

(2002) 02 BOM CK 0106
In the Bombay High Court
Case No : Criminal Appeal No. 52 of 1999

Bandu Yedu Metkari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 145, 154, 157, 21, 25
Penal Code, 1860 (IPC) — Section 302

Citation : (2002) BomCR(Cri) 746 : (2002) 2 BOMLR 492 : (2002) 2 MhLj 867

Hon'ble Judges : R.K. Batta, J;F.I. Rebello, J

Bench : Division Bench

Advocate : J.R. Kakade and Ujwal R. Agandsurve, for the Appellant; V.R. Bhosale, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The appellant was tried for murder of Prakash Narayan Padavale u/s 302 of the Indian Penal Code as also for causing injuries on Mainabai u/s 323 of the Indian Penal Code. The prosecution had in fact examined 9 witnesses in support of the said charges. By impugned judgment dated 31st December, 1998 the learned Additional Sessions Judge, Pandharpur, has convicted the appellant for murder u/s 302 of the Indian Penal Code and sentenced him imprisonment for life. The appellant was also convicted for the offence u/s 323 of the Indian Penal Code and has been sentenced to undergo 3 months R.I. and a fine of Rs. 500/-, in default to suffer R.I. for 7 days. The substantive sentences were ordered to run concurrently. The appellant challenges his conviction in this Appeal.

2. The F.I.R. in this case was lodged by the appellant himself. The incident is reported to have taken place at 9.00 p.m. on 2nd July, 1998 and the appellant lodged the F.I.R. on the next day morning. In this F.I.R. the appellant had given details as to how the incident in question had taken place. Besides this, the

prosecution had relied upon the evidence of eye witness Mainabai P.W, 6, who is the sister of the appellant, but she did not support the prosecution case against the appellant. Two other witnesses P.W. 5 Haridas Baliram, paternal uncle of the appellant and P.W. 8 Uttam Lawate also did not support the prosecution case. The prosecution case thus primarily rests upon the F.I.R. lodged by the appellant himself with the Police, motive for commission of crime and the presence of blood stains on the clothes of the appellant which were attached by the police when the appellant had gone to lodge the F.I.R. The prosecution had also led evidence of panch witnesses relating to recovery of chain at the instance of the appellant. Both these witnesses P.W. 3-Ratilal Lendave and P.W. 4-Sidheshwar Lawate also did not support the prosecution case.

3. The Trial Court found that part of the facts disclosed in the F.I.R. were admissible and were not confessional in nature and relying upon them besides motive as also blood stained clothes of the appellant has recorded the conviction of the appellant as aforesaid. The Trial Court also took into account that the weapons of offence iron chain and iron rod were stained with human blood of "O" group which was the blood group of the deceased.

4. The learned Advocate for the appellant after placing reliance on two judgments of the Apex Court in the case of Aghnoo Nagesia Vs. State of Bihar, and Bheru Singh Vs. State of Rajasthan, urged before us that except for the motive disclosed in the F.I.R. the presence of Mainabai and the presence of blood stains on the clothes of the appellant, the entire remaining part of the F.I.R. lodged by the appellant amounts to confession and the same cannot be used against the appellant. In respect of the blood stained clothes which were found on the person of the appellant it has been urged that the blood found on the said clothes is "O" group, which is also stated to be blood group of the deceased, but the blood group of the appellant was inconclusive and in the light of the fact that according to the prosecution the appellant had also suffered injuries which could result in his blood on his clothes, the presence of blood on the clothes of the appellant is not a strong piece of evidence. It is also pointed out that no question has been put by the Trial Court in relation to the bloodstains on the clothes of the appellant. He pointed out that the eye witness P.W. 6 - Mainabai and two other witnesses P.W. 5 - Dada Metkari and P.W. 8 -Uttam Lawate had not supported the case, as also the Panch relating to the recovery of the chain alleged to have been made at the instance of the appellant u/s 27 of the Indian Evidence Act. He, therefore, contends that the prosecution had failed to prove the charge against the appellant and the conviction which is mainly based upon taking into consideration inadmissible evidence amounting to confession which could not be used against the appellant, is required to be set aside.

5. The learned A.P.P., on the other hand, urged that even though number of witnesses have not supported the prosecution case yet in the light of the evidence on record relating to motive, presence of blood stains on the clothes of the appellant which were seized by the police when the appellant had gone to

lodge the F.I.R., presence of Mainabai at the time of incident and the injuries suffered by her as also the appellant are sufficient to uphold the conviction recorded by the Trial Court.

6. As we have already pointed out the incident in question took place at 9.00 p.m. The F.I.R. in this case was lodged by the appellant himself on the next day morning. The relevant portion of the F.I.R. on which the fate of the prosecution case rests, when translated in English (translation furnished by the learned Advocate for the appellant, reads as under :--

"At that time, I have seen in the house that my sister Mainabai and one Prakash Narayan Padwale, aged 28 years a person from our village Khupasangi, who was dealing in Loudspeaker business are slept on the cot in said house and there was only banian and underwear on the person of Prakash Padavale. On seeing me, he immediately stood up from the cot. As I was got angered on him, I have taken an iron chain which was kept in one corner in the house of my sister and with the said chain gave blows on the person of Prakash Padavale. Because of that, he fell in the door itself. I have given 2-3 blows with the said chain on the person of my sister and again took the iron Bar lying in the house and with the said iron Bar, gave blow on the head of Prakash Padavale who was lying on the ground near the door. At that time, my sister Mainabai asked me as to why I am beating so and due to fear she immediately fled away. I have seen towards Prakash Padavale and I could see that he died on the spot, I threw the chain and bar in the house and left the house immediately. At the time of coming out of the house of my sister Mainabai, which is made of thatch, my uncle Tayappa Metkari, cousin Haridas Ubhay, Baliram Dada, Ankush were seeing towards me. As it was night and as there was no vehicle, I came upto Canal on foot and after staying in one school in that night, to-day morning at 9 p.m. I came to the police station for giving intimation. There are illicit relations between my sister Mainabai and Prakash Narayan Padavale, r/o Khupasangi. I had heard about the same, But yesterday on 2-7-1998 at 9 p.m. as I had seen they both sleeping on one cot together, I have committed murder of Prakash Narayan Padavale by giving blows to him with Chain and iron Bar, and I have given blows with chain to my sister."

7. The Apex Court in Aghnoo Nagesia v. State of Bihar (supra) has laid down :

"10. 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 u/s 157 of the Evidence Act or to contradict him u/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 u/s 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission u/s 21 of the Evidence Act and is relevant, see, Faddi Vs. The State of Madhya Pradesh, , explaining Nisar Ali Vs. The State of Uttar Pradesh, and Dal Singh v. King Emperor, 44 Ind.App 137 = AIR 1917 PC 25. But a confessional first information report to a police officer cannot be used

against the accused in view of Section 25 of the Evidence Act.

11. The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Article 22 of Stephen's Digest of the Law of Evidence. Accordingly 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 AIR 1939 47 (Privy Council) :

".....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 Vs. The State of Punjab (Rup Singh-Caveator)*, . In *State of U.P. Vs. Deoman Upadhyaya, , Shah, J.*, referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. 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 @ page SC 124 to use in evidence the inculpatory part only. See *Hanumant Vs. The State of Madhya Pradesh*, . 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.

13. 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 single 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."

The Apex Court in *Bheru Singh v. State of Rajasthan*, (supra) has laid down :--

"17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded u/s 154 of the Criminal Procedure Code is not a substantive piece of evidence. It may be used to corroborate the informant u/s 157 of the Evidence Act or to contradict him u/s 145 of the Evidence Act in case the informant appears as a witness at the trial. Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct u/s 8 of the Evidence Act to the extent it is non-confessional in nature. It would also be relevant u/s 21 of the Evidence Act but the confessional part of the first information report by the accused to the Police Officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act."

8. Applying the principles laid down by the Apex Court in *Aghnoo Nagesia v. State of Bihar* (supra) and *Bheru Singh v. State of Rajasthan* (supra) we find that from the F.I.R. only the following circumstances can be utilised against the appellant and the other facts disclosed in the F.I.R. are in the nature of confession made to the Police Officer which cannot be used against the appellant. The circumstances which are admissible and can be used against the appellant are motive in the crime, the relationship of the appellant with his sister Mainabai, her presence in the house at the time of commissioning of the crime and the presence of the blood stains on the clothes of the appellant which were seized by the police when the appellant had gone to lodge F.I.R. with the police. The rest of the contents of F.I.R. being confessional in nature cannot be used against the accused in view of Section 25 of the Evidence Act.

9. In addition to this evidence, the prosecution had also examined other witness Mainabai P.W. 6, who was said to be having illicit relationship with the deceased and which furnished motive for the crime, did not support the prosecution case. She stated that she did not know the deceased Prakash Padavale and she did not know any incident. During cross-examination she was confronted with her police statement but no material could be elicited during the cross-examination by the learned A.P.P. Likewise P.W. 5 who is said to be an eye witness of the incident had also not supported the prosecution case when he stated that he does not know the incident and he had in fact gone to attend a marriage when the incident took place. In his case also he was confronted with his police Statement but nothing material could be elicited by the learned A.P.P. during the cross-examination of this witness. The third eye witness upon which prosecution has

placed reliance is P.W. 8 Uttam Lawate, who also did not support the prosecution case and he stated that he does not know anything about the incident. In his case also except for confrontation with his police statement no material could be elicited by the learned A.P.P. during cross examination.

10. The prosecution had also examined P.W. 3 and P.W. 4 in relation to the disclosure made by the appellant resulting in recovery of the weapon of offence namely chain. Both these witnesses also did not support the disclosure statement or recovery of the chain at the instance of the appellant. The other two Panchas namely P.W. 1 and P.W. 2 in whose presence the blood stained clothes of the appellants are said to have been attached have also not supported either the disclosure or attachment of the blood stained clothes from the person of the appellant. Therefore, this evidence relating to blood stains on the clothes of the appellant which were attached by the police at the time when the appellant had gone to lodge the F.I.R. also cannot be used against the appellant. In addition, even though blood "O" group was found on the said clothes .which was the blood group of the deceased, the blood group of the appellant was inconclusive. The prosecution case is that the appellant had also received injuries in the incident and the possibility of his own blood on clothes cannot be ruled out. The presence of blood on the said clothes even otherwise would be merely an incriminating circumstance which has not been proved by the prosecution. No questions have been put by the trial Court on illicit relationship which furnished motive and as such the same cannot be used against the appellant. Even if the said questions had been put, even then the evidence would not be sufficient to sustain the conviction recorded by the learned Additional Sessions Judge, hi the light of the above discussion we find that the impugned judgment convicting the appellant for murder u/s 302 of Indian Penal Code and for causing simple injuries to Mainabai P.W. 6 u/s 323 of Indian Penal Code cannot be sustained. The conviction and sentence imposed by the learned Additional Sessions Judge, Pandharpur vide judgment dated 31st December, 1998 in Sessions Case No. 119 of 1998 is, therefore, required to be set aside.

11. The conviction and sentence imposed by the learned Additional Sessions Judge, Pandharpur dated 31st December, 1998 in Sessions Case No. 119 of 1998 is set aside. The Appeal is accordingly allowed. The Appellant-Bandu Yedu Metkari shall be set at liberty forthwith, in case he is npt required in any other case.