



# LAW MANTRA THINK BEYOND OTHER

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## *PAKALA NARAYAN SWAMI VS EMPEROR, AIR 1939 PC 47\**

### **INTRODUCTION**

The present case is an appeal from a judgment of the Hon'ble High Court of Patna who affirmed the decision of the Session Judge of at Berhampur who had convicted the appellant of the murder of the deceased and sentenced him to death.

### **GENERAL CONCEPT OF CONFESSION**

An admission by the accused in a criminal cases is commonly called as confession<sup>1</sup>. Stephen defined a confession as, "an admission made by a person charged with a crime stating or suggesting the inference that he has committed a crime<sup>2</sup>". Thus confession is an acceptance of a guilt by an accused.

### **TO WHOME CONFESSION CAN BE MADE**

The confession can be made to the following persons:-

- Judicial Confession- A judicial confession is one that is made to the court itself or to a magistrate in the due course of legal proceeding under section 164 CRPC<sup>3</sup>.
- Extra Judicial Confession – An extra judicial confession is one which is made to anybody other than the magistrate or the court.
- To self – A confession does not require to be made to others. A confession may even consists of the conversation with oneself. The Hon'ble Supreme Court held in case of **Sahoo vs. State of UP**<sup>4</sup>, an accused who was charged with murder of his daughter in law with whom he was always quarrelling was seen on the day of the murder going out

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of the home saying words to the effect, 'I have finished her with her daily quarrels'. The Supreme Court held that the murmuring by the accused all alone to himself and overheard by someone is a valid confession.

### **EVIDENTIARY VALUE OF CONFESSION:**

Generally the confession itself is not sufficient to support a conviction. But when the court believes that the confession is true and voluntary, then it is not required to be supported by a corroborative evidence.

### **ESSENTIAL CONDITION OF A VALID CONFESSION**

1. The confession must be voluntarily.
2. The voluntary confession is admissible because a person having personal knowledge about the matter in issue accepts and therefore is relevant to the issue as evidence against him.
3. The confession must be true and trustworthy.
4. The confession must either admit in terms of the offence or substantially admit facts which constitute the offence
5. It is the duty of the prosecution to show that the confession has been obtained voluntarily and without any hope of advantage, or threat, or fear

### **EVERY STATEMENT IS NOT CONFESSION:**

Every statement made by an accused is not a confession. For a confession, the statement must either in terms admit the offence or substantially admit all the facts which constitute the offence. Self – explanatory statements cannot be taken as confession.

### **GENERAL CONCEPT OF DYING DECLARATION**

**INTRODUCTION:** The word “Laterm Mortem” means “word said before death”. Recording of dying declaration is very important task and utmost care must be taken while recording a dying declaration. A dying declaration is recorded carefully by a proper person, keeping in mind the essential ingredient of dying declaration.

Section 32(1) of The Indian Evidence Act: A close scrutiny of section 32(1) of Indian Evidence Act, it is vividly known when the statement is made by a person with regard to the cause of his death, or any of the circumstances of the transaction which resulted in his death comes into question. Each statement are relevant irrespective of the person who made such declaration was <sup>1</sup>expecting death or not. Thus it is apt to say that admissibility of dying declaration is explained in the section 32(1) of Indian Evidence Act<sup>5</sup>.

### **How a dying declaration should be?**

There is no particular form of dying declaration. However the best form of dying declaration is in the form of questions and answers<sup>6</sup>.

A dying declaration may be in the following forms –

1. Written form
2. Verbal form
3. Gestures and signs
4. If a person is not capable of speaking or writing he can make gestures in the form of yes or no by nodding and even such type of dying declaration is valid.
5. It is preferred that it should be written in the vernacular which the patient understands and speak.
6. A dying declaration may be in the form of narration.

### **OBJECT:**

- The presumption is “a person who is about to die would not lie<sup>7</sup>”.
- It is also said that “truth sits on the lips of a person who is about to die<sup>8</sup>”.
- The victim is exclusively eye witness and hence such evidence should not be excluded<sup>9</sup>.

### **FACTS OF THE CASE:**

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<sup>5</sup> section 32(1) of The Indian Evidence Act

<sup>6</sup> [www.legalservices.com](http://www.legalservices.com)

<sup>7</sup> [www.ourlaw.in](http://www.ourlaw.in)

<sup>8</sup> [www.legalservices.com](http://www.legalservices.com)

<sup>9</sup> [www.indiankanoon.com](http://www.indiankanoon.com)

On Tuesday, March 23, 1937, at noon the body of the deceased man was found in a steel trunk in a third class compartment at Puri, the terminus of a branch line on the Bengal Nagpur Railway, where the trunk had been left unclaimed. The body had been cut into seven portions and the medical evidence left no doubt that the man had been murdered. The body of the deceased was later identified by his widow. He was a man around the age of 40 years and had been peon in the service of Dewan of Pithapur. One of the daughters of the deceased was the wife of the accused. About 1919 the accused and his wife were married. They went to live at Berhampur about 250 miles from Pithapur. They returned to Pithapur during 1933 and on account of their needs of money the accused's wife borrowed Rs. 3000 at interest at the rate of 18% per annum. About 50 letters and notes proving these transactions signed by the accused's wife were found in the deceased man's house at Pithapur after his death. On 20<sup>th</sup> March 1937 the deceased man received a letter the contents of which were not signed but it was reasonably clear that it invited him to come to Berhampur that day or next day. Kuree Nukaraju's (the deceased) widow told the court that on that day her husband showed her a letter and said that he was going to Berhampur as Swami's wife had written to him inviting him to come to receive payment of his dues. The deceased left his place on 21<sup>st</sup> march to catch the train for Berhampur. And on Tuesday 23<sup>rd</sup> March his body was found in a steel trunk in a third class compartment of a train at Puri.

### **PROCEDURAL BACKGROUND OF THE CASE:**

The landmark judgment of the Privy Council has travelled its way up in the judiciary by the decision of both lower court i.e. trial court to High Court by convicting the accused for committing the crime of Murder and sentenced him for death. Hence an appeal to the Privy Council.

### **ISSUE RAISED**

- Whether the statement of the accused can be considered as confession?
- Whether the statement of the deceased to his wife that he is going to Berhampur to take back his loan was considered as a dying declaration?

### **ARGUMENTS ADVANCED**

1. The statement of the accused will not be considered as a confession. In the statement the accused said that the deceased came to his house in the evening of 21<sup>st</sup> March slept and left next day by the evening train. On 23<sup>rd</sup> March, he himself left by morning passenger train to Chattarpur in connection with some private business. This statement of the accused was partly confession and partly an explanation for his innocence. The word confession cannot be construed from a statement by an accused suggesting the inference that he had committed the crime. A confession either admit in terms of the offence or at any rate substantially admits all the facts which constitute an offence. An admission of a gravely incriminating facts even if a conclusively incriminating fact, cannot be considered as a confession. A statement which contains self-explanatory matter cannot be amount to a <sup>2</sup>confession<sup>10</sup>. The statement must either be taken as whole or rejected in toto<sup>11</sup>. This principle i.e. the confession must be either accepted as a whole or rejected in toto was also upheld in the case of **Palwinder Kaur v State of Punjab**<sup>12</sup>. Hence the statement of the accused will not be considered as a confession.
2. The statement of the deceased was considered as dying declaration under section 32(1)<sup>13</sup> of the Indian Evidence Act. The statement of the deceased that he was going to Berahmpur to take back his loan will be considered as a dying declaration as it is related to the circumstances of the transaction which resulted in death. It is not necessary that the declarant should be under any expectation of death. If the declarant has in fact died and the statement explains the circumstances surrounding his death the statement will be relevant even if no cause of death had arisen at the time of the making of the statement<sup>14</sup>. Hence the statement of the deceased to his wife that he is going to Berhampur to take back his loans will be admissible under section 32(1) of the Indian Evidence Act.

## **JUDGEMENT**

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10 Avtar Singh, the Indian Evidence Act. 22<sup>nd</sup> edition 2016.

11 Dr. Satish Chandra "Indian Evidence Act" 4<sup>th</sup> edition 2007.

12 AIR 1952 SC 354

13 When it relates to cause of death- when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

14 Dr. Satish Chandra "Indian Evidence Act" 4<sup>th</sup> edition 2007

The Privy Council expressed the opinion that the statement of the accused was partly confession and partly explanation for his innocence. By giving the benefit of doubt, the Privy Council set aside the conviction of the accused with the following observation.

- The word confession can be construed from a statement by an accused suggesting the inference that he had committed the crime.
- A confession either admits in terms of the offence or at any rate substantially admits all the facts which constitute the offence.
- An admission of a gravely incriminating facts even if a conclusively incriminating facts cannot be considered as a confession
- A statement which contain self-explanatory matter cannot amount to confession. Kit must be either be taken as whole or rejected in toto.
- The statement of the deceased to his wife was considered as a dying declaration and hence admissible under section 32(1).

#### **REASON FOR JUDGEMENT**

- Kuree Nakarju giving loan to the accused
- The statement of the accused was partly confession and partly an explanation to his innocence
- The statement of the deceased to his wife.

#### **CONCLUSION**

In the present case the Privy Council gave the definition of the word confession. Lord Atkin who delivered the judgement in a case stated that: the word “confession” used in evidence act cannot be construed as meaning statement by an accused “suggesting the inference that he committed the crime”. The case also talks about the anticipation of death i.e. a person was expecting death or not.