

Munni Lal Vs. the State

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Court : Delhi

Decided On : Nov-30-1994

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Judge : Dalveer Bhandari, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 50;
[Evidence Act, 1872](#) - Sections 25

Appeal No. : Criminal Appeal No. 45 of 1991

Appellant : Munni Lal

Respondent : The State

Advocate for Pet/Ap. : T.S. Sodhi and; H.P. Sharma, Advs

Judgement :

Dalveer Bhandari, J.

(1) This appeal is directed against the judgment of Mr. S. L. Khanna, Additional Sessions Judge, New Delhi dated 5th February, 1991 arising out of a Sessions case No. 36188. The basic facts which are necessary to dispose of this appeal are recapitulated as under:

(2) The accused appellant was charged with an offence punishable under Section 21 of Narcotic Drug and Psychotropic Substances Act, 1985 for having been found in possession of 150 grams of Heroin.

(3) On 23rd December, 1986 the Sub Inspector Surinder Singh of Crime Branch, Prosecution Witness No. 7 received a secret information in his office that three persons would come on a scooter near Shivaji Restaurant (Bhagat Singh Market) carrying Heroin and they would supply the Heroin to their known parties. Inspector Surinder Singh reduced the information into writing and sent a copy of the same to the Assistant Commissioner of Police concerned.

(4) Inspector Surinder Singh constituted a raiding party consisting of S.I. Om Prakash (Public Witness 4), Asi Jagpal Singh, Head Constable Harbir Singh and some constables and reached near the Shivaji Restaurant, Bhagat Singh Market. The members of the raiding party assembled near Arora Pan Bhandar at Bhagat Singh Market near Shivaji Stadium. S.I. Sukesh Kumar Along with a constable of Police Station Mandir Marg who was on patrol duty in the area met the raiding party and he was also apprised of the secret information. Naqabandi was effected outside Shivaji Restaurant at about 5.30 p.m. Three persons arrived on two wheeler scooter which was stopped at the pointing out of the informer. The scooter was being driven by Surjit Singh while accused Munni Lal Along with Sunil Kumar were sitting on the pillion seat of the scooter. Inspector Surinder Singh (Public Witness 7) disclosed the identity of the members of the raiding party to accused Munni Lal and his companions and about the information of their being in possession of Heroin.

(5) According to the prosecution story, though no notice under Section 50 Ndps Act in writing was given but inspector Surinder Singh, Public Witness 7 orally asked the accused and his companion whether they wanted to be searched before a Gazetted Officer or a Magistrate. Munni Lal, appellant and his other two companions declined the offer. Thereafter, Surinder Singh conducted search of accused Munni Lal and the search of Surjit Singh was conducted by Asi Om Prakash and search of Sunil Kumar was conducted by Asi Jagpal Singh. Accused Munni Lal was found to be wearing a military coloured jacket and from the right

side pocket of his jacket Heroin contained in polythene paper and tied in a handkerchief was recovered which weighed about 150 gms out of that 10 gms was separated as sample and converted into a parcel with the seal of S.S. The remaining Heroin was put in the same polythene paper and the handkerchief and thereafter it was sealed in the separate parcel with the seal of S.S.

(6) Heroin was also recovered from Surjit Singh and Sunil Kumar. Inspector Surinder Singh thereafter prepared a CfsI Form and affixed specimen of the seal of S.S. on the said Form and handed over after using the same to the Sub Inspector Om Prakash. Both the parcels contained the sample of Heroin and the remaining Heroin was taken into possession vide memo Exhibit PW4A which was attested by S.I. Om Prakash (Public Witness 4) and A.S.I. Jagpal Singh.

(7) Inspector Surinder Singh recorded Ruqqa Exhibit Public Witness 7B and directed head constable Harbir Singh (Public Witness 6) to take the case property, CfsI Form, copy of the seizure memo and the Ruqqa to the Police Station, Mandir Marg and asked him to produce the case property and the CfsI Form before the Duty Officer for the purposes of registration of the case. Accordingly head constable Harbir Singh produced the case property and the C.F.S.L. Form before the S.H.O. Inspector P. S. Patwal (Public Witness 5) affixed his seal of Asp on both the parcels and specimen of the said seal on CfsI Form and thereafter he deposited the case properly with Malkhana Mohrar. Head Constable Puran Singh (Public Witness 3) on the basis of ruqqa exhibit Public Witness 7)B Asi Ranbir Singh (Public Witness I) recorded formal Fir exhibit Public Witness 1A.

(8) On 2nd January, 1987, constable Ram Daras obtained the sample parcel from Malkhana Mohrar Puran Singh and deposited the same in the office of CfsI New Delhi vide certificate No. 274/21. The sample was analysed by N. K. Parshad, Sr. Scientific Officer, CfsI which gave positive test for Heroin. Inspector Surinder Singh obtained report of the analysis exhibit Public Witness 71D and thereafter accused was charge sheeted.

(9) To establish its case, the prosecution examined seven witnesses. Sub Inspector Om Prakash (Public Witness 4) and Inspector Surinder Singh Public Witness 7 are witnesses of recovery of 150 grams of Heroin from the possession

of accused appellant Munni Lal. Head constable Harbir Singh had taken case property from the spot. Along with the CfsI Form and produced before the S.H.O. Police Station Mandir Marg. He had also taken ruqqa exhibit Public Witness 7B to the police station on the basis of which formal F.I.R. was registered. Constable Ram Daras Public Witness 2 had deposited the sample parcel with the CFSL. Head Constable Puran Singh was acting as Malkhana Mohrar at police station Mandir Marg on 23rd December, 1986. According to him on that date the S.H.O. Patwal had handed over him two parcels bearing seals of SS. and P.S.P. for keeping them in safe custody in the Malkhana and after recording entry in the Register, photostat copy of which is exhibit Public Witness 3/1, he kept the case property in the Malkhana Mohrar on 2nd January, 1987 and sent the sample parcel to CfsI through constable Ram Daras.

(10) The statement of the accused was recorded under Section 313 of the Criminal Procedure Code . in which he pleaded that he is not guilty and had made grievance that he has been falsely implicated in the present. case. The accused submitted before the learned Additional Sessions Judge that no efforts have been made to associate any independent witness in the raiding party. The recovery has been effected from a crowded place around 5.30 p.m. There are many offices and shops, therefore, in case the respondent really wanted to associate independent witnesses there would have been no great difficulty because of the time and location of the place.

(11) The learned counsel also submitted that no action has been taken against 'those who refused to join the raiding party The Explanationn given by the Investigations Officer for not pining independent witness cannot be accepted in the circumstances of this case.

(12) The learned counsel appearing for the State submitted that a secret information was received around 5.15 p.m. and according to the information accused were to arrive there at 5.30 p.m. so there were only 15 minutes left at their disposal and. therefore, in that short span of time it was not possible for them to have arranged for independent witnesses. He further submitted that no adverse inference should be drawn against the prosecution for not joining the

independent witnesses. Looking to the peculiar facts and circumstances of this case.

(13) It is further mentioned on behalf of the State that it is a matter of common knowledge that members of public are ordinarily reluctant to join police investigation and therefore, it is not always possible to associate public witnesses particularly in a case of this nature when the time at the disposal of the raiding party was only 15 minutes.

(14) It is also contended that there is no compliance of the provisions of 'Section 50 of the Act because no notice was given to the Accused appellant under Section 50. The story of oral notice under Section 50 is clearly an after-thought. The learned Additional Sessions Judge has held that the entire prosecution version cannot be thrown out only on the ground that no option in writing was given to the accused because there is no such requirement of the law. The Additional Sessions judge has held that neither any entry was made by the S..H.O. in Roznamcha regarding the case property nor did. he give any note in the copy of the seizure memo that he has affixed his seal on the case property. Even then he did not see any reason to disbelieve the statement of Police Station Patwal who has stated that he has affixed a seal of Psp on both the parcels containing the sample, and the remaining Heroin as well as CfsI Form. The statement of Inspector police station Patwal finds corroboration from the entry of Malkhana Register exhibit Public Witness 3/8 which was made at the time of deposit of the case property. Learned Additional Sessions Judge has held that there is a note at portion A to A of exhibit Public Witness 3A to the effect that both parcels were sealed with the seal of the PSP. The learned Additional Sessions Judge has. held that the case property was produced before the S.H.O. who affixed his seal of Psp on the case property as required under Section 55 of the Act.

(15) it was contended before the learned Additional Sessions Judge that it is not clear whether CfsI Form was filled up at the spot or was it produced before the S.H.O.. who allegedly affixed the specimen of his seal on the Form and deposited the same in the malkhana. There is no mention of the deposit of the CfsI Form with the case property in the statement recorded under Section 151 of the Code of

Criminal Procedure. The S.H.O. did not make any reference to the CfsI Form and further, that constable Ram Daras who had taken the sample from the Metropolitan. Magistrate to he deposited to the CfsI for analysis, does not say that he had taken the CfsI Form from the Metropolitan Magistrate or deposited the same along with the sample parcel in the CfsI on the basis of the aforesaid facts and circumstances.

(16) It was also argued that no CfsI Form was prepared nor was it produced before the S.H.O. or deposited with the case property and therefore, there is a possibility that the CfsI Form was prepared later on. The learned Additional Sessions Judge has held that from the statement of P. S. Patwal recorded under section 161 Criminal Procedure Code . it was not put to him regarding omission of the. CfsI Form and, therefore, the S.H.O. of the Police Station, patwal was not called upon to show why he did not mention the affixation of seal on the CfsI Form. However, the commission to slate this fact of the statement recorded under Section 161 Cr. P.C. does not mean that the CfsI Form was not produced before the S.H.O. in the malkhana register.

(17) Invariably, the Metropolitan Magistrate, reproduced the copy of the seizure memo when he makes an entry in the register regarding deposit of the case property. Since there was no mention of the CfsI Form in the seizure memo, therefore, it was not mentioned in the malkhana register. The learned Additional Sessions judge has held that it appears that constable Ram Daras had forgotten to mention this fact in his statement. The learned Additional Sessions Judge reached to a clear conclusion that defense of the accused is without substance. The evidence adduced by the prosecution leaves no room of doubt that the accused Munni Lal was found in possession of 150 gms Heroin when intercepted by the police party Along with his companions Sunil Kumar and Surinder Singh on 23rd December, 1986 and consequently the Petitioner is clearly guilty under Section 21 of the Ndps Act.

(18) The learned Additional .Sessions Judge convicted the accused and sentenced him under Section 21 of the Ndps Act.

(19) The appellant aggrieved by the judgment and order of the Additional Sessions Judge preferred the appeal before this Court.

(20) Mr. Teja Singh Sodhi, counsel for the appellant submitted that the entire case is based on the testimony of the police witnesses without corporation of independent witnesses.

(21) The prosecution ought to have associated independent witnesses in the raidine party in order to establish credibility of the prosecution version and failure to do so renders the entire prosecution version doubtful and the appellant must get the benefit of doubt.

(22) Mr. Teja Singh Sodhi, also vehemently argued that there was no notice under Section 50 of the Ndps was given to the accused and no option as envisaged under Section 50 of the Ndps Act has been given to the accused appellant and only on this very ground, the accused appellant are entitled to acquit.

(23) The learned counsel further submitted that in the absence of independent witnesses it is imperative for the prosecution to give a notice in writing under Section 50 of the Ndps Act, otherwise entire prosecution version becomes doubtful.

(24) The learned counsel for the petitioner has placed reliance on the recent judgment of the Supreme Court State of Punjab v. Balbir Singh JT 1994 (2) 108, to demonstrate that section 50 of the Ndps is of mandatory character and non-compliance of the same vitiates the entire prosecution version.

(25) The learned counsel for the petitioner submitted that the service of written notice under Section 50 Ndps Act ought to become imperative particularly, in cases where the search was not conducted in presence of public witnesses.

(26) It is further submitted by Mr. Sodhi that in exceptional cases, notice could be oral also but those should be the cases where search is at least conducted in the presence of the public witnesses.

(27) The genesis of the submission of the learned counsel is that the trustworthiness and credit-worthiness of the prosecution version, either there should be a notice under 50 in writing to the accused or if the notice is oral, then it must be a case where public witnesses have been associated with the raid so that there is corroboration of prosecution version from independent witnesses. Reliance is also placed by the learned counsel on *Rattan Lal v. State*, : 32(1987)DLT1 . The court in this case has held that very stringent punishment has been provided for the offence under the N.D.P.S. Act and for that reason, the Legislature expected meticulous compliance of the procedure and provisions of law to rule out any possibility of implication and harassment of the innocent people. It would be total negation of rule of law if in serious offences of this nature, proper and strict compliance of procedure and provisions of law is not insisted upon.

(28) In this case. no public witness was involved in the matter of search and seizure as envisaged by sub-section 4 of Section 100 of the Code of Criminal Procedure. Section 100(4) Criminal Procedure Code . reads as under:

'1. Persons in charge of closed place to allow search. (2).....:..... (3).....-.....
(4) Before making a search under this Chapter the officer or other person about to make it shall call upon. two or more independent and respectable inhabitants to the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. (5)

(29) The court further observed that this Explanation on behalf of the prosecution that the public witnesses were requested but they declined to co-operate. This kind of Explanation is offered by the prosecution in almost all the similar cases and courts have to be quite cautious in scrutinizing prosecution version. The court further observed that in the circumstances of a particular case, it may so happen that for a variety of reasons, the public witnesses may decline to associate themselves but generally speaking, it does not so happen. If public witnesses decline to co-operate without any reasonable cause, it will be deemed to have committed an offence under Section 187 Indian Penal Code and this has been

clearly spelt out in sub-section (8) of Section 100 Criminal Procedure Code .

(30) It is submitted by the counsel for the accused that when public witnesses decline to associate themselves, then at least the necessary details must be available with the prosecution such as name of the witnesses, and the reasons for their declining to associate themselves with the raiding party. The concerned police officials must at least obtain the names, time, and addresses of the witnesses who were approached and declined to join the raiding party. They should also record reasons for not joining the raiding party so that in appropriate cases, verification can be done by the courts. Mere routine and bald version of the prosecution that the public witnesses had declined to join the raiding party ought not to be accepted unless convincing grounds for their not joining the raiding party are fully made out.

(31) The learned counsel for the appellant submitted that clear intention of the Legislature behind incorporating and introducing sub-section (4) of Section 100 was that in order to believe the prosecution version, and to have trustworthiness and credit- worthiness in its version, there must be corroboration from an independent source. The entire prosecution version based on Police witnesses can never be good enough and safe to be the basis of recording conviction.

(32) The strict compliance of sub-section (4) of Section 100 of the Code becomes all the more important in cases pertaining to the Mdps Act where such a stringent punishment is envisaged by the legislature.

(33) The Legislature in its wisdom rightly laid down such a severe punishment to the accused persons who are involved in drug-trafficking because such kind of accused make an attempt to demolish the entire social fabric of the nation and make it totally crippled. But at the same time, the Legislature envisaged that innocent people ought not to be harassed in cases of this nature.

(34) Experience of dealing with these cases reveals that unfortunately kingpins who are responsible for carrying on these nefarious trade are rarely brought to book and mostly only those accused are brought to book who are either the carrier of drugs or people who are charged with recovery of very small, quantity of The

narcotic substance, (which is at times meant for accused's personal use). The accused involved in small quantity are also guilty of the offence but in such cases, the possibility of implanting the drug substance for settling other scores or for other extraneous considerations cannot be totally ruled out. The courts have to be extremely careful in dealing with the matters pertaining to the Ndps Act even from this perspective. The accused involved in this nefarious trade and activities must be awarded the severe punishment envisaged by the Legislature and those innocents ought not to be harassed and if falsely implicated must be released acquitted at the earliest.

(35) The provisions of the Indian Evidence Act have specifically incorporated Section 25 of the Indian Evidence Act. which reads as under:-

'25. Confession to police officer not to be proved.- - No confession made to a police officer shall be proved as against a person accused of any offence-'

(36) 'THE intention and meaning is clear and explicit. Any confession made before the Police officer would be inadmissible. The Legislature in its wisdom and prudence thought it appropriate that this is a necessary safeguard which the innocent citizen ought to be provided with. Otherwise, possibility of false implication of innocent people in serious criminal cases cannot be ruled out. If the true intention of the legislature is given effect to, then in the instant, case. the conviction of the accused is entirely based on police witnesses. There is no corroboration of independent witnesses. In these conditions, even if the notice under Section 50 has also not been given in writing whether it would be safe to base conviction only on the police witnesses,

(37) Learned counsel also placed reliance on the Division Bench judgment of the Punjab & Haryana High Court, 1993 (1) Chandigarh Criminal Cases, 48 State of Punjab v. Mela Singh 3; while following the earlier judgment i.e. 1987 (2) RCR 117, Swarna v. State of Punjab 4, the court has held that, 'the law is, of course, well settled that the testimony of a witness is not to be doubted or looked up with suspicion merely because he happens to be a Police official, but, at the same time, a very well recognised role of caution, adopted by the courts, to look for corroboration to the testimony of such witnesses by independent witnesses,

particularly, when the time, place and circumstances, are such that independent witnesses are easily available. In the present case, as mentioned earlier, the place of apprehension and search of the respondent was through fare. People from the locality were present there at that time. It is simply incredible that no independent person collected there was joined as a witness and all of them declined to be joined as search witnesses. Failure of the investigating agency to make the search in the presence of two independent witnesses of the locality also renders the prosecution case against the accused doubtful. The accused was acquitted in the said case.

(38) The learned counsel also had drawn my attention to the Division Bench judgment of Himachal Pradesh, State of Himachal Pradesh v. Sudarshan Kumar @ Kala, reported in 1989 (1) CLR 240. The court observed, 'In this case also, the police had advance information with respect to the accused carrying charas. The police party was in Manali Bazar.' The court observed that 'it was, therefore, shocking that the Police could associate two independent witnesses, one of them PW-1, Dhani Ram did not support the prosecution case at all and had to be declared hostile. It beats one's imagination as to why some persons of such status and position could not be persuaded to join the police party on whose testimony the court act without second thought. It is not to say that an illiterate person, in all circumstances, is not a good witness, but in case of present nature, we cannot but observe with all the emphasis at our command that the police must devise new and improved investigating processes and ensure that the calibre of the evidence which is brought before a court of law is of a high order. Besides, in this case also, the mandatory provisions of Section 50, 52(1) and 57 have not been complied with. The accused's, therefore, entitled to acquittal. Accordingly, this appeal is accepted and it is directed that the accused be released forthwith. The incriminating articles he disposed of according to law.'

(39) -MR.TEJA Singh Sodhi, learned counsel for the appellant also submitted that admittedly the contraband drug was not taken to the SHO and his seal was missing. That also throws doubt on the credibility of the prosecution version.

(40) The learned counsel also submitted that there is nothing on record by which it can be established that the CfsI form was deposited along with the case property in the Malkhana.

(41) According to the scheme of the Indian Evidence Act, the Legislature in its wisdom enacted that the confession made before the Police is inadmissible in evidence.

(42) Sections 25, 26 and 27 differ widely from the law of England and were inserted in the Act of 1861, in order to prevent the practice of torture by the police for the purpose of extracting confession.

(43) In England, confession to a police officer is admissible in evidence in the absence of threat or promise.

(44) The first report of the Indian Law Commission shows the reason which prompted the Legislature in enacting sections 25 and 26. 'The police in the Province of Bengal are armed with very extensive powers. They are prohibited from enquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the police Inspector or Sub-Inspector, Police, who is authorised to examine the complainant, to issue process of arrest, to summon witnesses, to examine the accused and forward the case to the Magistrate or to submit a report of his proceedings according to the evidence. The evidence taken by the Parliamentary Committee on Indian Affairs during the Sessions of 1852 and 1853 and other papers which have been brought to our notice, abundantly show that the powers of the police are often abused for purposes of extortion and oppression and we have considered whether the powers now exercised by the police might not be greatly abridged. We have arrived at the conclusion that considering the extensive jurisdiction of the Magistrate, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the police with some such powers as they now possess.'

(45) As regards Sections 25, 26 and 27, Mahmood, J. observed in *Queen Empress v. Babu Lal*, 6 All. 509 : 'I have stated these facts as introductory of the observations which I am about to make that the rules contained in sections 25, 26 and 27 of the Evidence Act were not originally treated in British India as speaking rules of evidence, but rather as rules governing the action of police officers, and as matters of criminal procedure. I may take it that no such rules existed either in the Muhammadan law or in the English law of evidence the only two systems to which the courts resorted for guidance on questions of evidence in criminal matters.'

(46) Then after making mention of previous legislation on the subject he added : 'These legislative provisions have no doubt in my mind that the Legislature had in view the malpractices of police-officers in extorting confessions from accused persons in order to gain credit by securing convictions, and that those malpractices went to the length of positive torture. The Legislature in laying down such stringent rules, regarded the evidence of police officers as untrustworthy, and the object of the rules was to put a stop to the extortion of confession, by taking away from the police-officers the advantage of proving such extorted confessions during the trial of accused persons.'

(47) Similarly in *Solam v. Emperor*, 43, Indian cases 111(7), the court observed that Section 25 of the Evidence Act is enacted to guard prisoners accused of offences against unfair practices on the part of the police.

(48) In *Queen Empress v. Bipin*, 2 CWN 71, the court observed : 'The reason why the law in section 25 and 26 jealously excludes a confession made by an accused, whilst in the custody of a police officer unless it be made in the immediate presence of a Magistrate, is that there is room for apprehension that a police-officer, who is armed with large powers over accused persons, may unwillingly excite terror in their minds and extort false and involuntary confessions and his duty to investigate criminal cases and to detect offenders and bring them to justice may make him feel tempted to obtain confessions from accused persons by threat, promise or other improper influence.'

(49) As far back as the year 1817, the Legislature repealing the older rules upon the subject, passed Regulations Xx of that year, which, inter alia, had for its object the consolidation of the rules for guidance of police-officers. Clause (1) of section 19 of the Regulation laid down that 'whenever any person may be apprehended and brought before a darogah, or other police officer, under the provisions of this Regulation, the examination of the prisoner shall be taken, without oath in the presence of three or more credible witnesses.

(50) The provisions of Regulation Xx of 1817 remained uncurbed in the Statute-book up to the year 1862 (Act Xxv of 1961).

(51) THE Criminal Procedure Code of 1908, although did not expressly repeal section 19 of Regulation Xx of 1817, reproduced the rules contained in the first two clauses of that section, but modified and reversed them in some important and essential details, so as to render them even more stringent a circumstance which shows that the checks placed by the Regulation on the malpractices of police officers had proved inadequate.

(52) The Full Bench of Calcutta High Court in *Queen Empress v. Babu Lal*, 6 All 509 had mentioned that the reason of the rule that confessions made to police officer is inadmissible was partly because the evidence of a police officer is untrustworthy to prove a confession and partly that the police should not be encouraged to extort concession in the hope of gaining credit by securing convictions.

(53) The Supreme Court in *U.P. v. Deoman Upadhaya*, : 1960 CriLJ1504, has mentioned that Sections 25 and 26 were enacted not because the law presumed the statements to be untrue but having regard to the trained nature of the source of the evidence prohibited them from being received in evidence. It is manifest that class of persons who needed protection most were those in the custody of the police and persons not in the custody of police did not need the same degree of protection.

(54) The United States Supreme Court in *Miranda v. Arizona*, 384 Us 436 has laid down that a confession, is deemed to be involuntary where it is obtained by way of

custodial interrogation in an atmosphere created for no purpose other than to subjugate the individual. Unless adequate protective devices are employed to dispel the compulsion inherent in custody no statement obtained can be taken to be of free choice. The very fact of custody appears to be enough.

(55) It maybe pertinent to mention that after independence, it was claimed by the police officers all over India that police should be shown a greater measure of confidence and statements or confessions made to the police should be made admissible in evidence. The Law Commission was unable to accept the suggestion that the provisions in Ss 25 and 26 of the Evidence Act should be modified so as to make confessions to the police admissible. In its view officers of the status of Deputy Superintendent of Police and above must be trusted and confession made to them may be accepted in evidence. This relaxation must necessarily be restricted to the cases in which such officers themselves investigate crimes.

(56) The law as it stands today is that the confession made to police officer, including high officials, is not admissible. On the contrary, consistent efforts are being made in England that they should accent procedure of Indian Evidence-Act, 1872. Even in England, cases have come to the notice where third degree methods have been used to extort confession from the prisoners.

(57) Sarkar on Evidence (14th edition) 1993 quoted that. the 'Guardian (formerly the Manchester Guardian) in an editorial approving the idea of following the Indian Model described its gist as giving the Police unlimited powers to question a suspect, unhampered by the Judges Rules observed in the English Procedure, but prohibiting statements or confessions made by suspects to the Police from being heard in evidence at the subsequent trial proceedings they can be used by the Police only as clues which will lead them to further evidence, and to be admissible as evidence a confession must be made before a Magistrate.

(58) Reverting back to the Indian scenario, one can legitimately say without any fear of contradiction that even after 47 years of independence, conditions have almost remained unchanged. Even now, it would not be safe to base conviction on the basis of confession recorded by the Police. The Legislature in its wisdom has

incorporated section 25 in the Indian [Evidence Act, 1872](#) and retained the same unamended even after more than a century.

(59) 'THERE is distinction in basing the conviction on the confession recorded by the Police and conviction recorded on the basis of Police witnesses examined in Court. At the same time. when we analyze the well-settled and time tested principles of Evidence Act and criminal jurisprudence, the conclusion becomes irresistible that no conviction should be made solely on the testimony of the Police officials without any corroboration from any independent source. In the instant case. the conviction. by the trial court has been recorded solely on the testimony of the police officials and more so when even the mandatory notice under Section 50 Ndps Act has not been given in writing.

(60) The recovery is made at 5.30 P.M. on 23-12-86 from a very crowded place where there are large number of offices and shops are located, the prosecution has failed to join any independent persons in the raiding party. The Explanationn given is that they did not have enough time to join Public witnesses cannot be accepted particularly looking to the time and the place of recovery.

(61) The mandatory notice under section 50 of the Ndps Act has also not been given in writing to the accused. Though there is no requirement of law that the notice under Section 50 of the. said Act has to be given in writing but in cases where there is no public witness, in that event at least the notice under Section 50 ought to be in writing in order to lend credibility to the prosecution version. At least in those cases, where the entire prosecution case consists of only the police witnesses, there must be notice under Section 50 of the Ndps Act in writing.

(62) In this case, apart from these serious infirmities, and lacunas in the prosecution version the learned Additional Sessions Judge has held that no entry was made by the Sho in Roznamcha regarding the case property nor did he give any note in the copy of the seizure memo that he has affixed his seal on the case property.

(63) The learned Additional Sessions Judge has also held that it is not clear whether the Cfsi form was filled in at the spot or was it produced before the SHO.

(64) In view of all these serious infirmities in the prosecution version, it would not be safe to base conviction on such a quality of evidence, and the accused is clearly entitled to the benefit of doubt and accordingly the appeal is allowed and the conviction recorded by the Additional Sessions Judge in this case is set aside and accused is acquitted and released forthwith, if not required to be detained in any other case. Appeal allowed.

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