

AJAY SINGH
v.
STATE OF MAHARASHTRA

JUNE 6, 2007

[DR. ARIJIT PASAYAT AND D. K. JAIN, JJ.]

Evidence Act, 1872:

Extra-Judicial confession—'Confession' and 'Statement'—Distinction between—Accused prosecuted u/s. 302 IPC for causing death of his wife—Witness hearing accused uttering that death of his wife was caused by him—Held: Confession should be clear, specific and unambiguous—On facts, in the evidence of the three PWs who claim the accused to have made confession, there is great difference in the language the accused is supposed to have stated—There is inconsistency in the statements of the witnesses as to what was uttered by the accused—Besides, PW1 is inimical to accused and PW3 is his wife—It would, therefore, not be safe to place reliance on the so called extra-judicial confession—Penal Code, 1860—s. 302.

Code of Criminal Procedure, 1973:

s. 313—Power of trial court to examine accused—Purpose of—Death of wife of accused by burn injuries—Prosecution case that kerosene was found on dress of accused—No question put to accused in this regard while he was examined u/s 313—Held: Conviction based on accused's failure to explain what he was never asked to explain is bad in law—He must be questioned separately about each material substance to be used against him—Penal Code, 1860—s. 302.

Appellant-accused was prosecuted for murder of his wife. The prosecution case was that in the night of the occurrence the neighbours of the appellant heard him and his wife quarrelling and saw the appellant dragging his wife inside the house. After a short while they saw the appellant coming out of his quarters shouting that death of his wife was caused by him, and fleeing away. Thereafter, the neighbours entered the quarters of the appellant and saw that his wife had caught fire. They tried to extinguish the

A fire. However, she died at the spot. FIR was lodged by one of the neighbours, PW 1. The trial court found the accused guilty of the charge on the grounds that there was extra-judicial confession made before PWs 1, 2 and 3; and kerosene was found on the dress which the accused was wearing at the time of occurrence. The High Court concurred with the conclusions

B It was contended for the appellant-accused that there was no extra-judicial confession as claimed by the prosecution inasmuch as admittedly PW 1 had animosity with the accused, and PW 3, the wife of PW 1, was bound to support her husband. It was submitted that the utterances addressed by the accused could also be towards his another neighbours and not only to PW 1.

C Allowing the appeal, the Court

HELD: 1.1. While dealing with a stand of extra-judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra-judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made.

[Para 7] [988-A, B]

E 1.2. Confession should be clear, specific and unambiguous. In the instant case, the evidence of PWs 1, 3 and 4 is not consistent as to where the accused is supposed to have made the statement. While PW-1 said that he was inside the house, interestingly PW-3 stated that accused did not come out of the house and thereafter he did not utter a statement which is taken to be the extra-judicial confession. So far as PW-1 is concerned the trial court had disbelieved his evidence. Besides, there is inconsistency in the statement of these three witnesses as to what was uttered by the accused. It would, therefore, be not safe to place any reliance on the so called extra-judicial confession

[Para 7] [988-E, F, G]

G 1.3. The expression 'confession' is not defined in the Evidence Act. 'Confession' is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. The word 'statement' includes both oral and written statement. If the statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. [Para 8] [988-G, H; 989-A, B]

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Sahoo v. State of Uttar Pradesh, AIR (1966) SC 40 : (1966) CrI. U 68), A
relied on.

2.1. So far as the prosecution case that kerosene was found on accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code of Criminal Procedure, 1973. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. His statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus. B

[Para 9 and 11] [989-G; 990-C] C

Hate Singh, Bhagat Singh v. State of Madhya Pradesh, AIR (1953) SC 468, relied on.

2.2. A conviction based on accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused, so that he may be able to give such explanation as he desires to give. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. [Paras 12 and 13] [990-F, G] D E

3. The prosecution has failed to establish the accusations. The conviction is set aside. [Para 14] [991-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 829 of 2007. F

From the Judgment and Order dated 24.4.2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in CrI. A. No. 80 of 1996.

A.K. Sanghi and Gagan Sanghi (for Ramehwar Prasad Goyal) for the Appellant. G

Ajay Rai (for R.K. Adsure) for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. H

A 2. Challenge in this appeal is to the order passed by a Division Bench
of the Bombay High Court, Nagpur Bench, dismissing the appeal filed by the
appellant. Appellant faced trial for alleged commission of offence punishable
under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). He was
convicted by learned Ist Additional Sessions Judge, Nagpur and sentence of
life imprisonment and fine of Rs.200/- with default stipulation was imposed.
B Appeal filed against the judgment, as noted above, was dismissed.

3. Prosecution version as unfolded during trial is as follows:

C The appellant-accused was tried on a charge of having committed
murder of his wife Smt. Latabai (hereinafter referred to as 'deceased') by
pouring kerosene on her person and setting her ablaze in the night of 29.4.2003
i.e. at about 1.30 a.m. in the police quarters No. 203/3 at Raghujji Nagar,
Sakkardara at Nagpur. Appellant-accused was residing in the said quarters
along with his wife-the deceased and children. On the fateful night when the
D neighbouring residents, mostly police personnel were in their respective
quarters and sleeping in the courtyards, they heard sound of the tape-
récordeur, which was being played by the appellant-accused, at about 1.30 a.m.
in the night which awakened them. They heard the appellant-accused and his
wife quarrelling and saw the appellant-accused dragging the deceased inside
the house by holding her hands and after a short while they noticed the
E appellant-accused coming out of his quarters and shouting "Kaka Lata Mere
Hatho se Mar Gai" and fled away. Thereafter, the neighbours entered the
quarters of the appellant-accused and saw that Lata had caught fire. They
tried to extinguish the fire, but, as she had sustained excessive burns before
she could be removed to hospital, she died on the spot. Due to this incident,
all the people in the neighbourhood had gathered at the place of the incident
and report (Exh. 80) in the matter came to be lodged by Police constable
F Krishna Sadashiv Lute (P.W. 1) at Police Station Sakkardara. The said report
was taken down in the proforma prescribed under Section 154 of the Code
of Criminal Procedure, 1973 (in short the 'Code') which is Exb. 19, by P.S.I.
Kale (P.W. 11). P.S.I. Kale registered offence under Section 302 of IPC vide
G Crime No. 192/93 of Sakkardara Police Station. Thereafter, he visited the place
of the incident and prepared the spot panchnama (Exb. 40) in the presence
of the panchas. He noticed that deceased Lata was fully burnt and her neck
was stretched towards her stomach and her hands were crouching, both her
legs were drawn towards abdomen side. He also noticed partly burnt matters
on her person which was little bit wet. In the kitchen, he noticed that there
H was a tin, which was containing some kerosene, match sticks and other

material which he recorded in the spot panchanama and seized the Articles 1 to 7. P.S.I. Laxman Tighara (P.W. 9) took over the investigation of the case on 29.4.1993. He arrested the appellant-accused at about 7.00 p.m., who was found near statute of Tukdoji Maharaj, prepared the arrest panchanama and seized his clothes. The appellant-accused was referred to medical officer for his medical examination. In the course of investigation, the inquest Panchanama (Exb. 22) of the dead body of Latabai was prepared and dead body was sent to Department of Forensic Medicines, Medical College, Nagpur for conducting post mortem. The Medical Officer conducted the post mortem and gave the report (Exb. 31), which was admitted by the appellant-accused and, therefore, the prosecution did not examine any Medical Officer. The police recorded statement of witnesses in addition to completing the formalities of forwarding the articles, seized during the investigation, to the Chemical Analyser. After investigation was completed, charge-sheet came to be filed against the appellant-accused. His case was committed to the court of Sessions for trial. As accused pleaded innocence, he was put to trial.

4. The trial Court found the accused guilty primarily on two grounds; (a) there was extra judicial confession made before PWs 1, 3 and 4; (b) kerosene was found on the dress which the accused was wearing at the time of occurrence. Placing reliance on these two aspects, the trial Court found the accused guilty. High Court concurred with the conclusions.

5. In support of the appeal, learned counsel for the appellant submitted that there was no extra judicial confession as claimed. Admittedly, PW-1 had animosity with the accused because the said witness used to peep in the bathroom of the accused when his wife-deceased was taking bath. This aspect has been admitted by not only PW-1 but also PW-3. The latter being the wife of PW-1 was bound to support the statement of PW-1. There is great difference in the language the accused is supposed to have stated. It was admitted by PWs 1 and 3 that accused is supposed to have addressed the utterances towards "Kakaji" and this reference could be not only to PW-1 but also another neighbour of the accused. The officer who had given the FSL report was not examined as a witness.

6. Learned counsel for the respondent submitted that the Trial Court and the High Court have examined in detail the evidence and come to the conclusion about guilt of the accused.

7. We shall first deal with the question regarding claim of extra judicial confession. Though it is not necessary that the witness should speak the

A exact words but there cannot be vital and material difference. While dealing with a stand of extra judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the Court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the Court to judge credibility of the witness's capacity and thereafter to decide whether his or her evidence has to be accepted or not. If Court believes witnesses before whom confession is made and is satisfied confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous. The evidence of PWs 1, 3 and 4 is not consistent as to where the accused is supposed to have made the statement. While PW-1 said that he was inside the house, interestingly PW-3 stated that accused did not come out of the house and thereafter he did not utter a statement which is taken to be the extra judicial confession. So far as PW-4 is concerned the trial Court had disbelieved his evidence, the High Court found the same to be credible. Significantly, he stated that the accused came near his courtyard and shouted "Kakaji Daudo Lata Jal Gayee".

G In contrast, PW-1 stated that "Kakaji Lata Mar Gaye mere hathse". PW-3 in contrast said "Kakaji Mere hathse Lata Jal Gayee". It would, therefore, be not safe to place any reliance on the so called extra judicial confession.

8. The expression 'confession' is not defined in the Evidence Act,
H 'Confession' is a statement made by an accused which must either admit in

terms the offence, or at any rate substantially all the facts which constitute the offence. The dictionary meaning of the word 'statement' is "act of stating; that which is stated: a formal account, declaration of facts etc." The word 'statement' includes both oral and written statement. Communication to another is not however an essential component to constitute a 'statement'. An accused might have been over-heard uttering to himself or saying to his wife or any other person in confidence. He might have also uttered something in soliloquy. He might also keep a note in writing. All the aforesaid nevertheless constitute a statement. If such statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. This very question came up for consideration before this Court in *Sahoo v. State of Uttar Pradesh*, AIR (1966) SC 40: (1966 Cr1 U 68). After referring to some passages written by well known authors on the "Law of Evidence" Subba Rao, J. (as he then was) held that "communication is not a necessary ingredient to constitute confession". In paragraph 5 of the judgment, this Court held as follows:

...Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession goes not to depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession. as the case may be.... If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt

(Emphasis supplied)

9. So far as the prosecution case that kerosene was found on accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code.

10. The purpose of Section 313 of the Code is set out in its opening words- 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' In *Hate Singh, Bhagat Singh v. State*

A of *Madhya Pradesh*, AIR (1953) SC 468 it has been laid down by Bose, J that the statements of accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'. It was pointed out that the statements of the accused recorded by the committing magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

C 11. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

D 12. The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

G 13. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings

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must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

14. Above being the position, the inevitable conclusion is that the prosecution has failed to establish the accusations. The conviction is set aside. The appeal is allowed. The appellant be set at liberty forthwith if not required in any other case.

R.P.

Appeal allowed.