

Aghnoo Nagesia

Vs

State of Bihar

Criminal Appeal No. 37 of 1965

(R. S. Bachawat, Raghuvar Dayal, K. Subha Rao JJ)

04.05.1965

JUDGMENT

BACHAWAT, J. –

The appellant was charged under s. 302 of the Indian Penal Code for murdering his aunt, Ratni, her daughter, Chamin, her son-in-law, Somra and Dilu, son of Somra. He was convicted and sentenced to death by the Judicial Commissioner of Chotanagpur. The High Court of Patna accepted the death reference, confirmed the conviction and sentence and dismissed the appeal preferred by the appellant. The appellant now appeals to this Court by special leave.

The prosecution case is that on August 11, 1963 between 7 a.m. and 8 a.m. the appellant murdered Somra in a forest known as Dungijharan Hills and later Chamin in Kesari Garha field and then Ratni and Dilu in the house of Ratni at village Jamtoli.

The first information of the offences was lodged by the appellant himself at police station Palkot on August 11, 1963 at 3-15 p.m. The information was reduced to writing by the officer-in-charge, Sub-Inspector H. P. Choudhury, and the appellant affixed his left thumb- impression on the report. The Sub Inspector immediately took cognizance of the offence, and arrested the appellant. The next day, the Sub Inspector in the company of the appellant went to the house of Ratni, where the appellant pointed out the dead bodies of Ratni and Dilu and also a place in the orchard of Ratni covered with bushes and grass, where he had concealed a tangi. The appellant then took the Sub Inspector and witnesses to Kasiari garha khet and pointed out the dead body of Chamin lying in a ditch covered with Ghunghu. The appellant then took the Sub Inspector and the witnesses to Dungijharan Hills, where he pointed out the dead body of Somra lying in the slope of the hills to the north. The Sub Inspector also recovered from the appellant.

The medical evidence discloses incised wounds on all the dead bodies. The injuries were caused by a sharp-cutting weapon such as a tangi. All the four persons were brutally murdered.

There is no eye-witness to the murders. The principal evidence against the appellant consists of the first information report, which contains a full confession of guilt by the appellant. If this report is excluded, the other evidence on the record is insufficient to convict the appellant. The principal question in the appeal is whether the statement or any portion of it is admissible in evidence.

The first information report reads as follows : "My name is Aghnu Nagesia. (1) My father's name is Lodhi Nagesia. I am a resident of Lotwa, Tola Jamtoli, Thana Palkot, district Ranchi. Today, Sunday, date not known, at about 3 p.m. I having come to the P. S. make statement before by the S.

I. of Police (2) that on account of my Barima (aunt) Mussammat having given away her property to her daughter and son-in-law quarrels and troubles have been occurring among us. My Barima has no son and she is a widow. Hence on her death we shall be owners of her lands and properties and daughter and son- in-law of Barima shall have no right to them. She lives separate from us, and lives in her house with her daughter and son-in-law and I live with my brother separately in my house. Our lands are separate from the time of our father. (3) Today in the morning at about 7-8 a.m. I had gone with a tangi to Duni Jharan Pahar to cut shrubs for fencing. I found Somra sitting alone there who was grazing cattle there. (4) Seeing him

We have divided the statement into 18 parts. Parts 1, 15 and 18 show that the appellant went to the police station to make the report. Parts 2 and 16 show his motive for the murders. Parts 3, 5, 8 and 10 disclose the movements and opportunities of the appellant before the murders. Part 8 also discloses his intention. Parts 4, 6, 9 and 11 disclose that the appellant killed the four persons. Part 12 discloses the killing and the motive. Parts 7, 13 and 17 disclose concealment of a dead body and a tangi and his ability to point out places where the dead bodies and the tangi were lying. Part 14 discloses the previous confession by the appellant. Broadly speaking, the High Court admitted in evidence parts 1, 2, 3, 5, 7, 8, 10, 13, 15, 16, 17 and 18.

On behalf of the appellant, it is contended that the entire statement is a confession made to a police officer and is not provable against the appellant, having regard to s. 25 of the Indian Evidence Act, 1872. On behalf of the respondent, it is contended that s. 25 protects only those portions of the statement which disclose the killings by the appellant and the rest of the statement is not protected by s. 25.

Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in ss. 24 to 30 of the Evidence Act and ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of s. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investi

Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under s. 157 of the Evidence Act or to contradict him under s. 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under s. 8 of the Evidence Act. If the information is a non- confessional statement, it is admissible against the accused as an admission under s. 21 of the Evidence Act and is relevant, see *Faddi v. The State of Madhya Pradesh* (1) Criminal Appeal No. 210 of 1963 decided on January 24, 1964 explaining *Nisar Ali v. State of U. P.* (2) A. I. R. 1957 S. C. 366 and *Dal Singh v. King Emperor* (3) L. R. 44 I. A. 137. But a confessional first information report to a police officer cannot be used against the accused in view of s. 25 of the Evidence Act.

The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted

the definition of "confession" given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in *Pakala Narayanaswami v. The King Emperor* (4) [1939] L. R. 66 I. A. 66, 81. Lord Atkin observed :

"..... no statement that contains self-exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

These observations received the approval of this Court in *Palvinder Kaur v. The State of Punjab* (5) [1953] S. C. R. 94, 104. In *State of U. P. v. Deoman Upadhyaya* (6) [1961] 1 S. C. R. 14, 21, Shah, J. referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See *Hanuman v. State of U. P.* (1) [1952] S. C. R. 1091, 1111 and *Palvinder Kaur v. The State of Punjab* (2) [1953] S. C. R. 94, 105-106. The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.

Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

If proof of the confession is excluded by any provision of law such as s. 24, s. 25 and s. 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as s. 27 of the Evidence Act. Little substance and content would be left in ss. 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under s. 304-A of the Indian Penal Code and a statement made by him to a police officer that "I was drunk; I was driving a car at a speed of 80 miles per hour; I could see A on the road at a distance of 80 yards; I did not blow the horn; I made no attempt to stop the car; the car knocked down A". No single sentence in this statement amounts to a confession, but the statement read as a whole amounts to a confession of an offence under s. 304-A of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a non-confessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him". In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the Indian Penal Code. Unless he brings his case within one of the r

If the confession is caused by an inducement, threat or promise as contemplated by s. 24 of the Evidence Act, the whole of the confession is excluded by s. 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by s. 24. To hold that the proof of the admission of other incriminating facts is not barred by s. 24 is to rob the section of its practical utility and content. It may be suggested that the bar of s. 24 does not apply to the other admissions, but through receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant, but are of no value. But we think that on a plain construction of s. 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, ss. 25 and 26 bar not only proof of admissions of an offence

A little reflection will show that the expression "confession" in ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by ss. 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, s. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section

If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by s. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of s. 25 is lifted by s. 27.

Our attention is not drawn to any decision of this Court or of the Privy Council on the question whether apart from s. 27, a confessional first information report given by an accused is receivable in evidence against him. Decisions of the High Courts on this point are hopelessly conflicting. They contain all shades of opinion ranging from total exclusion of the confession to total inclusion of all admissions of incriminating facts except the actual commission of the crime. In *Harji v. Emperor* (1) A. I. R. 1918 Lah. 69 and *Noor Muhammad v. Emperor* (2) [1925] 90 I. C. 148, the Lahore High Court held that the entire confessional first information report was inadmissible in evidence. In

Emperor v. Harman Kisha (3) [1935] I. L. R. 59 Bom. 120, the Bombay High Court held that the entire confessional report dealing with events on the night of the offence was hit by s. 25, and it could not be said that portions of it dealing with the motive and the opportunity were not parts of the confession. In King Emperor v. Kom

We think, therefore, that save and except parts 1, 15 and 18 identifying the appellant as the maker of the first information report and save and except the portions coming within the purview of s. 27, the entire first information report must be excluded from evidence.

Section 27 applies only to information received from a person accused of an offence in the custody of a police officer. Now, the Sub Inspector stated that he arrested the appellant after he gave the first information report leading to the discovery. Prima facie, therefore, the appellant was not in the custody of a police officer when he gave the report, unless it can be said that he was then in constructive custody. On the question whether a person directly giving to a police officer information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of s. 27, there is conflict of opinion. See the observations of Shah, J. and Subba Rao, J. in State of U. P. v. Deoman Upadhyaya (1) [1961] 1 S. C. R. 14 at 26, 44. For the purposes of the case, we shall assume that the appellant was constructively in police custody and therefore the information contained in the first information report leading to the discovery of the dead bodies a

In the result, the appeal is allowed, the conviction and sentence passed by the Courts below are set aside, and the appellant is directed to be set at liberty forthwith.

Appeal allowed.

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