

P L D 1978 Supreme Court 21

Present : Anwarul Haq, Muhammad Akram and Dorab Patel, JJ

NAQIBULLAH AND ANON-Appellants versus

THE STATE-Respondent

Criminal Appeal No. 1-P of 1977, decided on 5th July 1977.

(On appeal from the judgment and order of the Peshawar High Court, Peshawar, dated the 4th November, 1975, in Criminal Appeal No. 23 of 19751 Murder Reference No. 7 of 1975).

(a) Criminal Procedure Code (V of 1898)-

S. 164-Confession, recording of-Accused kept in Police custody for seven days before recording of their confessional statements-No explanation for such inordinate delay-Magistrate also not satisfying himself about cause of delay before recording confessional statements nor putting any question to accused if they were tortured by Police during their arrests-Reasons for making confessions also not inquired into-Magistrate however found to have taken precautions to assure himself of confessions being voluntarily made without any inducement, threat or promise--Inadvertent lapses on his part, held, no reason to disbelieve Magistrate on point-Discrepancy with regard to period of custody being unexplained probable inference of accused being detained for interrogation by police a day before being arrested formally - Circumstance, held further, raised suspicion of Police having not acted quite fairly in investigation of case.-[Confession Investigation].

(D) Evidence Act (I of 1872)--

-- S. 24-Confession-Admissibility-Accused denying having confessed their guilt before any Magistrate while giving their statements before committing Magistrate but while on trial in Sessions Court, stating same having been obtained forcibly by torture-Accused's stand not only inconsistent but also not supported by any evidence Investigating Officers, produced to prove prosecution case, not crossexamined to show confessions having been obtained by torture. - Cross-examination of Magistrate recording confessions also not showing confessions having been obtained under any inducement, threat, or promise-Confessions, held, could not in circumstances be struck down as inadmissible.-[Confession].

(c) Criminal Procedure Code (V of 1898)-

S. 164 read with West Pakistan High Court Rules and Orders, Vol. 111, Cl. 13-Federal Capital of Sind Court Circular, Ch. VI, Part (C)-Confessions, recording of-Duty of Magistrates. -[Confession].

The provisions in Chapter 13, Vol. III of the then West Pakistan High Court Rules and Orders and those in Chapter VI, Part (C) of Federal Capital of Sind Circular are in the nature of instructions issued to the Magistrates for their guidance only in recording the confessions. These are merely directory in their nature. The sole object and the dominant purpose behind all these instructions issued to them is that they must always make a real and earnest endeavour to ensure that the confessions of the accused recorded by them are free and voluntary and are not caused by any inducement, threat or promise. Each case has got to be decided on its own facts in the light of the law. In this connection, however, in recording a confession, the Magistrate must always apply himself fully diligently and in all seriousness, as a matter of solemn duty, to this last entrusted to him under the law. He cannot be casual and remiss or act mechanically in the enquiries made from the accused before recording his confession. He should endeavour to place him at ease, dispel all or any of the lurking fear, Inducement, hope or promise from his mind to enable him if he so chooses, to make of his own volition, an absolutely free and voluntary statement according to the best dictates of his own inner conscience. The Magistrate before proceeding to record the confession must fully assure himself and satisfy his own judicial conscience about it.

Mat. Said Begum v. The State P L D 1958 Lah. 559 Jumma and other v. The Crown P L D 1954 Lah. 783 and Sped Sharifuddin Pirzada v. Sohbat Khan and others P L D 1972 S C 363 ref.

(d) Evidence Act (I of 1872)-

--- S. 24-Confession--Admissibility-Occurrence. at least according to confessional statements, not an altogether unwitnessed occurrence-Prosecution itself at first citing four persons as its witnesses but later giving up such witnesses as won over-Yet another witness allegedly present neither cited as witness nor produced in evidence-Prosecution also failing to effect recovery of blood-stained clothes worn by one accused-Witnesses of locality presumed to have seen accused returning from place of occurrence with clothes besmeared with stains of blood also not produced-Doctrine of confessional statements regarding accused asking witnesses to tell inquirers that deceased died due to drowning in river inherently fallacious, dead body actually lying at spot with injuries caused by sharp-edged weapon-Prosecution, held, failed to establish confessions being true and sufficiently corroborated in material particulars from other evidence on record.[Confession].

Queen v. Thompson (1893) 2 Q B D 12; State v. Minhun alias Gul Hassan P L D 1964 S C 813 1 Nadir Hussain v. The Crown 1969 S C M R 442 1 Dhani Bakhsh v. The State P L D 1975 S C 187 and Sarwan Singh Rattan Singh v, The State of Punjab P L D 1957 S C (Ind.) 555 ref.

(s) Criminal Procedure Code (V of 1898)-

5. 157-Investigation by Police-Investigating Officer not to be simply Satisfied with securing of confession but bound in duty to pursue investigation further.-[Confession-Investigation].

Queen-Emperor v. Babu Lal and others I L R C All. 509 and Hinga v. King-Emperor A I R 1922 Oudh 202 ref.

(t) Evidence Act (I of 1872)-

-- S. "-Last seen evidence-Evidence of deceased having been last seen alive in company of accused-A weak type of circumstantial .evidence for basing conviction.-[Evidence].

Fazal Elahi alias Sajawal v. The Crown P L D 1953 F C 214 ; State v. Manzoor Ahmad P L D 1966 5 C 664 and Rehmat aliels Rehman v. The State Criminal Appeal No. 52 of 1976 ref.

(g) Penal Code (XLV of 1860)-

Ss. 302 & 34 read with Evidence Act (I of 1872), S. 7-Last seen evidence-No independent and reliable evidence, except for two retracted confessions, brought on record to establish accused having been actually seen by any body at scene of occurrence or having participated in murder-No motive at all alleged in F. I. R. against accused for murder and motive as alleged at trial much too farfetched to be real-Explanation of accused not called about circumstance appearing against him in evidence regarding deceased having been last seen alive in accused's company and as such no opportunity of explanation given-Circumstances and evidence of deceased being last seen alive with accused, held, cannot be used against accused.[Evidence].

(b) Criminal Procedure Code (V of 1898)-

= S. 342-Criminal trial-Appreciation of evidence-Findings of Courts below regarding injuries on accused being caused as result of grappling with deceased-Based on conjectures and on no evidence. Onus, held, lay on prosecution to prove its case by adducing reliable corroborative evidence and not by merely finding fault with inadequate explanation furnished by accused.-[Evidence-Burden of proof].

Zahurul Hag, Advocate Supreme Court instructed by M. Qasim Inam,

Advocate-on-Record for Appellants.

Mufti Muhammad Idols, Advocate-General N: W. F. P. instructed by Safdar Hussain, Advocate-on-record for the State.

Date of hearing t 29th March 1977.