

**Padan Pradhan Vs. State**

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**Court :** Orissa

**Decided On :** Dec-02-1981

**Reported in :** 53(1982)CLT305; 1982CriLJ534

**Judge :** P.K. Mohanti and; B.K. Behera, JJ.

**Appellant :** Padan Pradhan

**Respondent :** State

**Judgement :**

**B.K. Behera, J.**

1. On Jan. 27, 1976, at 1 p.m., a station diary entry (Ext. 11) was made at the Angul Police Station in the district of Dhenkanal on the report of the appellant, who now stands convicted Under Section 302 of the IPC and sentenced to undergo imprisonment for life, to the effect that to feed fat his grudge against Indramani Pradhan (to be described as the deceased hereinafter), he took the deceased to a place by the side of the driver Lingara and after tying his hands and legs, dealt successive blows on him by means of a knife and left him on that spot. PW 14, then attached to the police station at Angul as Sub-Inspector of Police, being accompanied by the Assistant Sub-Inspector of Police (PW 12), proceeded to the spot and noticed patches of fresh blood on the ground. The injured Indramani had by then been removed to the hospital for treatment and PW 14 found him lying in a precarious condition. The plain paper first information report (Ext. 15) was drawn

up by PW 14 who took up the investigation in the course of which the appellant was arrested and taken to the spot and a dagger (MO R. a shirt (MO II) and a pant (MO III), suspected to have stains of blood, were seized by PW 14 on production by the appellant from his cabin. The injured Indramani succumbed to the injuries on the same day. In the course of investigation, PW 14 examined a number of witnesses and on 26-3-1976 made over charge of the investigation to the Circle Inspector of Police (PW 13) who took steps for sending the incriminating and other articles for chemical examination and placed a charge-sheet against the appellant who, after commitment, stood trial being charged Under Section 302 of the IPC

2. To bring home the charge to the appellant, the prosecution had examined fourteen witnesses. Of them, PWs 1 to 5, 7, 10 and 11, some of whom had been examined as witnesses to the occurrence and some others to prove incriminating movements of and circumstances against the appellant, did not support the case of the prosecution and were cross-examined by the prosecution Under Section 154 of the Evidence Act. PW 6, the father of the deceased Indramani, was examined to establish the strained relationship between the appellant and the deceased. His evidence would show the notoriety and extreme bad character of the deceased and his involvement in a number of cases of theft for which he (PW 6) had severed connections with him and his bitter feelings towards the deceased would be exhibited from his conduct in not even going to see his injured son Indramani lying in the hospital and he did not even go when the dead body was brought nor did he go to the burial ground. This then was the character of the deceased, as deposed to by his father. PW 8 was the Doctor who had conducted the autopsy over the dead body of the deceased Indramani, vide Ext. 7, the post mortem report and she had noticed a number of external injuries and consequent internal injuries and her evidence would undoubtedly establish that the death of Indramani was homicidal in nature, PW 9, a Revenue Inspector, had prepared the spot map (Ext. 9). PWs 12 to 14 were police officers. The appellant, whose case was one of denial and false implication, had not examined any witness in his defence.

3. We may at this stage point out a disquieting feature in the procedure adopted by the learned Sessions Judge while recording the statement, of the appellant.

Unfortunate as it might seem, the learned Judge asked the appellant to explain many circumstances of which there was no substantive evidence although some of the prosecution witnesses had made statements in that regard Under Sections 161 and 164 of the Code of Criminal Procedure which could not be treated as substantive evidence. Circumstances appearing in the evidence against an accused person can only be put to an accused person while examining him. What was done by the learned Sessions Judge was in flagrant violation of this elementary principle of law.

4. The learned Sessions Judge mainly relying on the report (Ext. 11) made by the appellant at the police station characterising it as an admission and admissible Under Section 21 and as a piece of conduct of the appellant admissible Under Section 8 of the Evidence Act coupled with the medical evidence pointing to the conclusion of a homicidal death, recorded the order of conviction. As observed by the learned Sessions Judge, even the evidence of seizure of MOs I to III could also be overlooked on the ground that the seizure had not been testified by the witnesses who were said to be present at the time of the seizure of the articles by PW 14.

5. Mr. Palit, the learned Counsel for the appellant, has submitted, relying on the principles laid down in the cases of *Pakalal Narayana Swami v. Emperor* AIR 1939 PC 47: (1939) 40 Cri LJ 364; *Nisar Ali v. State of Uttar Pradesh* : 1957 CriLJ550 ; *Faddi v. State of Madhya Pradesh* : 1964 CriLJ744 and *Dusasan Bhoiy. State of Orissa* 1981 Cri LJ 1452 (Orissa), that the report allegedly made by the appellant on the basis of which the Station Diary entry (Ext. 11) was made was out and out a confession made to a police officer and would thus be inadmissible, as provided in Section 25 of the Evidence Act and could not be used for any purpose against the appellant who subsequently stood trial being charged with the offence of murder. In 1981 Cri LJ 1452 (Orissa) (*supra*), the confession made before the Gram Rakshi was held to be inadmissible Under Section 25 of the Evidence Act. Ext, 11, it is submitted, could not be construed merely as an admission and further, no part of it relating to the commission of the actual offence was severable. If this report is excluded from consideration, the medical evidence could only establish a homicidal death and the highly unsatisfactory evidence with regard to the recovery

and seizure of MOs I to III which, on chemical and serological tests were found to have contained human blood, could not form the basis of the conviction of the appellant. Mr. Nayak, the learned Additional Government Advocate, has submitted that if Ext. 11 is taken out of consideration, the other evidence, including the evidence of PW 6 regarding the bitter relationship between the appellant and the deceased and the recovery of MOs I to III, may not be sufficient to sustain the charge. He has, placing reliance on the principles laid down in the case of *Kanda Padayachi v. State of Tamil Nadu : 1972 CriLJ11* , urged that the learned Sessions Judge was right in taking into consideration Ext. 11 and the other evidence supporting it and therefore, the order of conviction could not be assailed.

6. As earlier indicated, the homicidal nature of death in the instant case admits of no doubt. It would be seen from the evidence of PW 6 that on the day of occurrence at about 10 to 11 a.m., the appellant and PWs 1 and 2 had threatened to assault the deceased and the appellant had been complaining that the deceased had stolen away his articles. It would further be seen from his evidence that they brought him outside his house and about a couple of hours thereafter, PW 6 heard that his son died, and he noticed that his son was being taken to the hospital. Whatever might be the feelings of PW 6 towards his son to which reference has already been made, the fact remains that, the deceased was the son of PW 6. The evidence of PW 6 with regard to the quarrel between the appellant and the deceased and the threat administered by the former had not been supported by the evidence of any other witness and it would not be safe and proper to unreservedly accept the testimony of PW6 in this regard and hold that the prosecution had established the motive for the commission of the offence. Even if the evidence of PW 6 in this regard is accepted, it could be said that the appellant had some motive to commit the offence. It must be borne in mind that in the absence of clear and cogent evidence pointing to the guilt of an accused person, the proof of motive, however adequate, cannot, by itself, sustain a criminal charge.

7. As to the recovery of MOs I to III, there was, no doubt, the evidence of PW 14 that he seized these articles on production by the appellant from his cabin, vide Ext. 14, the seizure list, but PW 12, the Assistant Sub-Inspector of Police has, in

his evidence, limply stated about the seizure of MOs I to III vide Ext. 14, but he had not testified either that the appellant produced these articles or that the articles were in the cabin of the appellant. None of the witnesses said to be present then ha supported the evidence in this regard. There was no substantive evidence of any of the villagers that the cabin did belong to the appellant and there was complete absence of evidence from thfl side of the prosecution about, the ownership of MOs I to III. In these circumstances, no reliance couki be placed on the evidence relating to the seizure of these articles against the appellant and as a matter of fact, at the time of addressing this Court, the learned Additional Government Advocate, for these infirmities and .suspicious features, has not seriously pressed into service the evidence in this regard.

8. There thus remains for consideration the Station Diary entry (Ext, 11) which we would quote below:

One Padan Padhan son of Tirtha Padhan of Hularisinga aged about 28 years came to Angul P.S. and reported that due to repeated mischief cases by accused Indramani Pradhan of Hularisinga to his property he was searching for Indramani to take revenge since about one year. Today at about 10 a.m. he found him and took him to his father and asked him and his father to compensate the loss. His father did not agree. Therefore, he took him to Maliposi area on the opposite side of river Lingara and tied him bv two ropes to his legs and hands and gave successive blows by means of a knife on his head, face and shoulder. He has left him there at the spot and he has also left the knife and his wearing apparels stained with blood at his cabin and came to P.S. for taking shelter. Noted the fact in S. D. as this appears to be a case of serious nature.

There could be no doubt from the evidence of PW 14 that on the verbal report of the appellant and as reported by him, this entry had been made. We would now proceed to examine the legal questions raised by the learned Counsel for both the sides as to the admissibility and value of this document.

9. As the report made by the appellant at the police station, on the face of it, disclosed the commission of a cognizable offence and PW 14, who proceeded to the spot to verify the report, found patches of fresh blood lying on the ground, saw

the injured in a serious condition at the hospital and drew up the plain paper first information report (Ext. 15), the report made by the appellant disclosing the commission of a cognizable offence, in our view, was strictly to be treated as the first information report and as PW 14 had taken steps after recording this report although he had not formally registered a case, the first information report (Ext. 14) drawn up by him would be rendered inadmissible. As held by the Supreme Court in the case of Nisar Ali v. State of Uttar Pradesh : 1957 CriLJ550 , a first information report cannot be used as evidence against the maker at the trial if he himself becomes an accused. Ext. 11 could not be used as substantive evidence against the appellant.

10. An oral confession by an accused person not excepted Under Sections 24, 25 and 26 of the Evidence Act is an admission made by him and being a relevant fact may be proved at the trial under Sec, 21 of the said Act. A statement, not amounting to a confession made to a police officer can be used against the maker as an admission Under Section 21. What would amount, to a confession has clearly and lucidly been laid down by the Judicial Committee in the well-known case of Paka-lal Narayna Swami 1939-40 Cri LJ 364 (Supra). 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. No statement that contains selfexculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. In the instant case, the appellant was not in custody when he made the report and no discovery was made in consequence of his statement. Section 25 of the Evidence Act covers a confession made to a police officer before any investigation has commenced or otherwise not in the course of an investigation. As provided in Section 25 of the Evidence Act, no confession made to a police officer shall be proved as against a person accused of an offence. The prohibition in Section 25 is of a general nature and is not limited only to the confession of the offence with which the accused is charged. Where the accused is charged with murder, a confession to the Police of a lesser offence is also inadmissible. The appellant stood charged Under Section 302 of the Indian Penal Code with having committed the murder of the deceased. He had not, in terms, stated in Ext. 11 that

he had killed the deceased, but he did state that he had dealt successive blows by means of a knife on his person. Ext. 11 must, therefore, be construed to be a confession made to the police which would be rendered inadmissible, in evidence. In the case of *Faddi v. State of Madhya Pradesh* 1964 (2) Cri LJ 744 (supra) to which reference had been made and reliance had been placed by the learned Sessions Judge, it has clearly been laid down that a confessional first information report cannot be used against the maker when he becomes an accused.

11. A question may arise as to whether apart from the part of tying the deceased and assaulting him by means of a knife, the other part as to the motive prompting the appellant to commit the crime as mentioned in Ext, 11 could be rendered admissible. The answer to this question in the negative would be found in the principles laid down by the Supreme Court in the case of *Aghnoo Nagesia v. State of Bihar* : 1966 CriLJ100 . Their Lordships held thus (paras. 13, 14):

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.

If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section 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 Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25

and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

On the principles laid down in the aforesaid case of the Supreme Court, the entire report (Ext. 11) would have to be excluded from consideration and no part, of it could be admitted as an admission on the part of the appellant. In the case reported in : 1972 CriLJ11 (supra), it was held that an admission of a fact, however incriminating, but not by itself establishing the guilt of the maker of such admission; would not amount to confession within the meaning of Sees. 24 to 26 of the Evidence Act. In the instant case, however, Ext. 11 was undoubtedly a confessional statement made by the appellant to the Police and he later became an accused in the case. Ext, 11 could not, therefore, be admitted in evidence against him and taken advantage of by the prosecution.

12. On a careful consideration of the contentions raised by the learned Counsel for both the sides, we are of the view that the learned Sessions Judge went wrong in relying on Ext. 11 while finding the appellant guilty of the offence of murder.

13. In a case of this nature, there may be grave suspicion against the appellant. But suspicion, however grave, cannot take the place of proof. In the absence of legal proof of a crime, there can be no legal criminality.

14. We find that the order of conviction recorded by the learned Sessions Judge was factually wrong and legally untenable and therefore, it is to be set aside.

15. In the result, the appeal succeeds and is allowed. The order of conviction and sentences passed against the appellant Under Section 302 of the Indian Penal Code is set aside. The appellant be set at liberty forthwith.

**P.K. Mohanti, J.**

16. I agree.