KANDA PADAYACHI *alias* **KANDASWAMY** A

v.

STATE OF TAMIL NADU

August 27, 1971

[J. M. SHELAT, I. D. DUA AND S. C. ROY, JJ.] B

Evidence Act (1 *of* 1872), *ss.* 21 *and* 26—*Statement to doctor admitting incriminating fact—Made by accused while in police custody—If confession and hence irrelevant or relevant as admission.*

The conviction of the appellant by the Sessions Court for the offence of murder was confirmed by the High Court. The evidence was circumstantial. One of the circumstances was a statement by the appellant, while in police custody, to the doctor, which established the presence of the C appellant in the deceased's room at about the time of death and together with other circumstances, that he alone caused the death of the deceased.

On the question whether the statement was a confession and hence irrelevant under s. 26 of the Evidence Act, 1872.

HELD : A confession has to be a direct acknowledgement of the guilt of the offence in question and such as would be sufficient by itself for con- D viction. If it falls short of such a plenary acknowledgement of guilt, it would not be a confession even though the statement is of some incriminating fact which, taken along with other evidence, tends to prove the guilt of the accused. Such a statement is only an admission and not a confession. [454 F-G]

Palvinder Kaur v. *Punjab*, [1953] S.C.R. 94, *Faddi* v. *Madhya Pradesh*, [1964] 6 S.C.R. 312 and *A. Nagesia* v. *Bihar*, A.I.R. 1966 S.C. E 119, 123, followed.

Pakala Naravana Swami v. *The King*, 66 I.A. 66, applied.

Observations of Shah, J. in *U.P.* v. *Deoman Upadhyaya*, [1961] 1 S.C.R. 14, 21, explained.

Queen Empress v. *Nana*, (1889) I.L.R. 14 Bom. 260, overruled.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. F 19 of 1971.

Appeal from the judgment and order dated April 29, 1970 of the Madras High Court in Criminal Appeal No. 861 of 1969 and Referred Trial No. 69 of 1969.

S. K. Gambhir, for the appellant. G

A. V. Rangam, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal is against the judgment of the High Court of Madras by which it confirmed the appellant's conviction under sec. 302 of the Indian Penal Code and the sen- H tence of death awarded to him. It is founded on a certificate granted by the High Court under Art. 134(1)(c) of the Constitution.

A At the material time the appellant, a widower for sometime, was living in village Valayamadevi near the house where the deceased Natesa Padayachi and his wife Meenakshi (P.W. 1) used to reside. In course of time the appellant and Meenakshi developed illicit intimacy. The deceased Natesa was serving as a driver in a rice mill belonging to one Sundaralingam Pillai and B his son Guhan Pillai (P.W. 6). One afternoon the deceased returned home a little earlier than usual and found his wife and the appellant in a compromising position. A quarrel ensued between the deceased and the appellant when the deceased warned the appellant against his coming to his house. The appellant retorted that instead of quarrelling with him the deceased should C control his wife. To prevent the appellant visiting his residence the appellant and his wife went to reside in a portion of a *Chatram* belonging to his master. Enraged by this change of residence by the deceased, the appellant demanded, through one Govindaraja (P.W. 2), that the deceased should return to him the presents given by him to his wife. He repeated this demand about two days prior to the date of the occurrence through D Subharayan (P.W. 5). On July 7, 1969, the appellant visited the house of the deceased, but P.W. 1 scolded him, whereupon the appellant told her that she was talking to him in that vain because of her husband, and that if he were to do away with her husband she would not be able to withstand him.

E On July 10, 1969, Meenakshi went to another village to see the deceased's brother who was ailing. The appellant saw her and her children going. At about 9.30 that night he was in the tea shop of P.W. 3 when he enquired if the deceased had returned home from the rice mill where he was working. Next morning P.W. 5 and P.W. 6 found Natesa lying dead with cut injuries on his neck and other parts of his body. Amongst the articles lying F near him, there was a towel which belonged, according to the prosecution, to the appellant. The evidence was that the towel had a mark of the washerman who used to wash the appellant's clothes. P.W. 6 lodged the first information report at about 7.30 that morning very soon after he and P.W. 5 had discovered the ghastly tragedy.

G

There was no direct evidence to establish as to who was the assailant of Natesa. But the prosecution relied on circumstantial evidence, namely, (1) that the appellant had a motive to do away with the deceased as the deceased had come in the way between him and P.W. 1, (2) that the appellant knew that P.W. 1 and H her children had left the village that morning and the deceased would be alone in the house, (3) that the appellant had made enquiries that night to find out if the deceased had returned home from the rice mill. (4) that the towel M.O. 6 belonging to him

was found lying near the dead body of Natesa which was identified by the washerman as belonging to him, (5) that when the appellant surrendered at the police station his clothes M.O. 7 and 9 were found to have stains of human blood, (6) discovery by the appellant of the *aruval* M.O. 1, (7) injuries on the appellant, namely, an abrasion on his toe and multiple linear abrasions on his right arm and chest, and (8) his statement to the Doctor (P.W. 8), to whom the police took the appellant after his arrest, to the effect that it was the deceased Natesa who at about mid-night on July 10, 1969 had caused the injury on his toe by biting him.

Both the Sessions Court and the High Court accepted the evidence as to these circumstances and found that that evidence clearly pointed out the appellant as the person who had caused Natesa's death, and on that basis found the appellant guilty under sec. 302.

Counsel for the appellant raised two contentions before us. The first was that both the Sessions Judge and the High Court had not properly construed important pieces of evidence and had drawn inferences which were not warranted by the facts established by evidence. The second, which was more substantial and requires consideration, was that the statement made by the appellant before the Doctor (P.W. 8) that it was the deceased who had caused the injury on his toe on the fatal night was inadmissible under sec. 26 of the Evidence Act, 1872 as it was made whilst the appellant was in the custody of the police.

On the first point, counsel took us to the evidence of several witnesses including the medical evidence and tried to show that the injuries on the deceased could not have been caused by a weapon like the *aruval,* M.O. 1, discovered by the appellant. In our view, counsel was not able to point out any misconstruction of evidence either by the Sessions Court or by the High Court. Equally unsuccessful was his attempt to show that the injuries on the deceased were not capable of being caused by a weapon such as the *aruval,* M.O. 1. The evidence was clear and unambiguous and we find no reason why it could not be accepted by the Sessions Court or the High Court. The discovery of the towel belonging to the appellant near the dead body of Natesa the next morning and his statement to the Doctor that it was the deceased who had caused the injury on his toe were sufficient to clinch his presence in the deceased's house at about mid-night on July 10, 1969, a circumstance, together with the rest of the circumstances, enough to establish a chain leading to the conclusion that he was and could be the only person who had caused Natesa's death. To those two circumstances must be added the

A evidence as regards the stains of human blood on his cothes at the time of his arrest. The first contention raised by counsel, therefore, must fail.

As regards the second contention, we think that on the strength
B of the decisions, both of the Privy Council and of this Court, the High Court was right in its conclusion that the appellant's statement before the Doctor was properly admitted in evidence and could be relied upon as an admission under sec. 21 of the Evidence Act, 1872. Nothing was and could be found against the Doctor to prevent his evidence about the statement made before
C him by the appellant from being accepted. The only question, therefore, is whether the statement was inadmissible by reason of sec. 26.

Secs. 24 to 26 form a trio containing safeguards against accused persons being coerced or induced to confess guilt.
D Towards that end sec. 24 makes a confession irrelevant in a criminal proceeding if it is made as a result of inducement, threat or promise from a person in authority, and is sufficient to give an accused person grounds to suppose that by making it he would gain any advantage or avoid any evil in reference to the proceedings against him. Under sec. 25, a confession made to a police officer under any circumstances is not admissible in the evidence
E against him. Sec. 26 provides next that no confession made by a prisoner in custody even to a person other than a police officer is admissible unless made in the immediate presence of a magistrate.

The expression 'confession' has not been defined in the Evi-
F dence Act. But Stephen in his *Digest of the Law of Evidence* defined it as an admission made at any time by a person charged with crime stating or suggesting the inference that he committed a crime. Straight J., in *R.* v. *Jagrup*(1) and Chandawarkar, J., in *R.* v. *Santya Bandhu*(2), however, did not accept such a wide definition and gave a narrower meaning to the expression 'con-
G fession' holding that only a statement which was a direct acknowledgement of guilt would amount to confession and did not include merely inculpatory admission which falls short of being admission of guilt. The question as to the meaning of 'confession' was ultimately settled in 1939 by the Privy Council in *Pakala Naravana Swami* v. *The King Emperor*(3) wherein at page 81 Lord Atkin laid down that no statement containining self-exculH patory matter could amount to confession if the exculpatory

(1) I. L.R. 7 All. 646. (2) 4 Bom. L.R. 633.

(3) 66 I.A. 66.

statement was of some fact which if true would negative the offence alleged to be confessed. He observed :

> "Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the office. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, *e.g.*, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of confession in art. 22 of Stephen's *Digest of the Law of Evidence* which defines a confession as an admission made at any time by a person changed with crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined, it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles :—confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872; and in that Act it would not be consistant with the natural use of language to construe confession as a statement by an accused "suggesting the inference that be committed" the crime."

As held by the Privy Council, a confession has to be a direct acknowledgement of the guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgement of guilt it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove his guilt. Such a statement is admission but not confession. Such a definition was brought out by Chandawarkar, J. in *R.* v. *Santya Bandhu*(1) by distinguishing a statement giving rise to an inference of guilt and a statement directly admitting the crime in question.

In *Palvinder Kaur* v. *Punjab*(2), the statement made by the accused was that she had placed her husband's dead body in a trunk and had carried it in a jeep and thrown it into a well. But with regard to the cause of death, the statement was that her husband had accidently taken a poisonous substance erroneously

(1) 4 Bom. L.R. 633. (2) [1953] S.C.R. 94.

A thinking that to be a medicine. This Court referred to *Pakala Naravana Swami's* case(1) and the dictum of Lord Atkin and held that a statement which contained self-exculpatory matter could not amount to a confession if the exculpatory matter is of some fact which if true would negative the offence alleged to be confessed. But the Court added that a statement to be a con-
B fession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence, and that an admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. In *Om Prakash* v. *U.P.*(2), the appellant was convicted under sec. 161 read with sec. 109 of the Penal Code. Two statements made by him,
C Exs. P-3 and P-4, to the Assistant Agricultural Engineer, Aligarh were relied upon as confessions of bribery having been given by him to public servants and upon which the High Court had based his conviction. This Court set aside the conviction holding that neither of the two documents amounted to a plenary acknowledgement of the offence, that the statements were capable of being
D construed as complaints by him of having been cheated by the public servants named therein and that at best they might arouse suspicion that he had bribed them. In this conclusion, the Court approvingly cited *Pakala Naravana Swami's* cse(1) and relied on the meaning of the word 'confession' given therein by Lord Atkin. In *Faddi* v. *Madhya Pradesh*(3), the appellant filed a
E first information report on the basis of which the dead body of his step son was recovered and three persons were arrested. As a rsult of the investigation, however, the appellant was arrested. and was sent up for trial which resulted in his conviction and a sentence of death. In an appeal before this Court, he contended that the first information report ought not to have been admitted by reason of sec. 25 of the Evidence Act and sec. 162 of the
F Criminal Procedure Code. The contention was rejected on the ground that neither of the two provisions barred the admissibility of the first information report as that report was only an admission by the appellant of certain facts which had a bearing on the question as to how and by whom the murder was committed and whether the statement of the appellant in the Court denying the
G evidence of certain prosecution witnesses was correct or not. Such admissions were admissible under sec. 21 of the Evidence Act and as such could be proved against the accused.

It is true that in *Queen-Empress* v. *Nana*(4), the Bombay High Court, following Stephen's definition of confession, held
H that a statement suggesting the inference that the prisoner had

(1) 66 I.A.66.
(2) A.I.R. 1960 S.C. 409.
(3) (1964) 6 S.C.R. 312.
(4) (1889) I.L.R. 14 Bom. 260.

committed the crime would amount to confession. Such a definition would not longer be accepted in the light of *Pakala Naravana Swami's* case(1) and the approval of that decision by this Court in *Palvinder Kaur's* case(2). In *U.P.* v. *Deoman Upadhyaya*(3), Shah, J. (as he then was) referred to a confession as a statement made by a person "stating or suggesting the inference that he had commiteed a crime". From that isolated observation, it is difficult to say whether he widened the definition than the one given by the Privy Council. But he did not include in the expression 'confession' an admission of a fact, however incriminating, which by itself would not be enough to prove the guilt of the crime in question, although it might, together with the other evidence on record, lead to the conclusion of the guilt of the accused person. In a later case of *A. Nagesia* v. *Bihar*(4), Bachawat, J., after referring to Lord Atkin's observations in *Pakala Naravana Swami's* case(1) and their approval in *Palvinder Kaur's case*(2) defined a confession as "an admission of the offence by a person charged with the offence." It is thus clear 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 ss. 24 to 26 of the Evidence Act.

On the authority of these pronouncements by this Court, it is clear that the statement in question did not amount to a confession. It was an admission of a fact, no doubt, of an incriminating fact, and which established the presence of the appellant in the deceased's room but which clearly was not barred under sec. 26. The Sessions Judge and the High Court were, therefore, right in holding it to be admissible and in relying upon it. In this view, councel's second contention also fails and has to be rejected.

The appeal fails and is dismissed.

V.P.S. *Appeal dismissed.*

(1) 66 I.A.66.
(2) [1953] S. C. R. 94.
(3) [1961] 1 S.C.R. 14, at 21.
(4) A.I.R. 1966 S.C. 119, at 123.