

Queen-empress Vs. Gobardhan

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All528

Judge : John Edge, Kt., C.J., ;Straight and ;Brodhurst, JJ.

Appellant : Queen-empress

Respondent : Gobardhan

Judgement :

Edge, J.

1. This is an appeal by the Local Government under Section 417 of the Code of Criminal Procedure, 1882, from an original order of acquittal passed by the Sessions Judge of Agra on the 23rd of October 1886.

2. The respondent, Gobardhan, was tried for the murder of one Nihal Singh, under Section 302, Indian Penal Code, and was acquitted. The undisputed facts of the case are that from the 14th to the 19th of December 1885, Nihal Singh, with his wife and family, was staying with one of his elder brothers, Tej Ram, at Barai. At 7 o'clock on the morning of Saturday, the 19th December 1885, Nihal Singh, accompanied by his family, left Tej Ram's house at Barai to proceed to Agra. His wife, mother, and son were in a rath driven by his servant Pokha Ram. Nihal was on horseback. After they had proceeded a short distance, Nihal Singh told his

servant to go on with the rath to Tundla, and saying that he, Nihal Singh, would go to Tundla by way of Barai and Ratauli, rode off in the direction of Barai. Nihal Singh lived at Ratauli, where also lived his father-in-law's people. About noon of the 19th December, Nihal Singh arrived at the house of Abu Singh at Ratauli, and after eating some food and sending off some cooking utensils, left Ratauli about one o'clock in the afternoon, and proceeded in the direction of Narki. The road from Ratauli to Tundla goes by Narki. Abu Singh was a connection by marriage of Nihal Singh. So far as appears by the evidence before us, this was the last time that Nihal Singh was seen alive by any of his relations. On the morning of the 20th December, Abu Singh found at his door the horse Nihal Singh had been riding on the previous day. The horse was then without any bridle, and the stirrups had disappeared. Between 9 and 10 o'clock in the forenoon of the 20th of December, 'Pokha Ram, Nihal Singh's servant, called at Abu Singh's to make inquiries about Nihal Singh, who had not arrived at Tundla. On the afternoon of the 20th of December, a man called Mahasukha called at the thana' at Itmadpur, and at about 5 o'clock reported to Wali Husain, head constable, moharrir, to the effect that on the previous evening he, Mahasukha, having sold some eggs and fowls, was going from Tundla to his village Shibsingpura, and that on getting to a bridge on the Kotki road he found there Gobardhan, the present respondent, and another man whose name he did not know; that a mounted man whom he conjectured to be the Raja of Awa's karinda, and two other men, whose names he did not know, were coming along. That when the karinda got near the bridge Gobardhan shot the mounted man, who fell; and expired; that the four men seized him, Mahasukha, took his basket and rope from him, threw the dead body into a well, and dragged him near to it, and threatened him, saying--'if you tell, you will be murdered and that with great difficulty and by making many entreaties he got the men to let him go. He also reported, on the night of the 20th: of December, that Gobardhan had said he was going to Umrao Singh at Agra.

3. Wali Husain, three constables, and a chaukidar went with Mahasukha, and; between 7 or 8 o'clock that night arrived at a well, which Mahasukha pointed out as the well in which the body was, Wali Husain and the constables remained at the well that night, and on: the morning of the 21st December, Wali Husain went with Mahasukha to the bridge, where Mahasukha said the gun had been fired, and on

arriving at the bridge Mahasukha pointed out blood which was lying in a hollow place ahead of the bridge in a northerly direction, and said,--' At this place the mounted man fell from his horse.' Mahasukha then took Wali Husain into an arhar field in an easterly direction, and pointed out marks of dragging. Under a babul tree in the arhar field there were marks of blood, and at that place a leather purse and pencil-case were found. Mahasukha said,--'At this place the corpse was tied up.' After that, Wali Husain and Mahasukha returned to the well, and there, with the assistance of soma divers who had by that time arrived, the body was got out of the well. When the body was taken out of the well it was found that a dhoti was tied on the neck and that the feet were tied up to the neck with a rope. Some rings and other articles were found on the body. There was a bullet wound in the forehead on the right side, and the back of the corpse had scratches on it Which might have been produced by the body having been dragged along the ground. In the well was also found a pole, with which Mahasukha said the body had been carried to the well. Wali Husain showed the corpse to the people of the neighbouring villages, but no one recognized it. The well was about one mile from the bridge, and was on the way from the bridge to the Jamna.

4. Wali Husain, having handed over the corpse to Mahtab Khan, went in search of Gobardhan. Gobardhan lived at a village called Garhi Godhi, which is between 2 1/2 and 3 kos from the bridge. About noon on the 21st December, Wali Husain arrived at Garhi Godhi and searched Gobardhan's house in the presence of Gobardhan's brother, Bhagwant; but failed to find Gobardhan or to obtain any information as to his whereabouts. The body found in the well was subsequently identified as that of Nihal Singh.

5. On the 22nd of December, Mahasukha handed over to Amir Khan, Sub-Inspector of Police, four beads which had belonged to Nihal Singh. On the 22nd and 23rd of December, Mahasukha made statements implicating Gobardhan, Koka Ram, Babuti, Hira, Harpal and Srikishan. Baljuti, Harpal and Srikishan were practically taken into custody on the afternoon or evening of the 23rd of December. Gobardhan was arrested in Gwalior State some seven months later. Hira and Koka Ram have not yet been found. Prior to the arrest of Gobardhan, Mahasukha, Babuti, Harpal and Srikishan were tried for the murder of Nihal,

Singh. Mahasukha was convicted and sentenced to transportation for life. Babuti made no confession, but Harpal and Srikishan each made a confession. Babuti, Harpal and Srikishan were acquitted, apparently on the ground that Mahasukha's evidence as against them was not corroborated, although as to Harpal and Srikishan, Mr. Young, who tried them, was apparently satisfied that they had voluntarily made their confessions, and although those confessions afforded ample corroboration as against Harpal and Srikishan of Mahasukha's evidence.

6. So far as I have been able to ascertain from the evidence and from statements agreed to by the counsel engaged in the case, the distances between the different places referred to by the witnesses or by counsel are as follows: Barai to Tundla 16 kos, Barai to Agra 24 kos, Ratauli to Tundla 8 to 9 kos, Barai to the bridge 7 kos, Garhi Godhi to the bridge 2 1/2 to 3 kos, Itmadpur to Garhi Godhi 5 kos, Itmadpur to the well 2 kos, Itmadpur to Ratauli 9 kos. Persons going from Barai and Ratauli to Tundla would pass the bridge in question. The bridge is close to a place where two roads cross each other.

7. Mahasukha and Harpal lived at Shibsingpura; Koka Ram lived at Koka; and Gobardhan, Babuti, Hira and Srikishan lived at Garhi Godhi. Srikishan was a servant in the employment of Bhagwant and Gobardhan. Koka Ram was the son-in-law of Bhagwant. Bhagwant, Gobardhan and Babuti are Brahmans; Mahasukha and Hira are of the sweeper caste; Harpal is an Ahir, and Srikishan is a Chamar.

8. At the sessions trial the case for the prosecution was shortly, and put in narrative form, as follows: The title of Raja Baldeo Singh to the Awa estates was, at and prior to the time of the murder of Gobardhan, being disputed by the Rani Sakarwar, a widow of a previous Raja, and by Nihal Singh. Nihal Singh, was not only claiming on his own account, but was also assisting Rani Sakarwar to establish her claim. Nihal Singh's elder brothers, Zorawar Singh and Tej Ram, had compromised their claims. Umrao Singh had on one occasion threatened Nihal Singh, saying, 'Very well; I will settle with you,' because Nihal Singh was raising a contention as to the Raj. Umrao Singh was a friend of Raja Baldeo Singh. Gobardhan, professing to act on behalf of Raja Baldeo Singh and Umrao Singh, had employed Mahasukha, Hira, Hirpal, Babuti, Koka Ram and Srikishan to assist

him in murdering Nihal Singh when on his way to Tundla, and carrying the body to the Jamna. Gobardhan had stated to Mahasukha that ten thousand rupees have been settled by me and Raja Baldeo and Umrao as the price of killing a man,' 'and that a village would be given if the Rs. 10,000 were not. On the 18th of December, Gobardhan had said to Mahasukha: 'Two men came to me from Awa in the night.; they have just gone away this morning. Those men said that Raja Baldeo had said the man would come to-morrow, and that if he escaped this time he could not be got hold of again. Will you come? 'On the 18th of December Gobardhan, Mahasukha and Koka Ram went to the bridge, and Hira went in search of the other men. Gobardhan shot Nihal Singh at the bridge, and Nihal Singh, after the horse had gone some ten paces in the direction of Eta, fell off. Gobardhan and Koka Ram dragged the dead body into an arhar field, and then Koka Ram and Mahasukha dragged it under a babul tree. The deceased man at the time of the murder was wearing a sword attached by a cross-belt, and had a bag with him. Just then the sound of feet was heard, and Gobardhan, Koka Ram and Mahasukha ran and sat down in the arhar field, when four men were seen coming from the direction of Narki. One of the four coughed, and Gobardhan asked: 'Who is it? Is it Hira? ' And one of the four said: 'Yes; ' and Gobardhan said 'Come. It is some time since we killed the man. Why have you made this delay? 'The seven men went to the corpse, and Gobardhan told Hira and Mahasukha to tie up the body so that blood should not drop on the road. They tied the hands and feet of the body with a dhoti. Gobardhan told him to turn up the coat and bind it with the thick cloth round the head so that blood should not fall. Hira and Mahasukha did this, and then Harpal brought a rope and pole, and Gobardhan told them to tie the hands and feet securely. 'The dhoti may get rent, the Jamna is three kos off.' Hira and Mahasukha tied the hands and feet with the rope, and the latter told Gobardhan that he felt something on the upper arm of the corpse. Gobardhan said--'It will be an armlet,' and told Mahasukha to pull it off. Mahasukha was unable to pull it off, and then Gobardhan told him to cut it off with the sword, which was done, and the dholania was then handed by Mahasukha to Gobardhan. The body was then carried some distance on the polo, when, the men objecting to carry it further, it was proposed to throw it into a well close by. That well being dry, Gobardhan directed them to carry it to another well, which was done: and then

Koka Ram and Gobardhan pushed it with the pole into the well in which it was found. The men then returned to the place where the body had been tied up, where were a razai, a safa and a pair of boots, which Koka Ram tied up and put on his back, Gobardhan saying he would show them to Raja Baldeo and Umrao as evidence of the murder. Gobardhan gave the dholania, to Mahasukha, saying 'sell it, and you and Hira '; divide the proceeds, and I will go to Raja Baldeo Singh and get money and give some to everybody.' Gobardhan gave Harpal three swords, two of which he had himself brought, the other being the deceased's, and the pistol, and told him to take them to Bhagwant. Gobardhan and Koka Ram then went off towards Tundla, and the other five men went to their homes. Mahasukha discovered the next morning that the dholania was of copper, or copper and silver; he then went to Gobardhan's house, arriving there between 10 and 11 o'clock. Finding Bhagwant there, he asked him where Gobardhan was, when Bhagwant reviled him, and said he did not know where Gobardhan was. At this Mahasukha got angry, uttered abuse, saying he had got nothing, and went to the thana at Itmadpur and made the report already referred to. Gobardhan absconded.

9. In support of that case, Tej Ram, Abu Singh and Koka Ram were called and spoke to the movements of Nihal Singh on the 19th December. Zorawar and Tej Ram spoke as to Nihal Singh having had a dispute as to the Awa estate, and Zorawar as to the threatening language alleged to have been used by Umrao Singh to Nihal Singh. Mahasukha spoke as to his having been brought by Hira to Gobardhan, and as to Gobardhan inducing him to join in the murder by representing that he had arranged with Umrao Singh and Raja Baldeo Singh that Rs. 10,000 or a village would be given for the committing of the murder. He also spoke as to the fact of Gobardhan shooting Nihal Singh at the bridge, and the subsequent disposal of the body. A man called; Sarwan stated that on the evening of the murder he saw Gobardhan and two other men at the bridge. Wali Husain spoke as to the statement made by Mahasukha on the evening of the 20th December at the thana at Itmadpur, of the marks at the bridge, in the arhar field, and under the babul tree, of the finding of the body and the marks on it, and of his searching for Gobardhan at his house on the 21st of December. Amir Khan proved that on the 16th of December 1885 he had examined Gobardhan in Narki in reference to a burglary, when Gobardhan stated that he was in the service of

Umrao Singh and that he was going with a letter to Awa from Umrao Singh to Raja Baldeo. The witness identified the counterfoil of his diary, dated the 16th December 1885, which contained a copy of Gobardhan's statement on that occasion. The copy was in the handwriting of a constable who was then acting as a clerk, and was signed by the witness. This witness was not cross-examined at the sessions trial as to the entry in his diary or as to the fact of his having seen Gobardhan in Narki on the 16th December 1885. This witness gave his evidence on the 13th October 1886, and was subsequently, on the 19th of October, recalled, examined and cross-examined, but not as to what had taken place on the 16th December 1885. Juala Prasad produced a statement made by Mahasukha before Mr. Redfern, then a Joint Magistrate, on the 24th of December 1885. Wazir Ahmad, constable, stated that on the 16th of December 1885, he brought Gobardhan from Garhi Godhi, to Amir Khan at Narki, and that on that day he had seen Koka Ram, Gobardhan and some other men at a well at Garhi Godhi. This witness was cross-examined, apparently to see if he was near enough to Gobardhan, at the interview between Gobardhan and Amir Khan on the 16th December, to hear what passed, and to impugn the accuracy of the statement that he had in fact brought Gobardhan to Amir Khan on that day. Balwant, a constable, identified the body of Nihal Singh. Kanak Was examined as to the taking of the dead body to 'Agra, and' as to its having been carried by eight men (kahars).

10. Baldeo, chaukidar of Sarai Nurmahal, stated, inter alia, that a month or fifteen days before Nihal Singh was killed he had seen Gobardhan in Sarai Nurmahal and Garhi Godhi, and did not see him afterwards in the village. Nawala, a sweeper, contradicted Mahasukha as to the number of days during which Mahasukha had been living with him at Shibsingpura, and stated that at 10 o'clock on the night in question, Hira had called for Mahasukha and taken him away. The note of the Sessions Judge with regard to this witness is: 'A very stupid witness, as noted by the committing Magistrate.'

11. Mr. Yeatman, District Superintendent of Police, spoke to a witness named Chidda having given him some letter, and to the fact that Zorawar Singh had brought Chidda to him about the 25th of August 1886. The evidence of Chidda and Ram Lal went to connect Umrao Singh and Raja Baldeo Singh with the murder of

Nihal Singh. Sugaria, a dhobi, spoke to having seen Mahasukha and two other men on the night in question. At the close of the case for the prosecution, Umrao Singh was called as a witness. The following, as appears from the record, then took place:

Umrao Singh.--Neither the letter No. 1 nor the envelope No. 1 produced are in my writing, nor is the letter No. 2 nor envelope No. 2 in my writing. The handwriting of the letter No. 2 is like my handwriting, that of the envelope No. 2 is not, nor are the signatures in my handwriting. (To Court, at instance of Government Vakil).--I sometimes write to Balwant and Baldeo. I know English. I sometimes sign with an English pen. I always sign as I have now signed. I never addressed Rao Balwant as he is addressed in the letter of the 13th December, and the letter dated 14th contains mention of matters not within my knowledge. I didn't hear of application therein mentioned.

Chidda: This is Umrao (Umrao last witness) whom I mentioned in my evidence.

Umrao Singh to counsel for defence: I never saw this man Chidda in my life.

(Mr. Colvin was about to question the witness generally on the case and was ready to do so, but at the suggestion of the Court, Umrao having denied that he had ever seen Chidda, did not put any further question.)

12. In passing I cannot refrain from saying that in my opinion the suggestion of the Sessions Judge was a most unwise one. There was much other matter in the case upon which Umrao Singh should not only in his own interests, but in the interests of justice, have been examined. That unwise suggestion practically relieved Mr. Colvin, as he contended before us, from the necessity of calling any witnesses, and consequently placed this Court in a most difficult position in dealing with the case, and obliged us to allow Mr. Colvin to call several witnesses, the examination of whom in this Court consumed much valuable time. That suggestion of the Sessions Judge also most probably deprived him of the opportunity of hearing the evidence for the defence and of seeing how far such evidence pointed to the guilt or innocence of Gobardhan. This opportunity has been afforded to us.

13. Mr. Colvin for Gobardhan contended before us that the witnesses Chidda and Ram Lal were false witnesses who had been put forward at a late stage of the case to connect Raja Baldeo Singh and Umrao Singh with the murder. With this contention we agreed, and we have discarded their evidence. He further contended that the evidence of Sarwan could not be relied upon, and that if his evidence was discarded the evidence of Mahasukha was uncorroborated, and being that of an accomplice we should not, under such circumstances act upon it. He also contended that in certain details the evidence of Mahasukha was contradicted by Nawala, and other witnesses; that Mahasukha had on different occasions made different statements, and that his evidence was improbable, and that in the end of November 1885, Gobardhan had left his village on a pilgrimage to Unkarji in the Gwalior State, and was absent on that pilgrimage until he was arrested at Unkarji on this charge in July 1886. Mr. Colvin also contended that there was no evidence to connect Raja Baldeo Singh or Umrao Singh with the murder, and that as there was no such evidence, the alleged motive for the crime was not proved. He also argued that some enemies of Raja Baldeo Singh and Umrao Singh had, after the murder was committed, induced Mahasukha to falsely inculcate, by his statements Gobardhan, Raja Baldeo Singh, and Umrao Singh. Mr. Colvin strenuously argued that the Sessions Judge having acquitted Gobardhan of the charge we should not reverse his finding. He also contended that after the expression of opinion of the Sessions Judge to which we have already referred, no inference adverse to his client should be drawn from the fact that he had not called as witnesses for Gobardhan any of the persons who were referred to by Mahasukha in his evidence, such as Bhagwant, Srikishan and others. As the case stood, I thought, and still think, that, at any rate before the Sessions Judge, Mr. Colvin exhibited sound judgment and wise discretion, and acted as an able counsel should in the interests of his client in availing himself of the opportunity of not running the risk of calling witnesses for the defence. We thought it right in the interests of justice that Mr. Colvin should before us have the opportunity, if he chose to avail himself of it, of calling such witnesses for Gobardhan as he might think it advisable to call. Mr. Colvin elected to call witnesses. We gave a similar opportunity to Mr. Hill for the Crown, but he elected to stand on the evidence for the Crown which was upon the record. We directed

that Amir Khan, Sub-Inspector; Jai Narain, the clerk referred to in the evidence of Amir Khan; Wazir Ahmad, constable; Sarwan and Nand Kishore, and Jagat, zamindar, referred to in Sarwan's evidence, should attend to be examined before us, and that the Police diaries, and particularly those relating to the 16th of December 1885, should be forwarded to the Court for our inspection. For these purposes the hearing of the case, the arguments in which had already occupied us for four and a half days, was adjourned. The case was again proceeded with on the 2nd, 3rd, 4th, 5th, 6th, 7th, and 10th of last month, when Amir Khan, Jai Narain, Wazir Ahmad, Sarwan Jagat and two men of the name of Nand Kishore were called at our suggestion and were examined, cross-examined and re-examined, most of them at considerable length. Mr. Colvin and Mr. Gordon for Gobardhan called Umrao Singh, Chidda Khan, a daffadar of the Central Jail at Agra; Harpal, Babuti, Srikishan, Bhagwant, and Mahi Lal. Gobardhan was also questioned by the Court. Mr. Gordon stated that he had two witnesses to prove an alibi for Gobardhan, and invited us to express our opinion as to whether he should call them. The only expression of opinion which we thought it our duty to give, we gave, by informing him that he must exercise his own discretion, and that it was not for us to advise him as to the course which he should adopt. The result was that these persons were not called. Umrao Singh denied all knowledge of the transaction, generally contradicted the evidence of Zorawar Singh, and more particularly that part of it in which it was stated that he had threatened Nihal Singh. Umrao Singh stated that he first heard of Gobardhan on the 21st of December 1885, when a policeman called at his house in Agra, in search of Gobardhan, in connection with this charge. Having regard to part of Mr. Colvin's argument, this statement of Umrao Singh is of importance as showing that on or before the 21st of December, Gobardhan's name and that of Umrao Singh were associated in the matter then under investigation, and that the introduction of Umrao Singh's name into the case was not an afterthought, unless it was the result of a conspiracy between the) night of the 19th December and the time when the policeman was sent to Agra on the 21st. As a fact, Mahasukha had at 5 o'clock on the afternoon of the 20th of December mentioned the name of Gobardhan, and at 8 o'clock that night he also mentioned the name of Umrao Singh to the police. I have come to the conclusion that Mahasukha when he made his statement at the thana at

Itmadpur on the 20th of December, did not in fact know who the murdered man was, or where he or his relations lived. A careful examination of his statement and evidence, and the other evidence in this case, can, in my judgment, lead to no other conclusion. Having said this, I think it right to say at once that there is, in my opinion, no evidence before us to show that either Raja Baldeo Singh or Umrao Singh were in any way connected with Gobardhan or the crime. Mahasukha's evidence as to Raja Baldeo Singh and Umrao Singh is solely based on the statements which he says were made to him or in his presence by Gobardhan. If Gobardhan made these statements as to Raja Baldeo Singh and Umrao Singh, as I believe he did, it does not follow that there was any foundation for them. They may or may not have been true. It is I think obvious that Gobardhan would have had a difficulty in securing the assistance of Mahasukha and the other men to commit the murder, unless he could persuade them that they would obtain some material advantage in money, protection or otherwise, from joining in the dangerous enterprise which he was going to undertake, and it is difficult to see what course he could have adopted more likely to attain that object than the introduction of the names of two men of position, such as Raja Baldeo Singh and Umrao Singh. The views of the Sessions Judge on this point lead me to infer that he had in this, as on other points of the case, been carried away by the arguments of Mr. Colvin, and had not examined closely into the probabilities of the evidence or the motives which may probably have influenced the parties. The theory of the defence which was adopted by the Sessions Judge, that it is improbable that Gobardhan should have mentioned the names of Raja Baldeo Singh and Umrao Singh so freely as he appears by Mahasukha's evidence to have done, and that 'the way in which they are mentioned in his story points to the inference that he has been got at by their enemies,' is not, in my opinion, justified by an examination of the evidence which was before him.

14. The question on that point arises, by whom and when could Mahasukha have been got at? It has been suggested on behalf of Gobardhan that the relations of Nihal Singh, or the Rani or Thakurain of Kotla, and Adil Singh, may have got at Mahasukha. There is no evidence to support this suggestion. So far as Nihal Singh's relations are concerned, three of them, Zorawar, Tej Ram and Abu Singh, were examined, and not one question pointing to such a suggestion was put to

any of them. It was not even suggested by any question put to them that they or any of them or any of Nihal Singh's relations ever heard of Mahasukha until after he had, on the 20th of December 1885, made the statements which inculpated Gobardhan and Umrao Singh. Now as to the Rani of Kotla and Adil Singh, there is no evidence that they or either of them ever knew anything of Mahasukha. There is a vague statement of Gobardhan that Adil Singh had at some previous time been tried and acquitted on a charge of murder, that Koka Ram had been in some way mixed up in that case, and that Gobardhan had employed a mukhtar on behalf of Koka Ram. Gobardhan in his statement before us at the end of the case and when asked why should Mahasukha have made a false charge against him, told this vague story, and said that since he was released he had heard that Mahasukha was in the service of Adil Singh. Further, what must this suggestion as to the Rani of Kotla and Adil Singh presuppose? It must presuppose either that the Rani of Kotla or Adil Singh knew beforehand that Nihal Singh would be murdered, and had prior to the murder laid their plans for connecting Gobardhan, Umrao Singh and Raja Baldeo Singh, or one of them, it does not matter which, with the murder, or that between the time of the committing of the murder, that is to say, between the evening of the 19th of December and 5 o'clock in the afternoon of the 20th of December, they or one of them had ascertained that a murder had been committed, and that the murdered man, whose corpse was still in the well and unidentified, was Nihal Singh. Further, during that time, they or one of them must have ascertained that Mahasukha was an eye-witness of the murder and of the disposal of the body, or they must during that time have ascertained the circumstances of the murder, and of the disposal of the body, and have found Mahasukha, and in either case have got him to make his statements of the 20th December. Any one who reads with care the statements and evidence of Mahasukha must be satisfied that he did not know on the 20th of December 1885, who the murdered man was. On the 21st of December, Wali Husain showed the corpse to the people of the neighbouring villages, and no one recognised it. At 5 o'clock on the afternoon of the 20th, Mahasukha had introduced the name of Gobardhan, and at 8 o'clock that same night, the name of Umrao Singh, into the case. On the 21st, Gobardhan was sought for by the police at his own house at Garhi Godhi and at Umrao Singh's house at Agra. It is true that the constable who

went to Umrao Singh at Agra did, according to Umrao Singh's evidence, tell him that Nihal Singh had been murdered. It is the fact that Abu Singh stated that the thanadar of Narki came to him with Pokha Ram on the morning of the 20th, and told him that Nihal Singh had been murdered. This statement must have been merely the result of an inference based on the facts that Nihal Singh had not arrived at Tundla on the previous evening, that his riderless horse was found outside Abu Singh's door on the morning of the 20th, and that Pokha Ram had noticed marks of blood at the bridge. It is obvious that nothing definite was known as to the fact of a murder having been committed until Mahasukha made his statement at the thana of Itmadpur, which appears to have been the first information which the police of the thana, which was nearest to the scene of the murder, had of the fact that any one had been murdered or was in fact missing.

15. Mahi Lal, one of the fresh witnesses called by Mr. Gordon, stated that he had been a karinda of Rani Sakarwar, and had been engaged in preparing her case, and had never known Nihal Singh in connection with her claim to the Awa estate; and that, so far as he knew, Nihal Singh had never visited the Rani between the time when she put forward her claim and Nihal Singh's death. He also stated that Nihal Singh was not in a position to assist the Rani with money.

16. Mr. Gordon tendered evidence to show that Nihal Singh could not have had any good claim in law to the Awa estate. Mr. Hill objected to this evidence, and we rejected it on the ground that there was no evidence before us from which we could infer that Nihal Singh had any legal claim to the estates, and that it was not necessary for Mr. Gordon to give evidence to prove a negative until the prosecution had given some evidence to prove an affirmative. The evidence tendered by Mr. Gordon and rejected by us did not touch or qualify the fact which was proved, namely, that Nihal Singh had put forward claims to the estate. There was the fact proved by the evidence that Nihal Singh had preferred claims to the estate to the Collectors of Agra, Aligarh, Muttra, Etah and Mainpuri, and to the Commissioner of Agra and the Board and the Lieutenant-Governor. These claims, so far as we know, may have been unfounded, but there was the circumstantial evidence of Zorawar Singh given at the sessions trial on the 13th October 1886. When Zorawar Singh was examined before the committing Magistrate, he gave a

good deal of evidence on this point, and he stated, amongst other things, that before Raja Baldeo Singh was acknowledged as Raja, Nihal Singh had applied to the Collector of Muttra to have his name recorded as owner of the villagers belonging to the estate in that district, and that a notification was issued from the Jalesar tahsil. He also stated in the course of that examination that Nihal Singh had presented a petition to the Board and to Government claiming the estate. Zorawar Singh, although he was cross-examined at the sessions trial as to whether there was any civil cause other than that of Rani Sakarwar's pending at the date of Nihal Singh's death relating to the Awa estate, was not cross-examined as to the allegation that Nihal Singh had preferred the claims to which he had referred. If Zorawar Singh's evidence on this point was false, it was capable of easy and certain refutation, and the way to refute it was not by proving that those claims were unsubstantial and unfounded. These claims of Nihal Singh, we assume, were unfounded in law; but the fact remains that they had been made. Umrao Singh has come before us, and he has denied, upon his oath, that he was in any way concerned with Gobardhan or with the murder, and, so far as he is concerned, he should have the benefit of his having given his evidence, which appeared to me to be given in a manly and straightforward manner. Whether or not there was any foundation for the statements made by Gobardhan to Mahasukha, it is impossible for me to say. I can say no more than that Umrao Singh has, so far as he is concerned, denied on his oath in Court any complicity in the transaction, and that there is no evidence that the statements of Gobardhan as to Umrao Singh and Raja Baldeo Singh were true. I have dealt at some length with this part of the case, not only on account of the view expressed by the Sessions Judge, but also because we have been much pressed on the point by Mr. Colvin in his argument before us.

17. Harpal, Babuti and Srikishan have denied the story told by Mahasukha, and they have stated that the confessions of Harpal and Srikishan were extorted by the police, and principally by violence and torture ordered by Amir Khan. The fact that Harpal and Srikishan made statements at one time which, if believed, and if they had not been accomplices, would afford full corroboration of all that is material in Mahasukha's evidence, is proved. Those statements were put to them, and they admitted that they had made them, but they said that they had been threatened,

tortured and tutored by the police.

18. Having examined carefully the statements of Harpal and Srikishan, their several retractations and their evidence, and that of Babuti given before us, I am satisfied that their evidence before us is false, and that their allegations as to the torturing and tutoring by the police are substantially unfounded. According to Harpal, Mahasukha early on the Sunday morning after the murder told him, a stranger, that he, Mahasukha, was trumping up a charge against Gobardhan for the slaughter of a man, and asked him to give evidence against Gobardhan, and this, if the evidence for the defence is to be believed, some 20 or 25 days after Gobardhan had left for the Gwalior State on his alleged pilgrimage. In reply to us, Harpal said, according to my note of his evidence: 'I did not ask Mahasukha who had been killed. He did not tell me. I did not ask him where the man had been killed. He told me to say it was at the bridge. I did not then know which bridge. I asked him which bridge it was, and he said, 'You say it is the bridge. What have you to do with what bridge it was?' He did not tell me when the man had been killed. I did not ask him who the man was.' When Harpal and Srikishan first retracted their confessions, no distinct allusion was made by them to Amir Khan, whilst in their evidence before us, as to the alleged torturing, and tutoring by the police, Amir Khan was the principal offender. Babuti, Harpal, Srikishan and Bhagwant gave evidence to show that Gobardhan had left his village and the neighbourhood some 20 or 25 days before the murder of Nihal Singh, and had not returned. This evidence I do not believe. On the contrary, I am satisfied not only that Gobardhan was with Amir Khan at Narki on the 16th of December, but that it was his hand which fired the shot that killed Nihal Singh at the bridge on the 19th of December 1885. Bhagwant, who was examined next after Srikishan, had had no opportunity of knowing what Srikishan had said in cross-examination, and contradicted Srikishan on several material points so far as the credibility of their evidence was concerned, as, for instance, on the question of the partition of the joint property. Srikishan professed to having been told by Gobardhan that he, Gobardhan, was going on a pilgrimage to Unkarji, and would not come back. Bhagwant, Gobardhan's brother, said that they cultivated jointly; that Gobardhan wanted a partition; on that a quarrel took place, and he, Gobardhan, went off, leaving his wife and child behind, and saying that Bhagwant might take the whole,

and that he, Bhagwant, did not know or inquire where Gobardhan had gone, or whether he had gone on a pilgrimage or not. He admitted that he knew that the police were searching for Gobardhan on the Monday after the murder. Bhagwant's story, even if it had stood alone and uncontradicted, would have been most improbable.

19. I have come to the conclusion that no reliance can be placed upon the evidence of Sarwan. His evidence, if we could have believed it, would have afforded a complete corroboration of Mahasukha's as to Gobardhan having been at the bridge on the evening of the 20th December. It is possible that Sarwan may have passed the bridge on that evening and seen Gobardhan there, but his evidence on other points relating to his credibility has been so fully contradicted by Amir Khan, the police diaries, Jaggat and the Nand Kishores, that I consider it safer to discard it altogether.

20. In justice to the police, I should say that it appears to me that they were not responsible for the introduction into the case of the evidence of Sarwan or of that of Chidda or Ram Lal. Sarwan, on the important point as to when he first gave information to the police, was, at the sessions trial, and again before us, distinctly and in unequivocal terms contradicted by Amir Khan, Sub-Inspector of police. Chidda and Ram Lal appeared to have been first introduced by Zorawar Singh, and not by the police.

21. Before proceeding to consider the evidence of Mahasukha, I may repeat that I am satisfied that Gobardhan did not leave his village on the alleged pilgrimage 20 or 25 days before the murder of Nihal Singh, and that the story as to his having done so is absolutely false. I am also satisfied that Gobardhan was in Garhi Godhi on the 16th of December 1885, and that on that day he was taken by Wazir Ahmad, constable, to Amir Khan at Narki, and that Amir Khan's evidence as to what Gobardhan then said to him is true. I am also satisfied that on or before the morning of the 20th December 1885, Gobardhan absconded, and that, although rewards were offered for his apprehension, he was not arrested until July 1886, when he was found in the Gwalior State, far distant from his home, and that the explanations which he has given as to the cause of his long absence from his

home are untrue. If my belief is well founded, that the story of Gobardhan and the evidence of his witnesses as to his leaving his village are untrue, it follows that he left his village at a time and under circumstances other than those which his story and their evidence have disclosed, and that the true reason, for his leaving his village and his long absence from his home and family has been carefully concealed by him, whilst he has attempted by false evidence to mislead us, not only as to his motive for absenting himself, but also as to the time when he disappeared from the village. His disappearance from his village, otherwise unexplained, appears to me to afford corroborative evidence of Mahasukha's story so far as Gobardhan was concerned, and to be explainable, under the circumstances, only on the hypothesis that he was a party to' the crime with which he is charged, and, fearing that by the evidence of some of his accomplices or otherwise he might be implicated in it, he absconded and intended to keep out of the reach of the law either permanently or until he might find it safe to return. The explanation of his disappearance which I have adopted is a natural one, and is consistent with the evidence of Mahasukha, Amir Khan, Wazir Ahmad and Jai Narain, and the evidence afforded by the entries in the police diaries as to what took place on the 16th of December 1885. The explanation given by Gobardhan and his witnesses is, I believe, an untrue one, and is the only one offered by him or his witnesses. No other explanation has been suggested by Gobardhan, his witnesses or his counsel, and I must assume that Gobardhan and his counsel had no other explanation inconsistent with his guilt to put forward. Gobardhan was defended at the sessions trial and before us by a most able counsel, who did everything which it was possible for a counsel to do to secure a finding of acquittal, and who was fully alive to the bearing on the case of the disappearance of Gobardhan from his village, if that disappearance was not satisfactorily explained.

22. It is now necessary to consider the evidence of Mahasukha and the statements made by him at different times relative to the murder of Nihal Singh. In doing so, it must be kept in mind that Mahasukha had not been long in the neighbourhood, and was a comparative stranger, which may account for his not being able at an early stage of the inquiry to mention the names of all the six other men. According to Mahasukha's evidence, he had known Hira for four years, and Hira was the man who sought him out and brought him to Gobardhan. This would

also account for the fact that Gobardhan had employed Mahasukha, who was a stranger to him. It must also be kept in mind that some of Mahasukha's statements were made after he himself was charged as a party to the murder, and when he would naturally be anxious to make it appear that he was not a party to the actual murder. These statements must be looked at carefully to see if there is in any one of them anything inconsistent with the case for the Crown that Gobardhan is guilty of the offence with which he is charged. It would be rash to assume that an accomplice, because he tried, when charged with the offence of murder, to keep himself in the background, must necessarily be stating what was untrue as to the prisoner's share in the transaction. This evidence must be looked at in the light of common sense, and with the assistance of such knowledge as a Judge or jury may have of the motives which would ordinarily be likely to influence a person in his position.

23. The first statement which Mahasukha made was made at the thana at Itmadpur, at 5 o'clock in the afternoon of Sunday, the 20th of December 1885, that is, on the day after that on which Nihal Singh was, so far as we know, last seen alive by any of his relations. In that statement, as to which Wali Husain was examined at the sessions trial, Mahasukha professed to have seen the murder actually committed by Gobardhan. He accounted for his presence at the scene of the murder by saying that he was going from Tundla to his village after selling eggs. According to that statement he, Mahasukha, was not a party to the murder, and was an unwilling witness to the disposal of the body. He said he conjectured that the murdered man was the karinda of the Rajah of Awa (Raja Baldeo Singh). In that statement he did not mention any other names.

24. After making that statement, he took Wali Husain and other constables to the well in which the body of Nihal Singh was subsequently found. Later on the same day, and after Mahasukha and the constables arrived at the well, Mahasukha made a further statement that Gobardhan and an other man said they would go to Umrao Singh at Agra. It is obvious that at this time Mahasukha wished it to be understood that he was in no way a criminal participator in what had taken place.

25. Mahasukha's next statement was made on the 24th of December 1885, before Mr. Redforn. In that statement he told substantially the same story as he told before the Sessions Judge at the trial of Gobardhan. On that statement Mahasukha could have been convicted of murder. Of the seven men who, he alleged, took part in the murder or the disposal of the body, he appears by that statement to have known, excluding himself, the names of Gobardhan, Hira, Harpal and Koka Ram. In that statement, although he said that Gobardhan had told him that 'Umrao and Baldeo Singh had promised a village or Rs. 10,000 for the job,' he does not expressly state that Gobardhan said he would go to Raja Baldeo Singh and get money. He did then state that it was then that Gobardhan gave me the pieces of the armlet, bidding Hira and me divide, and as to the rest of the property he would settle in the morning. He said the armlet was of gold. Next morning early I went to Gobardhan's house to show him that the pieces were of copper or silver. I could not find him or Koka. His younger brother abused me, and Gobardhan was not there, so I went to the police.'

26. In speaking of Gobardhan's younger brother, Mahasukha is obviously referring to the elder brother, Bhagwant, the only brother of Gobardhan we have heard of.

27. On the 4th of February 1886, Mahasukha, who was then before Mr. Hamblin, charged with the murder, made another statement. That statement is as follows:

Q.--Do you wish to say anything?

A.--I have one thing to say in Court. If I make my statement, the Court will beat me. Shall I make the statement which the police told me to make? I now wish that my true statement be taken; and if so, I will make it.

Q.--Did the Court before which you made your previous statement beat you?

A.--No.

Q.--Why will the Court beat you now?

A.--I say this because if I do not state what the police told me to do, I shall be beaten; and if I do so, I shall be undone.

Q.--What is your true statement?

A.--My true statement is this. On Saturday Hira Bhangi awoke me at 10 p. m., and took me to a well near which there is an im tree. I found Harpal, Gobardhan and Koka Ram present there. Two other persons were also present. I did not know the names of those persons at that time, but I learnt afterwards that they were Babuti and Srikishan. Thus we were seven persons in all. Gobardhan took me away from the place by the road, and only said that he was taking me for service to Umrao Singh. He then took me to an arhar field, which was at a short distance from the road, and where there was a babul tree. I found a body tied there. When we arrived there, Gobardhan said to me that he and Koka Ram murdered the man. I said that we two persons would be unable to carry the body to the Jamna. Then Srikishan Chamar came near the body and wept. We all then said that we had been brought for service. He (sic) said that we should not have come if he had not deceived us. The body remained tied. There was a stick lying there. Gobardhan and Koka Ram gave the order for the body to be fastened to the stick and taken to the Jamna. I and Hira carried the body. When I and Hira arrived at a field, Gobardhan and Harpal carried it; and when these persons were tired, Babuti and Srikishan carried, and put it near a disused well close by the road. We all then said that we would not be able to carry the body to the Jamna. Gobardhan said that the body should not be thrown into that well, while Koka Ram said that it should be thrown into that well. When we took the body at Gobardhan's order to another well at a rabi field, Gobardhan said that, there being water in the well, the body would not be discovered two or three days. After that Babuti was dismissed, but I and Srikishan remained there to carry the body. After the body had been thrown into the well, Gobardhan and Koka Ram said 'wife's brothers' (an abusive term), 'do not communicate this to anybody. If you will do so, then know that the man had been caused to be murdered by Raja Baldeo Singh and Umrao Singh.' Gobardhan took out of his pocket an armlet or dholna, and told me, Hira Singh and Harpal to divide it, and that it was of gold. Gobardhan had a pistol and a sword, and Koka Ram had a sword. They told me to take the pistol and the sword, and to make it over to their brother, Bhagwant. I refused. Thereupon Gobardhan said that they would take them themselves. Gobardhan told me to go home, adding that he was going to Umrao Singh, and enjoining me not to mention the fact. A razai, a pair of shoes,

and a white safa (turban) were tied up in a bundle, and they took them away, saying that they would show them to Umrao Singh. After this they, I and Harpal went home. The Inspector who met me on the spot, near Itmadpur, gave me sweetmeat to eat. He showed me two-anna pieces and four-anna pieces, and told me to state what he had told me. Amir Khan, Sub-Inspector, also said so. The two-anna pieces and four-anna pieces have been given to me by the Munshi who is with the Inspector. The Munshi and Sheikh Kalia gave me sweetmeat to eat. They gave me chilam and tobacco (produced) to smoke in the hawalat.

Q.--Is the statement you have now made in the presence of the Court true, or have you made it at the instigation of the Police?

A.--This statement is true. I went to the police and made the report. It was I who made over the armlet to the darogah. The armlet in Court is the same. Three beads are of copper and one is of silver. Gobardhan gave them to me as remuneration for throwing the body, and stated them to be made of gold.

Q.--Why do you make a mention of two-anna pieces, four-anna pieces, chilam and tobacco, if the statement you made before the Court is true?

A.--I made a mention thereof because the Inspector told me to confess that I was an accomplice to the murder. He tells me to state what I stated before the Police. He said two statements of mine are false, and what I have now stated before the Court is true. The said two statements were made at the instigation of the Inspector.

Q.--Have you got to say anything more?

A.--The Inspector caused me to make a statement before the Collector '(then he said)' before the Joint Magistrate. The Inspector told me that as there was no witness to the murder, he would make me a witness and get me released. I agreed to state what he would tell me to state. He told me that I would get tobacco and puri daily. I eat puris and gur daily.

Q.--Was the body discovered on your report?

A.--Yes; the body was discovered on my report.

Q.--Do you mean the same body about which evidence has been given in this Court?

A.--The same.

Q.--Is your name Maha Singh or Mahasukha?

A.--My name is Mahasukha and not Maha Singh. I am called Mohrama.

28. There is nothing except Mahasukha's statement to show how he procured the anna pieces and the tobacco which he produced. It is possible that they may have been given to him by the Police to induce him to stick to the statement which he had made on the 24th of December 1885, before Mr. Redfern, when he probably did not see the full bearing of that statement against himself. The fact that he produced the anna pieces and the tobacco proved nothing beyond the fact that he had the anna pieces and the tobacco in his possession. To make the production of them corroborative of his statement that the Police had given them to him, it should have been shown that he could not have procured them or had them in possession unless they had been given to him by the Police. The production of the anna pieces and the tobacco by Mahasukha is a species of supposed corroborative evidence which is, in my experience, not unfrequently volunteered by witnesses anxious to give a realistic appearance to evidence given by them, and generally has the result of causing the statement to be discredited which the witness intended that it should support. It may be the fact that the Police did give the anna pieces and the tobacco to Mahasukha. The production of them does not prove that they had done so. On the other hand, it may be the fact that Mahasukha seeing how fatal to his own case was his statement of the 24th of December, was anxious to mislead Mr. Hamblin by the production of the anna pieces and tobacco, which, for all that appears except from his own statement, he may have had or procured otherwise than through the Police.

29. On the 15th of February 1886, Mahasukha was examined on the charge of murder by Mr. Hamblin. The following were the questions put to him and his

answers on that occasion:

Question by Court.--The charge under Sections 302 and 201, Indian Penal Code, is read out to you, and you are asked whether or not you have committed the said offence.

Answer.--I have heard the charge. I have not committed this offence.

Q.--Did any one else hit (or kill) him in your presence?

A.--No.

Q.--Did you throw the corpse of the deceased into the well?

A.--No.

Q.--Did any one else throw down the corpse in your presence?

A.--Yes; other persons threw the corpse into the well in my presence.

Q.--Have you any witness?

A.--There was one Newala, whose statement has been taken down,

Question by Court.--The charge under Section 411 of the Indian Penal Code is read out to you, and you are asked whether or not you have committed the offence?

A.--I heard the charge. I have not committed even this offence.

30. When on his trial before Mr. Young, Mahasukha said that his statement made before Mr. Hamblin on the 4th of February 1886, was correct. On the prosecution of Gobardhan, Mahasukha was examined before Mr. Harrison, the Magistrate, and at the sessions trial. On these two occasions he gave his evidence after he himself had been convicted and sentenced to transportation for life.

31. It is to be observed that Mahasukha from the first alleged that Gobardhan was connected with the murder, and on that point his statements and evidence never

varied. On the 20th of December, he mentioned (Umrao Singh's name. On the 24th of December, he also mentioned the name of Raja Baldeo Singh, and, according to his statement of that date, he, Mahasukha, was a party to the committing of the crime. When the case against him, Mahasukha, was being investigated before the Magistrate on the 4th and 15th of February 1886, and again when he was on his trial, his story, he then being aware of the dangerous position in which he stood, was so framed as to exclude himself, if his story were believed from participation in the murder and from previous knowledge that a murder was about to be committed. This may also account for the evidence of his friend Newala, that he, Gobardhan, did not leave Newala's house until 10 o'clock on the night of the murder. If any one of Mahasukha's statements is to be believed, Gobardhan did, in fact, murder Nihal Singh. I cannot find in any one of those statements anything inconsistent with the guilt of Gobardhan. Where there is any essential discrepancy between Mahasukha's different statements, the discrepancy may be accounted for by his anxiety to show that he did not actually participate in the murder. His statements on this trial, and indeed as a whole, are minute and circumstantial, and lead me to the conclusion that he was an eye-witness of the murder and of the subsequent disposal of the body, and that the evidence which he gave at the sessions trial in this case, that Gobardhan actually committed the murder, is true. A careful examination of that evidence, tested by the examination of the statement made by him at the thana of Itmadpur on the 20th of December, and again tested by his statement of the 24th of December 1885, have satisfied me that he saw the murder actually committed. His description of how the horse went on a few paces after the fatal shot was fired, and how Nihal Singh then fell to the ground, can hardly have been the result of imagination or of tutoring. There are many other points in Mahasukha's evidence, many of them small in themselves, which lead me without doubt to the conclusion that Gobardhan committed the crime of murder within the meaning of Section 302 of the Indian Penal Code, and that Mahasukha saw him commit it, as he says he did. That Mahasukha was an accomplice of Gobardhan in the commission of this great crime is evident from his own evidence.

32. That we could legally convic(sic) Gobardhan of the offence of murder on the uncorroborated testimony of his accomplice, Mahasukha, is apparent from reading

Section 133 of the Indian Evidence Act, 1872. On this point I may refer to the case of *Reg. v. Ramasami Padayachi*, T. L. R., 1 Mad., 394; *Empress v. Hardeo Das*, Weekly Notes, 1884, p. 286, and *Queen-Empress v. Ram Saian* I. L. R., 8 All, 306.

33. In the case of *Beg. v. Ramasami Padayachi* I. L. R., 1 Mad., 394, Sir Walter Morgan, C. J., and Mr. Justice Kindersley refused to interfere with a finding of guilty, the only evidence in support of which was the uncorroborated evidence of an accomplice. Whether it would be prudent to convict Gobardhan on Mahasukha's evidence, if uncorroborated, is another matter. As a general rule, it would, I think, be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice. The evidence of an accomplice, whether it is corroborated or not, must, like the evidence of any other witness, be considered and weighed by the Judge, who, in doing so, should not overlook the position in which the accomplice at the time of giving his evidence may stand, and the motives which he may have for stating what is false. If the Judge, after making due allowance for these considerations and the probabilities of the story, comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it is his duty to act upon the strength of his convictions. The oath of a juror in a criminal case in these Provinces is as follows: 'I shall well and truly try and true deliverance make between our Sovereign Lady the Queen-Empress and the prisoner at the bar, and give a true verdict according to the evidence. So help me God.' The form of affirmation is to the same effect. If jurors believe the uncorroborated evidence of an accomplice, and that evidence, if believed, establishes the guilt of a prisoner, are they to violate their oaths, and, contrary to their oaths and the uncorroborated evidence of the accomplice which they believe, to return a verdict of acquittal? In such a case, is a Judge to direct the jury to violate their oaths? There can be no difference in this respect, between the duty of a Judge acting as a jury and that of a juror. A Judge would advise a jury that it would be unsafe to act upon, in other words, to believe, the uncorroborated evidence of an accomplice, as he would advise the jury not to act upon the evidence of any other witness whose evidence might, from any cause, be open to suspicion; but in either case, he would have to tell the jury that if they believed the evidence, they might legally convict the prisoner. Confusion on this question has sometimes arisen from overlooking the distinction between a caution to be given to a jury and a direction on law. The

questions of fact are for the jury to find on the evidence. On questions of law the jury must accept the direction of the Judge. Similarly, a Judge when trying a case without a jury must, as a juror, come to a finding on the facts, and, as a Judge, direct himself upon the law. I do not think that it has ever been suggested that the advice of a Judge to a jury not to act upon the uncorroborated evidence of an accomplice is a direction on law. It appears to me, speaking generally, that an accomplice who is being tried, or who is awaiting his trial, is more likely to tell a false story with the object of exculpating himself than is an accomplice who has already been tried and sentenced, and knows his fate. As to the general circumstances of the murder, there is ample corroboration of Mahasukha's evidence. As to the fact that Gobardhan was a party to that murder, the only corroboration of Mahasukha's evidence which I find, taking the view of the whole of the evidence, which I do, is afforded by Gobardhan himself. He absconded and remained away until he was arrested seven months after Nihal Singh's death. Gobardhan and his witnesses gave a false account as to the time when he left his village, and he has never given any other. This, I think, is some corroboration of Mahasukha's evidence that Gobardhan was a party to the murder, and is sufficient for us to act upon. In the course of the argument our attention was drawn to the decision of this Court in the case of *Queen-Empress v. Ram Saran*, I.L.R., 8 All., 306. In that case the Court decided on the facts before it. What those Judges would have done if they had the facts in this case before them, I have no means of knowing. In my judgment, every case as it arises must be decided on its own facts. If cases were to be decided as to the facts on their supposed analogy to others, the result might be that when there was a series of cases, each decided on its analogy to the previous case, 'the last case to be decided would have applied to it the same principle which had been applied in the first of the series, although as between them there might be no similarity in the facts. The fallacy and the danger of applying such a principle to the legal construction of documents was pointed out more forcibly than I can hope to do, by one of the most eminent and clear-headed Judges and lawyers who ever adorned the English Bench,--I refer to the late Master of the Rolls, Sir George Jessel,--in one of his celebrated judgments. If such a principle be a fallacious and dangerous one to apply to the construction of documents, how much more fallacious and dangerous must such a principle be if

applied to the determination of cases which depend on the consideration of oral evidence, and the value and weight to be attached to such evidence.

34. If Judges were to decide criminal or other cases, so far as questions of fact were concerned, on their supposed analogy to a previous case, the Judges would not be exercising their own independent judgment upon the facts before them in the particular case, but would be accepting and leaning on the findings of fact of other Judges in the previous case, and would be applying such findings to the particular case, on the speculative assumption that the other Judges would take the same view of the evidence in the particular case in hand which they had taken of the evidence in the previous case.

35. Mr. Colvin also pressed upon us the fact that Gobardhan has been already acquitted, and the decision in the case of *Empress v. Gayadin I. L. R.*, 4 All., 148. I have before now expressed my approval, if I may say so, of the principle enunciated in that case. I do not think that case applies to the present.

36. In this case, we have not been considering whether or not the case shall be sent down for a re-trial. We have re-tried the case on the evidence which was before the Court below, and on further evidence which has been brought before us; and I think it is my duty to act upon the belief, which from an examination of the evidence I entertain, that Gobardhan did, in fact, murder Nihal Singh. As I have said, I think the Sessions Judge committed a grave error of judgment in expressing, in a case like this, an opinion which relieved Mr. Colvin from the necessity of calling witnesses, thereby depriving himself of the opportunity of seeing how far Gobardhan could make out his alibi, and what light the evidence of his witnesses might throw upon the case. The inference which he appears to have drawn, that Mahasukha had been got at 'by the enemies of Raja Baldeo Singh and Umrao Singh, is not supported by any evidence in the case, and cannot, I think, be supported when the evidence and the probabilities of the case are carefully considered.

37. I do not agree with the view of the Sessions Judge that because Mahasukha asked for a promise before giving his evidence, it should be assumed that without such promise having been given, Mahasukha was unwilling to tell the truth.

38. The Sessions Judge appears to think that the reason given by Mahasukha for his having given information to the police on the 20th of December is improbable. I do not agree with him. Mahasukha is a common man, and he evidently thought that he had been done and left in the lurch by Gobardhan, and became angry and desirous of punishing Gobardhan. The manner in which his inquiries as to Gobardhan were received by Bhagwant was not likely to re-assure him. We asked Mr. Colvin what other motive could be suggested for Mahasukha making his statement to the police on the 20th December, and he could not point to any other. The Sessions Judge says in his judgment: 'If his present story is true, Mahasukha ought to be able to account for everything Nihal Singh had about his person. He was taking his family to Agra, and must have had money about him. There is no mention of any money in Mahasukha's present story.' Did the Sessions Judge omit to notice that Mahasukha, in his evidence at the sessions trial, as recorded by the Judge, had said--There was a sword on the corpse, banging from a cross-belt, and a leather bag, and Gobardhan took them both, and there was a ring of gold on the right and of silver on the left hand; Koka Ram took them both. The sound of feet was heard, and Gobardhan said--' there are men coming; run.' The three of us ran and sat down in an arhar field, two fields or two and a half away;' and then Hira and two other men came up. If the Judge is right in his surmise that Nihal Singh had money upon him, the money would probably have been in that bag. If it had been permissible to have asked Mahasukha as to what he thought was in the bag, the Judge, if he had looked at the previous statement of Mahasukha, would have had a question suggested to him, the answer to which would probably have relieved his mind upon this point. If by using the words 'present story' in the passage from his judgment above quoted, the Judge meant it to be inferred that Mahasukha's 'present story' was at variance with a previous story of his, I should like to ask whether the Sessions Judge or any one else, before making such a comment on his evidence, had given Mahasukha an opportunity of explaining what may have been no variance at all. Again, the Sessions Judge says: 'According to what Mahasukha now says, he gave his services after much expression of reluctance. How was it that he was taken to stand by and see the murder done, while the other sweeper, the more active Hira, was only employed in bringing men to help to carry away the body? Is it not more likely that Hira brought Mahasukha,

as, according to Mahasukha's story, he brought Harpal, Babuti and Srikishan, after the murder had been committed? It cannot be said that if it was thought necessary for Hira to get three other men, a line can be drawn by saying it could not have been thought necessary for him to get as many as four. According to Mahasukha's story, the first idea was to carry the body to the Jamna, and the seven men, Gobardhan, Koka, Hira, Harpal, Srikishan, Babuti and himself, proved unequal to the task.' Reading this paragraph, one would be led almost to conclude that the Sessions Judge had not read the evidence which, in fact, he had himself recorded. Mahasukha's evidence on this point, as recorded by the Sessions Judge, was as follows: 'At mid-day Hira Bhangi came to me and said to me Come along, Gobardhan has sent for you. Why did not you come in the morning?' and Hira said to me 'I will get other men; you go to Garhi Godhi.' I went to Garhi Godhi to Gobardhan and Gobardhan and Koka and I sat and talked, and I said How can three men kill the man and throw him into the Jamna? Others must be got.' Gobardhan said 'Hira has gone for others.' I said 'He told me that, but I don't know when he will come.' He said 'As you were sent for, they were sent for. You don't know how important his business is.' I said I have come and they have not come.' Gobardhan said 'How long will you wait for them'? There has been great delay, come along.' 'The evidence of Mahasukha affords, to my mind, a most natural, most reasonable, and most direct answer to this comment of the Sessions Judge. I do not find it stated in the evidence that the seven men were unequal to the task of carrying the body to the Jamna. I do find it stated in the evidence recorded by the Sessions Judge, that after the body had been carried a considerable distance and near to the well where it was found, some of the men said they were tired. If the Sessions Judge had looked into the previous statements which had been made, a question for Mahasukha would have been suggested to the Judge, namely, whether any of the men gave other reasons for objecting to go further. It must be remembered that it was still a long way to the Jamna, and, if the question had been put, it would have been found that from the arhar field where the body was tied up to the place where the objection to go further was made, the men had been carrying the body along a road where they might have been seen by any one passing by. There are several other comments which I could make on the conclusions and surmises of the Sessions Judge. I should not have made any if I

did not wish to show the kind of surmises and deductions upon which most of his judgment is founded. The conclusion at which I have arrived is that this is not a judgment of acquittal which we, in the exercise of the duty imposed upon us, can allow to stand. In coming to this conclusion I have given full attention to the fact that Chidda and Ram Lal appear to me, as they appeared to the Sessions Judge, to be false witnesses, and to the fact that Sarwan's evidence has been so shaken by his own contradictions and by the evidence of Amir Khan and others, that it is not safe to depend on any part of it. This affords no reason why I should not act upon the evidence in the case which I do believe. The question which I have to decide is whether, to the best of my judgment on the facts before me, Gobardhan is or is not guilty. I should not be doing my duty if, holding the opinion I do as to Gobardhan's guilt, I were to find him not guilty merely because I wished to mark my sense of the wickedness and impropriety of those who put forward false evidence for the prosecution, or even if I thought that the Police had acted irregularly in the case. It would be a great misfortune to the administration and vindication of the law if a Judge were to allow such considerations to outweigh his conviction as to the guilt of a prisoner, and thereby permit a great crime, such as the present, to go unpunished. I find that Gobardhan did, in fact, on the 19th December 1885, murder, within the meaning of Section 302 of the Indian Penal Code, Nihal Singh, and for that offence Gobardhan should suffer the extreme penalty provided by the law. It was a cruel, wicked and unprovoked murder. In my judgment the order of acquittal should be set aside, a finding of guilty of murder entered, and Gobardhan should be sentenced to be hanged by the neck until he is dead. As my brother BRODHURST and I differ in opinion, the case will be referred with our opinions to a third Judge.

Brodhurst, J.

39. On the morning of the 19th December 1885, one Nihal Singh, who was a near relative of the Raja of Awa, left Barai, a village near to Awa, in the district of Etah, with the intention of riding to Tundla, and thence proceeding by train to Agra. He rode a pony, and he went via Ratauli, where his wife's family reside. He rode alone, having sent his wife and family direct to Tundla in a bullock carriage. Apparently he arrived at a bridge near Sukrari about two miles from Tundla, in the

evening, and was there waylaid and murdered by being shot in the head with a bullet. The first information of the crime that was received by the Police was from Mahasukha Bhangi, who, on the 20th December at 5 P. M., reported at the Police station of Itmadpur as follows:

Yesterday evening I was going from Tundla to my village, after having sold eggs and fowls. When I got to a bridge, on the Kotki road, I found there sitting on the bridge, Gobardhan, Brahman, resident of Garhi Godhi, and another man whose name I don't know. From that direction a mounted man, whom I conjecture to have been the Raja of Awa's karinda, and two other men behind him, whose names I don't know, were coming. When the karinda got near the bridge, Gobardhan shot him: he, being struck by the bullet, fell and died. The four men seized me, and taking my basket and rope from me, threw the dead body into a well, and dragged me near to it and said: 'If you tell you will be murdered.' With great difficulty, by making use of entreaties, I got them to let me go. The body is lying in the well.

40. On receiving this information, Wali Husain, head-constable, muharrir, some constables and a chaukidar, accompanied Mahasukha to the well, which is on the boundary of Alawalpur, about one mile from the bridge and four miles from the Police station. The party reached the well between 7 and 8 o'clock P.M. and remained there that night. Next morning Mahasukha went with the head-constable to the bridge, pointed out the place on the bridge where he alleged the man was shot, also the place, about 20 feet from the bridge, where there was much blood, and where he said the deceased fell from his pony, also the place near a babul tree in an arhar field, about 200 paces from the bridge, to which he said the four men dragged the corpse. He showed the head-constable the marks of dragging, and under the babul tree were found some cardamoms and pieces of betel nut, a leathern purse and pencil, and also some more blood, and Mahasukha stated that at that place the body had been tied up, slung on to a pole, and thence carried to the well. The party then returned to the well, divers were sent into it, and they took out the body, which was subsequently identified as that of Nihal Singh. In the coat pocket, amongst other articles, were found some cardamoms and pieces of betel-nut. The head-constable searched for Gobardhan at his home in Garhi Godhi, a village distant about five or six miles from the bridge, but could not find him.

41. Mahasukha had at first stated that he was a resident of mauza Teo. On inquiry by the police in that village it was ascertained that he had lived in that village; that he was originally a kumhar, but had married a woman of the sweeper caste, and had thus become a, bhangi; that he had left the village four or five years ago, and had not since been to it. The Police, having ascertained those particulars, questioned Mahasukha on the 22nd December, and he then admitted that he had been a kumhar and had become a bhangi; that he had left, the village of Teo some years ago, and had since then been wandering about; that he had put up at the house of Newala, bhangi, in mauza Shibsingpura, near Garhi Godhi, 10 or 15 days previously; that five or six days before the murder, Hira, bhangi, of Garhi Godhi, had taken him to Gobardhan, with whom he was previously acquainted; that Gobardhan and Koka Ram, who is the son-in-law of Bhagwant, Gobardhan's eldest brother, informed him that they were in the service of Thakur Umrao Singh, and that Umrao Singh offered a reward of Rs. 10,000 or a village for the murder of a certain person of Awa; that Gobardhan and Koka Ram asked him, Mahasukha to accompany them; that he consented on the understanding that he should receive a share of the money; that on Saturday, the 19th December 1885, Hira came to him at noon, and told him to go to Gobardhan's house, whilst he, Hira, collected other persons; that he accordingly went and found Gobardhan at his home and Koka Ram with him; that Gobardhan said the man who was to be murdered was coming that day, and that three or four other men were being collected to assist in the murder.; that they waited for thorn until about 4 o'clock P. M., and that Gobardhan then said that they must delay no longer, and that the other men would meet them at the Sukrari bridge; that Gobardhan was armed with a pistol, Koka Ram with a sword, and he, Mahasukha, with a lathi; that they went to the bridge and sat down on it; that at about one ghari after sunset, a man riding a mare and unaccompanied by any one else, approached from the direction of Awa; that Gobardhan told him, Mahasukha, that this was the man they were expecting; that Gobardhan and Koka Ram sat down on the bridge and told him to stand at a distance of 9 or 10 paces in front, and in case the bullet missed its mark to seize hold of the mare, in order that the other two might then despatch the rider with the sword; that he went forward as directed; that when the mounted man arrived at the bridge, Gobardhan fired at and wounded him; that the mare ran away; that when

she had gone only 10 or 15 paces her rider fell to the ground; that he made some convulsive movements and died; that they all three then dragged him by the legs to the babul tree in the arhar field; that after a time they heard persons coming; that Gobardhan asked who they were; that Hira replied; and that he, Hira, Harpal, ahir of Shingsingpura, a chamar of Garhi Godhi, and a fourth man, both of whom he could recognise, but whose names he did not know, joined them; that he and Hira tied up the body; and that the seven men carried it, two at a time by turns, and threw it into the well where it was found.

42. Mahasukha made a confession before Mr. Redfern, a Magistrate of the first class, on the 24th December, which was very much to the same effect as the statement he is alleged to have made before the Police on the 22nd idem.

43. Mahasukha's statement was again recorded by Mr. Hamblin, the committing officer, on the 4th February 1886. He then told a story different to either of those he had previously told, and which is to the following effect, vis., that at 10 o'clock P.M. on the Saturday, Hira, bhangi, awoke him and took him to a well where were Gobardhan, Koka Ram, Harpal and two other men whom he did not then know, but whose names he now understands to be Babuti and Srikishan; that Gobardhan, saying that he was taking him in the service of Umrao Singh, conducted him to an arhar field where, near a babul tree, they found a corpse tied up; that Gobardhan then said, 'I and Koka Ram murdered this man, but we unaided cannot carry his body to the Jamna; ' that Srikishan said they should none of them have come there had they not been deceived; that then, under orders of Gobardhan and Koka Ram, he, Mahasukha, and Hira tied the body to a pole, and that they all, two and two in turn, carried it for some distance; that they declared that they could not carry it to the Jamna; that Gobardhan said it should not be thrown into a well; that Koka Ram, however, was of a different opinion, and that Gobardhan eventually ordered its being thrown into the well where it was found, but where he said, as there was water in it, it would not be discovered for two or four days; that Gobardhan and Koka Ram then told them that Baldeo Singh, Raja of Awa, and Umrao Singh had caused the murder; but that they were not to say anything on the subject to any one. Mahasukha went on to say: 'The Inspector I met near the scene of murder has told me to say this, and also the darogha now

present, Amir Khan. I have received 2-anna pieces and 4-anna pieces from a Munshi who is with the Inspector. I have tobacco now and a chilam. The Munshi and Shaikh Kalian have given me sweets. This Munshi is now present in Fatehabad. The statement I have made to-day is a true one. I went to the Police and made the report. I gave up these beads to the Police. These are the beads which belonged to the armlet; Gobardhan gave them to me. The statements I made to the Inspector and the Court are false. The Inspector told me that if I changed my statement, I should be punished for perjury. I made the false statements before at the instigation of the Inspector. Before the former Court the Inspector caused my statement to be recorded. The Inspector said that I should be taken as a witness and released. I agreed to this, and he said I should have tobacco and puris every day. Owing to my report, the body was found, about which the evidence has been given in this Court.' There is a note by the Magistrate that Mahasukha 'showed money, tobacco and pipe.' Harpal, ahir, and Srikishan, chamar, each made a confession before Mr. Redfern on the 28th December, and each retracted his confession before Mr. Hamblin, and stated the circumstances under which he alleged it had been made. Babuti all along denied that he had any knowledge of the crime. The four men, Mahasukha, Bhangi, Srikishan, chamar, Harpal, ahir, and Babuti, Brahman, were committed for trial on the 15th February 1886, The remaining three accused, viz., Gobardhan and Koka Ram, Brahmans, and Hira, bhangi, though repeatedly searched for, could not be found, and apparently they had absconded.

44. The prisoners were tried by the then Sessions Judge, Mr. Young, who, towards the end of his judgment of the 30th March 1886, observed: 'I will here note that the assessors, two of whom are vakils, took great pains with the case and were of much assistance to me. Two of them would acquit Mahasukha of the charge under Section 302, but would convict him under Section 302-109. And the third convicts him under Section 302, Indian Penal Code. All convict him under Sections 201-411, Indian Penal Code.'

45. Mr. Young acquitted Srikishan, Harpal and Babuti. As to Mahasukha, he recorded: 'The Court, concurring with the minority of the assessors as to Section 302, and with all the assessors as to Sections 201-411, finds that Mahasukha,

bhangi, is guilty of the offence specified in the charge, namely, that he, on or about the 19th December 1885, at a bridge in Sukrari, on the Awa-Tundla road, has committed the offence of murder by abetting the killing of Nihal Singh, being present at the said murder; and secondly, at the same time and place, dishonestly received a stolen armlet, knowing it to be stolen; thirdly, caused evidence of murder of Nihal Singh to disappear in order to screen the offender from legal punishment, and has thereby committed offences punishable under Sections 302, 411 and 201 of the Indian Penal Code, and the Court directs that the said Mahasukha, bhangi, suffer transportation for life.'

46. One of the assessors, viz., Lala Pirbhu Dayal, vakil, in stating his opinion that Mahasukha was guilty of abetment of murder as well as the other two offences for which he was tried, remarked: 'I very much doubt that he was actually present at the commitment of the murder, but I think he took part in the conspiracy.'

47. Gobardhan was arrested in Gwalior territory, apparently during the latter half of July 1886. He was committed for trial on a charge of murder on the 26th August, and was tried by the then Sessions Judge, Mr. Macmillan, with the aid of two assessors, and, on the 23rd October, Mr. Macmillan, in concurrence with the opinions of both the assessors, found that the charge was not proved against Gobardhan, and acquitted him.

48. Against that acquittal the Government preferred this appeal on the 8th February 1887.

49. Nihal Singh was killed by a gunshot wound in the head. He sustained no other injury. His body was not left on or near the spot, but was slung on a pole and carried from the arhar field into which it had been dragged, past two dry wells, to a well in which there was water, and which well is about a mile distant from the scene of the murder. From these facts alone I am satisfied that Nihal Singh was not killed by ordinary robbers, but was way-laid and intentionally murdered, but by whom the murder was instigated there is no proof, and I concur with the learned Chief Justice that Ram Lal and Chidda, who were at a late stage produced to give evidence on this point, are false witnesses.

50. The learned Chief Justice has stated the circumstances under which the evidence of certain witnesses for the prosecution and defence was recorded before us. I agree with him in discarding the evidence of Sarwan, a witness for the prosecution. This witness, who is at present undergoing a year's imprisonment for dishonestly receiving stolen property, deposed that he saw Gobardhan at the bridge on the evening on which the murder took place. He did not, however, give any information on the subject to the Police until the expiration of twenty days, although he had abundant opportunity of doing so at the time the body was recovered from the well and on other subsequent dates. His statements are very conflicting, and they are, on one point, refuted by Nand Kishore, Jat, to whom Sarwan made allusion in his deposition. The whole of Sarwan's evidence is, in my opinion, utterly unreliable, and the production of such palpably false evidence is very damaging to the prosecution.

51. Amir Khan has, amongst other matters, deposed that he was Sub-Inspector at Itmadpur in December 1885; that he arrested Harpal, Srikishan and Babuti on the 25th December 1885, and that their statements as to ill-treatment at the hands of the police, in his presence, are absolutely false. He admits, however, that these three persons were taken to his tent on the 23rd December, and were ordered to remain there. A procedure of a similar kind was declared by the Full Bench of this Court, in their judgment in the case of *Empress v. Madar*, Weekly Notes, 1885, p. 59, to be 'illegal,' and 'a gross and unwarrantable breach of the powers entrusted to police officers,' and it was observed that a confession obtained under such circumstances 'must be regarded with grave suspicion.'

52. Harpal, Srikishan and Babuti were actually arrested on the 23rd December, and they were not produced before a Magistrate until the 28th idem, when each of the first two mentioned made a statement which amounts to a confession of having committed offences under Sections 109-302 and 201 of the Indian Penal Code. They, however, retracted these confessions before the committing officer, and alleged that they had been extracted from them owing to ill-treatment at the hands of the police. They have now been called for the defence, and they have deposed that, by threats and maltreatment, they were compelled to make false confessions, as taught them by the police. I have known several instances of a

murderer having, immediately after killing his victim, gone with the lethal weapon in his hand and still wearing blood-stained clothes, to the nearest police station and given himself up, and made a voluntary confession of his guilt. Confessions made some days after arrest may also often be true, but such confessions will, I believe, in almost every instance, not have, been made voluntarily, but have been extorted by maltreatment, or induced by. promises of pardon on being made a witness for the Crown. Police officers do not thus detain accused persons without an improper motive, and confessions obtained under such circumstances may almost with certainty be held to have been obtained by false inducements, or by maltreatment of one kind or other.

53. It is a significant fact that, in the same year, 1885, at the same police station of Itmadpur, two persons, viz., Manphul and Mussammat Chironji, were charged with the murder of a woman named Kishori.

54. Manphul was illegally detained by the police for thirty hours before he was taken into lawful arrest, and he was then sent to a Deputy Magistrate, who was encamped in the neighbourhood. Before that Magistrate he made a confession which, however, he entirely withdrew in the Court of Session; declared that he knew nothing whatever of the corpse that had been found, nor of any murder, and that his former statements were extorted from him by ill-treatment at the hands of the police. The trial was most carefully conducted by Mr. Redfern, who was then Sessions Judge of Agra. He, concurring with the assessors, found both of the accused not guilty, and acquitted them. It is very fortunate that the Sessions Judge and the assessors disbelieved the entire mass of concocted evidence that was produced before them for the prosecution, for it appears that Mussammat Kishori has since returned home, alive and well, and has given an explanation of her absence.

55. The evidence of Gobardhan's witnesses, Bhagwant, Brahman, his brother, and Srikishan, chamar, his former servant, as to the time and circumstances when and under which he, Gobardhan, left his home, is conflicting, and I concur with the learned Chief Justice in disbelieving it.

56. The evidence to prove the charge against Gobardhan consists merely in the statement of the accomplice Mahasukha, supported by the fact that Gobardhan disappeared from his home about the time that the murder was committed, and was arrested several months afterwards, under suspicious circumstances, in foreign territory. I believe, however, that, with the exception of the statement of the accomplice, there is no evidence that Gobardhan actually absconded after the murder was perpetrated. Admitting, for the sake of argument, that he did so, the fact would be relevant, but would not, I think, be sufficient corroboration of the evidence of an accomplice such as Mahasukha.

57. As observed by Macpherson and Glover, JJ., in their judgment in *Queen v. Sorob Boy*, 5 W. R., Cr., 28,--'Under certain circumstances the case against an accused person is certainly strengthened by his running away, and it is to some extent in the present instance; but a man who runs away may be, and often is, innocent, and any presumption of guilt which may arise from such a course is usually but a very small item in the evidence on which a conviction is based.'

58. Mahasukha has now been transported, and we have not had the advantage that the Sessions Judge and assessors had of hearing him make his deposition.

59. The Sessions Judge, Mr. Macmillan, has observed: 'Mahasukha's evidence does not satisfy me that he saw Nihal Singh shot dead. I think it more probable that he did not, than that he did, see the fatal shot fired. If he did not see Nihal Singh shot dead, his evidence is false at its core.'

60. Not only did Mr. Macmillan and the assessors, who aided him in the trial, think that Mahasukha did not see the murder committed, but, as I have already mentioned, Lala Pirbhu Dayal, wakil, one of the assessors at the trial of Mahasukha, when expressing his opinion that Mahasukha was guilty of abetment of murder, also remarked: 'I very much doubt that he was present at the commitment of the murder, but I think he took part in the conspiracy.'

61. I think it highly probable that Mahasukha did, as he states, enter into a conspiracy to commit murder, and I am satisfied that he assisted in carrying Nihal Singh's body from the arhar field to the well.

62. The arhar field is close to the place where the murder was committed, and Mahasukha, even if not present at the murder, nevertheless saw the pool of blood on the road, showing where Nihal Singh fell from his pony, and he no doubt, when assisting to remove the corpse, would hear all particulars from the persons who were actually present at the time.

63. Mahasukha has, on different occasions, told three different stories: two of those stories are undoubtedly not true, and it is very probable that the third and last story is also partly untrue. I am inclined to think that all of the principal offenders absconded, and I consider it scarcely probable that, if Mahasukha had actually abetted the murder at the spot, he alone would have remained and have given information of the murder to the police.

64. From a police point of view, it was very desirable that Mahasukha should depose that he saw the murder committed, for otherwise there was no chance of securing the conviction of the actual murderer.

65. Mahasukha, after he was sent up by the police, was not on bail, but was in the lock-up; and the fact that he, under those circumstances, was able to produce before the committing Magistrate 'money, tobacco and a pipe,' shows that he was allowed unusual indulgences, and probably with the object of keeping him in good humour, and willing to adhere to the evidence that he had given before Mr. Redfern. The production by Mahasukha, of the forbidden articles above-mentioned tends also to support his allegation that he was induced by the Inspector to give evidence on the promise of his being pardoned and made a witness for the Crown. The evidence that Mahasukha has given in the present case undoubtedly differs greatly from each of two of his previous statements, and it certainly therefore should be corroborated in material particulars.

66. My brother Straight in *Queen-Empress v. Ram Saran*, I.L.R., 8 All., 306, observed: 'The law in this country, as expressed in Sections 133 and 114 of the Evidence Act, is in no respect different from the law of England. It simply reproduces a rule of practice which the English Courts have recognised time out of mind, and which, I may add, their tendency of late years has been to apply with great strictness. The rule is this: a conviction based on the uncorroborated

testimony of an accomplice is not illegal, that is, it is not unlawful. But experience teaches that it is not safe to rely upon the evidence of an accomplice unless it is corroborated, and hence it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated, and when trying a case with a jury to warn the jury that such a course is unsafe. 'Further, not only is it necessary that the evidence should be corroborated in material particulars, but the corroboration must extend to the identity of the accused person.'

67. Numerous rulings on the subject by eminent Judges are quoted or referred to under the heading of 'accomplice' in the valuable works of Taylor On Evidence, Russell On Crimes and Misdemeanours, Archbold's Pleading and Evidence in Criminal Cases, and Roscoe's Criminal Evidence.

68. In the case of Queen v. Ramsadoy Chuckerbutty, 20 W. R. Or. 19, PONTIFJEX, J., observed: 'I think it would be unsafe to uphold this conviction. The only evidence against the prisoner is the woman Eomonee Shekranee, who is nonetheless an accomplice because she has already been convicted on her own confession. Under the circumstances, therefore, I do not think it would be right to convict on the uncorroborated evidence of such an accomplice. Accordingly I concur with Mr. Justice Mitter in setting aside the conviction and directing the discharge of the prisoner.'

69. In the case of Reg v. Budhu Nanku, I.L.R., 1 Bom., 475, Westropp, C.J., and Nanabhai Haridas, J., remarked: 'As regards the other appellants, the Court quashes the convictions and sentences on the ground that the approvers Shripatrav and Rama are not corroborated as to the identity of these latter prisoners. The confessions of co-prisoners implicating them cannot, in our opinion, be accepted as evidence to corroborate the testimony of these approvers: see Russell On Crimes, 4th edition, by Greaves, pages 603, 604 and 605; Reg. v. Malapa and Reg v. Chatur Purshotam, decided on the 7th January 1876, by West and Nanabhai Haridas, JJ.'

70. The appeal in the case of Queen-Empress v. Ram Saran was disposed of by Straight and Tyrrell, JJ., whose judgment is reported in I. L. R., 8 All., 306.

71. The following portions of the head-note will sufficiently show the evidence that was adduced against the four prisoners, appellants, and that was held to be inadequate except in the case of one of the four prisoners who had confessed his guilt:

The possession of property taken from a murdered person is not adequate corroboration of the evidence of an accomplice charging such person in possession with participation in the murder, though it would no doubt be corroboration of evidence that the prisoner participated in a robbery, or that he had dishonestly received stolen property.

In the trial of E. S. and M. upon a charge of murder, the evidence for the prosecution consisted of--(1) the confession of P., who was jointly tried with them for the same offence; (2) the evidence of an accomplice; (3) the evidence of witnesses who deposed to the discovery in R.'s house of property belonging to the deceased; and (4) the evidence of witnesses who deposed that, on the day when the deceased was last seen alive, all the prisoners were seen together near the place where the body was afterwards found. Held that there was no sufficient corroboration of the statements of the accomplice or of the co-confessing prisoner P.

72. R. S. and M., who had been convicted by the Sessions Judge, in concurrence with the unanimous opinion of the assessors, were accordingly acquitted.

73. For the purposes of this case, it is unnecessary for me to make any remark regarding all or any of these judgments beyond this, that they are rulings of Judges whose opinions are entitled to the highest respect, and that, as contended by the learned Counsel for the prisoner-appellant before us, the evidence that can be considered against Gobardhan is apparently weaker than that that was held to be insufficient for a conviction in the cases referred to.

74. The learned Counsel for the appellant lastly argued that this was not a case for interference under Section 417 of the Criminal Procedure Code, and in support of his argument he referred us to a judgment of Straight and Tyrrell, JJ., under the corresponding section of Act X of 1872, in *Empress v. Gayadin I. L. R.*, 4 All., 148,

the head-note of which is as follows:

It is not because at Judge or a Magistrate has taken a view of a case in which the local Government does not coincide, and has acquitted accused persons, that an appeal by the local Government must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice by putting in force the arbitrary powers conferred on it by Section 272 of the Criminal Procedure Code. The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public.

Held, therefore, the local Government having appealed from an original judgment of acquittal of a Sessions Judge, that as such judgment was an honest and not unreasonable one, of which the facts of the case were susceptible, such appeal should be dismissed.

75. I do not think that it can, in this case, be possibly said that the Sessions Judge 'has so obstinately blundered and gone wrong as to produce a result mischievous at once to the .administration of justice and the interests of the public.'

76. To adopt the language of my learned brothers, I may say that 'he, the Sessions Judge, had the witnesses before him, and consequently the best opportunity of judging their truth; and he appears to have conducted the inquiry with care and patience, and to have weighed and considered the facts to the best of his ability.'

77. I may go even further than .this,; and say that Mr. Macmillan has long and varied experience in these Provinces; that his judgment, as a whole, is able and well-considered; and that, having regard to all the circumstances of the case, he has, in my opinion, properly acquitted the accused; and, moreover, that if he followed-the judgment of a Bench of this Court to which he is subordinate--I refer to the judgment reported in I. L. R., 8 All., 306--he could not have come to any other conclusion.

78. For the reasons above-mentioned, I would dismiss this appeal.

79. In consequence of this difference of opinion, the case was, under Section 429 of the Criminal Procedure Code, laid before Straight, J., before whom it was re-argued.

80. The Offg. Public Prosecutor (Mr. G. E. A. Boss) for the Crown.

81. Mr. J. D. Gordon, for the Prisoner.

Straight, J.

82. This case has been referred to me in accordance with the provisions of Section 429 of the Criminal Procedure Code, in consequence of a difference of opinion between the learned Chief Justice and my brother Brodhurst upon the hearing of an appeal by Government from an acquittal of the respondent by the Sessions Judge of Agra, upon the 23rd October 1886. The respondent was charged in that trial with the murder, on the 19th December 1885, of a man of the name of Nihal Singh; and after the examination of a large body of evidence, the learned Sessions Judge and the assessors were of opinion that the evidence of the principal witness in the case, one Mahasukha, an admitted accomplice in the transaction, was not to be relied upon; that it was not satisfactory or sufficiently corroborated; and that therefore no conviction could properly be passed upon such materials. The result was that the respondent Gobardhan, a Brahman by caste, was acquitted of the crime with which he was charged. The Government then were advised that this acquittal was an improper one, and in the result an appeal was preferred from that acquittal to this Court in the month of February last, and in due course was heard by the learned Chief Justice and my brother Brodhurst at very great length and under somewhat exceptional circumstances. By that I mean to say that a number of witnesses were either re-called or called for the first time, and the fullest materials were obtained for the purpose of enabling this Court to form its opinion upon the propriety or otherwise of the acquittal by the Sessions Judge.

83. I have now heard the case also, though not at such length, and have had an opportunity of very closely scrutinizing all the evidence and the records bearing upon it, and I need scarcely add that the consideration of it has cost me much serious and anxious thought. For it goes without saying that at any time a matter

involving such grave questions as those that are concerned here must necessarily demand and receive the closest and most acute attention that a Judge can bestow. But in the present instance the difficulties cannot but be enhanced by the fact that, apart from the interests of the public on the one hand and the accused on the other, the learned Chief Justice and my brother Brodhurst have, after prolonged and careful deliberation, come to different conclusions, which they have fully and exhaustively stated in the two elaborate judgments delivered by them. I need hardly add that I have perused and re-perused those judgments with the most minute attention, to thoroughly value and understand them.

84. Before I proceed to discuss--and I shall not attempt to do so at any great length--the facts of this case, I feel it incumbent upon me, as more than once referred to by my brother Brodhurst in the course of his judgment, to make a few remarks in regard to two matters upon which he comments: first, as to the duty of this Court in dealing with, appeals from judgments of acquittal; and, next, as to the analogies to be drawn between the facts of the present case and the facts of another case decided by my brother Tyrrell and myself, which analogies my brother BRODHUEST employs as the foundation of the view that, as it was considered unsafe in that case to convict an accused person, so it necessarily follows that an acquittal is the only proper result in the case now under consideration.

85. With regard to the first of these matters, which is concerned with my remarks in the case of Queen-Empress v. Gayadin I. L. R., 4 All., 148, so frequently referred to, I can only say that when I made the observations I did on that occasion, I could not expect that they would be exhaustive of every possible condition or state of things that might arise, and I certainly had not present to my mind a case like that before me--in which, as I shall by and by have to point out, the Sessions Judge has overlooked the main and crucial circumstance which goes to corroborate the evidence of the accomplice, namely the disappearance of Gobardhan from his village contemporaneously with the undoubted murder of Nihal Singh. Under such circumstances I confess I cannot feel that I am in any way departing from, or doing violence to, the principle laid down in Queen-Empress v. Gayadin I. L. R., 4 All., 148, by entertaining this appeal and

determining one way or other as to the guilt of the respondent.

86. In respect of the second matter, namely, the analogies on which my brother BRODHURST has relied, it seems to me--and I say this with the most profound respect for him and for anything which falls from him with his long experience in this Court and as Sessions Judge--that I doubt the safety and soundness of applying such a method to the determination of questions of fact: indeed, I would venture to go the length of saying it is misleading. It is next to impossible to find one case in which the facts are identical with those of another, and this test by analogy can only be plausibly applied where they are precisely the same. In the case of *Queen-Empress v. Ram Saran I. L. R.*, 8 All., 306, I, imperfectly no doubt, endeavoured to point out, for my own guidance and that of the Subordinate Courts, what the rule of practice appeared to me to be in reference to the evidence of accomplices as embodied in the sections of the Evidence Act here, and illustrated by decisions of the English Judges; and the learned Chief Justice was right in the view he has formed as to what I intended to convey by that ruling. I could not for a moment pretend to lay down any hard-and-fast rule as to how questions of fact were to be determined. I do not think that a Judge or a jury, in trying a man upon one set of facts, can rightly or properly be influenced by the decision some other Judge or some other jury has arrived at upon facts some of which may be similar, but which cannot be identically the same. If it were necessary for me to enter at large into the facts of the case of Ram Saran, it would not be difficult to point out many variations between the facts there and those here. Every case, as far as its decision is concerned upon the merits, must stand or fall on the particular facts proved; and it is obvious that while, in one instance, the intrinsic truth and probability of an accomplice's evidence would necessitate the looking for slight evidence of corroboration of the kind mentioned in *Queen-Empress v. Ram Saran I. L. R.*, 8 All., 306, in another its inherent improbability would cast upon the Court the obligation of requiring very full support from independent materials. Thus, in the present case, it is necessary, first of all, to look very closely into the statements of the accomplice Mahasukha, to see whether they are such as to commend themselves to the better judgment, and I do not think it would be of the slightest assistance to me in doing so to compare the evidence given by the accomplice in the case of Ram Saran, and then to draw the

conclusion that because he was not believed, therefore Mahasukha is unworthy of belief; I cannot therefore adopt the test applied by my brother Brodhurst, nor do I think he was in the least degree bound by the conclusion of facts at which my brother Tyrrell and myself arrived in Ram Saran's case. I Concur with what the Chief Justice has said in his judgment on this point, and I feel myself in no way fettered by my own decision in another case upon a matter of fact arrived at on the facts of that case. This brings me to the facts of the case, and to the determination of the question which I have to decide, namely, aye or no, has the prosecution satisfactorily established that the respondent Gobardhan was the person who, upon Saturday night, the 12th December 1885, shot Nihal Singh through the head and thereby committed the crime of murder

87. Now, there are some matters in this case about which there can be, in my opinion, no dispute, and they are these: The deceased Nihal Singh was the brother of Zorawar and Tej Singh, both of whom have been examined as witnesses, and it appears that upon the 19th December 1885, Nihal Singh had been paying a visit with his brother Tej Singh, for the purpose of assisting at the gouna of Zorawar Singh's daughter, his own niece. Nihal Singh was undoubtedly connected with the family of one Raja Baldeo Singh and his brother Balwant Singh, and subsequent to the death of the last Raja, he had, whether rightly or wrongly, preferred claims to the property of the Raj. At any rate, I see no reason to doubt the truth of Zorawar Singh and Tej Singh on this point. A lady of the name of Rani Sakarwar had at the time Nihal Singh was murdered also brought a suit shortly before his, and that proceeding was pending at the time; and if Tej Singh is to be believed, when his brother left his house on the 19th December, he was bound for Agra 'to assist Rani Sakarwar in the prosecution of her claim against Raja Baldeo Singh.' Despite the evidence of Umrao Singh--and here I may remark Baldeo Singh has never attempted to give any evidence in the case--I cannot but feel a strong conviction that Nihal Singh was not a person who was likely to be regarded with favour by those connected at least with the management of the Raja's affairs. Whatever the precise nature of the deceased Nihal Singh's pretensions were, I believe what his brothers say, that he had been setting up some claim, and, moreover, had made himself busy in espousing the cause of Rani Sakarwar. Going on with the narrative, it appears that about 7 o'clock on the

morning of the 19th December, Nihal Singh left his brother's house with the avowed object of going, accompanied by his wife and family, to Tundla, there to take the train to Agra to support Rani Sakarwar. He was riding a horse, was armed with a talwar, and his wife and family were in a rath, which was driven by a man of the name of Dungar, and accompanied by a servant named Pokha.

88. When Nihal Singh left his brother at Barai he was in good health, clothed in his ordinary costume, and having a sort of satchel with some papers in his possession. He does not, however, appear to have had any money about him beyond a few rupees for the purpose of paying the railway fare from Tundla to Agra. For some time after leaving Barai, he and his wife and children continued along the same road, but when they got to a turning which led to Ratauli, the village in which Nihal Singh ordinarily resided, he intimated that he was going to make a detour in that direction and would follow on after. They continued directly along the road to Tundla, and in the course of their journey they passed over the bridge to which by and by I shall have more particularly to refer.

89. Nihal Singh having turned aside and gone in the direction of Ratauli, arrived there somewhere about the middle of the day. He called on a person there of the name of Abu Singh, and put up with him for the short rest that he made there, his object in going apparently having been to get his cooking utensils from his house, and send them to Tundla for the purpose of taking them on with him to Agra, The circumstance is a trifling one in itself no doubt; but I gather from it that Nihal Singh was at that time contemplating somewhat of a stay at Agra, which would be consistent with the object for which Tej Singh says he was going there. Nihal Singh left Abu Singh's house about the middle of the day, riding his horse, and proceeded thence to the bridge on the road to Tundla which is some two miles out of Tundla; the distance is some 14 miles. So that in ordinary course, presuming that Nihal Singh left Ratauli at 1 or 2 o'clock, he would, by travelling along at the rate of some four miles an hour, arrive in the neighbourhood of the bridge between 5 and 6 o'clock in the evening. The last person, except those who were concerned in doing him to death, who saw Nihal Singh leave, was Abu Singh, and I think it is pretty clear that Nihal Singh was at that bridge somewhere about 6 o'clock in the evening, and that he was shot down by some person who knew of his coming by

that; road and was awaiting him. The next fact proved is, that at 5 in the evening of Sunday, the 20th, the day following, one Mahasukha, a sweeper by caste, who was at the time a resident in the house of a man named Newala, in Shibsingpura, presented himself at the Itmadpur thana, and there to the officer in charge made a statement to the following effect: [His Lordship read the statement, and continued]:

90. I see no reason whatever for doubting that this is a perfectly truthful statement of the police officer as to what was told him by Mahasukha at 5 o'clock on Sunday evening, the 19th of December. So that within 24 hours of Nihal Singh's being killed at the bridge, information was given as to the mode in which he had been killed, which turned out afterwards to be perfectly correct; and most important of all, the name of Gobardhan, the respondent, was mentioned as that of the person who had shot Nihal Singh there. I can see no grounds whatever for suspecting that that statement has been concocted, or that the officer deposing to it has lent himself to a most wicked and diabolical conspiracy for the purpose of bringing to the gallows an innocent man. After he had made that statement the police went with Mahasukha to a place to which he led them. He first of all took them to a well, which they were unable at that time to search; but upon the following morning a diver went down and brought up the body of the deceased Nihal Singh, having upon it clothes as to which it is noticeable that his dark-coloured outside coat was pulled up and fastened over his head. He was found to have a bullet wound on his right jaw, and along with the body was found a big bamboo stick with which it was obvious that the body had been carried to the well and thrown in. Subsequent to his taking them to the well, Mahasukha pointed out a spot at the bridge where blood was found, and a place in an arhar field towards which the ground presented signs of a body having been dragged along, similar signs being also apparent upon the back of the clothes and body of the deceased man. There was, I say without hesitation, nothing in all the appearances of Nihal Singh's corpse, or of the things that were found upon it, to lead to the conclusion that that unfortunate man had been murdered for the purposes of ordinary robbery. Every indication, on the contrary, goes to satisfy me that from some motive of revenge or the like he was deliberately shot down upon that bridge by some one who had lain in wait for him with the sole or main object of taking his life. Starting then with hypothesis, which, in my opinion, is fully warranted by the facts, let me next consider in what way the

case presents itself, first, as put forward for the prosecution, and next, how it is met by the defence. The suggestion for the prosecution is that, as asserted by Mahasukha, directly or indirectly, as to the instance of persons who wished to get Nihal Singh out of the way, he was deliberately murdered by Gobardhan, the respondent, who was hired for the purpose. On the other hand, it is alleged by the defence that the police, as the instruments of some enemies of the Raja and Umrao Singh, tutored Mahasukha to tell the story that he did, introducing Gobardhan into the matter for the purpose of setting afloat a gross and wicked imputation upon those two persons.

91. Now, I think it will be convenient first for me to deal at once with this latter contention. I said so at the hearing of the case, and I say so now after having given it my most earnest and anxious consideration, that 'it appears to me' an incredible idea, for it involves this, that Nihal Singh's own friends must have, before he was murdered, determined that he should be murdered, with the knowledge and sanction of the Police so to speak, and that the Police should have put Mahasukha up to charge a man with the crime who, if his story is true, they must have known to be absent from his village, and who would therefore be able with little difficulty to prove an alibi. The wanton wickedness of the one thing and excessive folly of the other render it impossible for me seriously to entertain any such theory. It is no part of my duty sitting here--and I am very thankful it is not--to determine whether, aye or no, the case for the prosecution, in so far as it seeks to implicate the Raja and Umrao Singh, has been made out. It is enough for me to repeat what I have already said, that there are materials upon this record that show that Nihal Singh was not a person towards whom those connected with the Raja would be animated by the friendliest feelings. While one would be slow to attribute to the Raja or Umrao Singh all that the evidence of Mahasukha suggests, it may well be that over-zealous and unscrupulous hangers-on may have instigated what they would have deprecated, and have used their names for the purpose of encouraging the commission of an act that would, as they thought, benefit the Raja's interests, and get rid of a person who had already proved troublesome, and was likely to prove more so.

92. Much stress has been laid on the circumstances that Mahasukha has varied his statements in regard to this matter: more particularly in the statement that he made to Mr. Hamblin during the preliminary inquiry that took place with regard to the charge against himself. I have read all his statements through, and I entirely concur with the learned Chief Justice's criticism. I think that the learned Chief Justice's remark, that so long as he was in peril himself he undoubtedly did endeavour to make it appear that his part was a lesser one, is a perfectly well-founded observation. But when I come to his evidence given before the Magistrate and before the Sessions Judge, I do not hesitate to say--and I may claim a long experience in dealing with this class of evidence--that after reading it over and over again it leaves upon my mind an absolute conviction as to its truth. I do believe that with his own eyes he saw Gobardhan shoot Nihal Singh on the bridge in the way he describes, and, if there is corroboration, his evidence must undoubtedly be accepted.

93. There are things and incidents mentioned by him which, allowing for native ingenuity and Police tuition, I do not believe it was ordinarily possible for the witness to fabricate or invent. Incidentally I refer to one of them which has struck me. I have remarked that the coat of Nihal Singh was found pulled over his head. When I turn to the evidence of Mahasukha, when he was examined in the Sessions Court, he says this about it: 'Gobardhan afterwards turned the coat from behind over the deceased's head....'

94. Now, I have already remarked that this was obviously not a murder for the purpose of robbery. For if the people who killed Nihal Singh had had booty for their object, in the first place, they would have robbed him, and in the next place, they would not have troubled themselves to remove his body, and would at most have thrown it by the road-side. But as a matter of fact, his body is found at a distance of one mile or more from the place where it was killed. Why I refer to that is because it seems to me in a striking way to corroborate the mode in which Mahasukha states it came about that he was introduced into the transaction. If mere robbery had been contemplated, two or three men would have been sufficient, but if a deliberate murder was contemplated--with the object of carrying off the body and concealing it so that discovery should be impossible, or at least

be delayed, then a considerable number of men would be necessary. We must remember, too, that the accused man is a Brahman, and that, ordinarily speaking, except under great emergency, he would have the strongest indisposition to touch or carry a corpse himself. Mahasukha states how he was first called by Hira, who took him to Gobardhan, and then he goes on to describe how, after a good deal of conversation, he went back and was again sent for on Saturday to go along with Gobardhan, the object being for the purpose, not of using the weapon with which the man was to be killed, but principally to assist in carrying the body after the murder to the Jamna, into which river it was intended to throw it.

95. Now, I do not think that I can do better than read through the deposition given by the man Mahasukha in the Court below. He says: 'Nihal Singh was killed in my presence. Q.--In what way was he killed? A.--If your honor will make a promise to me, I will tell the whole matter. Q.--What do you mean? What promise should be made to you? A.--If hitherto it has been the practice for informers to be hanged or transported for life, even so be my fate. I want this promise, either that my imprisonment may be shortened or that I may be released. (Mahasukha was told at this stage that the Court would not make any promise to him whatsoever.)

96. Mr. Gordon has contended that that was an indication that this witness was a false and dishonest person. To my mind it seems rather the other way; for when he found that he could get nothing from the Court, he proceeded to speak at full length and in detail. Then he goes on to say: 'Four or five days before this case occurred, Hira, bhangi, said to me: Will you take service?' I answered--'Yes.' It was then evening....'

97. That is the description given by Mahasukha of the circumstances under which he became a party to this enterprise. I do not hesitate to say that if anybody reads that story, it is almost impossible to conclude that he either fabricated it out of his own head, or that the Police were at the bottom of it. After all, it was no more than an elaboration of the information which, within 24 hours of the murder, he had volunteered at Itmadpur thana, giving the name of Gobardhan. Then he goes on to describe the way in which he got to the bridge, and what occurred there: 'Gobardhan said 'the man has not come,' and as he said this, we heard the sound

of a man coming along on horseback....'O, Thakur, it is dark, why are you going along alone'?

98. Now it seems to me at once preposterous to suppose that these words were put into his mouth by the Police. The whole thing seems highly natural, and the conversation is one which would be likely to take place when a man is travelling alone along an Indian road, in the dark of a December evening, under the circumstances described.

99. Then Mahasukha goes on to say: 'The mounted man had pulled up his horse when this talk was going on.... When his horse had gone ten paces in the direction of Etah to where Koka was standing he fell'.... We know that the horse did go back. Then he goes on to say: 'When he fell on the ground, &c;, I recognized two of them as Hira, bhanghi, the man I mentioned before, and Harpal.'

100. And then he goes on to describe how, in handling the body, he discovered an armlet, and with the assistance of the talwar he cut it off, and subsequently four pieces of it were given to him by Gobardhan, which probably appeared to be of some value, more or less. Then he goes on to say that 'Gobardhan gave the order to take up the corpse, and I and Hira took it up.' Then he goes on to describe in considerable detail 'how he stopped at various places and found that it was a laborious task, and subsequently Gobardhan, with his foot, pushed the body into the well with the pole.' And then he says: 'Then the seven of us came on to the road.' [His Lordship, after reading other portions of the evidence, continued:

101. I have given now his account of the mode in which he came to be engaged in this transaction and of the part he played. I need not read his deposition further. He explains how it was that he went to the Police thana and made the statement he made there. He says, on the morning of Sunday, Gobardhan having gone away, he went to the house of Gobardhan; that he could not find him there; that he made inquiry; that Gobardhan's brother Bhagwant repulsed him with abuse, and he therefore went off and lodged his information.

102. I confess I do not myself see anything very unnatural in his conduct; on the contrary, it was like that of an angry man, who, finding he had been deceived,

sought to punish the person he believed had deceived him, by getting him into trouble. No doubt at the first he sought to convey to the Police the idea that he was a mere eye-witness, but he nevertheless denounced from the very first Gobardhan as the principal culprit.

103. I entirely concur with the learned Chief Justice that it is not within the bounds of credibility that he made that statement about Gobardhan with the connivance or conspiracy of the Police. His statement to that effect and his evidence stands far above the ordinary evidence of an accomplice, and is fortified by his mention of the name of Umrao Singh on the night of the 20th of December, upon which fact the learned Chief Justice lays so much stress, and in my opinion rightly, for the reasons given by him. Moreover, it is not out of place to note that, at the time he gave his evidence, he had been convicted of a share in the murder, and was a convict under sentence of life transportation.

104. Is he corroborated? I agree again with the learned Chief Justice that the absconding of Gobardhan from his village contemporaneously with the murder of Nihal Singh is a corroboration of a kind that, in a case like the present, may be acted upon. Mr. Gordon contended that it was open to question whether he did abscond. Upon looking into the evidence, I see no reason to doubt that Amir Khan saw him at Narki three days before the murder, namely, on the 16th, and that, he saw him upon the evening of that day a second time; and he is corroborate by the constable who went to fetch Gobardhan from his house in the adjacent' village. Therefore it is beyond doubt that on the 16th December he was not in. his own village, with no grounds, apparent or disclosed, for leaving it. At 5 o'clock of- the 20th December he is named as having taken part in the murder, and when search is made for him at his brother's house, where he resided, not a trace of him is found, nor does he ever return there. The absconding and absence from home when sought for seems to me to corroborate, the evidence given by the accomplice, namely, that when the gang parted on that Saturday night, Koka went off in the company of Gobardhan towards Tundla, and that they were then carrying with them the razai and the pair of boots to take to those who had employed them, for the purpose of satisfying them that the deed was done. I have thought over the matter long and anxiously, and cannot believe that this case is the outcome of

Police concoction. With every disposition to criticize in the most stringent manner the conduct of the Police, I see no indications about the evidence, either of Mahasukha or the other witnesses for the prosecution, which lead me to suspect, that there was any tampering with him or with them. Though I quite, concur with the observations of my brother Brodhurst in regard to the impropriety of the action of the Police with regard to the other persons who were tried with Mahasukha, they do not apply to him in so far as his implicating Gobardhan is concerned. The crucial fact remains that upon that Sunday night, not only did Mahasukha name Gobardhan, but he also made use of the name of Umrao Singh in connection with the charge.

105. I have said all that I think it necessary to say in dealing with this case, which has been so exhaustively discussed in the judgments of the learned Chief Justice and my brother Brodhurst. I have pointed out the intrinsic grounds upon which the evidence of Mahasukha seems to me entitled to credit, and I have shown that it is corroborated by the absconding of the accused--ran absconding which he has only faintly attempted to account for, but has given no proof-to explain. Does the story told by Mahasukha reasonably adapt itself to the conclusion I have arrived at, that Nihal Singh was murdered for revenge or some such motive and not robbery? I think it does. The whole story is consistent with that view, and the actual facts proved go to show that Nihal Singh was the victim of a deliberate murder, plotted and planned by persons who owed some grudge to him. I have only to add that the perusal of the evidence of the accomplice has driven me to the same conclusion as that arrived at by the learned Chief Justice, and I think the corroboration he acts upon is sufficient to support the evidence of the accomplice.

106. I confess I do not quite see why Sarwan has been discredited. It is true that he is a criminal person, and it is equally true that he had not made any statement to the Police till the 8th of January; but he never changed his statements, although he was aware that the police contradicted him on some points, and although he knew that his evidence was opposed to the evidence of other witnesses about the colour of the coat worn by the deceased. He nevertheless stuck to his original statements; and I am disposed to think that Sarwan was speaking what he believed to be the truth, and that his evidence might be relied upon for the purpose

of corroboration. But I do not think it is necessary to go into that matter, as without him there appears to me to be sufficient evidence.

107. That being so, I am of opinion that the appeal by Government ought to be allowed, and that Gobardhan, being convicted of the crime of murder-should suffer the punishment of being hanged by the neck until he be dead.

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