of the Evidence Act. The case against the appellant depends mainly on the evidence of the complainant. Whether his evidence should be believed without strong corroboration or whether there is the evidence sufficient to corroborate him apart from this admission we express no opinion.

4. We set aside the conviction and sentence passed on the petitioner and direct that he be re tried.