

Bhagwan Das and anr. Vs. State

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Court : Allahabad

Decided On : Aug-17-1966

Reported in : AIR1968All8; 1968CriLJ1

Judge : T. Ramabhadran and ;H.C.P. Tripathi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 300

Appeal No. : Criminal Appeal No. 2222 and Referred No. 149 of 1965

Appellant : Bhagwan Das and anr.

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : S.N. Mulla and ;K. Capoor, Adv.

Judgement :

Tripathi, J.

1. The two appellants have been convicted by the learned Additional District and Sessions Judge, Kanpur, of offences of murder, robbery and causing disappearance of evidence of murder for screening themselves from legal punishment. Appellant Bhagwan Das has been convicted under Sections

302/34,1.P.C. and appellant Bholey Khan under Section 302, simpliciter and both have been sentenced to death. Both of them have further been convicted under Section 201 I. P. C and sentenced to five years' rigorous imprisonment each Appellant Bhagwan Das has further been convicted under Section 394 I. P C and appellant Bholey Khan under Section 394 read with Section 397 1. P C and the former has been sentenced to four years' rigorous imprisonment and the latter to seven years' rigorous imprisonment The sentences of imprisonment inflicted on the two appellants under the various counts have been directed to run concurrently The appellants have come up in appeal against their conviction and sentences and the learned Sessions Judge has made the usual reference for the confirmation of the sentence of death inflicted on each of the appellants on the charge of murder.

2. The accusation against the appellants was that in the night of 9th and 10th of September. 1964 in furtherance of their common intention they committed the murder of one Panna Lal a grain merchant, misappropriated his 80 hags of grain of the value of Rs.. 5,700 and disposed of his dead body to screen themselves from legal punishment.

3. The prosecution case in brief is as follows.

4. Panna Lal (the victim) was carrying on business in grain under the style of Sheo Dutt Prasad Panna Lal at Mohammadabad Gohna in the district of Azamgarh. In the evening of the 7th September 1964 he left his home by a bus for Allahabad for purchasing grain. He was carrying with him Rs.. 13,000 in cash for the aforesaid purpose At Allahabad he purchased about 80 bags of grain of the value of Rs. 6,500 and despatched the same to Mohammadabad Gohna As no more grain was available at Allahabad he left Allahabad for Kalpt on the next day for completing his purchase. It appears that grain was not available at Kalpi as well and therefore Panna Lal came to a nearby grain market at Pokhrayan reaching there on the 9th of September 1964.

There he purchased another 80 bags of grain consisting of peas, wheat and gram of the value of Rs. 6023/9/- in the Arhat of the firm Kanhaiya Lal Darbari Lal. On the same date he hired truck No UP 13324 belonging to one Nand Kishore for

transporting the grain to Phaphamau at Allahabad. Appellant Bhagwan Das alias Bhakoley was the driver of the truck and appellant Bholev Khan was its cleaner. The truck was loaded at the premises of M/s. Kanhaiya Lal Darbari Lal and it left Pokhra-van on the same date at about 8.30 p m in the presence of Sri Kishen, a partner of the aforesaid firm. Panna Lal also went in the truck.

5. On the 11th of September. 1964, the two appellants returned with the truck to Pokhrayan. Appellant Bhagwan Das paid Rs. 160 representing the fare received from Panna Lal to Nand Kishore and another sum of Rs. 85 which he alleged to have received for transporting buffaloes from Phaphamau to Lucknow. The two appellants transported goods once more and thereafter they went on leave on the ground of illness. As neither Panna Lal nor the goods reached Mohammadabad Gohna till the 16th September, 1964 his uncle Gvan Chand came to Kalpi on the 17th September enquiring about him as Panna Lal had written to him from Allahabad that he was proceeding to Kalpi. At Kalpi he learnt that as Panna Lal could not get any grain from there he had gone to Pokhravan Gyan Chand then came to Pokhravan and met Sri Kishen. a partner of the firm Kanhaiya Lal Darbari Lal, and enquired from him about the deceased.

Sri Kishen informed him that Panna Lal had come to his shop on the 9th September, 1964 and had purchased 80 hags of grain and thereafter loading the same in the truck No. UP 13324 had left for Allahabad in the same truck on the same night at about 8.30 p.m. When Gvan Chand told Sri Kishan that Panna Lal had not reached home Sri Kishen informed him that the driver and the cleaner of the truck had come back after unloading the grain at Phaphamau Hoping that Panna Lal might have reached home by that time on another truck, Gyan Chand returned home but was perplexed to find that Panna Lal had not reached there. He then arranged for a jeep and came again to Pokhravan He found the aforesaid truck standing at the premises of M/s Kanhaiva Lal Darbari Lal On enquiry he was informed that the driver and the cleaner were on leave Gvan Chand naturally entertained a suspicion that Panna Lal had been a victim of some foul-play

He therefore came to police station Bhognipur and lodged a report there on 20-9-64 to the effect that Panna Lal who had left his home on the 7th September 1964,

with cash to purchase grain was missing and that he suspected that his life and goods had been put in danger by the aforesaid two appellants who were the driver and the cleaner respectively of the truck on which he had learnt that Panna Lal had transported his grain from Pokhrayan. Gyan Chand went to Kalpi with a Sub Inspector in search of the two appellants but they were not found. He then returned back to Mohammadabad Gohna. On 21st of September, 1964, appellant Bhagwan Das came to the premises of M/s Kanhaiya Lal Darbari Lal where Sri Kishen, the partner of the firm, and Nand Kishore the owner of the truck were present. Nand Kishore enquired of him as to where he had unloaded the grain of the Azamgarh merchant whose uncle had come to enquire of him.

Bhagwan Das who was upset at this enquiry confessed that in furtherance of the common intention of both Panna Lal had been done to death by appellant Bholey Khan while he was asleep in the truck and that his grain had been disposed of by them at Lucknow. He also confessed that both had thrown his dead body in river Pandu and had washed the blood stains from the body of the truck near a canal at Lucknow and that he had received a sum of Rs. 2100 as his share, from the sale proceeds of the grain which he had got deposited with his mother-in-law at Kanpur. As the story given by Bhagwan Das consisted of various details it was reduced in writing by Nand Kishore who obtained the signature of Bhagwan Das on it in the presence of Darbari Lal and Sri Kishen. Bhagwan Das was thereafter taken to the police station Bhognipur and was handed over to the police along with his extra judicial confession.

6. Sub-Inspector Ram Khelawan Singh (P W 37) accompanied Bhagwan Das to Kanpur and at his instance recovered Rs. 2100 in currency notes of Rs. 100 each from the house of his mother-in-law in the presence of the witnesses. He arrested Bholey Khan on the 21st of September 1964, who had certain injuries which were examined by Dr. Mangrant at Pokhrayan dispensary on the 22nd of September, 1964, Appellant Bhagwan Das while in custody took the Sub-Inspector to Lucknow and pointed out the shop where the grain had been sold by them. The Sub-Inspector took in possession the Daskhati Bahi of the shop and sealed it at the spot. He also recorded the statements of the recovery witnesses.

Thereafter appellant Bhagwan Das took the Sub-Inspector to Allahabad and at his instance some pieces of cloth eight in number and a chappal were recovered from a pit by the side of Grand Trunk Road near village Nidura on the 24th of September, 1964. A lota bearing the inscription 'Hari Prasad Gupta Mohammadabad Gohna' was also taken out from Pandu river from a place pointed out by him. During the course of their journey the two appellants are alleged to have paid octroi charges and to have thumb marked or signed the records of various octroi check posts. The admitted thumb impressions of Bhagwan Das and signatures of Bholev Khan were referred to Finger Print and Hand Writing Expert along with their disputed thumb impressions and signatures on the octroi-records, whose reports are Exhibits 63 to 65.

7. Bholey Khan was put up for identification on the 1st of December, 1964, in the district Jail. Kanpur, in the presence of a Magistrate where he was correctly identified by Sita Ram (P. W 2) proprietor of the firm Jagan-nath Babu Ram of Lucknow and Chhatanki . one of its Palledars. The Lota and the chappal which had been recovered on the pointing out of Bhagwan Das were correctly identified by the members of the family of the deceased as belonging to him.

8. At the trial, appellants had pleaded not guilty to the charges. They, however admitted that truck No UPI 3324 belonged to Nand Kishore of Pokhrayan and Bhagwan Das was employed as a driver and Bholey Khan as a cleaner on it in September 1964. They also admitted that on the 9th September. 1964. 80 bags of grain purchased by some grain dealer of Mohammadabad Gohna was loaded on the truck at the premises of M/s Kanhaiya Lal Darbari Lal at Pokhravan. They however, expressed their ignorance about the name of the dealer. They admitted further that from Pokhravan they went to Allahabad and from there they came to Unnao via Phaphamau and Rae Bareilly and from Unnao they came to Lucknow on the same truck. They denied that the Azamgarh merchant had come on the truck.

On the other hand they affirmed that Mohan Lal had accompanied them and it was he who paid octroi dues at the octroi barriers. Bholey Khan denied his signatures' for the refund of octroi charges and Bhagwan Das denied his thumb marks. Their case was that the truck on reaching Lucknow was stopped near Charbagh and

Mohan Lal went to the city and returned after 1 1/2 hour with six or seven the-las The grain hags were then unloaded from the truck and placed on those the las Mohan Lal then asked the appellants to go back with the truck and accordingly they left Lucknow at 10 or 11 pm on the 10th September 1964. They performed their duties as driver and cleaner at Pokhrayan till the 19th September, 1964, on which date a jeep with a Sub Inspector of Police and some persons came to the door of Sri Kishen The occupant of the jeep went inside the shop

After half an hour the two appellants were called inside The Sub-Inspector thereafter took the appellants. Mohan Lal. Sri Kishen and Nand Kishore to the thana and put them in the lock up On the 20th September 1964, he escorted all of them to Lucknow from where they were brought back to Pokhrayan on the same date at 5 PM and the other three persons were released Bhagwan Das stated further that the alleged extra judicial confession Exhibit Ka 1 was scribed at the police station on the 19th September t964 and his signatures were obtained forcibly on it He also denied the alleged recoveries on his pointing out. The two appellants asserted to have been falsely implicated in the case on account of the police. Sri Kishen and Nand Kishore and the witnesses from Lucknow were deposing against them as they happened to be known to Sri Kishan. About the injuries found on his person Bholey Khan stated that he had received them at the hands of the police at the thana They examined four persons in their defence namely Smt. Raj Rani Mother-in-law of Bhagwan Das (D W 1). Sohan Lal (D. W 2), Jalpa Singh (D. W 3) and Ram Gulzar (D W 4).

9. Smt. Raj Rani stated that the police recovered Rs.. 2300 consisting of 22 currency notes of Rs.. 100 and ten currency notes of Rs.. 10 each from her house on search and prepared a recovery memo. Bhagwan Das was not present there and Smt. Raj Rani had claimed that the amount recovered belonged to her. Her evidence was corroborated by Sohan Lal (D W 2)

10. Jalpa Singh (D. W 3) stated that he was working as a Palledar in the Bazar of Pandavganj at Lucknow and had seen the two appellants on various occasions bringing grain to the market in a truck

11. Ram Gulzar (D. W 4) who sells tea and syrup on a thela at Pandevganj, Lucknow, claimed to have known the two appellants since the last two or three years as they used to visit his thela for taking tea and syrup.

12. Mohan Lal who was examined as a court witness admitted that he was in the service of Nand Kishore of Pokhravan for the last two years whose truck plies on hire but denied to have gone in the truck on the night of 9th September 1964 and to have paid octroi duties on the various octroi barriers lying on the way

13. There is no direct evidence to connect the two appellants with the offences charged against them. The prosecution case rests on the various pieces of circumstantial evidence and on the extra judicial confession alleged to have been made by Bhagwan Das on the 21st of September 1964.

14. The testimony of Cyan Chand (P W 1) an uncle of the deceased, which is of an unimpeachable character leaves no room for doubt that his nephew Panna Lal left Mohammadabad Gohna with Rs. 13000 on the 7th of September, 1964, for purchasing grain at Allahabad. From Allahabad Panna Lal sent one truck loaded with grains with a letter Exhibit Ka 9 informing him that he was proceeding to Kalpi for making further purchases and that since then he did not return home.

15. Sri Kishen (P W 5) a partner of firm Kanhai Lal Darbari Lal testified that 45 bags of peas, 23 bags of wheat and 12 bags of gram costing about Rs. 6000 and odd were purchased by Panna Lal through his shop at Pokhravan on the 9th September 1964 and that he had left his shop at 8 p.m. on truck No UPI 3324 along with the grain for Allahabad and the truck was driven by appellant Bhagwan Das and appellant Bholay Khan was its cleaner. The testimony of Sri Kishen who is wholly an independent witness, finds corroboration from the evidence of Nand Kishore (P W 3) the owner of the truck and Chandra bhan a Munim of the aforesaid firm who has proved the entries of the account books showing that Panna Lal of Azamgarh had purchased grain worth Rs. 6000 and odd from his shop on the 9th September, 1964 after making a cash payment.

16. We have no doubt in our mind that the testimony of all these witnesses about the purchase made by Panna Lal from the shop of Sri Kishan at Pokhravan and

his subsequent departure along with the goods purchased by him on the truck for Allahabad is wholly reliable and the learned Sessions Judge was justified in accepting the same. The two appellants admitted that some grain purchased by an Azamgarh merchant was loaded on a truck for being transported to Phaphamau but they denied that the said merchant had also come in the truck. According to them it was Mohan Lal a man of Nand Kishore the owner of truck, who had come in the truck. It is difficult to accept their statement on this point it was the grain belonging to Azamgarh merchant which was being transported by the appellants on their truck in the natural course, therefore, it will be he who would be interested for its safety as well as for saving his expenditure of his return journey.

Why should Mohan Lal go with the truck when the driver who was in the employment of Nand Kishore was there to realise the fare. Mohan Lal denied to have accompanied the truck on that night and stated that in fact he was on leave since a day before on account of illness. Panna Lal had already finished his work at Pokhrayan and his goods were to be transhipped at Phaphamau to another truck. In the circumstances there was no reason for him to stay back at Pokhrayan leaving the transhipment of the goods at Phaphamau on the sweet mercy of the appellants. Sri Kishen appears to be a man of substance and it is incredible that he would have conspired with Nand Kishore to detain Panna Lal at his shop and then to send Mohan Lal for misappropriating the grain as it is alleged by the two appellants. We have, therefore, no hesitation in rejecting the story put forward by these appellants as wholly incredible.

17. It is admitted by the appellants that instead of returning from Phaphamau back to Pokhrayan they took the truck to Lucknow via Unnao. According to the prosecution the two appellants disposed of the 80 bags of grain belonging to the deceased at Lucknow and while passing on their journey had paid octroi duties at various municipal barriers. There is a wealth of evidence both oral and documentary on this point. Chandan Lal (P. W 26), Badri Prasad (P. W 39), Ali Udbad (P W 40), Ansar Ali (P W 45) and Babu Ram Tewari (P. W 46) are the clerks who were posted on different barriers through which the truck passed from Pokhrayan to Kanpur from Kan-pur to Allahabad and from Allahabad to Lucknow. They have proved the payment of octroi dues by appellant Bholey Khan at

different octroi barriers and its refund to him Exhibit Ka 52 is the receipt evidencing payment of Rs. 16 as octroi duty in respect of truck bearing No. UPI 3324 by one Bholev Khan at 11-15 p.m. on the night of 9th and 10th September, 1964, while entering Kanpur

Ex. Ka 53 is the carbon copy of Exhibit Ka 52 which was given to the truck and it was returned at the exit barrier at Allahabad at the time of refund It shows that the truck crossed the exist barrier on the 10th September, 1964, at 12.40 a.m Exhibit Ka 56 is the entry in the book maintained at the barrier which shows that the truck reached the exit barrier at 12.30 a.m. Exhibit Ka 55 is the entry about the refund of Rs. 16 shown in the receipt and it also bears the signature of the person named Bholey Khan These receipts pertain to the payment and refund of Rs. 16 on the barriers which fall at Kalpi Kanpur road. Appellant Bholey Khan denied his signature both at Exhibit Ka 55 and Exhibit Ka 41 His sample signatures were obtained and along with the disputed signatures they were sent to a Hand Writing Expert for comparison and report

The reports of the Hand Writing Expert Sri Chunni Lal Sharma Exhibits Ka 64 and Ka 65 and his evidence unmistakably show that the disputed signatures and the sample signatures were made by the same person Sri Sharma has given cogent reasons in support of his findings and his evidence goes to indicate that on a comparison of the disputed signatures and the admitted signatures of Bholev Khan he was satisfied that they had been made by the same person The testimony of Jaswant Singh (P. W 41) the Marketing Inspector shows that the aforesaid truck was checked at Phaphamau marketing barrier and there is an entry about it in the checking register Exhibit Ka 49 which indicates that the name of the sender of the goods was Kanhaiaya Lal Darbari Lal of Pokhrayan and the consignee was Sheo Prasad Panna Lal of Azamgarh The driver of the truck had thumb-marked the entry describing himself as Bhakoley

Nand Kishore the owner of the truck has stated that Bhakolev is an alias of Bhagwan Das. Bhagwan Das, however denied his thumb mark on Exhibit Ka 49 His sample thumb impressions were obtained and they were sent along with the disputed thumb mark for comparison to Sri Malkhan Singh (C W 2) a Government

Finger Print Expert, whose evidence indicates that both the thumb marks are of the same person It is thus obvious that the entries in the various books maintained at different octori barriers falling on the road and the evidence of the octori clerks who were responsible for maintaining those entries coupled with the Experts' evidence discussed above leave no room for doubt that the truck was taken from Pokhrayan to Kanpur, from Kanpur to Allahabad and from Allahabad to Lucknow via Unnao by the two appellants

18. Sita Ram (P. W 2) is the partner of the firm Jagannath Babu Ram of Pandeyganj at Lucknow. He says that on the 10th September, 1964, at about 6 p.m. one merchant who gave out his name as Wahid Mian came to him and enquired the rates of various grains and asked him if he was prepared to purchase the same. The witnesses agreed to purchase the grain and half an hour thereafter a truck loaded with grain came to his shop and it was un-loaded by Ismail Khan and Chhatanki Palledar. The merchant asked for Rs. 100 to be paid as charges of the truck and on the next morning Rs. 4400 were paid to him and an entry was made about it on the Daskhati Bahi which is Exhibit Ka 12 The witness proved the relevant entries in respect of this transaction in the account books of his firm the two copies of which are Exhibits Ka 4 and Ka 8 and the original entries are Ka 3 and Ka 7 in the Rokar Bahi. The witness identified Bholey Khan as the person who had sold the grain to him giving his name as Wahid Mian and had thumb marked the entries in Daskhati Hand after obtaining the payment. In the identification parade held on the 21st December, 1964, in jail Bholey Khan was identified by Sita Ram.

19. Chhatanki (P. W. 22) corroborated the statement of Sita Ram in all its essential particulars and stated that he had unloaded 80 bags of wheat, gram and peas from a truck brought by a Vyapari whom he identified later on in jail and who was none else but appellant Bholey Khan present in court.

20. Sub-Inspector Ram Khelawan Singh (P. W. 37) has stated that along with others he and Sri Kishen were taken by appellant Bhagwan Das to the premises of a firm at Panday ganj under the name and style of Jagannath Babu Ram on the 22nd September. 1964, where the goods were alleged to have been sold and it

was from that shop that he took in custody one page from the Daskhati Bahi containing Exhibits Ka 11 and Ka 12 which contained the thumb marks of appellant Bholey Khan. Appellant Bhagwan Das admitted to have been taken to the shop of Jagannath Babu Ram at Pandeyganj but denied the recovery of a page of Daskhati Bahi from the aforesaid shop at his instance. The testimony of Ram Khelwan Singh on this point has been supported by Sri Kishen (P W 5) a partner of firm Kanhaiva Lal Darbari Lal of Pokhrayan and Sita Ram, a partner of firm Jagannath Babu Ram of Lucknow. It is, therefore, clear that the fact that the aforesaid goods had been disposed of at the shop of firm Jagannath Babu Ram at Pandeyganj, Lucknow came to the knowledge of the investigating agency at the instance of appellant Bhagwan Das and it was at his pointing out that a page from Daskhati Bahi of the shop containing the thumb impression of Bholey Khan was recovered by the Investigating Officer.

21. The thumb impressions on Exhibits Ka 11 and Ka 12 were subsequently compared by Sri Sahenshah Husain (P. W 6), Finger Print Expert with the sample thumb impression of Bholey Khan and both were found to be by the same person. It is, therefore, obvious that the goods loaded on the truck were disposed of at the shop of Jagannath Babu Ram at Pandeyganj, Lucknow, by Appellant Bholey Khan who received payment for the same and thumb marked the Daskhati Bahi of the firm in token of having received such payment. It is also clear that the Daskhati Bahi was recovered by the investigating agency at the instance of Bhagwan Das who pointed the shop to them and the contention of the appellants that it was Mohan Lal who had disposed of the goods at Lucknow must be rejected as false.

22. The testimony of Jalpa Singh and Ram Gulzar (D. Ws. 3 and 4) to the effect that they had seen the two appellants in the Bazar of Pandeyganj because they used to bring grain in the market in a truck even if true does not help the appellants and cannot cast any doubt about the veracity of the statement of Sita Ram and Chhatanki that they had not seen the aforesaid two appellants before the date of transaction in question. Recovery of Rs. 2100.

23. Sub Inspector Ram Khelawan Singh (P. W 37) has stated that on the 21st December, 1964 at about 4 p.m he had gone to Kanpur on a truck with appellant

Bhagwan Das who told him that he had kept Rs. 2100 with his mother in law in Mohalla Korianana. According to the witness he was taken to a house where Bhagwan Das demanded money from his mother-in law who went inside the house, brought Rs. 2100 in currency notes of Rs. 100 each and handed over the same to the witness. The currency notes were put in a sealed cover and the recovery memo was prepared in the presence of Param Lal and Akbar Ali (P Ws. 11 and 15) who have stated that the house in question belonged to Moti Lal. father-in-law of appellant Bhagwan Das and that it was at the instance of Bhagwan Das that Rs. 2100 in currency notes were handed over by the mother-in-law of appellant Bhagwan Das to the Sub Inspector in their presence and a recovery memo was prepared

These recovery witnesses are the next door neighbours of Moti Lal and nothing has been brought out in their evidence to discredit their testimony Smt. Raj Rani who was examined as a defence witness stated that Bhagwan Das was her son-in-law According to her Rs. 2300 were taken by the police after searching her house in the absence of her husband but Bhagwan Das was not with them at the time of the search She admitted that the Sub-Inspector prepared a recovery memo and obtained her thumb marks and the witnesses also signed those papers. She claimed that the money belonged to her We are however unable to place any reliance on her testimony that the money which was recovered from her house was hers and that Bhagwan Das was not present at the time of its recovery Bhagwan Das is a person of ordinary means and had he not given information to the Investigating Officer about the presence of such a considerable amount at the house of his father-in-law it would not have been possible for the police to have found the whereabouts of Moti Lal who was an ordinary person and then to have searched his house. We are, therefore, satisfied that the prosecution story 'regarding the recovery Rs. 2100 in the shape of 21 notes of 100 rupees denomination at the instance of Bhagwan Das from the house of his mother-in-law has been established beyond the realm of doubt

24. The next piece of incriminating evidence relates to the recovery of Chappals Exhibit 3 and piece of cloth Ex. 9 from a pit by the side of Grand Trunk Road between Pokhrayan and Kanpur and a Lota from the bed of river Pandu near

village Chheoli Chappals Exhibit 3 was correctly identified by his uncle Gyan Chand to be of Panna Lal and the Lota bearing the inscription 'Hari Prasad Gupta Moham-madabad Gonna' was correctly identified by Gyan Chand to be the same which Panna Lal had taken while starting for journey

25. As regards the recovery of the cloth and chappal we agree with the learned Sessions Judge that they do not carry the prosecution case any further because of the discrepancies found in the testimony of the recovery witnesses. The recovery of Lota., however, has been sufficiently established by Hari Prasad. Gyan Chand and Sheo Dutt Prasad. Hari Prasad Gupta is the uncle of the deceased whose name was found inscribed on the Lota. Gyan Chand and Sheo Dutt Prasad have testified that Panna Lal had taken the Lota with him when he had left his home at Mohammadabad Gohna for Kalpi. There appears no reason to doubt the testimony of Gyan Chand and Sheo Dutt Prasad on this point. We are satisfied, therefore, that the Lota which was recovered from the bed of the river at the pointing of appellant Bhagwan Das was one which was carried by the deceased when he had left his home for his onward journey to the various grain markets

26. To sum up, it has been established that (a) Panna Lal was last seen with the appellants with whom he went in the truck in the night of 9th September, 1964, from Pokhrayan to Phaphamau and since then has neither been seen nor heard of (b) The aforesaid truck instead of returning back to Pokhrayan or Kalpi after unloading the grain at Phaphamau was taken to Lucknow via Phaphamau and Unnao by the two appellants and 80 bags of grain purchased by the deceased were sold by appellant Bholey Khan at the shop of Jagan-nath Babu Ram at Lucknow, (c) At the instance of appellant Bhagwan Das the Daskhati Bahi of the firm Jagannath Babu Ram at Pandeyganj, Lucknow, was seized and it bore the thumb impressions of appellant Bholey Khan evidencing receipt of payment of the price of the grain, (d) The Lota which the deceased was carrying with him was recovered from the bed of Pandu river falling in the way at the instance of appellant Bhagwan Das (e) On 22nd September, 1964, when Bholey Khan was medically examined he had two abrasions $1/2'$ x $1/8'$ and $1/6'$ x $1/10'$ on the right base of thumb palmer side, one healed abrasion $3/4'$ x $1/6'$ on right wrist outer side, contused area $3'$ x $2\ 1/2'$ on left foot dorsal side and a contusion $1'$ x $1'$ on left

knee and the duration of injuries Nos. 1 and 2 was 10 to 12 days while the duration of injuries Nos. 3 and 4 was about 1 day.

27. These circumstances which have been established by cogent and reliable evidence, in our opinion, form a complete chain and leave no reasonable ground for a conclusion consistent with the innocence of the accused. The cumulative effect of these various pieces of circumstantial evidence is that within all human probability Panna Lal was done to death by the two appellants who disposed of his goods after committing his murder and appropriated the proceeds thereof among themselves.

28. Then there is the extra judicial confession of appellant Bhagwan Das which has been testified by Nand Kishore (P W. 3) and Sri Kishen (P. W 5) Nand Kishore has stated that as the story of the crime unfolded by Bhagwan Das was a long one he thought it expedient to reduce it in writing A perusal of the aforesaid written extra Judicial confession (Exhibit Ka 1) shows that it is a long statement giving various details of the journey and the way in which the deceased was done to death, his personal belongings were disposed of and his grain was sold at Lucknow for a sum of Rs. 4,300

29. Learned counsel for the appellants has urged that as the alleged extra judicial confession was handed over to the police along with the appellant it must be deemed to be a confession made to a police officer and as such inadmissible in evidence. Alternatively it is submitted that in all probability the confession was obtained by the police after they had come in possession of the various pieces of circumstantial evidence in order to lend assurance to their story and as such it is neither true nor voluntary and cannot therefore be taken into account against the appellants. We do not find any substance in these contentions.

30. If the police had already laid its hands on the various links of the chain of the incriminating circumstances there was no point in its trying to obtain an extra judicial confession by force from one of the two appellants as the links already discovered were enough to prove their guilt. On the other hand we are satisfied that it was the extra judicial confession made by appellant Bhagwan Das giving the various details of the commission of the crime which led the police on the real

track and enabled them to discover the various links of the chain. This confession was made by Bhagwan Das not to the police but to the witnesses at Pokhrayan and simply because a record of his statement was handed over to the police will not make it inadmissible in evidence.

The evidence of Nand Kishore and Sri Kishen which inspires complete reliance shows that the confession was made by Bhagwan Das voluntarily in response to a question by Nand Kishore as to what he had done with the deceased and his goods and that no pressure was exercised on him for obtaining that confession. The confessional statement of the appellant finds corroboration from the various recoveries made at his instance from the shop of Jaganath Babu Ram at Pandevganj, Lucknow, and from the bed of Pandu river and the house of his mother-in-law. It is therefore, obvious that the extra judicial confession is not only voluntary but also represents truth.

In short in his confessional statement Bhagwan Das has stated that in furtherance of their common intention the deceased was put to death by appellant Bholey Khan with a knife while he was asleep in the hind part of the truck his dead body was thrown in the river and his goods were sold at Lucknow and the sale proceeds were divided among the two appellants. Every part of this statement has been corroborated by the various recoveries made at his instance and by the evidence of the eye-witnesses. The fact that two abrasions on the right base of the thumb and right wrist of Bholey Khan were found on medical examination the duration of which was about 10 or 12 days does indicate that in all probability he had received those injuries when he was using the assassin's knife on the sleeping Panna Lal in the truck.

31. Learned counsel for the appellants has argued that even if the extra judicial confession made by Bhagwan Das is held voluntary and true it cannot be used against the other appellant for recording his conviction.

32. It is true that the extra judicial confession made by Bhagwan Das cannot be made the sole basis for the conviction of his co-accused. There is however no bar in getting an assurance from the extra judicial confession if the facts and circumstances brought out on the record by themselves indicate unmistakably that

the co accused had been connected with the crime In this view of the matter we are of opinion that the extra judicial confession can be used for this limited purpose for arriving at a decision regarding the guilt of appellant Bholev Khan as well

33. Even if the extra judicial confession is not taken into account the circumstantial evidence enumerated above is itself sufficient to bring the various charges home to the appellants and the only reasonable inference de-ducible from those circumstances is that the appellants are responsible for the commission of the offences charged against them

34. In the result we are satisfied that the prosecution has succeeded in bringing the various charges home to the appellants and they have been rightly convicted by the trial court.

35. Then there remains the question of sentence to be considered " was a brutal murder of a sleeping person whose confidence was betrayed by the assailants The murder was committed with the base motive of grabbing the goods of the deceased. The offence, therefore, falls clearly under Section 302 I. P. C. It, however, appears from the evidence and circumstances of the case that the leading part was played by appellant Bholey Khan who was the cleaner of the truck and with whom the deceased must have slept on the hind part of the truck. It is he who went to dispose of the grains at the Lucknow shop and paid the octroi charges during the way. The presence of injuries on his right wrist and right thumb indicates that probably the knife of the assassin was wielded by him. In the circumstances we are of opinion that he has been rightly awarded the extreme penalty provided under the law on the charge of murder.

36. As regards appellant Bhagwan Das he made a confessional statement to the owner of the truck as soon he enquired about the whereabouts of the deceased. It was because of his statement that in all probability the various links of the story could be gathered together by the investigating agency and the truth saw the light of the day. We are, therefore of the opinion that a sentence of death is not called for in his case and the ends of justice will be secured if he is sentenced to undergo imprisonment for life on the charge of murder

37. Accordingly we affirm the conviction and sentence of appellant Bholey Khan as recorded by the trial court and dismiss his appeal. The reference made by the learned Sessions Judge for the confirmation of the sentence of death inflicted on Bholey Khan is accepted.

38. The appeal of Bhagwan Das is allowed in part. His conviction under Section 302/34 I. P. C. is affirmed but the sentence of death inflicted on him thereunder is set aside. Instead he is sentenced to undergo imprisonment for life. His conviction and sentences for the other offences as recorded by the trial court are affirmed. The appellant is in jail. He shall serve out the sentences as awarded to him by this Court which are directed to run concurrently. The reference made by the learned Sessions Judge for the confirmation of the sentence of death inflicted on him is rejected.

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