

A

## SITA RAM

v.

## STATE OF UTTAR PRADESH

B

April 25, 1965

[A. K. SARKAR, C.J., J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

*Indian Evidence Act, 1872 (1 of 1872), s. 25—Confessional letter to Police Officer—Admissibility.*

C

The appellant was convicted for urder under s. 302 Indian Penal Code. The prosecution relied on amongst other materials, a letter. The letter contained a confession and was addressed to the Sub-Inspector. The appellant wrote the letter with the intention that it should be received by the Sub-Inspector, kept it near the dead body and left the house after locking it. The lock was broken open and the letter was recovered by the Sub-Inspector. In appeal to this Court the admissibility of this letter was challenged.

D

HELD: (Per *Curium*) There was sufficient material on the record, apart from this letter, establishing the guilt of the appellant.

Per Sarkar, C.J. and Mudholkar, J:—The letter was admissible in evidence.

E

No doubt, the letter contained a confession and was addressed to a police officer. That could not make it a confession made to the police officer which is within the bar created by s. 25 of the Evidence Act. The Police Officer was not nearby when the letter was written or knew that it was being written. In such circumstances quite obviously the letter would not have been a confession to the police officer if the words "Sub-Inspector" had not been written. Nor it can become one in similar circumstances only because the words "Sub-Inspector" has been written there. It would still have not been a confession made to a police officer for the simple reason that it was not so made from any point of view. [267 H—268 B]

F

Per Bachawat J.,—The letter was inadmissible in evidence and was a confession made to a police officer. [268 D-E]

A confession to a police officer was within the bar of s. 25, though it was not made in his presence. A confessional letter written to a police officer and sent to him by post, messenger or otherwise is not outside the ban of s. 25 because the police officer was ignorant of the letter at the moment when it was being written. [268 G].

*R. V. Hurribole*, (1876) I.L.R. 1 Cal. 207, approved.

G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 118 of 1964.

Appeal from the judgment and order dated March 2, 1964 of the Allahabad High Court in Criminal Appeal No. 2531 of 1963 referred No. 160 of 1963.

H

*K. L. Sharma and Harbans Singh*, for the appellant.

*O. P. Rana*, for the respondent.

The Judgment of SARKAR, C.J. and MUDHOLKAR, J. was delivered by MUDHOLKAR, J. BACHAWAT, J. delivered a separate Opinion.

**Mudholkar, J.** The Additional Sessions Judge, Kumaon, after convicting the appellant Sita Ram of an offence under s. 302, Indian Penal Code for the murder of his wife Sindura Rani, has sentenced him to death. The High Court of Allahabad affirmed his conviction but reduced the sentence to one of imprisonment for life.

The fact that Sindura Rani met with a homicidal death is not in dispute. What is, however, contended on behalf of the appellant is that there is no evidence on the basis of which his conviction could be based. Admittedly there are no eye-witnesses to the occurrence. The prosecution case against him rests on the following material:

(1) motive; (2) opportunity; (3) subsequent conduct; (4) false explanation and (5) confessional statements.

There is ample evidence on record to show that the relations between the appellant and his wife were very much strained, that the two were living apart and that this was because the appellant suspected that his wife was a woman of loose character. This evidence consists of the testimony of some near relatives and also of several letters written by the appellant to his wife Sindura Rani, to his mother-in-law Inder Kaur (P.W. 2) and to his brother-in-law Tilak Raj (P.W. 1). The appellant had denied that the letters were in his hand-writing but it has been found by both the courts below that they were in fact written by him. The finding of each of the two courts below that the relations between the appellant and his wife were strained because the appellant not merely suspected the fidelity of his wife but also charged her with unchastity being one of fact cannot be lightly permitted to be questioned in an appeal by special leave. No ground has been made out by learned counsel which would justify our looking into the evidence for ourselves.

Similarly, on the question of opportunity, Sindura Rani who had gone to stay with her people had been asked by the appellant to return home on the pretext that one of their children was ill and accordingly she arrived at Kashipur where the appellant lived only 5 or 6 days prior to the incident. Since her return she and the appellant were the only two adult persons living in the house of the appellant. The only other person living with them was their daughter about two years old.

When the Sub-Inspector of Police arrived on the morning of September 15, 1962 after receiving a report that the appellant's house was locked from outside and the cry of a child from inside could be heard, found the outer door of the house locked. After breaking it open he found a lantern burning by the side of the dead body of Sindura Rani. From these facts the courts below were justified in coming to the conclusion that the appellant had an

**A** opportunity to commit the murder of his wife Sindura Rani. The appellant's defence that he had gone to Punjab along with one Pritam Singh on September 13, 1962 and could return from there on September 19, has not been accepted by the two courts below in the absence of any material to substantiate it.

**B** In addition to these there is the fact that the appellant could not be found till September 19, on which date he surrendered himself before the court. It would be reasonable to infer from this that he was absconding till this date. The explanation which the appellant gave concerning his absence has been rightly rejected as false. In the circumstances there was adequate material before the courts below upon which his conviction could be based.

**C** In addition to this circumstantial evidence the prosecution placed reliance upon Ex. Ka 9. This is a letter dated September 14, 1962 addressed to the 'Sub-Inspector' and bears the signature of the appellant in Urdu. It reads thus:

**D** "I have myself committed the murder of my wife Smt. Sindura Rani. Nobody else perpetrated this crime. I would appear myself after 20 or 25 days and then will state everything. One day the law will extend its hands and will get me arrested. I would surrender myself.

(Sd. in Urdu) Sita Ram Naroola,  
14th September, 1962."

**E**

On the back of this letter is written the following:

"It is the first and the last offence of my life. I have not done any illegal act nor I had the courage to do that, but this woman compelled me to do so and I had to break the law."

**F** This letter was found on a table near the dead body of Sindura Rani. It was noticed by the Sub-Inspector Jagbir Singh, P.W. 16 and seized in the presence of three persons who attested the seizure memo and were later examined as witnesses in the case. The prosecution has established satisfactorily that the letter is in the handwriting of the appellant and that the signature it bears is also that of the appellant. Learned counsel for the appellant has challenged

**G** the admissibility of this letter on the ground that it amounts to a confession to a police officer and that, therefore, s. 25 of the Evidence Act renders it inadmissible in evidence. We do not think that the objection is well-founded. No doubt, the letter contains a confession and is also addressed to a police officer. That cannot make it a confession made to a police officer which is within the bar created by s. 25 of the Evidence Act. The police officer was not nearby when the letter was written or knew that it was being written. In such circumstances quite obviously the letter would not

**H**

have been a confession to the police officer if the words "Sub-Inspector" had not been written. Nor do we think it can become one in similar circumstances only because the words "Sub-Inspector" had been written there. It would still have not been a confession made to a police officer for the simple reason that it was not so made from any point of view.

We agree with the High Court, therefore, that the confession contained in Ex. Ka-9 is admissible and that it is an additional circumstance which can be pressed in aid in support of the charge against the appellant. However, as already stated, even without this confessional statement there was sufficient material before the courts below on the basis of which the appellant's conviction could be sustained.

The appeal is without any merit and is accordingly dismissed.

Bachawat, J. Section 25 of the Indian Evidence Act reads:

"No confession made to a police officer shall be proved as against a person accused of any offence."

In my opinion, the letter, Ex. Ka-9, is a confession made to a police officer, and is not admissible in evidence against the appellant. The letter contained a confession, and was addressed to the Sub-Inspector. The appellant wrote the letter with the intention that it should be received by the Sub-Inspector, kept it on a table near the dead body of his wife and left the house after locking it. The lock was broken open and the letter was recovered by the Sub-Inspector, Kasipur, to whom the letter was written. The Sub-Inspector received the letter as effectively as if it was sent to him by post or by a peon.

It is said that the appellant made no confession to the Sub-Inspector, inasmuch as the officer was not present near the appellant when he wrote the letter. I do not see why a confession cannot be made to a police officer unless he is present in the immediate vicinity of the accused. A confession can be made to a police officer by an oral message to him over the telephone or the radio as also by a written message communicated to him through post, messenger or otherwise. The presence or absence of the police officer near the accused is not decisive on the question whether the confession is hit by s. 25. A confession to a stranger though made in the presence of a police officer is not hit by s. 25. On the other hand, a confession to a police officer is within the ban of s. 25, though it was not made in his presence. A confessional letter written to a police officer and sent to him by post, messenger or otherwise is not outside the ban of s. 25 because the police officer was ignorant of the letter at the moment when it was being written.

**A** In *R. V. Hurribole*<sup>(1)</sup>, Garth, C.J. said that s. 25 is an enactment to which the Court should give the fullest effect. He added:

“I think it better in construing a section such as the 25th, which was intended as a wholesome protection to the accused, to construe it in its widest and most popular signification.”

**B** In its widest and most popular signification, the phrase “confession made to a police officer” includes a confession made to a police officer in a letter written to him and subsequently received by him. We should not cut down the wholesome protection of s. 25 by refined arguments.

**C** I am, therefore, of the opinion that the Courts below were in error in admitting Ex. Ka-9 against the appellant.

I, however, agree that, apart from Ex. Ka-9 there are sufficient materials on the record establishing the guilt of the appellant. The appeal must, therefore, fail.

The appeal is dismissed.

*Appeal dismissed.*