

SAHOO

v

STATE OF U.P.

February 16, 1965

[K. SUBBA RAO, J. C. SHAH AND R. S. BACHAWAT, JJ.]

Confession—Accused muttering self-incriminating statement to himself—Whether amounts to confession—Communication to another person whether necessary.

The Sessions Judge in convicting the appellant of murder took into account an extra-judicial confession alleged to have been made by him when shortly after the murder he was muttering to himself that he had finished the deceased. The High Court confirmed the conviction. In appeal before this Court it was contended that that the muttering of the accused did not amount to a confession as it was implicit in the concept of confession whether judicial or extra-judicial that it should be communicated to another. A man cannot confess to himself; he can only confess to another.

HELD: (i) Sections 24 to 30 of the Evidence Act deal with the admissibility of confessions, but the expression 'confession' is not defined. Shortly stated a confession is a statement made by an accused admitting his guilt. [88 E]

Pakala Narayana v. R. L. R. 66 I.A. 66, referred to.

(ii) It is not a necessary ingredient of the term confession that it shall be communicated to another. The dictionary meaning of the term does not warrant any such extension, nor the reason of the rule underlying the doctrine of admission or confession demands it. The probative nature of an admission or confession does not depend on its communication to another though just like any other piece of evidence can be admitted in evidence only on proof. The following illustration pertaining to a written confession brings out the idea: A kills B; enters in his diary that he had killed him, puts it in his drawer and absconds. When he places his act on record he does not communicate to another; indeed he does not have any intention of communicating it to a third party. Even so at the trial the said statement of the accused can certainly be proved as a confession made by him. If that be so in the case of a statement in writing, there cannot be any difference in principle in the case of an oral statement. [88 H-89 C]

Bhogilal Chunilal Pandya v. State of Bombay, [1959] Supp. 1 S.C.R. 310, relied on.

(iii) But there is a clear distinction between the admissibility of an item of evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. Generally such soliloquies are mutterings of a confused mind. Before such evidence can be accepted it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. [90 B, D]

In the present case the confession along with the other evidence of circumstances was sufficient to prove the guilt of the appellant.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 248 of 1964.

A Appeal from the judgment and order dated September 16, 1964 of the Allahabad High Court in Criminal Appeal No. 348 of 1964 and capital sentence No. 26 of 1964.

P. C. Khanna, for the appellant.

O. P. Rana, for the respondent.

B The Judgment of the Court was delivered by

Subba Rao, J. Sahoo, the appellant, is a resident of Pachperwa in the District of Gonda. He has two sons, Badri and Kirpa Shanker. He lost his wife years ago. His eldest son, Badri, married one Sunderpatti. Badri was employed in Lucknow, and his wife was residing with his father. It is said that Sunderpatti developed

C illicit intimacy with Sahoo; but there were incessant quarrels between them. On August 12, 1963, during one of those quarrels, Sunderpatti ran away to the house of one Mohammed Abdullah, a neighbour of theirs. The appellant brought her back, and after some wordy altercation between them they slept in the only room of their house. The only other inmate of the house was the appel-

D lant's second son, Kirpa Shanker, a lad of about 8 years. On the morning of August 13, 1963, Sunderpatti was found with serious injuries in the room of the house where she was sleeping and the appellant was not in the house. Sunderpatti was admitted in the Sadar Hospital, Gonda, at 5.25 p.m. on that day and she died on August 26, 1963 at 3 p.m. Sahoo was sent up for trial before the

E Court of Sessions, Gonda, on a charge under s. 302 of the Indian Penal Code.

The learned Sessions Judge, on a consideration of the entire evidence came to the conclusion that Sahoo killed Sunderpatti. On that finding, he convicted the accused under s. 302 of the Indian Penal Code and sentenced him to death. On appeal, a Division

F Bench of the High Court at Allahabad confirmed both the conviction and the sentence. Hence the appeal.

Except for an extra-judicial confession, the entire evidence in the case is circumstantial. Before we advert to the arguments advanced in the appeal it will be convenient to narrate the circumstances found by the High Court, which are as follows: (1) The accused had illicit connections with the deceased; (2) the deceased and the accused had some quarrel on the Janmashtami day in the evening and the deceased had to be persuaded through the influence of their neighbours, Mohammed Abdullah and his women-folk, to go back to the house of the accused; (3) the deceased was seen in the company of the accused for the last time when she was alive; (4) during the fateful night 3 persons, namely, the accused, the deceased and the accused's second son, Kirpa Shanker (P.W. 17), slept in the room inside the house; (5) on the early morning of next day, P.W. 17 was asked by his father to go out to attend to calls of nature, and when he came back to the varandah of the house he heard some gurgling sound, and he saw his father going out of the house murmuring something; and (6) P. Ws. 9, 11, 13

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and 15 saw the accused going out of the house at about 6 a.m. on that day soliloquying that he had finished Sunderpatti and thereby finished the daily quarrels. A

This Court in a series of decisions has reaffirmed the following well-settled rule of "circumstantial evidence". The circumstances from which the conclusion of guilt is to be drawn should be in the first instance fully established. "All the facts so established should be consistent only with the hypothesis of the guilt of the accused and the circumstances should be of a conclusive nature and tendency that they should be such as to exclude other hypotheses but the one proposed to be proved." B

Before we consider whether the circumstances narrated above would stand the said rigorous test, we will at the outset deal with the contention that the soliloquy of the accused admitting his guilt was not an extra-judicial confession as the Courts below held it to be. If it was an extra-judicial confession, it would really partake the character of direct evidence rather than that of circumstantial evidence. It is argued that it is implicit in the concept of confession, whether it is extra-judicial or judicial, that it shall be communicated to another. It is said that one cannot confess to himself: he can only confess to another. This raises an interesting point, which falls to be decided on a consideration of the relevant provisions of the Evidence Act. Sections 24 to 30 of the Evidence Act deal with the admissibility of confessions by accused persons in criminal cases. But the expression "confession" is not defined. The Judicial Committee in *Pakala Narayana v. R.*⁽¹⁾ has defined the said expression thus: C

"A 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." D

A scrutiny of the provisions of ss. 17 to 30 of the Evidence Act discloses, as one learned author puts it, that statement is a genus, admission is the species and confession is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt. What does the expression "statement" mean? The dictionary meaning of the word "statement" is "the act of stating, reciting or presenting verbally or on paper." The term "statement", therefore, includes both oral and written statements. Is it also a necessary ingredient of the term that it shall be communicated to another? The dictionary meaning of the term does not warrant any such extension; nor the reason of the rule underlying the doctrine of admission or confession demands it. 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 E

(1) I.R. 66 I.A. 63. H

A an admission or a confession does not 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. The following illustration pertaining to a written confession brings out

B the said idea: A kills B; enters in his diary that he had killed him, puts it in his drawer and absconds. When he places his act on record, he does not communicate to another; indeed, he does not have any intention of communicating it to a third party. Even so, at the trial the said statement of the accused can certainly be proved as a confession made by him. If that be so in the case of a statement in

C writing, there cannot be any difference in principle in the case of an oral statement. Both must stand on the same footing. This aspect of the doctrine of confession received some treatment from well-known authors on evidence, like Taylor, Best and Phipson. In "A Treatise on the Law of Evidence" by Taylor, 11th Edn., Vol. I, the following statement appears at p. 596:

D "What the accused has been overheard muttering to himself, or saying to his wife or to any other person in confidence, will be receivable in evidence."

In "The Principles of the Law of Evidence" by W. M. Best, 12th Edn., at p. 454, it is stated much to the same effect thus:

E "Words addressed to others, and writing, are no doubt the most usual forms; but words uttered in soliloquy seem equally receivable."

We also find the following passage in "Phipson on Evidence", 7th Edn., at p. 262:

F "A statement which the prisoner had been overheard muttering to himself, if otherwise than in his sleep, is admissible against him, if independently proved."

These passages establish that communication to another is not a necessary ingredient of the concept of "confession". In this context a decision of this Court in *Bhogilal Chunilal Pandya v The State of Bombay*⁽¹⁾ may usefully be referred to. There the question was whether a former statement made by a witness within the meaning of s. 157 of the Evidence Act should have been communicated to another before it could be used to corroborate the testimony of another witness. This Court, after considering the relevant provisions of the Evidence Act and the case-law on the subject came to the conclusion that the word "statement" used in s. 157 meant only "something that is stated" and the element of communication was not necessary before "something that is stated" became a statement under that section. 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

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(1) [1959] Supp. 1 S.C.R. 310.

a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt. A

But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low; the words may be confused; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. B
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The circumstances found by the High Court, which we have stated earlier, lead to the only conclusion that the accused must have committed the murder. No other reasonable hypothesis was or could be suggested. D

Further, in this case, as we have noticed earlier, P.W.s 11, 13 and 15 deposed that they clearly heard the accused say when he opened the door of the house and came out at 6 O'clock in the morning of the fateful day that he had "finished Sunderpatti, his daughter-in-law, and thereby finished the daily quarrels". We hold that this extra-judicial confession is relevant evidence: it certainly corroborates the circumstantial evidence adduced in the case. E

In the result, we agree with the conclusion arrived at by the High Court both in regard to the conviction and the sentence. The appeal fails and is dismissed. F

Appeal dismissed.