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*Before K. S. Garewal & R. S. Madan, JJ.*

JAI BHAGWAN—Appellant

*versus*

STATE OF HARYANA—Respondent

CRIMINAL APPEAL NO. 105/DB OF 2003

3rd November, 2006

*Evidence Act, 1872—Ss. 24 & 25—Conviction of appellant u/s 302 & 324 IPC—Trial Court relying on disclosure statement made by accused in police custody—Whether confession made to a police officer shall be proved as against a person for any offence—Held, no—Confession not made in the presence of a Magistrate—Barred u/s 25 of 1872 Act—Such statement could only be used for limited purpose given in S.27—Appeal allowed, accused acquitted.*

*Held*, that statement of witnesses before the police are not admissible in evidence as there is clear bar under Section 162 Cr.P.C. The statement of accused before the police are a different matter. They may be bald statements. They disclose alibi or some other allied matter. In some cases they may be statements making a clean admission guilt. Section 24 of the Evidence Act, 1872 provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(Para 19)

*Further held*, that Section 25 of the Act provides that no confession made to a police officer shall be proved as against a person accused of any offence. The object of this section is to prevent confessions obtained from accused persons through undue influence being received as evidence against them. Such a confession shall be absolutely excluded from evidence because the person to whom it was made is not to be

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relied on for proving such confession, police officers being notorious of employing coercion to obtain the confessions.

(Para 20)

*Furhter held*, that the learned trial Judge used the statement exhibit PP to return a finding of guilt against Jai Bhagwan-appellant. This statement was a confession made by Jai Bhagwan while he was in police custody. Since it was not made in the presence of a Magistrate, therefore, it was a confession barred under Section 25 of the Act and nor was it covered by the exceptions under Section 26 of the Act. This statement could only be used for the limited purpose given in Section 27 of the Act, which provides 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.

(Para 21)

Baldev Singh, Senior Advocate with Sudhir Sharma, Advocate,  
*for the appellant.*

S. S. Goripuria, DAG, Haryana.

### JUDGEMENT

**K. S. GAREWAL, J.**

(1) Jai Bagwan alongwith his brother Chandgi Ram, Chandgi Ram's son Rajesh and his own wife Pushpa faced trial before the learned Additional Sessions Judge, Gurgaon, on the charges of murder of Jai Bhagwan's nephew Karambir and for causing injuries to Rambir (PW-9).

(2) Out of the four accused only Jai Bhagwan was found guilty and convicted,—*vide* judgment dated 14th December, 2002. Jai Bhagwan was sentenced to imprisonment for life under Section 302 IPC and imprisonment for 2 years under Section 324 IPC. He was also sentenced to fines and imprisonment in default of payment. All the sentences were directed to run concurrently.

(3) This case involves a dispute between three sons of Jaga Ram of Ladpur who had been adopted by his maternal aunt Panchi of Chhilarki. The three sons were Sube Singh, Jai Bhagwan and

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Chandgi Ram. The deceased in this case, and the injured witness Rambir (PW-9) are the sons of Sube Singh while Sube Singh's brothers Jai Bhagwan and Chandgi Ram, former's wife Pushpa and latter's son Rajesh are the accused. Sube Singh's wife Khilliya (PW-8) was the other eye witness to the occurrence. The prosecution alleged that Jage Ram had land in both his ancestral village Ladpur and his adopted village Chhilarki. After Jage Ram's death, his property was inherited by his three sons in equal share. Jai Bagwan and Chandgi Ram sold the land in Ladpur, including the share of Sube Singh, but did not pay the share of the sale price to Sube Singh. This led to the differences between the three brothers and the members of their families.

(4) On 7th October, 2000 at 9 p.m. Karambir deceased and his brother Rambir were standing in front of their house. They warned Jai Bhagwan and Chandgi Ram to cultivate the land falling in their share only once the dispute regarding the sale of the land at Ladpur was settled. Jai Bhagwan replied that there was nothing to be settled and nothing to be paid by them to Sube Singh or his sons and they would continue to cultivate their share of the land at Chhilarki. Khilliya (PW-8) tried to take Rambir and Karambir to her house but in the meanwhile accused reached there. Jai Bhagwan and Rajesh were armed with knives while Chandgi Ram and Pushpa were empty handed. Pushpa exhorted her co-accused that Karambir and Rambir be taught a lesson for demanding the land. Chandgi Ram caught hold of Karambir and Rajesh stabbed on his chest and face. Pushpa caught hold of Rambir (PW-9) and Jai Bhagwan stabbed him on the body. When alarm was raised, Sube Singh's son Vijender and Karambir's wife Neeraj reached there. Both Karambir and Rambir fell down and the accused escaped. Karambir became unconscious and he alongwith his injured brother were shifted to CHC, Pataudi, where Dr. Yogesh Lata (PW-6) declared Karambir dead. However, Rambir was medico-legally examined and referred to General Hospital, Gurgaon. Later he was taken to Safdarang Hospital, New Delhi, where he remained admitted from 8th October to 25, 2000. Dr. Yogesh Lata reported the arrival of Karambir's dead body and injured Rambir to SHO, Police Station, Pataudi at 10.55 p.m. Station House Officer, Police Station, Pataudi directed A.S.I. Ram Chander (PW-11), Officer in-charge Police Post Haily Mandi, to proceed to CHC, Pataudi, for investigation. A.S.I. Ram Chander (PW-11) reached the said Health Centre and recorded

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the statement of Karambir's mother Khiliya (PW-8), on the basis of which formal FIR was registered against the accused at 12.05 a.m. (0005 hours) on 8th October, 2000.

(5) The investigation was taken up by A.S.I Ram Chander who first prepared the inquest report on the dead body and then sent it for post-mortem examination. Thereafter, he went to the spot and collected blood stained earth. He also prepared a rough site plan of the place of occurrence and recorded the statements of the witnesses. Post-mortem on the dead body of Karambir was conducted by Dr. B. B. Aggarwal (PW-1) at General Hospital, Gurgaon. The following injuries were found on the person of the deceased :—

- (1) "3.2 cm elliptical incised wound with clear margin, both ends were acute. It was 2.7 cm above xiphitermen and just lateral to left side of sternum.
- (2) 3.3 cm elliptical incised wound over left cheek 4 cm lateral to angle of mouth with tailing medially, skin deep.
- (3) 3 abrasions with mild blood over dorsum of left elbow 1 cm. × 1 cm, and half cm in diameter."

(6) The Medical Officer also noted that there was substernal ecchymosis over injury No. 1. There was an incised cut over left side of left ventricle and pericardium was full of blood. Left ventricle was also full of blood. The stomach contained semi solid food and liquid. In the opinion of the Medical Officer, the cause of death was haemorrhage and shock as a result of injuries to the heart. All the injuries were anti-mortem in nature and injury No. 1 was sufficient to cause death in normal course. Probable time that elapsed between the injuries and the death was 5—10 minutes.

(7) Earlier Rambir had been medico-legally examined by Dr. Yogesh Lata (PW-6) at 11 p.m. on 7th October, 2000 before he was referred to General Hospital, Gurgaon/Safdurjang Hospital, Delhi. The Medical Officer had found Rambir smelling of alcohol. He also found the following injuries on his person :—

- (1) Incised wound over lateral aspect of left arm lower one half part with size 2.3 cm × 0.5 cm × full muscle deep, tapering at both hands. Slight fresh blood was seen at the site of wound.

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- (2) Incised wound over back of right side just medial to medial border of right scapular area size 1.2 cm × 0.25 cm × muscle deep. Slight fresh blood was seen at the site of wound.
  - (3) Incised wound over the left lateral aspect of chest lower one half of size 3.4 cm × 1 cm × muscle deep. Slight fresh blood was seen at the site of wound. He was referred for this injury to GH, Gurgaon for x-ray.
  - (4) Incised wound over left lateral aspect of chest, lower most part of size 2 cm × 0.25 cm × muscle deep. Slight fresh blood was present out of the wound. This injury was also referred to GH Gurgaon for x-ray as per MLR and further investigation.”

(8) Jai Bhagwan, Chandgi Ram and Rajesh were arrested by A.S.I. Ram Chander (PW-11) on 12th October, 2000. Pushpa was arrested on 3rd November, 2000. On 14th October, 2000 the Investigating Officer interrogated Jai Bhagwan who made a disclosure statement that he had kept a knife in the chapper. His statement was recorded and is Exhibit PP. The statement was signed by him. Thereafter Jai Bhagwan led the police party to his house and produced the knife from the stated place on concealment. The knife was taken into possession.

(9) On 3rd November, 2000 the Investigating Officer showed the knife to the Medical Officer, General Hospital, Gurgaon, to seek his opinion as to whether the injuries on Karambir deceased could have been caused by that knife and whether those injuries had resulted into death. The Medical Officer spoke to Dr. B. B. Aggarwal (PW-1) who opined that the possibility of these injuries with the knife (measuring 2.9 cm in width) was evident. Thereafter, the knife was re-sealed with seal BB and the sample seal was handed over.

(10) After investigation all the four accused were sent up for trial. Charges were framed against all of them under Section 302/34 and 324/34 IPC to which the accused pleaded not guilty and claimed trial. At the trial, the main witnesses examined by the prosecution were Dr. B. B. Aggarwal (PW-1), Dr. Yogesh Lata (PW-6), Khilliya (PW-8), Rambir (PW-9) and ASI Ram Chander (PW-11).

(11) The accused were examined without oath under Section 313 Cr. P.C. Jai Bhagwan admitted the relationship between the accused

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and the deceased and also the fact that their father had been adopted by their maternal aunt at Chhilarki and had left his ancestral village Ladpur. However, he denied that he had sold the share of his brother Sube Singh. He also denied the other circumstances of the dispute between the parties and the evidence produced against him. He admitted that he was arrested along with Chandgi Ram and Rajesh on 12th October, 2000 and was sent to PHC, Pataudi for his medical examination. However, he denied his interrogation by ASI Ram Chander on 14th October, 2000 and the contents of the disclosure statement Exhibit PP stated to have been made by him to the Investigator. Recovery of the knife on the basis of the statement was also denied.

(12) In defence, Jai Bhagwan pleaded that on the date of occurrence Rambir entered his house after scaling the wall, gave a lathi blow on his person. He saved himself. Rambir again gave a lathi blow on his head and was again in the process hit him with the lathi. Jai Bhagwan apprehended being killed by Rambir, and so he acted in self-defence of his person and caused simple injuries to Rambir.

(13) Chandgi Ram, acquitted accused, gave the following counter-version :—

“I am totally innocent. In fact, there was a dispute regarding some alleged land of village Ladpur amongst Jai Bhagwan and the complainant party. The sons of Smt. Khilliya used to beat Jai Bhagwan now and then and I used to intervene as Jai Bhagwan was all alone and having minor children while Smt. Khiliya had three grown up sons. On the alleged date of occurrence I was present at my house when the daughter of Jai Bhagwan namely Dholi who was greatly scared came to call me claiming that her father was being beaten by Rambir and Karambir and Rambir has misbehaved with her. As usual I went to intervene and pacify them. Both Karambir and Rambir were under the influence of liquor. When I reached there Rambir while abusing Jai Bhagwan remarked that he would marry his daughter and he would not find better son-in-law than him. I caught hold of Rambir and took him to his house. There was bit dark at the time. I was empty handed. I never caused any injury to any body. I was just busy in intervening. In fact the FIR was mainly contributed by

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Dalip son of Jugti r/o Haily Mandi and also resident of village Chhilarki. I had supported Rajender, Sarpanch. I was present in the village at the time of cremation of Karambir. In fact, I had lit his pyre. My son Rajesh was also present at that time. Smt. Khiliya's son-in-law namely Hawa Singh and his elder brother Raj also stayed at our house on the next day of murder of Karambir. My wife and son Rajesh had accompanied the injured to Pataudi and thereafter Beerawati my wife had accompanied Rambir to Gurgaon. My son Rajesh was sent by Smt. Khiliya to her house as her grown up grand daughters were all alone at the house."

(14) Both Rajesh and Pushpa were also examined but we do not feel it necessary to re-produce what they said as Rajesh had pleaded that he had reached the spot after the occurrence and Pushpa had also pleaded that she was innocent. When called upon to enter defence, the accused produced Dr. D. V. Yadav (DW-1), Rajinder Singh (DW-2), Raj Singh (DW-3), Billu (DW-4) and Dilpat Singh (DW-5).

(15) The learned Trial Judge relied heavily on the disclosure statement Exhibit PP and observed in the following terms :—

"...Thus, the fact remains that the recovery of the knife (Ex. P1) was effected from accused Jai Bhagwan in pursuance of his disclosure statement Ex. PP. No objection was raised by the defence when this statement Ex. PP was exhibited in evidence. This statement inculpates accused Jai Bhagwan himself in the crime. This statement is material evidence in the case. Therefore, though, it is bit in the form of confession of accused Jai Bhagwan made before the police, but it cannot be thrown out as a piece of waste paper because this statement was voluntarily made by accused Jai Bhagwan before PW11. There is nothing on the file which can go to show that he made this statement due to inducement, threat or promise. It led to the recovery of knife which could not be recovered in the absence of this disclosure statement. In this connection reference may be made to **Balbir Singh versus State of Punjab** AIR 1957 Supreme Court 216."

29. Once statement Ex. PP is taken into consideration being admissible in evidence the whole story becomes clear. The English translation of the relevant portion of this statement reads as under :—

“On 7th October, 2000 in the evening Rambir came after consuming liquor and started to quarrel on the pretext of partition of the land. I tried to make him understand. But he did not understand. On hearing the noise my brother Chandgi and his son Rajesh and my wife Pushpa also came. On the other side Karambir, his mother and wife also came. Rambir caused a lathi blow on my head. I caused a knife blow to him in my defence. Rambir was taken away by my brother Chandgi Ram. Thereafter Karambir came there and caused a slap to me. My wife Pushpa and Rajesh son of Chandgi Ram caught hold him. I lost temper and caused knife blow to Karambir. Karambir fell down after sustaining knife blow. Knife has been concealed by me in my Chapper. Except me none else had the knowledge of the place of concealment. I can get it recovered from the place of concealment.”

(16) Learned Trial Judge continued to refer to Exhibit PP to absolve Rajesh and Pushpa. He held that the statement goes to show that Chandgi Ram did not catch hold Rambir with intent to over power him so that Jai Bhagwan may cause injury to him. Rather Chandgi Ram caught hold Rambir to bring the quarrel to an end and to save him from Jai Bhagwan. The learned Trial Judge referred to Exhibit PP in paragraphs 33 and 34 of the judgment to hold that Rajesh and Pushpa cannot be taken as culprits as they were trying to bring the dispute to an end and to avoid any fatal incident. Karambir had slapped Jai Bhagwan who lost his temper and Jai Bhagwan had then stabbed Karambir who fell down. Therefore, it was clear that Karambir had been stabbed by Jai Bhagwan and not by Rajesh. As a result of this the learned Trial Judge came to the conclusion that the prosecution had failed to prove the participation of accused Chandgi Ram, Rajesh and Pushpa. Hence they were acquitted. The learned Trial Judge also held that the prosecution had been able to prove beyond reasonable doubt that Jai Bhagwan stabbed Rambir (PW-9) and Karambir and, therefore, found Jai Bhagwan guilty under Section 302 and 324 IPC.



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(17) It may not be necessary to discuss the prosecution evidence threadbare because Jai Bhagwan's conviction was not based on what the eye witnesses Khilliya (PW-8) and Rambir (PW-9) had testified against him. Jai Bhagwan's conviction was based on the confession to the police (Exhibit PP). Jai Bhagwan's statement under Section 313 Cr.P.C. may be said to be his version of the case, but this was not even discussed. Even the version given by Chandgi Ram under Section 313 Cr.P.C. was not referred to by the learned Trial Judge.

(18) In a sessions trial, the Trial Judge firstly frames the charges against the accused, then record his plea. If the accused pleads not guilty, the prosecution is called upon to present its evidence. At the conclusion of the prosecution evidence, the accused can be acquitted if the Court finds there is no evidence that he has committed the offence. If he is not acquitted under Section 232 Cr.P.C. he is called upon to enter in his defence. After recording defence evidence the accused may be convicted or acquitted of the charge. This brings the trial to a close.

(19) Statements of witnesses before the police are not admissible in evidence as there is clear bar under Section 162 Cr.P.C. The statements of accused before the police are a different matter. They may be bald statements. They disclose alibi or some other allied matter. In some cases they may be statements making a clean admission guilt. Section 24 of the Evidence Act, 1872 (hereinafter referred to as the Act) provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(20) Section 25 of the Act is the provision which concerns us in this case. This section provides that no confession made to a police officer shall be proved as against a person accused of any offence. The object of this section is to prevent confessions obtained from accused persons through undue influence being received as evidence against them. Such a confession shall be absolutely excluded from evidence

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because the person to whom it was made is not to be relied on for proving such confession, police officers being notorious of employing coercion to obtain the confessions.

(21) It is indeed very astonishing that the learned Trial Judge used the statement exhibit PP to return a finding of guilt against Jai Bhagwan-appellant. This statement was a confession made by Jai Bhagwan while he was in police custody. Since it was not made in the presence of a Magistrate, therefore, it was a confession barred under Section 25 of the Act and nor was it covered by the exceptions under Section 26 of the Act. This statement could only be used for the limited purpose given in Section 27 of the Act, which provides 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.

(22) The statement exhibit PP led to the recovery of the knife and that knife was shown to the Medical Officer who gave his opinion that it was the knife which could have caused fatal injury to Karambir. Exhibit PP could have been used only limited to this extent and not in the manner in which the learned Trial Judge had employed it to record conviction.

(23) The manner of appreciation of evidence is completely divorced from the accepted mode of appreciation of evidence. To say the least, the line adopted by the learned Trial Judge is perverse and may have actuated by consideration other than merit. Even if a charitable view is taken, it can be affirmatively recorded that no Judge with such standing would act in such a manner.

(24) Both eye witnesses were disbelieved by the Trial Judge. The evidence relied upon by the learned Trial Judge was inadmissible, therefore, could not be used to record conviction. The remaining evidence does not support Jai Bhagwan's conviction.

(25) As a result of the above discussion, we hold that the appellant's conviction cannot be sustained. This appeal is allowed and the appellant is acquitted. He shall be released forthwith unless wanted in any other case.