

(2010) 09 CAL CK 0012

Calcutta High Court

Case No: CRR No. 1631 of 2009

Shibu Talukdar and Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Sept. 3, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 482
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 302, 34, 376(2)

**Hon'ble Judges:** Kalidas Mukherjee, J**Bench:** Single Bench**Advocate:** Saurav Chatterjee and Rajiv Lochan Chakraborty, for the Appellant; Joy Sengupta, for the Respondent

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**Judgement**

Kalidas Mukherjee, J.

This is an application u/s 482 Cr.P.C. assailing the order dated 09.3.2009 passed by learned Additional Sessions Judge, 2nd Fast Track Court, Berhampur in Sessions serial No. 154 of 2008 u/s 376(2)(g)/302/34 of the Indian Penal Code.

2. In course of the evidence of Chandan Das, S.I. of Police the prosecution sought for permission to exhibit the statements of the accused recorded u/s 161 Cr.P.C. The defence immediately filed an application on 14.1.2009 contending, inter alia, that such statement was not admissible. It has been contended that the learned Trial Judge by the impugned order dated 09.3.2009 illegally and without application of judicial mind rejected the petition filed by the defence and held that the whole of the statements recorded u/s 161 Cr.P.C. were admissible in evidence and directed the same to be marked as exhibit 12 and exhibit 13. It has been further contended in the application that the learned Judge did not consider that the purported confessional statements were allegedly made by the petitioners while in police custody and, as such, inadmissible in evidence. It is contended that the learned

Judge did not take into consideration the provision of Section 27 of the Indian Evidence Act. Being aggrieved with the order impugned, the accused persons have filed the instant application.

3. The learned Counsel appearing for the petitioners submits that the statements u/s 161 Cr.P.C. are inadmissible in evidence except where it leads to the recovery u/s 27 of the Indian Evidence Act. It is contended that the whole of the statements cannot be marked exhibit. It is contended that the learned Trial Judge observed that the point of recovery could not be separated from the rest of the statement and, as such, the whole of the statements should be marked exhibit. The learned Counsel has referred to and cited the decision reported in 2008(2) SCC (Cri) 266 [Alok Nath Dutta and Ors. v. State of West Bengal] paragraph 54.

4. The learned Counsel appearing for the O.P. State submits that if the statement regarding recovery can be separated from the rest of the statement that portion should be marked exhibit. In this connection the learned Counsel has referred to and cited the decisions reported in [Nuzrul Sk. @ Nazrul Mondal Vs. State of West Bengal](#), and [K. Chinnaswamy Reddy Vs. State of Andhra Pradesh](#), .

5. In this case of Alok Nath Dutta and Ors. v. State of West Bengal (Supra) it has been held in paragraph 53 as follows:

53. It is, however, disturbing to note that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the Court. See State of Maharashtra v. Damu SCC at P. 282, para 35.)

6. In the case of K. Chinnaswami Reddy v. State of Andhra Pradesh and Anr. (Supra) it has been held in paragraph 9 as follows:

9. ...Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved u/s 27....

7. P.W. 18 S.I. Chandan Kumar Das has stated that he recorded the statement of accused Shibu Talukdar and Ratan Halder in course of investigation. He has stated that he seized broken brick, one branch of mango tree stained with blood (having length of 18") from the place of occurrence in presence of witnesses; the accused identified the brick and said branch of mango tree at the spot. The whole of their statement u/s 161 Cr.P.C. have been marked exhibit 12 and exhibit 13 respectively.

Towards the end of the statement u/s 161 Cr.P.C. accused Shibu Talukdar stated that after Silpi died, the branch of tree and the broken brick were dropped in a bush and if he was taken there, he would be able to identify the same. Similarly Ratan Halder towards the end of his statement u/s 161 Cr.P.C. has stated that after Silpi died, the brick and the branch of tree were thrown in a bush and if he was taken there he would be able to identify the same.

8. Provision contained in Section 27 of the Evidence Act is quoted hereunder:

27. How much of information received from accused may be proved. ♦ Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

9. It is clear that so much of that information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved. In the instant case both Shibu Talukdar and Ratan Halder told that after Silpi died the branch of tree and the brick were thrown in a bush and if they were taken to that place they would be able to identify the same. 10. P.W. 18 has also stated that pursuant to the statement of Shibu Talukdar and Ratan Halder he recovered one piece of brick and another piece of branch of mango tree. u/s 27 of the Evidence Act this much of the information received from Shibu Talukdar and Ratan Halder relating to the discovery of those articles may be proved by the prosecution u/s 27 of the Evidence Act. The learned Trial Judge erred in law in holding that each and every word of the statements are inter-linked with each other and cannot be separated from the remaining portion and, as such, the whole of the confessional statements of the accused Shibu and Ratan recorded by the I.O. was admissible in evidence. I find that the observation of the learned Trial Judge is not sustainable in law in view of the discussions made above. I find that part of the statements of these two accused where they have stated that after Silpi died the branch of mango tree and the brick were thrown in the bush and if they were taken to that place they would be able to identify the same, this part of the statement be marked exhibit. The whole of the statement u/s 161 Cr.P.C. cannot be marked exhibit. The order impugned is set aside. The learned Judge will mark that part of the statement as stated above as exhibit 12 and exhibit 13 and proceed to conclude the trial as early as possible. The application is disposed of accordingly.

11. Let a copy of this order along with the L.C.R. be sent to the learned Court below immediately.

12. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.