

The stree v. state of orissa (1954 s.c.



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The Supreme Court examined this question in *Nisa Stree v. State of Orissa* (1954 S. C.

279), and observed that Sec. 27 does not contravene Art 20(3) of the Constitution, as it would not be correct to presume that information given by the accused under Sec. 27 is compelled testimony. The information given by an accused to a police-officer leading to the discovery of a fact which may or may not prove incriminatory, has been made admissible in evidence by S. 27. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character, so far as the giver of the information is concerned.

If the self-incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of clause (3) of Art. 20 of the Constitution for the reason that there has been no compulsion. It must, therefore, be held that the provisions of S. 27 are not within the prohibition aforesaid, unless compulsion has been used in obtaining the information. (*State of Bombay v. Kathi Kalu, A.*

I. R. 1961 S. C.

1808). Therefore, there must have been compulsion of the person concerned to make Art. 20(3) applicable.

Mere questioning of the accused person by a police-officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not compulsion. (*Ahmedmiyan v. State, A.*

I. R. 1963 Guj.

159) Section 27 and Article 14 of the Indian Constitution: The constitutional validity of S. 27 of the Art. was also challenged in State of U.

P. v. Deoman Upadhyaya, (A. I.

R. 1960 S. C. 1125), where it was argued that the said section was ultra vires the Constitution, inasmuch as it was violative of Article 14 of the Constitution, on the ground that it discriminated between persons in police custody and those not in such custody. In that case, the respondent was convicted by the trial court on the charge of murder. The finding was that a quarrel had ensued between the respondent and the deceased, that the respondent borrowed a gandasa, and that the next morning, he was seen hurrying towards a tank and taking a bath. The Court also recorded a finding that he absconded thereafter, and that the dead body was found on the same morning. When the accused was arrested two days later, he offered to produce the gandasa to the police, took them to the tank, and fetched it from under the water.

When the matter went to the High Court, it was contended that the statements of the accused to the police were inadmissible on the ground that section 27 was ultra vires Article 14 of the Constitution. The High Court accepted this contention and acquitted the accused. When the matter went in appeal to the Supreme Court, the judgment of the High Court was reversed, and the Supreme Court, by a majority, convicted the accused. In the course of the majority judgment, it was observed as follows: “ The principle of admitting evidence of statements made by a person giving

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information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination, because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.” How much of the information is to be proved: There has been some difference of opinion regarding the extent of information that can be proved against the accused in view of the phrase “ whether it amounts to a confession or not.” The most liberal interpretation given is that of the Madras High Court in Re-Atthappa Goundan, (1937 Mad. 695 E.

B.) where the whole statement, including confession of guilt and other incriminating statement, was held to be admissible. However, the Privy Council held, in Pullukury Kottaya v.

Emperor, (1947 PC. 67), that a stricter interpretation was to be put on Section 27. It appears that this decision of the Privy Council swung the pendulum to the other extreme. Following this decision, there was a tendency among some High Courts to give a very narrow interpretation to S. 27.

The whole law has now been put on an even keel by the Supreme Court in Ramkishan v. State, (1955 S. C. 104), where their Lordships observed as follows: “ On a bare reading of the terms of the section, it appears that what it allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered ...If the police- officer wants to prove the information or a part thereof, the Court would have to consider whether

it related distinctly to the fact thereby discovered, and allow proof thereof only if that condition was satisfied.” It may also be noted that if the information given by the accused to the police-officer contains parts leading to the discovery of facts and other parts not leading to the discovery, the Court must admit only such portions which distinctly lead to the discovery of facts, whether such portions amount to confessions or not.