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Dhoom Singh Vs. the State

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Court : Allahabad

Decided On : Oct-10-1956

Reported in : AIR1957All197; 1957CriLJ431

Judge : Mukerji and ;Chowdhry, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300; Evidence Act, 1872 - Sections 3 and 27; Constitution of India - Article 20 and 20(3)

Appeal No. : Criminal Appeal No. 677 of 1956 and Referred No. 52 of 1956

Appellant : Dhoom Singh

Respondent : The State

Advocate for Def. : Shri Rama, Dy. Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal allowed

Judgement :

Chowdhry, J.

1. This is an appeal by one Dhoom Singh, aged 20 years, who has been convicted by the learned Additional sessions Judge of Muzaffarnagar under Section 302, I. P. C., for the murder of a 10 years old boy Ranbir singh and sentenced to death.

The leference under Section 374, Criminal Procedure Code, for confirmation of the' sentence is also before us.

2. Two brothers Baljit P. W. 1 and Chatra lived in separate houses in village Pachenda. The appellant is a son of Chatru. The deceased Ranbir and a 5 years old girl Ranbiri were Baljit's children by a concubine Gangadevi by name. She had deserted him 2 or 3 years previously. Baljit owned 7 bighas of cultivatory land, two houses and 3 heads of cattle.

3. The prosecution case is that Baljit fell seriously ill about a fortnight before the occurrence so that his children had to find for their food from house to house. So after about a week of illness he called the appellant and entrusted to him the care of his children and property in case he died, and the appellant began to look after them.

4. The deceased and the appellant used to go together for bringing fodder. They did so on Sunday, September 18, 1955, also but the appellant alone returned at about 2 P. M. Baljit inquired where Ranbir was. The appellant replied that Ranbir had not gone with him. Baijit asked the appellant to go & search for Ranbir. The appellant went away but again came back alone in the evening. Being too ill to go out himself, Baljit again asked the appellant on Monday, September 19, to make a search for the missing boy, but the appellant again came back in the evening and stated that he could not find the boy anywhere.

5. On Tuesday, September 20, Baljit went in the company of Raghubir P. W. 9 and one NainSingh to the police station of Kotwali in Muzaffarnagar, only a couple of miles away, and lodged there a report about the disappearance of the boy In the following words:

'My son Ranbir Singh aged 9-10 years of lean body and fair complexion having eyes of average size and an old cut mark of gandasa on the right hand near the wrist, height about 4 feet, who is putting on knicker having yellow and green stripes and shirt of yellow gabroon, and whose head and feet are bare, is missing since 18th September, 1955, at about 10 in the day from the village of Pachenda Kalan. A search may be made.'

6. The village Mukhia Ramji Lal P. W. 2 had gone to the neighbouring village Ratheri, and on his return from there in the forenoon of Tuesday, September 20, he learnt that Baljit's son Ranbir was missing. In the afternoon he was told by two of his fellow villagers Sukhbir Singh P. W. 7 and Raghubir P. W. 9 that, as the former was returning from Ratheri and the latter from his cultivation, they had seen the appellant and the deceased going together towards the fields at about noon on Sunday, September 18. The three of them then went and conveyed the information to Baljit.

7. The following day, Wednesday September 21, the Mukhia called the appellant at about 10 a.m., and, on being interrogated, the appellant confessed to having murdered Ranbir but said nothing about the disposal of the dead body.

8. Ram Phal Tyagi P. W. 12, second officer at Police Station Kotwali Muzaffarnagar, is the officer who investigated the case. He reached Pachenda at 10.30 A.M. on Thursday, September 28, and arrested the appellant at 7 o'clock the same evening.

The appellant was interrogated and later in the evening a dead body, identified by Baljit and others as that of Ranbir, was discovered at the Instance of the appellant from the sugar-cane field of one Hamid in village Ratheri, about a mile from Pachenda. A recovery memo and then an inquest report were drawn up by the investigating officer in the presence of Ramji Lal P. W. 2, Balla P.W. 3, Chatar Singh P.W. 4, Dilay Ram P.W. 5 and Raghubir P.W. 8, all residents of Pachenda except Diley Ram who was Mukhia of Mustafabad, a neighbouring village. The investigating Officer interrogated witnesses both before and after recovery of the dead body.

Hashim P.W. 10, a resident of Ratheri, belonged to the latter category. The evidence of this witness is that on Sunday at about midday, when he was on a round of his fields, he had seen Dhoom Singh coming out of the field of Hamid.

9. Constable Hukum Singh P.W. 13, who had accompanied the investigating officer to Pachenda, fetched a shell from the police station, left with the dead body in it at 11 O'clock the same night, viz., on the night of Thursday, September 22,

and reached mortuary at Muzaffarnagar at midnight. The post-mortem examination of the dead body was conducted by Dr. Ram Pal Singh, medical officer in charge of the District Hospital, at 1 P.M. on September 23.

According to the doctor, the probable age of the deceased was about 10 years and the probable time since death about a week. External examination showed that the body was in an advanced state of decomposition and maggots were crawling all over the body. The skin had peeled off and hair had fallen. Nails over fingers and toes were present. Eye-ball sockets were empty.

Nose, face and neck muscles had been eaten away by maggots. No mark of any external injury was visible on the body. Internal examination revealed that the scalp had disappeared, thetutures of skull bones had loosened, the brain had decomposed and was full of maggots, ribs joints were loose and all the internal organs of the body had decomposed. Due to the advanced state of decomposition of the dead body, the doctor could give no opinion regarding the cause of death.

10. The learned Sessions Judge says that Dhoom Singh was sent to jail on September 25. We were shown no evidence as to when actually the appellant was sent to jail. On September 24 at 5 P.M. he was medically examined in the district jail of Muzaffarnagar by Dr. Jag Mohan who has been produced as a defence witness. The jail doctor found the following injuries on the person of the appellant:

'(1) Faint contusion 11/2' x 3/4' on the back of left arm in the middle.

(2) Multiple contusion in an area 12' x 5' on the back of left thigh lower part, left knee and upper part of left leg.

(3) Multiple contusions In an area of 6' x 4' on the back of left knee extending down-wards.'

11. The police made a report on September 23 for the recording of the appellant's confession and on September 27 the appellant was taken from jail to the court of Sri Fasihuddin a first class magistrate of Muzaffarnargar, for that purpose. The magistrate says that, after making the appellant wait in his court room for about two hours to collect himself, he proceeded to record the appellant's confession.

The following is a full record of the confession and of the preliminary questions put to the appellant by the magistrate to satisfy himself that the confession was being made voluntarily:

'Q: Do you know that you are standing in the court of a 1st class Magistrate?

A: I know it.

Q: Is the station officer or any other policemen present in court?

A: No.

Q: Have your handcuffs been removed?

A: Yes.

Q: It is not essential for you to confess and if you make a confession, evidence shall be produced against you.

A: I know this.

Q: Whatever you state shall be taken down and can be used against you?

A: I am at fault. I shall tell that.

Q: Why are you making your statement all of a sudden when you know that it shall be used as evidence against you?

A: I am at fault. That is why I am making statement all of a sudden.

Q: When did you come to jail?

A: I came to jail five days ago.

Q: Are you making statement on being threatened by any body?

A: No.

Q: How, when and where had you been arrested?

A: My uncle whose son I have killed mentioned my name. The police arrested me in Pachenda. I was arrested at my house. I was arrested on the 18th at 12 in the day. I had come from village and sat down just then.

Q: How were you kept under lock-up and did the police beat you?

A: Nobody beat me under lock-up. I was detained for three days. The police did not oppress me.

Q: Are you making this statement under pressure of any one?

A: No.

Statement of Dhum Singh, son of Chatru, resident of Pachenda P. S. Kotwali.

On Sunday the 18th September I had gone to the jungle to bring fodder. I had gone to bring fodder in village Pachenda, in the western direction in the Jungle. It was 8 or 9 in the day. My cousin Ranbir was with me. He too had gone to bring fodder. In the way evil ideas crept in my mind. On reaching the sugarcane field I killed him.

The sugarcane field belonged to the people of Ratheri. I strangulated Ranbir. I strangulated him with my hand. Ranbir was aged 10 or 11 years. He died at the spot. The tongue had notcome out. He had cried. The scene of occurrence is at a distance of 1 mile from the village. The corpse remained lying in the field. I handed it over to the police. Heard and admitted.'

12. The memorandum prescribed by Section 164(3),Criminal Procedure Code, was appended at the foot of the confession.

13. The statement made by the appellant under Section 342, Criminal Procedure Code, in thecourt of the committing magistrate was to thefollowing effect:

Q: 'Had you been on 18th September 1955 living at the house of your uncle Baljit in the village of Pachenda Kalan because your uncle was ill and his only son Ranbir was a minor.

A: Yes. That is why I had been living with my uncle.

Q: Did you, on the same day and in the same Tillage at about 10 or 11 in the day, went alongwith Ranbir to the forest to bring fodder?

A: No. I had gone alone to bring fodder. Ranbir did not go with me.

Q: Did you on the same day 11 and 2, murder Ranbir, put his dead body in a sugarcane field and place plaster over it?

A : No. Neither did I commit murder; nor did I place the dead body in the field.

Q: Did Sukhbir and Raghubir witnesses, see you in the way on the same day going from Pachenda gram to the jungle of Ratheri?

A: No. They did not meet me at all.

Q: Did Mohammad Hashim see you on the same day at about 1 in the day coming out from the sugarcane field of Hamid in the jungle of Ratheri?

A: No. I had gone back after cutting fodder.

Q: Did Ramphal Tyagi Sub-Inspector of Police arrest you on 22nd September, 1955 in the village of Pachenda and you gave him word in presence of witnesses to hand over the dead body of Ranbir which you said, was lying in the sugarcane field of Hamid?

A: The Sub-Inspector arrested and took 'me away to Mustafabad and from that place he brought me to Kotwali. I did not make a promise of handing over the dead body. From Kotwali he took me round forests and in the evening made me stand near the dead body saying that that was the dead body and ordered me to lift it. The dead body was lying in the jungle of Ratheri.

Q: Did you on the same day take away the police Sub-Inspector along with witnesses in thejungle of Ratheri in the sugarcane field of Hamid and hand over the dead body of Ranbir deceased to the Sub-Inspector after taking it out from the field?

A: No. I did not take out and hand it over. I did not proceed forward and notice it in the field. It was raining on that day.

Q: (The confession, Exhibit P5, of the accused was read out to the accused and it was asked). Did you make this statement on oath of your own accord in presence of Sri Fasihuddin, Magistrate, Jansath?

A: I do not remember whether or not did I make this statement in presence of Deputy Saheb.

A long time has passed.

Q: Why do prosecution witnesses depose against you?

A: Due to the party politics. My father hadenmity with Baljit from before; of course I had no enmity with Baljit.

Q: Have you anything else to say?

A: No.'

The statement of the appellant in the Sessions Court was as follows:

Q: 'Your statement exhibit P14 recorded by City Magistrate on 6th January 1956 is read over to you. Did you make it and is it correct?

A: I did give this statement and it is correct but the City Magistrate did not record my statement that I had been beaten by the police.

Q: Whether Baljit is your uncle and whether he was ill for a few days before 18th September 1955 and did he call you to his house to look after his property, cattle and children during his illness?

A: Baljit is my uncle. Ranbir aged about 10 or 11 years was his son. Baljit was ill for 7 or 8 days preceding the date of disappearance of Ranbir. Baljit had called me to his house for bringing fodder for his cattle during his illness.

Q: Did you along with Ranbir go to the fieldat about 10 a.m. on Sunday the 18th September, 1955 for bringing fodder for cattle of Baljit.

A: I alone had gone to bring fodder for cattle on Sunday morning. Ranbir had not gone along with me to the fields. But I had left him at his house. I returned from the fields at about 1 p.m. on that day.

Q: Raghubir son of Ghasita P.W. 9 and Sukhbir P.W. 7 have deposed that they had seen Ranbir going along with you in the fields at about the midday on Sunday, the 18th September, 1955. What have you to say to it?

A: This evidence is wrong. Ranbir did not go along with me.

Q: Did you along with Ranbir go into the sugarcane field of Hamid near village Ratheri. Hashim P.W. 10 claims that he had seen you coming out of that field at about midday on 18th September 1955. What have you to say to it?

A: This evidence is wrong. I did not go to the sugarcane field. Hashim is a man of the police and his statement is false.

Q: It is in evidence that after you had returned from the field on that day Baljit enquired from you about Ranbir and reminded you that Ranbir had gone along with you and whether at the instance of Baljit you had gone to search for Ranbir. What have you to say to it?

A: When I returned from the fields Baljit enquired from me where is Ranbir'? I told him that Ranbir had not gone along with me. Baljit asked me to go and search for Ranbir. I went to my house to search for Ranbir and returned to inform Baljit that Ranbir was not there. I searched for the boy until I was arrested by police two days after. I was arrested by the police on 20th September 1955 from my own house.

Q: Is it a fact that on Wednesday you had told Ramji Lal P.W. 2 that you had murdered Ranbir?

A: No. I did not say so to Ramji Lal on any date and time.

Q: Is it a fact that Ranbir disappeared and had not been seen since the midday of 18th September 1955. It is said that he had been murdered and that his dead body was recovered from inside a sugarcane field of Hamid near village Ratheri on 22nd September 1955. What have you to say to it?

A: Ranbir disappeared on, and could not be seen since, Sunday. Dead body of Ranbir was recovered from sugarcane field near Ratheri on 21st September 1955 and not on 22nd September 1955.

Q: Were you arrested by S. I. Ramphal Tyagi from your house on 22nd September 1955 and together in presence of Balla P.W. 3 Ramji Lal P.W. 2, Chatar Singh P.W. 4, Dilay Ram P.W. 5 and Raghubir son of Tota P.W. 8 promised to produce dead body of Ranbir and did you all take these persons to the sugarcane field of Hamid and bring out dead body of Ranbir from under some mud in the field on the same day.

A: S. I. Ramphal Tyagi arrested me from my house on 20th September 1955 and took me to the house of Dilay Ram P.W. 5 in Mustafabad and he detained me there for a whole day and in the evening he brought me to the police station Kotwali. I was beaten by him in Kotwali with lathis. In the night I was detained in Kotwali and on the following morning I was taken to jungle. After some wanderings in the jungle I was taken by Darogha Ramphal to the field from where the dead body of Ranbir was recovered after sunset. When I reached that field, I had found the dead body of Ranbir lying outside the field.

Since I was nervous due to severe beating therefore I could not identify the persons who were present at the place of recovery of the dead body of Ranbir. We started for Kotwali at about 8 P.M. and the dead body was left at the mortuary which lies on the way from the place of recovery to the Kotwali. I was detained in Kotwali in the night. I was not given any food for two days and was beaten.

I was beaten for obtaining my promise for stating in the manner desired by the police. Due to hunger and beating I assured the police to depose and state as they liked. On the following day I was detained in Kotwali. I was detained in Kotwali until sent to jail on 24th September 1955. I did not promise to produce the dead

body of Ranbir from my place and the witnesses are telling lies. Police had instructed me to give statement, but I have now forgotten that statement. I did state before Deputy Saheb according to the instruction of the police.

Q: (Read his confessional statement Ex. P5) Did you make this statement before Sri Fasihuddin Magistrate in his court room on 27th September, 1955?

A: Yes. I did give this statement before Deputy Saheb but I gave this statement due to pressure of police. When I gave this statement Darogha Ramphal Tyagi was standing in the Verandah of Sri Fasihuddin Magistrate. When I was taken from the lock-up to the court room Darogha Ramphal met me and I was detained near the lock-up. There Darogha instructed me to give this statement and he said that he could have me beaten inside the jail if I did not stats according to his instructions. For fear of Darogha I gave this statement before Deputy Saheb. I did not express my fear before Deputy Saheb.

Q: (Read confessional statement Ex. P5). Is this the correct story recited by you about the murder of Ranbir committed by you in the field and whether you made this confessional statement in the court room of Sri Fasihuddin Magistrate voluntarily, with full understanding and without any fear or favour and out of your own will?

A : This statement is wrong. Ranbir had not gone along with me on that day. I did not commit his murder by throttling or by any other means; I did not dispose of and conceal his dead body in sugarcane field. I did not point out the dead body of Ranbir to anybody. I did not give thisconfessional statement out of my free will but I gave it on account of fear of police.

Q: Why are you being prosecuted and why the witnesses are deposing against you to prove the allegations that you had intentionally committed murder by causing death of Ranbir on 18th September 1955?

A: Ramji Lal, Mukhya P.W. leads a group in the village. Last year there was held election of Sarpanch in the village. Ramji Lal had asked me to vote for Bishamber. I and my lather voted for Sher Singh and since then group of Ramji Lal has been

inimical towards us. Another election was held seven months ago and this was contested by Bishambhcr and Jiwan. Ram Lal again asked me and my father to vote for Bishamber. My father voted for Jiwan. This is the cause of enmity with us. I am being implicated on account of this enmity. Witnesses belong to the group of Ramji Lal and hence they are deposing against me.

Q: Will you give defence?

A: Yes.

Q: Have you to say anything else?

A: No.

The accused was unrepresented in the magistrate's court but he was defended by a learned counsel in the Sessions Court. The only witness produced in defence was the jail doctor.

14. Except for the judicial and extra-judicial confessions of the appellant, the evidence in this case was entirely circumstantial, namely: (1) that there was motive for the appellant to commit the murder; (2) that the deceased and the appellant went together in the forenoon, and the appellant returned alone in the afternoon, of September 18; and (3) that the dead body or Ranbir was recovered at the instance of the appellant on September 22.

The second circumstance is composed of three parts: Baljit's statement that the deceased and the appellant left his house together to bring fodder, the statements of Sukhbir and Raghubir that the two were later seen going together towards the fields, and the statement of Hashim that the appellant alone was seen emerging from the sugarcane field of Hamid where the dead body was subsequently recovered.

The learned Sessions Judge believed the first and third parts of the second circumstance but not the second. He also believed the first circumstance of motive and the third one of the recovery of the dead body of Ranbir at the instance of the appellant. Of the two confessions he believed the judicial but not the extra judicial

one. As regards the injuries found on the person of the appellant, the learned Judge was of the view that the fellow villagers of the appellant may have been responsible for the same but not the police. _ He found no extenuating circumstance and convicted' and sentenced the appellant as aforesaid.

15. The first contention put forward by the learned counsel for the appellant was that there -was no proof of corpus delicti in this case. According to him the prosecution had failed to prove that the offence charged has been committed because, firstly, it is not proved that the dead body recovered was the dead body of Ranbir and, secondly, even if the dead body be of Ranbir, it is not proved that death was caused by human agency.

So far as the identity of the dead body is concerned, there is the statement of the deceased's father Baljit that when the dead body was discovered in the sugarcane field he went and identified it as that of his son Ranbir. This statement of Baljit was not challenged in cross-examination.and finds support from the medical evidence that the body was of a 10-years old male person.

The appellant also admitted in the trial Court thatthe dead body recovered from the sugarcane fieldwas that of Ranbir. On the second question ofwhether death was caused by human agency, medical evidence is inconclusive since, due to the advanced state of decomposition, the doctor was unableto give any opinion as to the cause of death. It iscertainly true that most of the parts of the bodywere absent, and that it is possible that they hadbeen eaten away by some wild animal; but thatmay have taken place after the boy had been doneto death by human agency. A definite finding onthis part of the argument based on absence ofproof of corpus delicti must depend on the otherevidence in the case.

16. The most important pieces of evidence are no doubt the alleged recovery of the dead body at the instance of the appellant and his confession. The other evidence, which is entirely circumstantial, is of a flimsy character. The motive suggested is that the appellant killed Ranbir in order to inherit Baljit's property; but the fact that Baljit had also a daughter serves as an offset to that suggestion. The statement of Baljit that at 10 A. M. on 18-9-1955 he sent Ranbir with the appellant to bring fodder does not carry conviction in view of his earlier statement in the

court of the committing magistrate that he had sent Ranbir to the appellant.

17. The next link in the chain, that Sukhbir and Raghubir having later in the day seen the two going towards the fields, has been rejected by the trial court. There is no doubt that the learned Sessions Judge has made mention of many facts incorrectly. For instances, Ramji Lal professes to have learnt of the appellant and the deceased having been seen together from Sukhbir on Tuesday and not on Monday. Again, Sukhbir had not stated in the court of the committing magistrate that he was not in the village on Sunday, but only that he had not returned to the village on Sunday. Again, while discussing the evidence of Raghubir, the learned Judge wrongly ascribes a statement to Baljit which had in fact been made by Ramji Lal. It may therefore be that the finding arrived at by the learned Judge on this part of the case, which was a finding based mostly on discrepancies, was arrived at on a misreading of the evidence. But there are weightier grounds for supporting that finding. Sukhbir says that on the very day that he saw the appellant and the deceased going together, i.e. on Sunday September, 18, he mentioned the fact to Baljit. The other witness Raghubir professes to have imparted the information to Baljit two days later. This, is, on the face of it Incredible, since the loss of the child must have been the talk of the village. In any case, Raghubir admittedly accompanied Baljit to the police station on Tuesday, September 20.

He should then have told Baljit that he had seen Ranbir in the company of the appellant on the day since when the boy had been missing. If then the information had already been conveyed to Baljit on Sunday by Sukhbir, and if it should in the ordinary course have been conveyed to Baljit by Ranghubir when they went to the police station, absence of any mention in Baljit's first information report about Ranbir having last been seen in the company of the appellant detracts considerably from the credibility of these two witnesses. The finding of the learned Sessions Judge that this particular circumstance had not been proved is therefore a correct finding, though on grounds different from those relied upon by him.

18. The next circumstance, that of the appellant having been seen later in the day emerging alone from the sugarcane field in question, appears wrongly to have been found by the learned Sessions Judge as proved. The sole witness on the

point is Hashim. The learned Sessions Judge was of the view that Hashim was a disinterested witness.

The witness was asked in cross-examination whether his drain and the drain of the appellant were adjacent to each other. The only apparent relevancy of such a question appears to be that it was sought to be suggested that there was some dispute between the two about the drains, but the matter was not pursued to that extent. It is significant however that the witness first admitted that his drain and the drain of the appellant were adjacent to each other and then added that he did not know if that other drain belonged to the appellant.

He added further that the drain belonged tothe Jats of Pachenda. Hashim professes to have been present when the dead body was recovered in the field, but he does not figure as one of the witnesses of inquest. He says that he had no talk with any one about his having seen the appellant coming out of the field in question. In these circumstances it is strange that the investigating officer should have selected Hashim for purposes of interrogation.

At any rate, there is no explanation appearing in the statement of the investigating officer as to what led him to suspect that interrogation of Hashim would furnish him an important link in the chain of circumstances against the accused, Furthermore, all the witnesses of recovery, including the investigating officer, are unanimous that the dead body was recovered from a field of village-Ratheri; but Hashim says that he had seen the appellant coming out of a field in village Nasirpur. Hashim's testimony therefore fails to prove that the appellant was seen on the day in question emerging from the field in which the dead body was subsequently discovered,

19. Of the two confessions the one alleged to have been made extrajudicially to Ramji Lal Mukhia has not been believed by the learned Sessions Judge because, in his view, Ramji Lal was an unreliable witness, and he was the last person to whom the appellant could have made a confession. The appellant has stated that there were two rival groups in the village owing to the contest in the elections to the Gaon sabha, and that he and Ramji Lal belonged to these rival groups. Ramji Lal admitted in his cross-examination that he and the appellant supported rival

candidates for the office of Pradhan in two elections. The learned Sessions Judge was therefore right that Ramji Lal was not the person to whom the appellant would have made a confession. It may be noted at this stage that quite a number of other prosecution witnesses were likewise ranged against the appellant in the elections. These are Balla P.W.3, Sukhbir Singh P.W.7 and Raghubir P.W.8. The allegation of the appellant, therefore, that he owed his false implication to the enmity of Ramji Lal Pradhan and men of his group cannot be brushed aside, specially in the light of the evidence, to be referred to presently, relating to the circumstances in which the recovery of the dead body and the judicial confession of the appellant are said to have been made.

20. Recovery of the dead body at the instance of the appellant and his judicial confession are then the only things left against him. It cannot be gainsaid that these are important pieces of evidence for if the retracted confession could beheld to have been made voluntarily, and if it couldalso be held to have been made truly by reason of its corroboration in the material particular of thedead body having been discovered at the instance of the appellant, the offence for which he has beenconvicted should be held to have been fully broughthome to him.

The argument of the learned counsel for theappellant in this connection was that neither the confession was voluntary nor the discovery genuine. And in support of this argument considerable reliance was placed on the circumstance, noted already, that when the jail doctor examined the appellant at 5 P. M. on September, 24 (which, in the absence of any evidence oh the point, shouldbe taken as the date and time of the appellant's admission in jail), he was found to have a number of contusions on his person. The question that naturally arises is: Were these injuries a result of beating and, if so, who gave the beating and when, and what, if any, is the effect of it on thiscase

21. Now, if the injuries were there, as nodoubt they were, when the appellant was admitted in jail, the investigating officer should have been aware of the same because admittedly the appellant was in police custody since at least September 22. The investigating officer, when cross examined, did not have the courage to deny their existence, but he said that the appellant 'had some swelling'when he

arrested him.

This was of course far from the truth for themedical evidence showed that, besides a faint contusion on the left arm, the appellant had multiple contusions in an area of 12' x 5' on the back of the left thigh and further multiple contusions in an area 6' x 4' on the back of the left knee. It was incumbent on the investigating officer therefore to have had the appellant's injuries medically examined as soon as he was arrested, to find cuthow they were caused and to put forward that explanation in court. This was all the more necessary in a case like the present where the probativevalue of the two main pieces of evidence on which the prosecution relied, discovery of the dead body at the instance of the appellant and the appellant's confession, depended entirely on their voluntariness.

What we find, however, is that not only have the prosecution made no attempt to explain the injuries but the investigating officer tried to whittle them down. As against this there is the definite statement of the appellant that he was beaten by the police twice, once before the recovery of the dead body and again before his consignment to jail. True, he made no such statement in the committing court, but that does not take away from the fact that the injuries were there. The appellant's statement, which can under the law 'be taken into consideration', finds support from the medical evidence. According to the jail doctor, the injuries had been caused by some blunt weapon, and they could have been caused on September, 19, 20 or 21 but neither before nor after that. The medical evidence thus fully corroborates the appellant's statement. The appellant's statement is therefore worthy of reliance, and particularly so in view of the suppressio veri indulged in by the prosecution.

22. This is however not the only circumstanceindicative of the fact that investigation in this case was not above board. There is a strange lacuna in what may be called the genesis of the case since it does not appear as to what led the investigating officer to reach the scene of the occurrence, as he professes to have done, at 10-30 a. m. on September 22. There is evidence of no furtherreport besides the one which Baljit had lodged at 11-30 a. m. on September 20, and that was merelyby way of an information that the boy had been missing since

September 18 without any suggestion of foul play. On arrival in the village the investigating officer admits having contacted the two mukhias, Ramji Lal P. W. 2 Mukhia of Pachenda and Dileyram P. W. 5 Mukhia of the neighbouring village of Mustafabad. He professes to have arrested the appellant at his house at 7 P. M. the same day & the discovery of the dead body at the instance of the appellant is said to have followed soon after. What he was doing in the village during the 81/2 hours preceding the arrest does not also appear.

23. In fact, the statement of the investigating officer, S. I. Ramphal Tyagi, about his having reached the village and made the arrest on September 22 appears to be untrue. Only one witness, Raghubir P. W. 9, supports him with regard to that, but four others, namely, Baljit P. W. 1, Ramji Lal P. W. 2, chattar Singh P. W. 4 and Dileyram P. W. 5, unanimously say that the Sub-Inspector came to the village on Wednesday, September, 21, and arrested Dhoom Singh the same day. This consensus of testimony in so many witnesses cannot be explained away as mistaken, in fact, Ramji Lal, the Mukhia, hits the nail on the head, if one may make use of that colloquialism, for he states that it was he who had called the investigating officer on Wednesday (September 21) at about midday.

This attempt on the part of the investigating officer to post-date his arrival and the arrest of the appellant by one day seems to be deliberate, and its purpose appears to be to shut off certain activities of his during those 24 hours while the appellant was in his custody. There is one other fact in regard to which there appears to be a deliberate attempt at concealment, namely, the place where the investigating officer passed the night following his arrival in the village. He professes to have stayed that night at the house of Ramji Lal in Pachenda. But Dileyram says that both the investigating officer and the accused stayed at his house in Mustafabad. This material discrepancy apart, there in no explanation forthcoming for the investigating officer and the accused passing the night in any of the villages when the police station was only a couple of miles away.

The appellant's statement that he was taken to the Kotwali after his arrest and beaten there and then taken back the next day to the field where the dead body was appears therefore to be correct, There is also no reason, in this context, not to

accept his further statement that he was again given a beating in the Kotwali before being sent to jail in order to extract a promise from him that he would make a confession to the dictates of the police.

24. The legal effect of this beating is that it vitiates both the alleged discovery of the dead body and the confession. To take the discovery of the dead body first, the learned counsel appearing for the State took his stand on a Full Bench decision of this Court reported as Emperor v. Misri, ILR 31 All 592 (A), while the learned counsel for the appellant relied on Article 20(3) of the Constitution.

According to the Full Bench decision, information leading to discovery conveyed by the accused to the police under any circumstance and irrespective of whether it was the result of inducement offered by the police, was admissible. The argument of the learned counsel for the appellant, on the other hand, was that this interpretation of Section 27 of the Evidence Act was in conflict with the rule against self-incriminating evidence embodied, in Clause (3) of Article 20 of our Constitution.

25. Now, there is no doubt that all the conditions requisite for the application of the provisions of Article 20(3) of the Constitution are present here namely, (1) that the appellant was accused of an offence, (2) that he was compelled to be a witness, and (3) that he was compelled to be a witness against himself. As regards the first ingredient, their Lordships of the Supreme Court have laid down--In Sharma v. Satish, 1954 SCA 449 at p. 458: (AIR 1954 SC 300 at p. 304) (B) that the protection of this provision would be available to a person 'against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course results in prosecution.'

That such an accusation had been levelled in this case is apparent from the fact that, on information conveyed to him by the village Mukhia Ramji Lal, S.I. Ramphal Tyagi of the police station within Whose jurisdiction the offence had been committed had already come and arrested the appellant.

26. As regards the second & third ingredients, from what has gone before it is manifest that the appellant was compulsorily subjected to treatment which

furnished evidence of discovery of the dead body at his instance (supposing for the time being that it was the appellant who discovered the dead body). True, evidence in Court relating to that discovery has not emanated from the appellant but from the investigating officer and other witnesses of recovery, but protection against testimonial compulsion, so long as the fact discovered is the outcome of compulsion exercised on the accused, has been held to extend to compelled testimony previously obtained outside Court and to its being deposed to in Court by any person other than the accused himself. This principle has been laid down as follows by the Supreme Court in the aforesaid case of 'Sharma v. Satish' (B):

'Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the Court room. The phrase used in Article 20(3), is 'to be a witness' and not to appear as a witness.' It follows that the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him'.

Interpreting this rule against compulsory self-incrimination in the corresponding Fifth Amendment to the Constitution of U. S. A., Treanor J. observed in--'Ross v. State', 204 Ind. 281 : 162 N. E. 865 (C) as follows :

'We think that O'brien v. State, (1890) 125 Ind 38 : 25 NE 137 (D), properly limits the privilege against self-incrimination to testimonial compulsion, i.e., a defendant cannot be required to be a witness in his own trial, nor can another person testify under such circumstances that he is a mere 'mouth-piece' of the defendant; the defendant being the real witness'. The privilege does not embrace testimony of a witness other than the defendant unless such testimony results In getting before the jury evidence which rests upon the testimonial responsibility of the defendant. 'Unless some attempt is made to secure a communication, written or oral, upon which reliance is to be placed as involving his consciousness of the facts and the operations of his mind in expressing it, the demand upon him is not a testimonial one'.'

27. It would appear thereafter that the evidence of discovery of the dead body at the instance of the appellant is hit by the provisions of Article 20(3) of the

Constitution. There does not,however, seem to be any necessity for laying that provision under Constitution, or of considering the effect of that provision or the interpretation ofSection 27 of the Evidence Act as contained in decisions like ILR 31 All 592 (FB)(A), since it appears to be possible to dispose of the evidence relating to the alleged discovery of the dead body of Ranbir at the instance of the appellant on a shorter ground. Irrespective of whether any such discovery is protected by Section 27 of the Evidence Act, or whether it falls within the mischief of Article 20(3) of the Constitution, where facts disclosed point, as they clearly do in this case, to the accused having been subjected to third degree methods Prior to the discovery, the genuineness of the discovery is rendered doubtful and the discovery becomes worthless as a piece of evidence. The reason behind the view that threat, promise and inducement are irrelevant for admissibility of evidence of discovery within the purview of Section 27, Evidence Act seems to be that discovery by itself is a guarantee of the genuineness of the discovery,

'But', as pointed out in the Full Bench decision of this Court (A), 'there may be cases where the circumstances are such, that the fact that the discovery was induced by a promise would raise a doubt as to the genuineness of the discovery and render the evidence almost worthless.' That such circumstances do exist in the present case appears clearly from the fact, as adverted to already, that the investigation was not above board. Furthermore, of the five witnesses of recovery of the dead body, Ramji Lal, Balla, Raghubir, Chattar Singh and Dileyram, the first three belonged to the rival group in the village elections and Dileyram tried falsely to show, as pointed already, that the investigating officer did not take the accused to the Kotwali after his arrest.

The remaining witness Chattar Singh no doubt professes to have been ranged on the same side with the appellant in the elections, but where the rest of the witnesses are of such questionable character it would be unsafe to rely on the sole testimony of Chattar Singh simply became nothing untoward has been brought out in his cross-examination. Where then the police investigation is not above board, the accused is subjected to beating prior to the alleged discovery and the witnesses of recovery are not dependable' the genuineness of the discovery becomes so doubtful as to render that piece of evidence almost worthless.

In these circumstances, it is not open to the prosecution to urge that discovery, at the instance of the accused is by itself a guarantee of its genuineness for it becomes doubtful that it was the accused who made the discovery.

28. In the context of the above circumstances it would not be possible to make any use of the judicial confession of the appellant. And this for two reasons : firstly, there is nothing left to serve as a corroboration to the retracted confession and, secondly, the judicial confession also cannot be held to be voluntary. Much stress was laid by the learned counsel for the State on the circumstances that the appellant had been for three days in jail before his confession was recorded by the Magistrate on September 27, and that the Magistrate gave the appellant two hours to collect himself before proceeding to record his confession.

It is however difficult to hold with any degree of certainty that the effect of the treatment to which the accused was subjected had been removed by reason of his 3 days stay in jail. Over and above that there is the clear allegation of the appellant that when he was being taken to the Court room for the recording of his confession S.I. Ramphal Tyagi detained him and directed him, on pain of being beaten again inside the Jail, to give his statement according to as he had been instructed already. The appellant stated further that when he gave his statement before the Magistrate the investigating officer was standing in the verandah of the Court room.

The Magistrate only stated that there was no police official in his Court room, but he admitted that he was unable to say whether there was any police official outside his Court room. Furthermore, it appears that the time which the Magistrate professes to have given to the appellant to collect himself was given before the warning and not after it. This precaution could have served a useful purpose if it had been resorted to after the administration of a warning to the accused for otherwise the accused would not know why he had been brought there and so no question of his collection himself would arise.

Alike by reason, therefore, of the confession not appearing to us to be voluntary, and of there being no evidence in corroboration of this retracted confession, it is a worthless piece Of evidence.

29. It would thus appear from what has gone before that not one of the items of evidence relied upon by the prosecution is available against the appellant. It can now be said also that, medical evidence being what it is, the contention of the learned counsel for the appellant is well founded that there was no proof of corpus delicti in the sense that there was no proof that Ranbir's death was caused by human agency.

30. The appeal is accordingly allowed andthe conviction and sentence of the appellant under Section 302, I. P. C., are set aside and he is acquitted.The reference for confirmation of his sentenceof death is rejected. Unless required in connection with any other offence, the appellant shallbe set at liberty forthwith.

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