

## Law of Confessions And Rajiv Gandhi Case<sup>1</sup>

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The Kalpanath Rai judgment was an attempt by the Supreme Court to soften the rigor of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act -- TADA. Section 15 makes (i) a confession given to a police officer of a rank not less than that of a Superintendent of Police admissible in a TADA case, and (ii) it makes such a confession admissible not only against the accused who has made the confession but also against the co-accused and abettor etc.

In normal law, at least in the English tradition, the best evidence is direct evidence. That is, what is spoken to the witness stand and is subjected to cross examination. Confession is brought to evidence by a third person speaking of it, saying that the accused said this and that to me. For this reason, a confession is not regarded as very good evidence. But if it stands up to the test of *voluntariness*, it is accepted as evidence on the common sense ground that nobody would *voluntarily* speak ill of himself unless it is true. That is why *voluntariness* is absolutely essential if a confession is to be believed. If any force or coercion is involved, it would be of no value. That is why any confession made to the police officer or to any one while in the custody of police is not admitted in evidence as *a general principle* (irrespective of whether in the particular case there was any coercion).

But the question that arises is this: suppose an accused person makes a confession (other than to a police officer). If it is voluntary, then it is admitted in evidence on the principle that (as said above) nobody would *voluntarily* speak ill of himself if it were not true. But suppose that in the course of implicating himself, the accused implicates his co-accused also. Can the 'confession' he makes about his co-accused also be received as evidence? The reason for admitting confession affecting him does not apply here. Here in the ordinary law, confession of an accused is *not* evidence against a co-accused. Section 30 of the Indian Evidence Act says that it can be 'taken into

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<sup>1</sup> These are notes given by Balagopal in June 1999 to K. Manoharan, Convenor of the Campaign Against Death Penalty that was seeking commutation of death sentence to the four convicted in the Rajiv Gandhi murder case. They were written before the review petitions of the four were rejected by the Apex Court.

consideration' by the court against the co-accused. Judicial interpretation has laid this to mean that it is not evidence and therefore cannot stand on its own, but if there is other evidence against the co-accused, then the confession of the accused which implicates the co-accused can be called upon to support it.

Section 15 of TADA, on the contrary, not only makes a confession given to a police officer of a rank not less than that of a Superintendent of Police admissible in evidence against the accused who has given the confession, but also against the co-accused. It is the latter part that has been 'read down' by the Supreme Court in the Kalpanath Rai case. Instead of striking it down, the Supreme Court said that it means nothing more than Section 30 of the Indian Evidence Act as far as the co-accused is concerned.

A look at the Rajiv Gandhi case shows that if the above interpretation is applied to that case, not much remains. Much of the evidence consists of confessions in which each of the accused implicates the other. If all that is discounted, except where there is independent evidence in support of it, then nothing remains in this case.

So, the Supreme Court could 'save' the prosecution only by reversing the Kalpanath Rai judgment, and it has done so.

The other very unsatisfactory aspect of the judgment is the assessment of voluntariness. The TADA allows a confession given to a police officer of a rank not less than that of a Superintendent of Police to be admitted in evidence, but the general principle that the confession must be voluntary in order to be believed remains intact. As in the Kartar Singh case, the Supreme Court said that the test of voluntariness is the same for TADA confessions as for normal confessions.

It is here that the Supreme Court has slipped up badly in the Rajiv Gandhi case. There is absolutely no assessment about voluntariness. None of the principles laid down in a long line of earlier cases has been followed. It has been held that if the confession is made after a long time in police custody, the accused should be sent to jail custody for at least a day or two and only then the confession should be recorded. And that after the confession, the accused must not spend any more time in police custody but should be immediately taken to court and from there remanded to judicial custody. And so on. There is no application of any of these principles in the Rajiv Gandhi case.