

SHRISHAIL NAGESHI PARE

STATE OF MAHARASHTRA

March 25, 1985

[O. CHINNAPPA REDDY AND V. BALAKRISHNA ERADI, JJ.]

*Criminal Procedure Code 1973, Section 164*

*Retracted confession of accused—When can form basis of his conviction  
—Whether can form basis of conviction of co-Accused.*

*Criminal Trial :*

*Evidence of truthful eye witness—Whether sufficient to warrant a conviction.*

The petitioner was convicted by the Sessions Judge under Section 302, IPC, and the conviction was confirmed by the High Court.

Dismissing the Special Leave Petition.

**HELD :** -1. The evidence of an eye witness, if accepted is sufficient to warrant conviction though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eye witness is sufficient without anything more to warrant a conviction and cannot for instance be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. [463A-B]

2. A retracted confession by an accused may form the basis of a conviction of that accused if it receives some general corroboration from other independent sources. It cannot however, be the basis for convicting a co-accused though it may be taken into consideration against co-accused also. It is entirely wrong to think that a confession can lead nowhere. [463D-E]

A. In the instant case, the High Court was wrong in treating the evidence of the eye witness as 'one of three legs of a tripod' which must collapse if any of the other Legs collapses. It was also wrong in holding that a confession cannot be the foundation of a conviction but can only constitute a fourth leg to a tripod, and that "the confession alone and by itself cannot prove the guilt of an accused."

[463C-D]

B. CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 372 of 1985.

C. From the Judgment and Order dated 18/19.9.1984 of the Bombay High Court in Criminal Appeal No. 423 of 1981

S.B. Bhasme, A.B. Bhasme and M.A. Firoz for the Petitioner.

The Order of the Court was delivered by

D. CHINNAPPA REDDY, J. This Special Leave Petition by the first accused in Session Case No. 134 of 1930 before the Sessions Judge, Sholapur whose conviction by the Sessions Judge under section 302 has been confirmed by the High Court, has to be dismissed as it rests entirely on appreciation of evidence. While dismissing the Special Leave Petition we are however, constraint to make a few remarks about some of the observations of the High Court. In paragraph 18 of the judgment of the High Court it has been said "the case of the prosecution stands on the pedestal of a tripod having the eye witness account of Shrimant and Nirmala as one leg ; the discovery of axes, spear and a pair of trousers as the second leg and the animosity generated by high-handed behaviour of Malkari regarding diversion of rain water as the third leg. The confession made by accused No. 1 Nogeshi which was subsequently retracted forms the additional fourth leg of the tripod but it is well settled that the confessional statement can never be an evidence upon which to found a conviction. It can at best furnish an additional re-enforcement when the other evidence is clinching enough to pronounce a verdict of guilt. The confessional statement alone and by itself would lead us nowhere ; if one of the legs of the tripod on which the prosecution bases its case gives way, the whole case like Humpty Dumpty would come tumbling down and the additional fourth leg—that is, the confession, will not, like all the King's horses and all the King's men would put Humpty Dumpty together."

The metaphor used by the judges is entirely misapplied and misleading. The evidence of the eye witness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eye witness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. The Judges of the High Court were wrong in treating the evidence of eye witness as 'one of three legs of a tripod which must collapse if any of the other legs collapses. Again the High Court is wrong in thinking that a confession cannot be the foundation of a conviction but can only constitute 'a fourth leg to a tripod'. This statement has been repeated again in paragraph 30, where the High Court has observed "the confession alone and by itself cannot prove the guilt of an accused." We are not a little surprised that such a statement should have been made by the High Court. We wish to make it clear and this is only to repeat what is so well established that a retracted confession by an accused may form the basis of a conviction of that accused if it receives some general corroboration from other independent sources. It cannot however, be the basis for convicting co-accused though it may be taken into consideration against co-accused also. It is entirely wrong to think that a confession can lead nowhere. We are sorry to find such careless statements in the judgment of a High Court.

Special leave petition is dismissed.

N.V.K.

*Petition dismissed*