

PATNA HIGH COURT

Lachhuman Munda

Vs

State of Bihar

Criminal Appeal No. 618 of 1961

(Anant Singh and G.N. Prasad, JJ)

11.09.1963

JUDGMENT

Anant Singh, J.

1. By his order dated the 7th June, 1961, the Second Additional Judicial Commissioner of Ranchi has convicted and sentenced to life imprisonment under Section 302 of the Indian Penal Code the appellant for the murder of one unmarried girl named Badam Bhogtain, the sister of Birsa Pradhan (P.W. 5) of village Hessel, Police station Khunti in the district of Ranchi. The appellant is also alleged to be of the- same place, his house being 20 to 25 steps away from that of Birsa. The appellant has filed this appeal from jail.

2. The appellant had worked as Dhangar (domestic servant) for one year till Magh of 1960, and during that period, he lived in the home of Birsa, where his sister Badan Bhogtain also lived. She was murdered sometime during night intervening the 15th April and 16th April 1960. and the crime was brought to light by the appellant himself at about 6.15 A.M. on the 16th of April 1960 when the appeared in person at the Khunti Police Station before the Deputy Superintendent of Police, Shri Devi Charan Sinha (P.W. 11), who was then the officer-in-charge, being on training. The appellant produced a balua (Ext. 1) and gave his statement (Ext. 1/2) which was treated as the first information report. The Deputy Superintendent of Police registered a case and took up the investigation of the case. He found the handle of the balua broken. He noticed some blood stains on the blade and handle with a hair sticking to it. He noticed blood station also on his dhoti (Ext. VI) and Gamchha (Ext- VII) which the appellant had on his person. He also noticed injuries on his finger. He seized the balua (Ext. 1) with its handle, dholi (Ext. VI) and Gamehria (Ext. VII) and prepared a seizure list. (Ext. 2/2) in presence of Prafulla Kumar Bhagat (P.W. 1) and Chandra Mohan Mishra (P.W. 6). The Deputy Superintendent also prepared an injury report in respect of the injuries on the fingers of the appellant.

3. The Deputy Superintendent left the police station at about 8 A.M. along with the appellant in a truck, and from village Pelol they went on foot The appellant took the Deputy Superintendent to a ditch which was situate in a solitary place on the boundary of village Mahil about one mile from village Hessel. Some local witnesses were called, and among them were Sahdeo Manjhi

(P.W. 2) and Sidam Dam (P.W. 9). The appellant pointed out the dead body of Badan Bhogtain which was lying in a ditch and which was not visible from the village path which was at a distance of about 60 yards, The Deputy Superintendent, who will be hereinafter referred to as 'D.S.P.' held an inquest over the dead body and prepared an inquest report (Ext. 4/2). He found the wearing apparel of the deceased lying around there, all besmeared with blood. Five pieces of bamboo, each about one finger in length, were also found scattered near the dead body. The earth near it was stained with blood. The D.S.P. scraped and seized from two places blood-stained earth and also seized the bamboo pieces and prepared a seizure list (Ext. 3/2). On going back to the thana, he found on experiment that four of the bamboo pieces, which he had picked up from near the dead (sic) body, exactly fitted in when combined with the broken end of the handle of the axe that had been produced by the appellant earlier at the thana. One of the bamboo pieces slightly covered the sliced portion of the handle of balua and that piece had blood-like stains over it. The appellant was kept in thana lock up; but at about 7.15 P.M. he escaped from the police station when he was taken out for answering the call of nature. He was, however, rearrested on the 18th April 1960. The D.S.P. examined some witnesses, and on the 2nd May, 1960, he sent in a sealed box the blood stained articles to the Chemical Examiner. They were (1) small pieces of bamboo handle. (2) scrapings from bamboo handle. (3) earth. (4) earth, (5) sari cuttings, (6) dhoti cuttings, (7) towel cuttings, (8) sample blood of the deceased. (9) a piece of back hair taken from the balua (ext. 1) and (10) some black hairs taken from the head of the deceased. The Chemical Examiner's report indicated that there was blood on all the articles and that the hair taken from balua was a human hair, although it could not be said that it was a hair of the similar type in the hairs taken from the head of the deceased. The report (Ext. 10/1). further indicated that with the exception of the small piece of bamboo handle and the hairs, the rest of the articles mentioned above contained human blood, although their group could not be determined except in the case of Sari cutting which were stained with 'O' group blood,

4. It was at about 1 P.M. on the 17th April 1960 that the Civil Assistant Surgeon of Khunti Hospital, Dr. M. Bhagat (P.W. 3) held post-mortem examination over the dead body of Badan Bhogtain and found eight incised injuries on her corpse, all of them above the chest region. The injuries were of various dimensions ranging upto 7" x 2½" x bone deep, and there were some fractures as well. They were all ante-mortem, caused by a sharp cutting weapon like balua (Ext. 1) There was also a foetus about six months old found in the uterus of the corpse. The death was due to shock and haemorrhage as a result of injuries on the head, and death in the opinion of the doctor should have occurred within 36 hours from the time of his examination.

5. The same doctor had on the 20th April 1960 examined the appellant and found two nearly dried up lacerated wounds, one 1/8" x 1/6" muscle deep on the right ring finger, near the junction of first and second phalanx in front, and the other 1/8" x 1/4" x muscle deep on the right middle finger above the first phalangeal joint in front. They were both simple in nature and they might have been caused by human teeth bite, and the age of the injuries was about four days old.

6. The D.S.P. after his training was complete, made over charge of the case on the 18th June 1960 to the regular Officer-in-charge, Chandreshwar Nath Sinha, who after completing investigation submitted charge-sheet on the 22nd August 1960 against the appellant, who, in due course, was committed for trial after the usual enquiry under Chapter XVIII of the Code of Criminal Procedure by a Magistrate.

7. The appellant denied his guilt and pleaded that he had been falsely implicated. He denied having lodged any first information report or produced any article or pointed out the dead body of the deceased or any other article to the D.S.P. The learned trial Judge has excluded from consideration the first information report lodged by the appellant and has convicted him on the basis of the circumstantial evidence alone.

8. A question was raised as it has also been raised here before us by the learned counsel, Shri Lakshmi Narain Mishra who assisted us as amicus curiae that the first information lodged by the appellant is completely inadmissible in evidence. An English rendering of the first information, which is in Hindi, is as follows :

"My name is Lakshman Munda son of Budhram Munda resident of village Hesel, P.S. Khunti. I today Saturday at this time (06.15 hours) date not known having come to the P.S. Just now state before you that I had fallen in love with Badan Bhogtain Daughter of Pusa Bhota of the village for about one year and she was carrying pregnancy of about six months through me. Badan Bhogtain had no parents and she was not married. She was living in the house of her brother Andhu Bhogta in the village itself. For the last one week she had been living with me in my house. On (previous) Wednesday, in the evening, she went out of the house for stroll after informing me and did not return home after that. Yesterday, on Friday (a little) before sunset, while I was returning home from my maternal uncle's house at village Marfa after making a search for her. I saw her (Badan Bhogtain) sitting alone at a tanr in Mahil Siwan. I asked her to return to my house to which she replied that she would not return even if he would cut her. Then I gave her a slap upon which she inflicted teeth-bite in the middle and index finger of my right hand. At this I got enraged and hit on the neck of Baden Bhogtain with this very Balua, which I am producing before you, by the right hand but it did not hit correctly and its handle was broken. But she fell down. Thereupon I gave two-three blows at the same place and pressed in her neck by Balua. After a little while she died struggling. The splash of her blood fell upon my Dhoti and Gamchha which I am producing before you. I remained in the mango orchard night and lodge information having come to the P.S. just now. I washed the Balua in the same ditch on the same night. Out of fear I did not tell this thing to anybody in the village and lodge the information having come straight to the P.S. The dead body is lying at the same place in the Tanr. I left the broken handle of the Balua too at that very place.

This is my statement which I got read over in presence of two witnesses and affix my left thumb mark having found it correct."

It would be noticed that the first information report was made by the appellant before the investigation was taken up by the D.S.P. As a matter of fact, the investigation followed the recording of the first information report, made by the appellant. It is only a statement made by an accused to a police officer during the course of an investigation that cannot be used in view of the provisions of Section 162 of the Code of Criminal Procedure, but there is no bar to the use of any such statement made by an accused to a police officer before an investigation of a case has commenced, unless it is hit by the provisions of

Sections 24 and 25 of the Evidence Act.

Section 24 bars the admission of any confession made by an accused under any inducement, threat or promise from a person in authority. Section 25 lays down that "no confession made to a police officer shall be proved as against a person accused of any offence".

9. There is, however, again an exception provided in Section 27 which is to the following effect :

"Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

A 'confession' is nowhere defined in the Evidence Act; but it is a settled principle that confession must be of the crime in terms with which an accused has been charged. It would be noticed that it is only a confession made to a police officer which is not admissible in view of the provisions of Section 25; but there is no bar to the admissibility of an admission of any relevant fact made by an accused to a police officer prior to the commencement of any investigation. An 'admission' is defined in Section 17 of the Evidence Act as follows :

"An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned".

The provisions of Sections 19 and 20 are not relevant for our purpose in the present case, Section 21, however, refers to such admissions of relevant fact which can be proved against the person who makes them. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, whether they occurred at the same time and place or at different times and place are relevant under Section 6 of the Evidence Act; and similarly, any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact, under Section 8.

10. The first information report in the present case, as quoted above, can be split up in three parts. The first is introductory to the relevant fact, referring to the motive, opportunity and description leading to the crime. The second part relates to the commission of the actual crime by the appellant and the third relates to the after events as to the conduct of the appellant and his confessional statement leading to the discovery of certain facts. It is only the second part relating to the actual commission of the crime of murder by the appellant and his statements connected therewith beginning from "At this I got enraged and hit on the neck of Badan Bhogtam.....After a little while she died struggling" which would be inadmissible being confession of the crime made by the appellant. The first part up to the stage of 'Then I gave her a slap upon which she inflicted teeth bite in the middle and index finger of my right hand' not being in any way confession of the crime, with which the appellant has been charged, would be admissible in evidence as the statement of relevant fact of introductory nature and furnishing motive and description of the opportunity for the crime and other connected matters. Similarly,

the statements relating to subsequent events beginning from "The splash of her blood fell lodge the information having come straight to the P. S." are also admissible as admission of subsequent events showing the conduct of the appellant. The fact of production of blood-stained balua, dhoti and Gamchha is even independently admissible, being not a statement of the appellant made in course of the investigation.

11. The statements "The dead body is lying at the same place in the Tanr. I left broken handle of the Balua too at that very place" would also be admissible within the meaning of Section 27 of the Evidence Act as an information leading to the discovery thereby of the dead body of the deceased from the ditch and of the five broken pieces of bamboo stick from near the dead body on the pointing of the appellant.

12. It would thus appear that the whole of the first information report need not and should not be excluded from consideration. It is only the confessional part of the crime in terms that must be excluded, and I would totally exclude them from consideration. A similar view was taken by Pepsu High Court in the case of *Kartar Singh v. State*¹. In that case also, the accused himself had lodged the first information report, and their Lordships observed :

"-.....those portions which do not relate to the commission of the crime itself, as for instance which are introductory or narrate the motive and the opportunity for the offence, the presence of certain witnesses or give information about facts which are admissible under Section 27, Indian Evidence Act would be relevant evidence in the case."

A Division Bench of this Court presided over by Das and Dalziel, JJ. in *Akal Sahu v. Emperor*², has laid down as follows :

"..... that the statement of a person, who is subsequently accused of an offence may be admissible in evidence as an admission, provided it is not hit by the excluding sections of the Evidence Act relating to the confession of an accused person for by Section 162, Criminal Procedure Code."

Their Lordships, however, emphasised that "before admitting a portion of a statement, care must be taken to see that that portion is not so connected with the confessional portion as to be inseparable from it". In that case, however, the whole first information report lodged by the accused was taken into evidence, since it did not amount to confession at all; but the principle remains the same. There is no bar to

splitting up a first information report and to exclude from it any of the inadmissible parts of the statement and admit the rest of it. The statement which the appellant made does not appear to have been made as a result of any inducement, promise or threat of any person in authority or otherwise, as it would be seen that he appeared at the thana of his own accord and made his statement voluntarily. When a person appears before a police officer of his own accord and accuses himself of having committed any offence he submits to the custody of the police within the meaning of section 27 of the Evidence Act as was held in *Udai Bhan v. State of Uttar Pradesh*³,

13. On behalf of the appellant, however, reliance has been placed on the case of *Nisar Ali v. The*

*State of Uttar Pradesh*⁴, wherein it has been laid down :

"A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses."

But in that case, the aforesaid observations were made entirely in a different context. There were two accused in that case, Nisar Ali and Qudrat Ullah. The first was tried for the murder of one Sabir and the latter for abetment of the murder. Both were acquitted by the trial court. The State took an appeal to the High Court against Nisar Ali alone, and he was convicted by the High Court. He then took his appeal to the Supreme Court. In that case, a first information report was lodged by Qudrat Ullah and not by Nisar Ali, and it was in that connection that the aforesaid observations were made. It is obvious that there was no question involved whether the statement of an accused made prior to the commencement of the investigation could be used against him as an admission or otherwise. This case has no bearing on the facts of the instant case. Learned Counsel appearing for the appellant relying on the case of *Palvinder Kaur v. State of Punjab*⁵, has contended that the statement of an accused either in the nature of confession or admission cannot be split up but should be rejected or accepted as a whole, and the Court should not accept only the inculpatory part rejecting the exculpatory part as inherently incredible. The case again has no bearing on the question involved in the present case. In *Palvinder Kaur's* case 1953 BLJR 30 : (AIR 1952 SC 354) the only evidence available against the accused was her own statement, which was partly exculpatory and partly inculpatory, and there was no other evidence to disprove the exculpatory statement, and it was in that context that it was held that the statement was to be accepted or rejected as a whole. In the instant case, I am excluding rather the inculpatory part from consideration than the other statements. The question is whether any statement of an accused can be split up. In my opinion, there is no bar to doing so provided the confessional statement is clearly separable from the rest of the statements which are otherwise admissible.

14. Learned Counsel for the appellant has also referred to the case of *Prabhoo v. State of Uttar Pradesh* reported in⁶ in support of his contention

that even the statement of the accused leading to the discovery of the dead body and bamboo pieces from near it as also the fact of the production of the balua and dhoti and the Gamchha should not be taken into evidence. Again, the facts of the above case are quite different. In that case, the appellant made certain statement and produced from his house a kulhari, a shirt and a dhoti which were found to be blood-stained. He also made a Statement to have used the axe in committing the murder. Their Lordships in paragraph 9 of the judgment doubted the evidence regarding the recovery of the aforesaid articles and said that the courts below were wrong in admitting certain statements alleged to have been made by the appellant in connection with the recovery. They concluded :

"We are, therefore, of the opinion that the courts below were wrong in admitting in evidence the alleged statement of the appellant that the axe had been used to commit murder or the statement that the blood stained shirt and dhoti were his."

In the instant case, the fact of the production of the balua by the appellant at the thana and the fact of the seizure of the dhoti which he was wearing and the Gamchha which he was keeping on his shoulder have been proved by the D.S.P. and one of the two search witnesses (P.W. 1). The D.S.P. only said that he had noticed blood like stains on the dhoti and Gamchha of the accused without making it clear if the appellant was actually wearing the dhoti and keeping the Gamchha on his shoulder; but this was made quite clear by P.W. 1 who said that the appellant was putting on the dhoti (Ext. VI) and keeping the Gamchha (Ext. VII) on his shoulder. 'Both of them have further said that they had found blood like stains on the axe, the dhoti and the Gamchha. They have also said that they had seen a hair sticking to the blade of the axe. There is no reason whatsoever to disbelieve their evidence.

15. These articles were found by the Chemical Examiner and the Serologist to have contained human blood and the hair being a human hair, and the earth and the small bamboo sticks taken from near the dead body were also found to have contained human blood. The dead body and the aforesaid bamboo pieces had been discovered on the pointing of the appellant as the D.S.P. and the search witness (P.W. 2) have testified. Again, I see no reason to disbelieve that evidence, although P.W. 2 has made some contradiction that he and his companions found police officers already standing at the spot whereas, according to the D.S.P. they had been sent for through a constable while the D.S.P. was still on his way. It seems that the D.S.P. after sending the constable reached the spot when the witnesses also arrived a little later. The only relevant question is whether the dead body and the bamboo pieces were recovered in consequence of the pointing by the appellant. The D.S.P. had no information about them from before, and it was not even suggested to him. There is no reason to think that he had any information about their presence there, until they had been shown to him by the appellant.

16. The fact that the two injuries on the fingers of the appellant appear to have been caused by the teeth-bite as the doctor has certified is also significant.

17. The deceased, as the doctor certified, must have been killed sometime during the night between the 15th April, 1960 and 16th April, 1960. It was only the next morning that the appellant himself appeared at the police station and produced the balua (Ext. 1) which was stained with human blood. His dhoti that he was wearing and the Gamchha that he was putting on his shoulder were also found to have been stained with human blood. He had two teeth-bite injuries on his two fingers. It was on his pointing that the dead body as also the broken pieces of the small bamboo sticks were discovered in the ditch, referred to above.

18. The appellant instead of offering any explanation altogether denied to have made any statement and produced or pointed out any material. If he had offered any explanation, the matter had to be considered; but in the absence of any explanation the aforesaid circumstances conclusively point to his guilt that he was the murderer of the woman. Now even if the first information report is excluded from consideration as the learned Judge has done, the circumstances are conclusively pointing to his guilt without any manner of doubt. He has, therefore, been rightly convicted. There is no merit in the appeal, and it is dismissed.

G. N. Prasad, J.

18. I agree.

Appeal dismissed.

Cases Referred.

¹ AIR 1952 Pepsu 98

² AIR 1948 Pat 62

³ AIR 1962 SC 1116

⁴ AIR 1957 SC 366

⁵ 1953 BLJR 30 : (AIR 1952 SC 354)

⁶ AIR 1963 SC 1113