

Amln and anr. Vs. the State

Amln and anr. Vs. the State

SooperKanoon Citation : sooperkanoon.com/453491

Court : Allahabad

Decided On : Aug-29-1957

Reported in : AIR1958All293; 1958CriLJ462

Judge : Chaturvedi and ;A.N. Mulla, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 5, 24 and 27; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367; [Constitution of India](#) - Articles 20, 20(3) and 245

Appeal No. : Criminal Appeal No. 170 of 1957

Appellant : Amln and anr.

Respondent : The State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : K.A. Arahi and ;C.P. John, Advs.

Disposition : Appeal allowed

Judgement :

Mulla, J.

1. Appellant Amin and his mother Shrimati Shakira have been convicted under Sections 302, 364 and 379, I. P. Code by the Additional Sessions Judge, Sitapur. They were also found guilty under Section 201, I. P. Code, but the trial court

relying upon a decision of the Supreme Court did not consider it desirable to sentence them under this offence. Each of them has been sentenced to death under Section 302, I. P. Code, to ten years' rigorous imprisonment under Section 364, I. P. Code and to three years' rigorous imprisonment under Section 379, I. P. Code.

The trial court had charged them with these offences directly as well as constructively by applying Section 34 of the Indian Penal Code, but in the judgment it held them to be directly liable. The charge against the two appellants was that on the evening of the 11-6-1956, they kidnapped Kumari Nabbo aged about 8 years to their house in village Imalia, police station Mahmudabad, District Sitapur and thereafter murdering her and robbing her of the ornaments which she was wearing, they tried to screen themselves from, legal punishment by secretly throwing her dead body in the Lakhpera grove, which was more than a mile away at dead of night after wrapping it in a gunny bag. The usual reference for the confirmation of the death sentences passed against the two appellants is also before us.

2. We may straightway observe that the trial court should have charged the two appellants under Section 394, I. P. Code and not under Section 379, I. P. Code. Where violence is used for committing theft, it becomes robbery and the two appellants on the findings of the trial court were clearly guilty of an offence under Section 394, I. P. Code.

This, however, has not occasioned any injustice in this case, for both the appellants were convicted under Section 302, I. P. Code. We therefore, proceed to narrate the prosecution story.

3. The prosecution case is that Imalia is a big village about two miles away from police station Mahmudabad. It is mostly inhabited by Pathans, and one of them Ahmad Yar Khan was employed in the Secretariat at Lucknow. Ahmad Yar Khan's wife Shrimati Shahida (P. W. 2) and his eight year old daughter Nabbo as well as his other relations, however, resided at Imalia.

The appellants were also related to this family and Shrimati Shakira appellant was an aunt of Shrimati Shahida. The two appellants also resided in Imalia, Shakira's husband Sadiq Ali was in the tobacco 'business and he also cultivated some land of Shrimati Ruqqan, an ex-Zamindaria. About two years before the incident Sadiq Ali relinquished this land and six months before this incident, he along with his family members migrated to Patehpur in Barabanki district some 12 miles away.

The appellants were in straightened circumstances and occasionally their relations helped them. About a year before the incident, Shahida gave her Karas to Shakira when she wanted a loan. Similarly P. W. 12 Hatim Ali, who was the son-in-law of Shakira used to give her money occasionally. About six days before the incident Amin came back to his house at Imalia and wanted a loan from Shahida, but Shahida told him that she cannot give any more money.

Then on the morning of the date of the incident Shakira herself came to Imalia and approached Shahida as well as Hatim Ali praying for a loan, but both of them expressed their inability to advance anything. It was in this background that the crime was committed.

4. According to the prosecution Kumari Nabbo went out of her house to play outside at about 3 p. m., on the 11-6-1956. She was wearing a black jumper, Pyjama of Chhint of a particular design and a ready-made Choti was attached to her hair and it was tied up with an imitation Lachha. She was also wearing ornaments and had eight silver Lachhas of Imarti design on her feet, six silver Chooris of Motichur design on her wrists, four Balis of silver in each ear and a small gold nose pin in her nose.

Shortly afterwards there was some rain and she was seen playing with the village boys near a tank in the locality known as Imambara Wali Gali. A little before sunset, she was found standing under a tamarind tree near the house of the appellants with a boy P. W. 5 Amir Hasan and when P. W. 6 Mohammad Shafi passed that way and told her to go back to her house she said that she was going to a cinema show with her maternal uncle.

Appellant Amin is a cousin of P. W, 2 Sha-hida and so Nabbo called him Mama. According to Amir Hasan, Shakira called the girl inside the house saying that she should not wet her clothes in the rain. Nabbo went to Shakira's house and Amir Hasan himself left for his own house. This was the last time that the girl was seen alive.

5. When Nabbo did not come back to her house till sunset time, her mother felt worried. Her husband's brother Riyasat Khan (P. W. 1) lived nearby and she called him and told him about the disappearance of the girl. Riyasat Khan as well as other neighbours and relations then searched for the girl, but she could not be found.

During this search Shakira appellant was constantly going up to the tank and coming back thereby suggesting that the girl was drowned in the tank. Amin was not in the village when this search was made on the night of the 11th of June. The villagers kept an all night vigil round the tank and the search was again resumed next morning. This continued till noon and then Riyasat Khan proceeded to police station Mahmuda-bad and lodged a report about the disappearance of the girl.

6. The report of Riyasat Khan was recorded at 2.15 p. m. on 12-6-1956 at police station Mahmudabad. In this report the dress and the ornaments worn by Nabbo, when she left her house, were given in detail. Head constable Ghulam Haider (P. W. 8) took it down and registered as a case. Constable Mokaarrab Rasa (P W. 9) was sent with Riyasat Khan to help him in tracing out the missing girl.

The search continued, but no trace could be found. In the afternoon it was noticed that Shakira appellant also left Imalia after locking the house. Amir Hasan and Mohammad Shaft also related what they had seen to Riyasat Khan and so a suspicion arose against the two appellants.

7. It was on the next morning i. e., on the 13th of June, 1956, that Sri Mohammad Naim, station officer, Mahmudabad, came to Imalia to investigate this disappearance. He was not present at police station Mahmudabad when the report was lodged. He remained at Imalia on the 13th and the 14th of June and examined several witnesses also prepared a sketch map. He tried to contact the

appellants, but they were not to be found. On 15th June, he came to Sitapur to give evidence in a case, but he went back to Imalia the same night. He had already issued instructions for the arrest of the two appellants and the next morning at about 7-30 A.M. the two appellants were brought under arrest and placed before him by Constable Ram Lakhan and Izharul Haq (P. W. 10). Shrimati Shakira was arrested at the house of one Wall Ahad at Mahmudabad at 5 a.m., on 16-5-1956 and Amin was arrested an hour later near the railway line. Amin had tried to escape; but he was pursued and when he fell down, he was overpowered. He had received some injuries when he fell down. The moment Sri Moha-mad Naim interrogated the two appellants in the presence of some witnesses, they broke down and started making confessions. Amin told the investigating officer that he could produce the dead body of Kumari Nabbo. Sri Nairn thereupon along with some witnesses including P. W. 7 Shabbir Ahinad and P, W. 14 Sattar accompanied Amin who took them to the Lakhpera grove which was about 1 1/2 miles away from Imalia. Lakhpera grove is a huge grove as its very name indicates, for it means a grove containing a Lac of trees. There are mango and guava trees in this grove. Amin proceeded to that part of the grove where there were guava trees and from under the long grass and dense bushes, he produced a bundle wrapped in a piece of Tat and tied with a string. Inside the tat there was a piece of Kathri and some broken bones were found in it. The bundle was giving a foul smell and a Choti with Lachha, a Chhmt Pyjama and a black jumper were also found near the place. There was no flesh on the bones. A recovery list of these articles, duly attested by witnesses, was prepared by the investigating officer. He then called the relations of Nabbo and when they came, they identified the Choti with Lachha, the black jumper and the Chhint pyjama as the dress worn by Nabbo when she went out of her house on the 11th of June.

8. After this recovery was made, Amin was interrogated further and he agreed to hand over the ornaments of the deceased girl, He brought back Sri Nairn and the witnesses to his house and after digging about a span at the middle trench between the raised platforms of the latrine, he produced a 'Potli' which contained eight Lachhas six Chooris and seven Balis. A recovery list attested by witnesses was prepared.

Amin seemed to be in a confessing mood at that time and immediately afterwards he produced a piece of Kathri from another part of his house and stated that he had torn a piece of this Kathri to wrap it round to dead body of Nabbo. This Kathri was also taken into possession and a recovery list was prepared. Amin's disclosures did not end here. He showed a cot without strings to Sri Naim and said that the Advain (string) of this cot was used to tie up the bundle which was recovered from Lakhpera grove. He was further questioned about the remaining ornaments and he stated that they were with his mother.

9. Shrimati Shakira was then interrogated and she also agreed to hand over the ornaments with her. She took Sri Nairn and the witnesses inside her house and from the crevice of a wall produced eight Lachhas. They were also taken in possession and sealed. Then from under a cornbin in another Kothri, she brought out the small gold nose-pin.

This was also recovered and sealed. Thus the entire ornaments worn by Nabbo were recovered and they were identified by the mother & other relations of the deceased girl in the identification proceedings which were held on 2-7-1956 by Sri R. P. Singh, S.D.M. Sidhauri.

10. The bones recovered from the Lakhpera grove were first sent to the Civil Surgeon, who could give no opinion as to the cause or the duration of death or the sex of the victim. In his opinion these bones were probably of a child of 8 or 9 years of age. These bones were then sent to the Chemical Examiner and he also could not determine the sex of the deceased. The bones in his opinion were of a human being between 5 and 8 years of age.

11. Earlier during his investigation Sri Nairn had discovered three other pieces of circumstantial evidence against the appellants, when he had recorded the statements of witnesses on the 13th and the 14th of June. From Constable Izharul Hag (P. W. 10) and Afzal Husain (p. W. 11) he had come to know that Amin appellant was seen by them at Mahrrmdabad at about 8 or 9 p. m. coming from the railway station side on the 11th of June and when he was questioned by Izharul Haq about his presence there at that time, he had replied that he had missed the train for Fatehpur and so was going back to Imalia. Izharul Haq had

made these inquiries because Amin had a shady reputation.

12. The same night Shrimati Zubeda (P. W. 4) who was at the house of the appellants at Imalia on that night was awakened from her sleep by the opening of a side door. She saw her mother Shakira opening the door and Amin coming into the house. Both of them talked in whispers for some time and then Amin picked up a piece of Tat and unloosed the strings of a cot and after unlocking a Kothri, he went inside.

Shortly afterwards he came out with a bundle wrapped in the Tat and tied with the string and went out of the house through a small window. When she enquired from her mother about this nocturnal episode, she was told that the bundle contained tobacco and as Amin had to catch a train which left Mahmudabad in the early hours of the morning, so he had left for the station at night. When the bundle was recovered subsequently in the Lakhpera grove, she identified the piece of Tat, the Kathri and the string as belonging to her mother.

13. The third circumstance that had come to light was that the same night between 12 and 1 Amin appellant was seen with a wrapped bundle in his hands in the Lakhpera grove by P. W. 13 Wali Mohammad, who was employed as a watchman of plot No. 11 of the said grove by P. W. 7 Shab Sir Ahmad, who had purchased its produce.

Amin was challenged by Wali Mohammad and he gave out the same story of proceeding to Mahmudabad railway station with a bundle of tobacco, as he had to catch an early train. This accidental meeting took place about 4 or 5 furlongs away from the place where subsequently the bones were found, it was on the basis of this chain of circumstantial evidence that the two appellants were prosecuted.

14. The defence of the appellants was that they had incurred the displeasure of the Muslim residents of Imalia because their pegs were rooted in the passage of the Tazia procession and they did not agree to uproot them. This led to a dispute which created bad blood between them and the other Muslims. This quarrel had taken Place more than a year before the incident.

The witnesses in the case were opposed to them because they wanted to turn them out of the village. About 8 or 10 months before the incident, the land which was in the cultivatory possession of Sadiq Ali, father of Amin appellant, was forcibly taken away from him. This land belonged to Shrimati Ruqqan whose niece was married to Sri Mohammad Naim, station officer, Mahmudabad. Sri Naim had helped Shrimati Ruqqan in taking this forcible possession and turning out the appellants from the village.

The appellants had then settled down at Fatehpur and used to prepare tobacco and sell it. They were not in Imalia on the 11th of June. Amin had gone to Jarwal to sell tobacco on that date and when he came back to Fatehpur, Shakira told him that some tobacco was left which can be sold at Mahmudabad. As Imalia was only two miles away from Mahmudabad, both of them wanted to see their village home and so they came back to Imalia on the 12th of June in the afternoon. When they reached Imalia, they found that the girl was missing.

The residents of Imalia resented their coming back, although Amin told them that they will go back shortly. Next morning Sri Naim came to the village and after holding a consultation with the villagers he gave both of them a beating and took them to the police station. They were detained at the thana and subjected to ill-treatment there uptill the 17th of June. Amin denied that any bundle was recovered from the Lakhpera grove at his pointing out.

Both the appellants further denied that they handed over any ornaments or any ornaments-were recovered from their house. The prosecution story regarding the manner in which the two appellants were arrested at Mahmudabad, the fact that Amin was seen in Lakhpera grove at night by Wali Mohammad, the handing over of the Kathri piece and the pointing out of the cot without Advain, the meeting of Amin with Izharul Haq and Afzal Husain at the Mahmudabad tea stall and the presence of Shrimati Zubeda in their house on the night of the 11th of June; all these facts were also denied. In defence the appellants examined Sri B. N. Srivastava, the Jail Doctor, to prove that they were medically examined on 18-6-1956, and both of them had several injuries.

15. it would be seen from the detailed history given above that the case against the api-pellants rests entirely on a chain of circumstantial evidence. Before analysing and testing the links of this chain it is necessary to decide two questions. These questions are.

1. Has the prosecution succeeded in proving that Nabbo has been killed and the bones recovered are of her dead body?

2. Has it been established beyond reasonable doubt that Nabbo was not killed by some mishap or accident and her death was the result of violence used against her?

In our opinion on the evidence led in the case, both these questions can be answered in the affirmative without any reasonable doubt. The counsel for the defence did not contend that the death of Nabbo has not been established. The recovery of the ready-made Choti with Lachha, black jumper and Chhint pyjama near the bonee satisfactorily fixes the identity of the dead body.

The reports of the Civil Surgeon and the Chemical Examiner are not of much help, but they also establish that the bones were of a child between 5 and 8 years. The identification of the articles of dress cannot be doubted and has not been questioned. We are, therefore, satisfied that Nabbo is no longer alive.

16. That she was killed by violent means can also safely be accepted. It was contended by the counsel for the defence that she might have strayed into the Lakhpera grove and then devoured by some wild animal. This contention was advanced because it was elicited in cross-examination that wild animals prowled in this grove. This argument, in our opinion, has no force. Firstly, it is difficult to accept that the girl came to this grove herself, as it is 1 1/2 miles away from Imalia.

Secondly, the bundle and the string would not have been recovered from the grove, if some wild beast had killed her. Again, the ornaments would also have been found lying near the bones near the grove, if she was the unfortunate victim of such an attack. The wild beasts could not have taken away the silver ornaments and placed them somewhere else to be found by the investigating agency later on.

The presence of the tied up bundle and the absence of the ornaments clearly proclaim human agency and it is obvious that the girl was killed for her ornaments. It is true that no signs of violence were found by the Civil Surgeon, but no weapon is needed to kill a child of 8 years. She was most probably strangled and as no flesh was present on the bones, the signs of asphyxia could not be noted.

The absence of flesh was perhaps due to the fact that after the body was placed in the Lakhpera grove, the wild animals that infested this grove devoured the dead body. We are, therefore of the opinion that the prosecution evidence satisfactorily proves that Nabbo was murdered.

17. We now take up the chain of circumstantial evidence that connects the appellants with this crime. This evidence consists of the following 12 links:

1. The appellants were hard up for money and even on the date of the incident they had tried to raise a loan which was refused both by Shahida (P. W. 2) and Hatim Ali (P. W. 12).

2. Nabbo and P. W. 5 Amir Hasan were seen 'standing under a tamarind tree near the house of the Appellants at about sunset time by P. W. 6 Mohammad Shafi and when Nabbo was asked to go back to her house, she said that she was going to a cinema show with her Mama (Amin appellant).

3. Nabbo went to the house of the appellants when she was called by Shakira on the pretext that she was wetting her clothes in the rain. Both the appellants were in their house at that time, as stated, by P. W. 5 Amir Hasan. This was the last time that she was seen alive.

4. When a search for the missing girl was made after sunset, Amin had left the village after locking a Kothri and Shakira by her conduct suggested that the girl was drowned in the tank.

5. Amin was seen at about 8 or 9 p. m. the same night at Mahmudabad by P. w. 10 Izharul Haq and P. W. 11 Afzal Hussain and on being questioned he explained his presence there by alleging that he had missed the Fatehpur train.

6. Shrimati Zubeda (P. W. 4) saw Amin coming back to his house at dead of night and talking with Shakira in whispers. She also saw Amin packing up a gunny bag and removing a string from the cot and after opening a locked Kothri he emerged out again after some time with a wrapped and tied bundle in his hands.

Amin left the house again at night and when Shrimati Zubeda made inquiries from her mother Shakira about this nocturnal departure, she was told that Amin was taking tobacco for sale as he had to catch an early morning train.

7. Between 12 and 1 the same night P. W. 13 Wall Mohammad saw Amin with a bundle in his hands in the Lakhpera grove. On inquiry Amin repeated the story of catching the early train and taking tobacco for sale. The place of this meeting was only 4 or 5 furlongs away from the place where the bundle containing the bones was subsequently found.

8. Shakira also left the Imalia house on the 12th of June and asked P. W. 4 Zubeda to go to her husband Hatim Ali (P. W. 12). None of the appellants came back to the village till they were brought under arrest on the morning of the 16th of June.

9. Amin when he was interrogated on the morning of the 16th took the investigating officer and witnesses to Lakhpera grove and produced a bundle from a guava plot. This bundle smelt foul and the broken skeleton of a human child between 5 to 8 years was found in that bundle. The clothes of the deceased girl were also recovered from the same place which establish that the skeleton was of Nabbo deceased.

10. After producing the bundle Amin brought the investigating officer and the witnesses to his house and produced the major portion of the ornaments of the deceased girl by digging-them out from the latrine.

11. Amin then produced a piece of Kathri from a Kothri of the house and a torn piece out of the same Kathri was found in the bundle recovered from Lakhpera grove. The bundle was tied with Advain and a cot without Advain was also found in the house of the appellants. This cot was pointed out by Amin himself.

12. Shakira also produced the remaining ornaments of the deceased girl from a crevice of the wall and from under a cornbin.

18. We have carefully analysed the chain link by link, and in our opinion it is only the last four circumstances which are important and which if accepted prove the case against the appellants. Some of the other eight circumstances also assume importance when read with these four circumstances, but by themselves they are inconclusive, even if they are believed.

After anxious consideration we have come to the conclusion that the majority of these eight pieces of circumstantial evidence are not believe able and they appear to us to be links which have been forged in order to embellish the prosecution case. We now proceed to give our reasons for holding this opinion.

19. The credibility of circumstantial evidence depends to a large extent upon the impression created in the mind of a court by the methods adopted by the investigating agency. Where these methods are fair and much criticism cannot be levelled against them, the investigation inspires confidence, but where there is a total disregard and a flagrant breach of the rule of law, very little value can be attached to such evidence.

Such an investigation is not only capable but likely to fabricate links and build up its chain of evidence. The investigation in this case was not only unfair, but highly tainted. It was unfortunate that Sri Mohammad Naim was posted at police station Mahmudabad. He had his relations in this area and he added the zeal of a partisan to the zeal of a police officer when he investigated this case.

It was remarkable that Sri Naim remained for three days in this village ostensibly investigating only the disappearance of a girl. We have mentioned above that the defence contended that Sri Naim was married to a niece of Shrimati Ruqqan and he helped her in forcibly ejecting Sadiq Ali from the possession of some fields. Sri Naim did not hesitate to commit perjury, when he denied on oath that he was married to the niece of Shrimati Ruqqan.

This fact was, however, elicited by the defence in the cross-examination of P. W. 1 Riyasat Khan as Riyasat Khan was the Manager on behalf of Shrimati Ruqqan,, his knowledge can-not be doubted. The residents of Imalia were, therefore, under the personal influence of Sri Naim and he could safely depend upon them to support any story which he may choose to place before the Court.

It seems to us that Sri Naim used this advantage to the full. He fabricated several links with the help of these tools. The following appear to us to be the doubtful links:

(a) That the deceased girl was seen at about :sunset time by P. W. 6 Moharamad Shafi and she told him that she was going to a cinema show with her Mama.

(b) That Shakira called the girl to her house.

(c) That Shrimati Zubeda was present in the house of the appellants on the night of the 11th June and she saw Amin taking away a bundle at night.

(d) That the appellant was seen at Mah-mudabad by Izharul Haq and Afzal Hussain at a tea stall.

(e) That wall Mohammad saw Amin at night In the Lakhpera grove.

In our opinion these are embellishments added by Sri Naim in order to build up the case against the appellants. We will now take up these pieces of evidence one by one.

20-25. (Their Lordships then examined the evidence and other circumstances of the case and proceeded as under:--)

That it would be seen that there are only three witnesses on whose testimony some reliance can be placed, although even in their case there are clear indications that they have been made to resile from their earlier statements which were adverse to the prosecution. These witnesses are P. W 1 Riyasat Khan, P. W. 2 Shrimati Shahida and P. W. 3 Shrimati Zaibun. Therefore, the only circumstances which can be safely accepted are:

1. The appellants wanted a loan which was refused by Shahida.
2. Shakira acted in an agitated manner and suggested that the girl was drowned in the tank when the search started on the evening of the 11th of June,
3. Both the appellants were in Imalia on the 11th and while Amin left on the evening of the 11th, Shakira left on the 12th.

These circumstances do not lead to any conclusion and, therefore the case against the appellants rests almost entirely on the remaining four circumstances which we have not discussed so far.

26. But before taking up these circumstances we will give our reasons why; in our opinion the appellants were illegally detained in custody by Sri Naim since the 13th and were subjected to third degree methods in order to extort confessions from them.

27. We have referred to the medical evidence produced by the defence, but now we will deal with it at length. Sri B. N. Srivastava, the Jail Doctor, examined the two appellants between 10. and 10.45 a. m. on the 18th of June. The following injuries were found On Amin:

1. Contusion $\frac{1}{4} \times \frac{1}{2}$ ' on the base of right thumb of hand.
2. Contusion 4×2 ' right side of foot upper two-third.
3. Contusion $\frac{1}{4} \times$ ' on left sole of foot on the middle one-third

Ex. Ka 14, the general diary report dated the 16th of June recorded at 19-45 at police station Mahmudabad shows that there were at least two other injuries on the person of Amin appellant. It is mentioned in this report that there were swellings on the left calf of Amin and his left arm. These injuries were not noted by the Jail Doctor, which either escaped his attention or which had subsided by the time when he did his examination on the 18th June. We are, therefore, of the opinion that Amin had received many more injuries than were actually detected by the Jail Doctor.

28. Then we come to the injuries of Shakira appellant.

The following injuries were found:

1. Contusion 2' x 1' on the right ankle lateral aspect.
2. Contusion 2 1/2' x 1 1/4' on the dorsum of left foot just above the basis of fingers.
3. Multiple contusion 3 1/2 x 2 1/4' on the upper one-third of right thigh outer aspect.
4. Multiple contusion 2 1/2' x 1 1/2' just 1 1/2' below injury No. 3 right thigh.
5. Contusion 2' x 1/2' on the right patilla.
6. Contusion 2' x 1/2' on the right patilla.
7. Contusion 1 1/2' x 1/2' medial to injury No. 6.
8. Multiple contusion 5 1/4' x 2 1/2' on the left half of upper arm and shoulder.
9. Contusion 2 1/2' x 1' left scapula middle.
10. Contusion 2 1/2 x 1 1/2' right shoulder top.
11. Contusion 3' x 1/2' right scapula middle. Apart from these injuries Shakira complained of internal injuries in her private parts, but when examined by a female warden, no injuries could be detected. We may at once say that we believe Shakira on this point and we are satisfied that apart from giving her a terrific beating she was also subjected to bestial indignities.

29. The duration of these injuries was given by the Doctor in the case of Amin as two days and in the case of Shakira as 36 hours. The margin of error in this duration according to the Doctor could be 9 to ten hours.

30. The prosecution explains the injuries of Amin by alleging that he fell down on the railway line when he was pursued. Izharul Haq constable is the witness who

gave this explanation. When the Doctor was cross-examined on the basis of this explanation he stated that the injuries of Amin could not be caused by such an accidental fall, but if he was deliberately felled down at such a place, then these injuries are possible.

As regards the injuries of Shakira, he stated that they cannot be caused even if she fell down more than once, but if she was forced to fall down again and again then these injuries are possible. Generally we hesitate to express our opinion on medical matters but it is impossible for us to accept that these injuries could be caused by repeated falls.

There is not the remotest possibility of these injuries being caused in any other way except by third degree methods. The site of injuries 2 and 3 on Amin makes it highly probable that he was struck repeatedly with a blunt weapon in the soles of his feet. There is also a strange symmetry in the injuries of Shakira which indicates a planned beating and she was subjected to a, greater torture because she was weaker and more likely to break and confess.

We have occasionally commented upon the questionable methods adopted by the investigating officers in investigating crimes, but Sri Naim seems to us to be one of the most outstanding and brilliant exponents of the cult of baton even amongst his own special class.

31. The trial court while discussing these injuries observed:

'The accused Amin has stated that he and his mother were arrested and beaten on 13-6-1956, and on subsequent days but the medical evidence disproves that version. The injuries were received by the two accused persons on 16-6-1956, and the duration could vary by about ten hours. Amin had only three injuries, one on the right thumb and two on the soles of the feet and they could possibly be caused when he tried to run away but was captured and force was used in capturing him.

However, the injuries on the person of Sha-kira are quite large in number and suggest that she was probably beaten after her arrest. That may have been done to extract confession from her on 16-6-1956, but there is no confession on the

record and in any event the beating given to her after being brought to the police station from Imalia on 16-6-1956, is not material so far as the merits of the case are concerned.'

The line of reasoning adopted by the trial court apart from being fallacious shows a lamentable lack of judicial approach. It shows an alarming tendency practised by so many judicial officers, namely, averting the eyes so that the unpleasant truth may not be seen. Justice cannot be divorced from truth and the first duty of a person who is entrusted with the task of administering justice is to do his best to reach the truth.

But it is a sad commentary on the existing conditions that even the most glaring misbehaviour of the investigating agency in criminal cases quite frequently goes unnoticed by the trial courts and instead of severely condemning these practices, they go to the length of accepting spurious explanations offered by the prosecution. They do not seem to realize that by this attitude they not only 'encourage but contribute to the non-observance of the rule of law. The Additional Sessions Judge made a fetish of the approximate duration of the injuries given by the Jail Doctor and on that basis built his house of cards.

It did not strike him that it requires very great experience and expert knowledge to give an approximate duration of injuries which are not fresh and the Jail Doctor cannot be classed amongst these great experts. The basic fallacy in his own line of reasoning escaped his notice. He came to the conclusion that Shakira was mercilessly beaten in order to extract a confession and yet he considered it probable that Shakira would willingly confess in the morning immediately after her arrest and even hand over the stolen property which was hidden, but for some unaccountable reason she will become so tough in the evening that even a severe beating will not break her and induce her to confess, although she had already done so in the morning.

The general diary report Ex. Ka 14 clearly states that both the appellants confess their guilt and a report for recording their confessions would be sent. It is, therefore, clear that to make this beating a subsequent act after the discoveries the trial court ignored the weight of evidence. Even on its own conclusions that

Shakira was beaten in the evening the trial Court did not consider it necessary to condemn the brutal conduct of Sri Naim. Perhaps the trial court thinks that these methods are permissible in order to investigate crimes.

32. Apart from the injuries discussed above, there is another important Piece of evidence which strongly corroborates the contention of the appellants that they were arrested earlier and not on the morning of the 16th of June. When Shrimati Shahida (P. W. 2) was examined before the Magistrate, she stated that on the third day on the disappearance of Nabbo the Sub-inspector came with Shakira and searched her house. Shrimati Zaibun (P. W. 3) went a stage further and stated before the Magistrate that the ornaments were recovered on the third day of disappearance. Both these witnesses denied their earlier statements, but could not explain how they came to be recorded.

The trial court attached no importance to these statements on the ground that the witnesses were simple village women who were led to make these statements by clever cross-examination. In our opinion these two witnesses in an unguarded moment blurted out the truth and then they were made to disown these statements in the interests of the prosecution.

These statements clearly prove that the appellants were not arrested on the morning of the 16th of June and Sri Naim fabricated the police records in order to hide the illegal detention of the appellants for several days. He staged their arrest on the morning of the 16th of June when he had broken their resistance lay third degree methods and they were ready to make disclosures.

33. To sum up our conclusions, we find that Sri Naim committed perjury in order to bide his intimacy with and influence over the witnesses. He safely used them to fabricate links of circumstantial evidence. He arrested the appellants probably on the 13th of June but in order to subject them to compulsion for some days he fabricated the police records and staged a fictitious arrest on the morning of the 16th of June. Lastly, by methods of torture, he broke their spirit and forced them to confess and made disclosures. It is in this background that we will assess the remaining four pieces of circumstantial evidence.

34. These come under the head 'discoveries' following the confessional statements made by the appellants. Two of these circumstances, namely the pointing out of a cot without string and handing over a piece of Kathri do not possess much evidentiary value. It is true that the string tied to the bundle containing the bones was identified by P. W. 4 Zubeda as belonging to her mother, but as in our opinion she was not even present in Imalia on the night of the 11th of June and yet deposes about hearing a whispered conversation between his mother and brother she is totally unreliable and her identification cannot be accepted.

We also think that a piece of ordinary string is not an identifiable article and the same applies to a piece of Tat. No identification proceedings were held in respect of these articles and the claim made by Zubeda was not tested. She simply picked out these articles in court. These articles do not possess any distinctive mark. No doubt the absence of string in a cot was a suspicious circumstance, but so many false links have been forged in this case that we cannot believe Sri Naim or the search witnesses when they say that a cot without string was pointed out by Amin. The search witnesses appear to us to be mere stooges of Sri Naim.

35. Similarly the presence of a Kathri in the house of the appellants does not connect it with the piece of Kathri that was recovered from the bundle found in Labhpera grove. A kathri is an ordinary article which may be found almost in any house in a village. No attempt was made at any stage to put the two pieces with their torn edges side by side to determine that together they formed one whole piece.

This would have been the best and perhaps the only evidence to prove that a piece out of the Kathri of the appellants was used in wrapping the dead body. The trial court instead of applying this test readily accepted the identification by Zubeda and the wholly unreliable testimony of Sri Naim and the search witnesses about the self-incriminatory statement made by Amin.

36. We are also of the opinion that the recovery of these articles cannot be described as a 'discovery' under Section 27 Indian Evidence Act. These articles were not recovered from any hidden place and in the normal course of

investigation the investigating agency was bound to see them and take them in possession without Amin making any statement of pointing them out. It has become the normal device of the investigating agency to turn an ordinary recovery into a discovery in order to utilize the provisions of Section 27 of the Indian Evidence Act against an accused person.

Sri Naim would have acted in a most inefficient and negligent manner if after the recovery of the bundle containing the Kathri piece he had not noticed the Kathri in the house of the appellants or the cot without strings himself, and it was only at the pointing out of Amin appellant that his attention was drawn to them. These two circumstances, also, therefore, do not advance the prosecution case against the appellants.

37. The remaining two circumstances, namely, that Amin produced the bundle containing the bones at Lakhpera grove and both the appellants produced ornaments of the deceased girl from hidden places, if accepted, are in our opinion sufficient to prove the case against Amin appellant at least, but the question arises whether this evidence, even if believable, can be used against the appellants.

38. The counsel for the State contends that this evidence is admissible under Section 27 of the Indian Evidence Act, which specifically lays down that any discovery made in consequence of information given by an accused person can be proved against him. There is no doubt that if the rule of admissibility laid down in Section 27 Indian Evidence Act is held to prevail, this contention must be accepted.

The various High Courts agree that Section 27 Indian Evidence Act is an exception to the general rule laid down in Sections 24 to 26 of the Indian Evidence Act and where any discovery or delivery of property of thing follows a confession, so much of the confession which strictly relates thereto is admissible in evidence, for these portions at least cannot be untrue.

In such a case it becomes immaterial that the confession was secured by any inducement, threat or promise for the resultant discovery is by itself the proof of its truth'. *Emperor v Misri*, ILR 31 All 592 (PB) (A); *In re, Chinna, Papiiah*, AIR 1940

Mad 136 (B) and Neharoo Mangtu Satnami v. Emperor, AIR 1937 Nag 220 (C), are a few out of the many authorities which) support this view.

39. In the Allahabad case cited above Knox,. Acting C. J. observed:

'The object of this section (Section 27, Indian, Evidence Act) was to provide for the admission of evidence which, but for the existence of this section, could not, in consequence of the preceding sections, be admitted in evidence. By it information, even if it amounted to a confession and was made to a police officer under any circumstances could be proved as against the accused, or rather so much of it could be proved as related distinctly to the fact thereby discovered.'

Similarly the learned Judges of the Nagpur High Court observed:

'Section 27, Evidence Act, is in the nature of a proviso relating to the previous sections which lay down the general rules as to the in-admissibility of confessions made in certain circumstances. Whether a confession to which Section 27 applies was induced by promises or not is immaterial.

The general ground for not admitting a confession made either to a police officer, or made under any inducement, or made by persons while in custody, is clearly the danger of admitting false confessions; but the necessity for this precaution disappears when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given.'

These views were, however, expressed at a time when the [Constitution of India](#) did not exist and they, therefore, need a re-examination. The [Constitution of India](#) not only changed the political structure of the country by giving a form to our new democratic State by laying down certain fundamental principles regarding human liberty and rights, but it also restricted the operation of laws whether old or new which were repugnant to these basic liberties and rights.

It provided a touchstone on which every law was to be tested. It represents the sovereign will of the people and is above all laws which must conform to the limits prescribed by it. There is a sanctity and permanence attached to it and it should not be lightly disregarded.

40. In the words of Marshall C. J., in *Marbury v. Madison*, (1803) 1 Cranch 137 at p. 176 (D):

'That the people have an original right to establish for their future Government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.'

Amongst the rights guaranteed to the people of India is the right to be free from the compulsion of testifying against one's self. This is incorporated in Article 20(3), of the [Constitution of India](#) and it runs as follows:

'No person accused of an offence shall be compelled to be a witness against himself.'

It is, therefore, to be considered whether in the circumstances of the case the appellants were compelled to be witnesses against themselves or not and if they were so compelled, whether the rule of law laid down in Section 27, Indian Evidence Act should apply or Article 20(3) of the [Constitution of India](#) becomes a bar to the acceptance of that rule. That there is a conflict between them cannot be denied.

41. Where such a conflict exists, it is the duty of the court to try to resolve this conflict, but if the conflict cannot be resolved, the Constitution being paramount and supreme must be held to prevail and the conflicting law must be held to be void. To quote Marshall C. J., again (1803) 1 Cranch 137 at pp. 176, 177, 178 (D):

'The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its Invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be riot law, does it constitute a rule as operative as if it was a law? This would be to over-throw in act what was established in theory;

If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

These, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions, it would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual.

It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.'

42. The Supreme Court of India has also repeatedly laid down in clear and unambiguous terms that the [Constitution of India](#) overrides all other laws and those laws, whether old or new, which are repugnant to it must be held to be void. Even 'colourable legislations' where the conflict is not direct, but indirect have been held to be ultra vires of the Constitution. To quote only one extract, Mukherjea J., observed in *Gajapati Narayan Deo v. State of Orissa* : [1954]1SCR1 .

'It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant.

On the other hand if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power If the Constitution of a State distributes legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitation on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act, within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being valid by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff J. in *Attorney General for Ontario v. Reciprocal Insurers*, 1924 AC 328 at P. 337 (F):

'Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.' In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions 'by employing an indirect method. In cases like these, the inquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority.'

43. The powers of the legislature in India are limited for they are made subject to the provisions of the Constitution by Article 245(1). Therefore, any law which directly or indirectly transgresses the fundamental rights guaranteed by the Constitution, and these include the right given by Article 20(3), must be held to be void

44. The only question that remains to be decided is whether in the circumstances of the case the appellants are entitled to claim the protection of Article 20(3) of the Constitution and consequently these discoveries following their confessions become inadmissible against them. Two questions arise at this stage:

1. Were the appellants persons accused of an offence?
2. Were they compelled to be witnesses against themselves?

We will take up these questions one by one. The term 'accused' or 'accused of an offence' is not defined either in the Evidence Act or the Criminal Procedure Code. The Dictionary meaning of the word 'accused' is to bring a charge against or to blame. In the Law Lexicon of British India by P. Ramanatha Aiyar 1940, 'accusation' is defined as the charging of a person with a crime. It is further mentioned in the Lexicon that 'to accuse' or 'threaten to accuse' of a crime is not restricted to the narrow meaning of accusation by course of law.

TO place a person in the position of an accused, an oral accusation is not necessary for circumstances alone might point a finger towards him. In our opinion where evidence whether oral or circumstantial points to the guilt of a person and he is taken in custody and interrogated on that basis, he becomes a person accused of an offence. The mere fact that his name was not mentioned as an accused in the first information report will not take him out of the category of persons accused of an offence.

A confession made by such a person stands on the same footing as the confession made by a person specifically named in the first information report. In Phipson on evidence (7th Edition) the opening paragraph of Chapter XXI dealing with confessions runs as follows:

'In criminal cases, a confession made by the accused voluntarily is evidence against him of the facts stated. But a confession made after suspicion has attached to or a charge been preferred against him, and which has been induced by any promise or threat relating to the charge and made by, or with the sanction of, a person in authority, is deemed not to be voluntary and is inadmissible.'

It would thus appear that the moment suspicion attaches to a person, he for all purposes becomes an accused person and any self-incriminatory statement made by him subsequently is inadmissible in evidence against him, if it is induced by any promise, threat or violence. That these two appellants were persons accused of an offence, when they made disclosures against themselves cannot be doubted.

Admittedly constables were deputed to arrest them and they were in police custody at the time when they made their disclosures. The investigating agency also clearly described them as accused persons in all the recovery lists which were prepared as a result of their handing over property and other things or at their pointing out. They were admittedly interrogated as accused persons.

Again the evidence furnished by these discoveries could have been used against them only if they were accused persons, for the words of Section 27 of the Indian Evidence Act apply only to discoveries made in consequence of information received from persons accused of an offence. If they were not accused persons

the prosecution cannot rely upon Section 27 of the Indian Evidence Act to prove this evidence against them. We are, therefore, satisfied that the two appellants were persons accused of an offence.

45. Coming to the second question, we find that it consists of two parts. The first part relates to their being compelled and the second part relates to their testifying against themselves. We have already answered the first part of this question in our decision and there is not the slightest doubt in our minds that they were not only compelled but brutally compelled before they made their disclosures.

46. We have now to interpret the words 'to be a witness' used in Article 20(3) of the Constitution. The Supreme Court has already interpreted these words in *M.P. Sharma v. Satish, Chandra* : 1978(2)ELT287(SC) , Jagannadhadag J., observed:

'Broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion'. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witnessstand. We can see no reason to confine the content of the Constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is 'to be a witness'.

A person can 'be a witness' not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (see Section 119, Evidence Act) or the like. 'To be a witness' is nothing more than 'to furnish evidence' and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes

Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. 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 witness¹ 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 witness⁷ is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available, therefore, to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.'

47. In the light of these observations it cannot be disputed that the appellants who 'were persons accused of an offence furnished evidence against themselves as a result of coercion. Their case is, therefore, clearly covered by Article 20(3) of the [Constitution of India](#).

48. That Article 20(3) applies to discoveries under Section 27, Indian Evidence Act. if these discoveries are the results of compulsion was also held in a Bench decision of this Court in Dhoom Singh v. State : AIR1957 All197 , but the learned Judges did not consider it necessary to decide the case on this point and found the prosecution evidence defective and insufficient on other grounds.

We are clearly of the opinion that the scope of Section 27, Indian Evidence Act is restricted by Article 20(3) of the Constitution and the discoveries which follow a confession brought about by compelling an accused persons cannot be used against him. We, therefore, hold that these discoveries are not admissible in evidence against the appellants.

49. The counsel for the State has argued that the view which we have taken will not only make the task of the investigating agency extremely difficult, but we will be acquitting self-avowed murders, which would be highly injurious for the safety of the community. This argument is not worthy of our consideration. As observed by Justice William O. Douglas in his book 'We the Judges', at page 64:

'If the judiciary bows to expediency and puts questions in the political rather in the justiciable category merely because they are troublesome or embarrassing or pregnant with great emotion, then, the judiciary has become a political instrument itself. Courts sit to determine questions be stormy as well as on calm days. The

constitution is the measure of their duty. And it is the Constitution, not the judges' individual preferences, that marks the line between what is justiciable on the one hand and, on the other, what is political and therefore beyond the reach or competence of courts.'

If the State wants to arm the investigating agency with the barbarous right of using compulsion and violence for the purpose of extracting confessions, it can amend the Constitution, taut so long as the Constitution stands and it is meant to stand permanently the duty of the judges, is clear and they must hold it paramount over all other laws. Apart from this in our opinion the escape of offenders from punishment spells far less danger to the community at large than the non-observance of law by those whose primary duty is to uphold and maintain the law.

It destroys the very foundation of the 'rule of law' which is the greatest asset and protection of a democratic State. Article 20(3) of the Constitution is a recognition of the principle that it is inconsistent with the dignity of human beings that they should be subjected to the methods of the inquisition. It is a step towards achieving a successful termination of what has been described as Man's long struggle to live under a government of laws and not of men.

50. To quote Justice Douglas again ('We the Judges,' page 30):

'Legal history shows, I think, that man's struggle to be free is in large degree a struggle to be free of oppressive procedures -- the right to be free from torture, the right to know the charge and to have a fair opportunity to defend, the right to have a system of laws that is not a pitfall for the innocent.'

The very essence of the rule of law is that every individual should be able to seek the protection of the laws whenever he receives an injury. In other words every injury must have its redress, but if we do not hold the evidence collected by inquisitional methods as inadmissible, we would be holding that there are injuries against which there is no redress.

We would be encouraging tiny despots in every district to tyrannise and establish then reign of terror over the guilty and innocent alike for they seem to know no

other method of investigation except the use of their batons. It would mean the end of everything for which the rule of law stands.

51. AS we have held the evidence furnished by discoveries to be inadmissible, there is no satisfactory evidence left against the appellants to prove their guilt. Even if we had not reached this conclusion we would not have accepted this evidence. It was observed in : AIR1957 All197 :

'Where facts disclosed point, as they clearly do in this case, to the accused having been sub-jected to third degree methods prior to the discovery, the genuineness of the discovery is rendered doubtful and the discovery becomes worth-less as a piece of evidence

In these circumstances it is not open to the prosecution to urge that the 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.'

52. We are in entire agreement with the view expressed above and we do not consider it safe to rely on the evidence furnished by these discoveries. We have already referred in an ear-lier part of this decision to the statements of P. W. 2 Shahida and P. W. 3 Zaibun. We have relied upon their statements which show that the house of the appellants was searched on the 13th of June and perhaps the ornaments were also recovered on that date.

Sri Naim appears to us to be quite capable of recovering the ornaments on the 13th and staging a recovery on the 16th. The story of the division of these ornaments is also highly suspicious and seems to us to be an attempt to incriminate Shrimati Shakira by proving her exclusive possession over some of the property. It does not stand to reason that the mother and son would divide the ornaments, and, even if they intended to do so, they will do it immediately and will not bury them at the same place.

53. The recovery of the dead body could also have been made without any assistance being given by Amin appellant. It is admitted that there are watchmen in Lakhpera grove who round their respective areas in the course of their duty.

This is also admitted that a foul smell was coming from the bundle. Any of the watchmen could have been attracted by this foul smell and brought it to the notice of Mahmudar bad police.

Police station Mahmudabad is only half a mile away from this grove. After receiving this information Sri Naim could stage his act of recovery at the pointing out of Amin appellant on the 16th. All these doubts arise because our confidence in the investigation has been completely shattered by the conduct of Sri Naim, so we would not have accepted this evidence against the appellants even if we had held it to be admissible.

54. As a result of our findings and conclusions, we set aside the conviction of both the appellants under Section 302, I. P. Code as well as Sections 364 and 379, I. P. Code. There was no evidence to support a conviction under Section 364, I. p. Code at all and it is not understandable how the trial court convicted them on this charge.

55. Both the appellants are acquitted of all the offences charged against them and they should be released forthwith, unless wanted in connection with some other case. The reference made by the trial court is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com