
(1975) 07 J&K CK 0003
In the Jammu And Kashmir High Court

State		APPELLANT
	Vs	
Suram Singh		RESPONDENT

Date of Decision : 18-07-1975

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 164
Evidence Act, 1872 — Section 24

Citation : (1976) CriLJ 96

Hon'ble Judges : Jaswant Singh, C.J;Mufti, J

Bench : Division Bench

Judgement

Mufti, J.—The respondent, Suram Singh, (hereinafter called 'the accused') was tried in the Court of Additional Sessions Judge. Jammu. for

offences under Sections 302. 451, R. P.C. The learned Additional Sessions Judge. Jammu, on consideration of the evidence, found that the

offences were not proved against the accused and acquitted him. The State has filed this appeal and challenged the order of acquittal. On 22-4-

1975. after hearing the Advocate General and counsel for the accused, we made the following order :

Having heard learned Counsel for the parties, we find that there is no force in this appeal which is therefore dismissed. Reasoned judgment will follow.

We now proceed to give our reasons.

2. Briefly put, the prosecution case was that on the night intervening 13/14th May. 1972. at about 10.30 p.m. the accused trespassed into the

compound of Chuni Lai P.W. with a view to having illicit intercourse with his daughter, Mst. Guddi, P.W., who lay asleep in the compound along

with other members of the family. Suspecting the accused to be a thief, Mst. Gvanoo wife of Chuni Lai, who was still half-asleep raised an alarm.

The alarm raised by her woke up her husband, Chuni Lai and her son. Balwant Rai. They got up and chased the accused who had meanwhile left

the spot lest he should be noticed or apprehended. The accused encountered Balwant Rai on the periphery of a nearby air-field which the accused

could not cross in hurry, as it was fenced with barbed wire. and, there, in desperation stabbed Balwant Rai in his abdomen with a knife. Balwant

Rai succumbed to the stab injuries on the following day. Chuni Lai reported the matter to the police as our report Exp A-It is suggested that during

investigation the police recovered a knife. Bush shirt and Pyjama stained with blood belonging to the accused pursuant to a disclosure statement

made by him. It is also suggested that the accused made a confessional statement u/s 164, Criminal P.C. before Munsiff. Judicial Magistrate.

Jammu but he subsequently resiled from it at the trial

3. The learned Additional Sessions Judge has negated the connection of the accused with the occurrence which otherwise, he says, is not open to

question. In view of the certain extraordinary features of the case and the extremely, unsatisfactory nature of the evidence we are inclined to share

the conviction of the learned Additional Sessions Judge as regards the innocence of the accused.

4. There is no witness who might have noticed the accused trespassing into the compound attached to the house of Chuni Lai on the fateful night or

who might have later seen the accused stabbing the deceased.

[After considering the evidence (in paras. 5 and 6) his Lordship proceeded.]

7. Finally comes the confession made by the accused u/s 164. Criminal P- C which he has subsequently resiled from. Before the Additional

Sessions Judge, the respondent objected to its admissibility on the twin ground; firstly because it was recorded on oath, and, secondly, because, as

he said, it was involuntary resulting from a prolonged torture to which he was subjected by the police. The learned Additional Sessions Judge has

upheld the objection and rejected the confession and. in my opinion, rightly so. The accused was arrested formally on 18-11-1972 and produced

for getting his confessional statement recorded on 28-11-1972 which was eventually recorded by Munsiff, Judicial Magistrate. Jammu, on 30-11-

1972 and surprisingly enough, on solemn affirmation, and is Exp. U on the file. The intervening delay in the production of the accused before the Judicial Magistrate has nowhere been explained by the prosecution. Alongside there is the positive assertion of Munshi Ram P.W. that he and so also the accused were subjected to severe beating during their detention by the police. Both these circumstances lend support to the allegation made by the accused that tone confession was involuntary and proceeded from the pressure exercised on him by the police. There is nothing in the confessional statement Exp. U or in the evidence given at the trial by Mr. G. R Bodha. Judicial Magistrate, to indicate that the learned Magistrate tried to dispel the fear of police torture that the accused must, in the circumstances, have been labouring under when the accused was produced before him first on 28-11-1972 or which,, his statement was eventually - recorded by him on 30-11-1972. Here it may be noted that according to the Magistrate's own showing the accused was produced before him by the police even after he was remanded to the -judicial custody. May be, that this was so because the jail authorities have no force of their own- to produce a prisoner in the Court. But that obviously made it necessary for the Magistrate to be more cautious and careful and to assure the accused of protection in case he was not willing to make a confessional statement. Beyond fulfilling formalities, the Magistrate has, however, made no effort to assure the accused of that protection. He has taken no care to ascertain the period during which the accused remained in police custody; the treatment that he received; whether he apprehended any trouble if he did not give a statement: and what was the motivating force which impelled him to make a statement involving himself in the crime. In this background, his evidence at the trial, that the statement was given by the accused out of his free-will, does not really inspire confidence. The confessional statement must, in the circumstances be treated as involuntary resulting from the police pressure and is inadmissible u/s 24 of the Evidence Act.

8. Assuming that the confessional statement was voluntary, it would still be inadmissible because it was made under compulsion of oath. Here it may not be violative of Section 24 of the Evidence Act in its not having been proceeded from threat, promise or inducement. But it does violate

Article 20(3) of the Constitution according to which no person accused of an offence shall be compelled to be a witness against himself. That the accused made a confessional statement before a Magistrate which could be read against him at the trial cannot be disputed. That he did so when he stood in the character of an accused person cannot also be disputed. The confession is therefore a statement made by an accused who was driven to make it under compulsion of an oath. That being so, the use of confession against the accused at the trial would constitute a violation of clause 3 of Article 20. That is what renders it inadmissible. Viewed from any - angle, therefore, the confession cannot be treated as a circumstance adverse to the accused.

Jaswant Singh, C.J.

9. I have had the advantage of going through the judgment which my learned brother, Mufti, J., has taken great pains to prepare. While I agree with the conclusion arrived at by him as also the observations made by him that the confessional statement purporting to have been made by the accused u/s 164 of the Criminal P.C. is inadmissible in evidence as it was made on oath and as a result of the pressure exercised by the police, I regret I find myself unable to subscribe to the view expressed by him in the last para-graph of the judgment that even assuming that the confessional statement was voluntary, it was still violative of d. (3) of Article 20 of the Constitution, as it was made under compulsion of oath. Clause (3) of Article 20 of the Constitution provides that no person would be compelled to be a witness against himself. As held in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, the compulsion contemplated by this clause means duress which in the context means physical objective act and not the state of mind of the person making the statement, and unless duress is exercised against an accused, he cannot be held to have been compelled to be a witness against himself. If that be so, I doubt if the mere administration of oath to an accused by a Magistrate while recording his statement u/s 164 of the Criminal P.C. can fall within the purview of compulsion as contemplated by Clause (3) of Article 20 of the Constitution, and amount to a compelled testimony.