

(1921) 12 BOM CK 0024

Bombay High Court

Case No: None

Emperor

APPELLANT

Vs

Haji Sher Mahomed and Others

RESPONDENT

Date of Decision: Dec. 21, 1921**Acts Referred:**

- Evidence Act, 1872 - Section 25

Citation: 75 Ind. Cas. 70**Hon'ble Judges:** Fawcett, J**Bench:** Single Bench

Judgement

Fawcett, J.

During Police inquiries into the present case the accused No. 16, Mahomed Ubhayya, was questioned by an Inspector of Police, Mr. Satham, regarding a bundle of ammunition which he produced. He is said thereupon to have made a statement that it had been given to him by Mahomed Jaffer and Mahomed Karim and it is sought to put in evidence this statement to the Police Inspector. The question is whether it is not excluded as being a confession made to a Police Officer u/s 25 of the Evidence Act. Mahomed Jaffer is accused No. 11 and Mahomed Karim was accused No. 10, but has since been made an approver. Mahomed Karim has given evidence that this particular ammunition belonged to the gang of dacoits, of which he and accused Nos. 11 and 16, with others, were members.

2. Mr. Velinkar, for the Public Prosecutor, argues that this statement does not amount to an admission of an incriminating circumstance so as to constitute a confession within the meaning of Section 25, and he relies upon the case of Emperor v. Mahomed Ibrahim 5 Bom. L.R. 312 where a statement made by an accused to a Police Officer that a box, which he was found carrying away at night, belonged to him, was held to be admissible, inasmuch as it did not amount directly or indirectly to an admission of a criminating circumstance. There is of course no doubt that a statement of a self-exculpatory kind, which, if true, is in favour of the

accused, is admissible, in spite of the fact that, if it is shown to be false, it raises an inference of guilt; and a distinction must be made between such statements and statements which, although intended to be made in self-exculpation and not as a confession, nevertheless contain an admission of an incriminating circumstance, on which the prosecution relies. Instances of the latter class of statements are to be found in *Imperatrix v. Pandharinath* 3 Ind. Dec. 479 and *Queen-Empress v. Javesharam* 10 Ind. Dec. 245. The leading cases on the subject are collected in the judgment of Carnouff, J., in *Barindra Kumar Ghose v. Emperor* 7 Ind. Cas. 359 : 37 C. 467 : 14 C.W.N. 1114 : 11 CrI. L.J. 453 and I agree with his conclusion that it is for the Court to decide, according to the particular circumstances of each case, whether a statement of an accused amounts to a confession or not. In this particular case the statement of accused No. 16 that Mahomed Jaffer and Mahomed Karim had given him the ammunition is clearly of an incriminating kind, inasmuch as both Mahomed Jaffer and Mahomed Karim are alleged by the prosecution to have been members of the same gang of dacoits as the one to which the accused No. 16 is charged with having belonged. The mere fact that the accused in making his statement may have intended it to be self-exculpatory is insufficient. The real test is, what is its effect: and, having regard to the circumstances I have mentioned, there can, I think, be no doubt that it is a statement which can properly and would presumably be relied upon by the prosecution as a true statement and an admission that he was associated with members of the alleged gang of dacoits.

3. The case is in some respects similar to that of *Queen-Empress v. Javecharam* 10 Ind. Dec. 245 where a statement of one accused that he had received certain property, which was alleged to have been stolen, from his co-accused was held to be inadmissible as being an admission of a criminating circumstance, on which the prosecution evidently relied.

4. Following this and similar rulings, I hold that the statement in question is inadmissible u/s 25 of the Evidence Act.