

Aghnoo Nagesia vs State Of Bihar on 4 May, 1965

Equivalent citations: 1966 AIR 119, 1966 SCR (1) 134, AIR 1966 SUPREME COURT 119, 1966 (1) ANDHLT 430, (1965) 2 SCWR 750, 1965ALLCRIR 451, 1965 BLJR 865, 1966 MADLJ(CRI) 134, 1966 MAH LJ 113, 1966 MPLJ 49, 1966 SCD 243, 1966 (1) SCR 134, (1966) 1 SCJ 193

Author: R.S. Bachawat

Bench: R.S. Bachawat, Raghubar Dayal

PETITIONER:

AGHNOO NAGESIA

Vs.

RESPONDENT:

STATE OF BIHAR

DATE OF JUDGMENT:

04/05/1965

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

SUBBARAO, K.

DAYAL, RAGHUBAR

CITATION:

1966 AIR 119

1966 SCR (1) 134

CITATOR INFO :

R 1972 SC 66 (13)

F 1972 SC 922 (14)

ACT:

Indian Evidence Act (1 of 1872), s. 25-Ban an confession made to a police officer-Confessional F.I.R. by accused-Ban whether applies to while statement or only those part showing actual commission of crime.

HEADNOTE:

The appellant was tried for murder. The principal evidence against him consisted of a first information report containing a full confession of the crime. The appellant was convicted under s. 302 Indian Penal Code by the trial

court and the High Court upheld the conviction, By special leave he appealed to the Supreme Court.

The question before the court was whether the whole confessional statement in the first information report was banned by s. 25 of the Evidence Act or only those portions of it were barred which related to the actual commission of the crime.

HELD : 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 provocation etc. If the confession is tainted the taint attaches to the whole statement of the accused. [140 B-C]

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. Little substance and content would be left in ss. 24, 25 and 26 if proof of admissions of incriminating facts in confessional statement is permitted. [140 D-E, F]

The appellant's first information report was a confessional statement to a police officer and as such no part of it could be admitted into evidence on account of the ban in s. 25 except in so far as the ban was lifted by s. 27 and except in so far as it identified the appellant as the maker of the report. [143 P-G]

Case law considered.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 37 of 1965.

Appeal by special leave from the judgment and order dated November 9, 1964 of the Patna High Court in Criminal Appeal No. 200 of 1964 and Death Reference No. 9 of 1964. K. K. Jain, for the appellant.

S. P. Varma and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by 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 Ghangu. 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's house a chadar stained with human blood. The evidence of P.W. 6 shows that the appellant had gone to the forest on the morning of August 11, 1963.

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 you 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 -one 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 I got enraged and dealt him a tangi blow on the fill (calf) of right leg, whereby he toppled down on the ground. Thereupon I dealt him several Chheo (blows) on the head and the face, with the result that he became speechless and died. At that time there was none near about on that Pahar. (5) Thereafter I came to the Kesari Garu field where "Somra's wife Chamin was weeding out grass in the field. (6) I struck her also all on a sudden on the head with the said tangi whereby she dropped down on the ground and died then and there. (7) Thereafter I dragged her to an adjoining field and laid her in a ditch to the north of it and covered her body with Gongu (Pala ke Chhata) so that people might not see her. There was no person then at that place also. (8) Thereafter I armed with that tangi went to the house of my Barima to kill her. When I reached there, I found that she was sitting near the hearth which was burning. (9) Reaching there all on a sudden I began to strike her on the head with tangi whereupon she dropped down dead at that very place. (10) Near her was Somra's son aged about 3 -4 years. (11) I also struck him with the tangi. He also fell down and died. (12) I finished the line of my Barima so that no one could take share in her properties. (13) I hid the tangi in the jhari of my Barima's house. (14) Later on I narrated the occurrence to my chacha (father's brother) Lerha that I killed the

aforesaid four persons with tangi. After sometime (15) I started for the P.S. to lodge information and reaching the P.S. T make this statement before you. (16) My Barima had all along been quarrelling like a Murukh (foolish woman) and being vexed, I did so. (17) All the dead bodies and the tangi would be lying in those places. I can point them out. (18) This is my statement. I got it read over to me and finding it correct, I affixed my left thumb-impression."

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 investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by s. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by ss. 24, 25 and 26. It provides that when any fact is deposed to as 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. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence Order investigation, save as mentioned in the proviso and in cases falling

under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of s. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under s. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by s. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under s. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by s. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

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 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) explaining *Nisar Ali v. State of U.P.* (1) and *Dal Singh v. King Emperor*(1). 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). 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 con-

fession 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 *Palvin. der Kaur v. The State of Punjab* (5). In *State of U.P. v. Deoman Upadhyaya*(6), 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 (1) Criminal Appeal No. 210 of 1963 decided on January 24, 1964..

(2) A.I.R. 1957 S.C. 366.

(3) L.R. 44 I.A. 137.

(4) [1939] L.R. 66 I.A. 66, 81.

(5) [1953] S.C.R. 94, 104.

(6) [1961] 1 S.C.R. 14, 21.

Sup.CI/65-10 liberty to use in evidence the inculpatory part only. See Hanumant v. State of U.P. (1) and Palvinder Kaur v. The State of Punjab(1). 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 (1) [1952] S.C.R. 1091, 1111.

(2) [1953] S.C.R. 94,105-106.

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 recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defenses. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

If the confession is caused by an inducement, threat or pro- mise 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 though 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 by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the 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 30 thus shows that matters affecting other persons may form part of the confession.

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) and *Noor Muhammad v. Emperor*(2), the Lahore High Court held that the entire confessional first information report was inadmissible in evidence. In *Emperor v. Harman Kisha* (3), 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. Kommoju Brahman*(1), the Patna High Court held that no part of the confessional first information report was receivable in evidence, the entire report formed a single connected story and no part of it had any meaning or significance except in relation to the whole, and it would be wrong to extract parts of the statement and treat them as relevant. This case was followed (1) A.I.R. 1918 Lah. 69.

(2) (1925) 90 I.C. 148.

(3) [1935] I.L.R. 59 Dom. 120.

(4) I.L.R. 119401 Patna, 301, 308, 314.

14 3 in *Adimoola Padayachi v. State* (1), and the Court admitted only the portion of the confessional first information report which showed it was given by the accused and investigation had started thereon. In *State of Rajasthan v. Shiv Singh* (2) the Court admitted in evidence the last part of the report dealing with the movements of the accused after the commission of the offence, but excluded the other parts of the statement including those relating to motive and opportunity. In *Legal Remembrancer v. Lalit Mohan Singh Roy*(3), the Calcutta High Court admitted in evidence the narrative of the events prior to the night of the occurrence disclosing the motive of the offence. This case was followed by the Nagpur Court in *Bharosa Ramdayal v. Emperor*(4). In *Kartar Singh v. State* (5), the Court admitted in evidence the introductory part and the portion narrating the motive and the opportunity. In *Ram Singh v. The State*(6), the Rajasthan High Court held that where it is possible to separate parts of the first information report by an accused from that in which he had made a confession, that part which can be so separated should be admitted in evidence, and on this view, admitted a part of the report relating to motive and subsequent conduct including the statement that the accused had left the deceased lying wounded and breathing in the tibia and there was no hope of her surviving and he had come having covered her with a cloth. In *Lachrymose Mundane v. The State of Bihar* (7), the Patna High Court admitted in evidence portions of the first information report relating to the motive, the opportunity and the entire narrative of events before

and after the crime. This case was followed in the judgment under appeal. Some of the decided cases took the view that if a part of the report is property severable from the strict confessional part, then the severable part could be tendered in evidence. We think that the separability test is misleading, and the entire confessional statement is hit by s. 25 and save and except as provided by s. 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

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.

(1) [1960] M.W.N. -28.

(3) [1922] I.L.R. 49 Cal. '167.

(5) A.I.R. 1952 Pepsu 98.

(2) A.I.R. 1962 Rajasthan 3.

(4) A.T.R. 1941 Nag. 86.

(6) [1952] I.L.R. 2 Rajasthan 93.

(7) A.I.R. 1964 Patna 210.

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 in the 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). 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 and the tangi is admissible in evidence. The entire evidence against the appellant then consists of the fact that the appellant gave information as to the place where the dead bodies were lying and as to the place where he concealed the tan,-', the discovery of the dead bodies and the tangi in consequence of the information, the discovery of a blood-stained chadar from the appellant's house and the fact that he had gone to Dungi Jharan Hills on the morning of August 11, 1963. This evidence is not sufficient to convict the appellant of the offenses under s. 302 of the Indian Penal Code.

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.

(1) [1961] 1 S.C. R. 14 at 26, 44.