

Shri Irfan Ali Vs. State

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Court : Allahabad

Decided On : Oct-29-1968

Reported in : 1970CriLJ603

Judge : Gangeshwar Prasad, J.

Appellant : Shri Irfan Ali

Respondent : State

Judgement :

ORDER

Gangeshwar Prasad, J.

1. Irfan Ali, applicant in revision No. 1166 of 1964 and Smt. Lareti, applicant in revision No. 1181 of 1964 who were tried together by the Assistant Sessions Judge, Bareilly, were convicted under Section 120B, I. P. C. read with Section 328, I. P. C. and Smt. Lareti was further convicted under Sec. 328, I. P. C. simpliciter. Irfan Ali was sentenced to two years rigorous imprisonment on the charge against him and Smt. Lareti was sentenced to two years' simple imprisonment on each of the two charges for which she was convicted. The sentences imposed upon Smt. Lareti were, however, directed to run concurrently. The applicants appealed against the convictions and sentences, but their appeals were dismissed by the Civil and Sessions Judge Bareilly-Bijnor. Thereupon they came up in revision to this Court.

2. Briefly stated the prosecution case was as follows:

In 1959, when the offences were said to have been committed, both the applicants were in the employ of Sri Ashwini Kumar, 1. A. Section who was at that time posted as District Magistrate, Bareilly. Smt. Lareti was employed as an Aya and Irfan Ali as a motor driver. The applicants had grown intimate with each other and had eventually developed illicit relations. One Puran was also in the service of Sri Aswini Kumar at that time as a cook. These three persons and one Ali Husain, orderly, lived in the outhouses attached to Sri Ashwini Kumar's residence, Banney, a cousin of Irfan Ali, also used to live with Irfan Ali, and since he was out of employment in those days, the applicants were anxious to oust Puran and have Banney appointed as a cook instead. To achieve this object they spread a rumour that Puran had illicit relations with Ali Husain's married daughter, who was staying with Ali Husain. Later, it so happened once that Puran chanced to see the two applicants, Smt. Lareti and Irfan Ali, in a compromising position inside the motor garage of Sri Ashwini Kumar. He started telling people about what he had seen, with the result that the matter became the subject of common talk and the applicants got apprehensive that it may reach the ears of Sri Ashwini Kumar and lead to unpleasant consequences. The applicants, therefore, became very keen on getting Puran turned out of the service of Sri Ashwini Kumar. With that end in view Smt. Lareti dropped some pieces of salt in the Dal cooked by Puran one day so that Sri Aswini Kumar and his wife may feel annoyed and dissatisfied with Puran. Since this did not have the desired effect the applicants entered into a conspiracy to mix Dhatura in the food prepared by Puran for the members of Sri Aswini Kumar's family so that Puran may be finally turned out. In prosecution of that conspiracy Smt. Lareti managed to mix Dhatura in the food which was served by Puran for Sri Aswani Kumar and Smt. Aswini Kumar on the night of 3rd May 1959. That day Sri Aswini Kumar had gone to Nainital with the Commissioner and returned to his residence late. The food was laid for him and his wife at about 10 or 10.30 P. M. and one of the items of the food was cooked brinjal vegetable. Sri Aswini Kumar had no appetite and he, therefore, took only some soup and just a little of two other vegetables but did not eat the brinjal vegetable at all. Smt. Ashwini Kumar, however, had her dinner as usual and ate the brinjal vegetable as well. After about an hour Smt. Ashwini Kumar began feeling unwell and when her

condition showed deterioration Dr. Miss A. W. Dukley Medical Superintendent of the Dufferin Hospital, Bareilly and, later, the Civil Surgeon, Dr. C. S. D. Misra, were sent for. As the Doctors suspected it to be a case of Dhatura poisoning the stomach of Smt. Ashwini Kumar was washed and the stomach wash was duly preserved and sealed for examination. Smt. Ashwini Kumar recovered after treatment for a few days.

The Civil Surgeon made a formal report about the matter to District Magistrate who forwarded it to the Deputy Superintendent of Police, and the latter ordered registration of a case and investigation. The Circle Inspector of Police started the investigation but later it was taken up by the Criminal Investigation Department. The stomach wash was sent for examination to the Chemical Examiner, Agra, who reported that Dhatura was detected therein. Smt. Lareti and Irfan Ali were taken under arrest in the night intervening 21st and 22nd May, 1959. On 28th May, 1959, at the pointing out of Irfan Ali, the investigating Officer recovered roots, stems and one dry fruit of a plant from a place within the limits of Sri Ashwini Kumar's residence and a stone from his motor garage. These articles were also sent for examination to the Chemical Examiner, Agra, who reported that the roots, stems and the fruits were identified to be of Dhatura plant and that Dhatura was detected on the stone. On 1st June 1959 Smt. Lareti made a confession which was recorded by a Magistrate in jail. After the completion of the investigation the applicants were sent up for trial.

3. Irfan Ali pleaded not guilty. Smt. Lareti, in her statement in the committal proceedings, admitted guilt, accepted the correctness of all the facts alleged against her by the prosecution including the administration of Dhatura and acknowledged having made the confession recorded in jail; but, at the trial, she, pleaded not guilty, repudiated the allegations made against her and, with regard to her confession, stated that she had made it as directed (meaning, presumably, as directed by the police) because her daughter was seriously ill and she was assured that she would be let off if she did so. The Courts below found the charge of criminal conspiracy to administer Dhatura poison proved against the applicants and the charge of actual administration of the poison proved against Smt. Lareti. As was but natural in a case of this kind, there was no direct evidence in proof of

the offences with which applicants were charged. The case of the prosecution rested on evidence of motive, some items of circumstantial evidence including the evidence of conduct of the applicants and the recoveries made at the instance of Irfan Ali, and the confessional statements made by Smt. Lareti. The courts below accepted the entire prosecution evidence and also held that the confessional statements of Smt. Lareti were voluntary and true.

4. The evidence led by the prosecution clearly proved that Dhatura was mixed in the brinjal vegetable which was served for Sri Ashwini Kumar and Smt. Asnwini Kumar on the relevant night. The children of the family who had taken their food earlier and had also eaten the brinjal vegetable had no complaint whatsoever, and Sri Ashwini Kumar who took only the other two vegetables and not the brinjal vegetable did not at all feel unwell. Puran too, who took his meal later and ate the brinjal vegetable also, remained quite well. Smt. Ashwini Kumar, however, who ate along with other things the brinjal vegetable started feeling unwell shortly afterwards, and Dhatura was detected in her stomach wash. The only reasonable inference in the circumstances, therefore, is that somebody mixed Dhatura in the brinjal vegetable served for Sri Ashwini Kumar and Smt. Ashwini Kumar. In the courts below it was suggested on behalf of the applicants that the case might have been one of attempted suicide by Smt. Ashwini Kumar, but the suggestion was repelled and, indeed, there was no foundation for it and having regard to the circumstances, it was too fantastic to deserve serious consideration. Very rightly, the suggestion was not put forward by the learned counsel for the applicants before me.

5. In regard to the fact that it was Smt. Lareti who mixed Dhatura in the brinjal vegetable the two confessional statements of Smt. Lareti, one made in jail during investigation and the other made in committal proceedings, constituted the main evidence. The judgments of the courts below clearly show that the rest of the evidence was regarded as only corroborative of the confessional statements and not as sufficient in itself to establish the above fact. This, in my opinion, was a correct estimate of the value and the probative force of the evidence other than the confessional statements. If the confessional statements were either untrue or had not been voluntarily made, the remaining evidence could at best only involve Smt.

Lareti in suspicion of a grave character but it could not fix the guilt upon her conclusively. The courts below considered in detail the circumstances attending the confessional statements and they felt satisfied of. their voluntariness and truth. Their finding in regard to the confessional statements and to the guilt of Smt. Lareti was not at all challenged before me by the learned counsel for Smt. Lareti. I shall, however, briefly refer to the main grounds on which the confession recorded in jail was assailed in the courts below.

6. The two major objections urged against the confession were that Smt. Lareti was detained in police custody for a- unduly long period before she was sent to jail and that the confession should have been recorded in court, and not in jail. As noted above Smt. Lareti was arrested in the night intervening 21st and 22nd May but she was sent to jail on 1st June. For about ten days, therefore, she was kept in police custody and, unless satisfactorily explained, this prolonged detention was, indeed, a circumstance strongly militating against the voluntariness of the confession.

In *Nathu v. State of Uttar Pradesh* : 1956 CriLJ152 , there was before the Supreme Court a confession of the appellant who had been kept separately in the custody of the C.I.D. Inspector for about thirteen days preceding the making of it. Dealing with that confession their Lordships observed:

It appears to us that the prolonged custody immediately preceding the making of the confession is sufficient, unless it is properly explained, to stamp Exhibit P-15 as involuntary. P.W. 33 made no attempt to explain this unusual circumstance. It is true that with reference to this matter the appellant made various suggestions in the cross-examination of P.W. 33, such as that he was given 'bhang' and liquor, or shown pictures, or promised to be made an approver, and they have been rejected- and rightly- as unfounded.

But that does not relieve the prosecution from its duty of positively establishing that the confession was voluntary and for that purpose, it was necessary to prove the circumstances under which this unusual step was taken. There being no such evidence, we are unable to act upon Exhibit P-15 as a voluntary confession. It was argued that better evidence was not forthcoming, as the investigation by P.W. 32

was, as already stated, halfhearted and perfunctory, and no adequate steps were taken to secure evidence before P.W. 33 took up the matter on 18-7-1952.

All this is true, and the result is no doubt very unfortunate, but that does not cure the defect from which Exhibit P-15 suffers. It was also argued that both the courts below had found that Exhibit P-15 was voluntary and that that was a finding with which this Court would not interfere in special appeal. But, then the courts below have, in coming to that conclusion, failed to note that P.W. 33 has offered no explanation for keeping the appellant in separate custody from the 7th to 20th August, and that is a matter which the prosecution had to explain, if the confession made on 21-8-1952 was to be accepted as voluntary.

In the instant case, however, the Investigating Officer P.W. 29 gave an explanation regarding the detention of: Smt. Lareti and the explanation was found by the courts below to be acceptable. In giving their findings as to the voluntariness of the confession, the courts below took into account the fact that Smt. Lareti was detained in police custody for about ten days before being sent to jail and her confession was recorded the next day thereafter, and the conclusion reached by them cannot, therefore, be said to be vitiated on account of an omission to consider this important circumstance relating to the confession.

In *Ram Prakash v. State of Punjab* : 1959 CriLJ90 , the Supreme Court had before it a confession which was made after the accused had been kept in police custody for fifteen days preceding the confession and which was recorded by a Magistrate barely an hour after the production of the accused before him. Their Lordships observed that, the Magistrate ought not to have recorded the confession on the day he did and he ought to have remanded the accused to jail custody for a few days in order that the police influence may be removed from his mind, but the confession was not discarded on that account. In view of the care which the Magistrate had taken to satisfy himself as to the voluntariness of the confession before recording it, the intrinsic reliability of the account given in the confession, and the acceptance of the confession by the accused in his statement in the committal proceedings their Lordships held that the confession was both voluntary and true.

It cannot, therefore, be urged that by reason of the fact that Smt. Lareti was detained in police custody for about ten days and her confession was recorded just a day after her confinement in jail the confession could in no circumstance be regarded as having been voluntarily made. Whether the other facts of the case could dispel the doubt created by the above feature of the confession and could ensure its voluntary character in spite of it is, however a different matter.

7. As to the impropriety of recording the confession in jail there could hardly be any doubt. As pointed out by their Lordships of the Supreme Court in *Ram Chandra v. State of Uttar Pradesh* : 1957 CriLJ559 , the first rule of the standing orders issued by the Government of Uttar Pradesh and printed as Appendix XIX at page 566 of Manual of Government Orders, Uttar Pradesh (1954 Edition) says that confessions may ordinarily be recorded in open court and during court, hours unless for exceptional reasons it is not feasible to do so and it thus 'emphasises that the Magistrate in recording confession is exercising part of his judicial function in the manner prescribed by law.' It was not, however, laid down in that case that irrespective of any other fact or consideration a disregard of the above-mentioned rule would in itself entail the rejection of a confession. It will be noticed that their Lordships observed that there was no tangible evidence, either of a direct or of a circumstantial nature, in corroboration of the confession (which was a retracted confession) and then proceeded to say:

It appears to us, however, clear that in this case it would be extremely unsafe to base a conviction for murder on the confession of the appellant Ram Chandra which, as pointed out above, is clearly open to a good deal of criticism, and has been taken in the jail without adequate reason, a fact the significance of which has not been noticed by either of the courts below. We are also of the opinion that the story of murder as given in the confession is somewhat hard to believe'. That a confession may remain worthy of acceptance and be acted upon, in spite of having been recorded in jail, would be apparent from a reference to the decision of the Supreme Court in *Hem Raj Devi Lal v. State of Ajmer* AIR 1954 SC 4G2, where it was observed:

No doubt the confession was recorded in jail though ordinarily it should have been recorded in the Court House, but that irregularity seems to have been made because nobody seems to have realised that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession.

While, therefore, it is true that the abovementioned circumstances made the confession of Smt. Lareti open to serious criticism and brought its voluntariness, gravely into question, it cannot be denied that the courts below could still hold that the confession was voluntary if, after properly appreciating the importance and significance of these circumstances, they found that there were other facts and circumstances which completely assured its voluntariness. Such assuring facts and circumstances were, I think, present.

8. (His Lordship reviewed the circumstances under which the confession was made and also considered the confessional statement, and agreed with the lower court that it was voluntary confession and proceeded.)

Having regard to all the facts and circumstances of the case the finding of the courts below that Smt. Lareti mixed Dhatura in the food served for Smt. Ashwini Kumar and her husband and was guilty of an offence punishable under Section 328 I.P.C. was thus quite correct. Indeed, as I have noted at an earlier stage of the judgment, the learned Counsel for Smt. Lareti did not challenge the finding of the courts below against her. Nevertheless, I examined the record to satisfy myself of its correctness, and particularly of the voluntariness and truth of the confessional statements on which it was principally based. The confession of Smt. Lareti, howsoever negligible its value and howsoever limited its use against Irfan Ali. could, in a certain situation and for a certain purpose, be taken into consideration against him and that also made it necessary for me to consider the grounds on which the confession was assailed in the courts below.

9. The law as to the proper use of the confession of a co-accused is well settled, and in *Haricharan Kurmi v. State of Bihar* : 1964 CriLJ344 , their Lordships of the Supreme Court have laid it down as follows:

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence, circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person, it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kash-mira Singh v. State of Madhya Pradesh* : 1952 CriLJ839 , where the decision of the Privy Council in *Bhuboni Sahu's case* has been cited with approval.

In : 1952 CriLJ839 (referred to in the above decision) their Lordships quoted with approval the following passage from the judgment of Reilly, J. in *In re, Periyaswami Moopan*, ILR 54 Mad 75 at p. 77 : AIR 1931 Mad 177 at p. 178:

the provision goes no further than this where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence.

and then proceeded to observe:

Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first to marshall the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to

sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

10. The confession of Smt. Lareti, therefore, could not, to quote the words of Reilly, J. from the case referred to by their Lordships, 'be added to supplement evidence otherwise insufficient', and could be used only to further strengthen the conclusion reached by the court on the other evidence. In other words the other evidence should not only have been worthy of reliance but should also have been, by itself and unaided by the confession, sufficient for a finding of guilt against Irfan Ali. Clearly that evidence was not of such a character.

11. The most important pieces of evidence against Irfan Ali were the recoveries made at his instance. The recovery of roots, stems and a dry fruit of Dhatura may be taken up first. Sri R.N. Azad, I.A.S. P.W. 24 who was posted as a Magistrate at Bareilly and occupied the residence of the District Magistrate for fifteen or twenty days in January 1959, stated that he had seen five or six Dhatura plants growing at a place within the compound of the District Magistrate's residence. Prior to his being taken in the Indian Administrative Service he was an Expert of Plant Diseases in the Indian Horticultural Research Institute and in that capacity he had done some work on Dhatura species, That presumably accounted for his having taken notice of the plants. Sri R.N. Azad further stated that towards the end of May 1959 the C.I.D. Inspector took him to the place where he had seen the Dhatura plants and he found that the plants were not there. The C.I.D. Inspector who conducted the investigation deposed to having taken Sri R.N. Azad on 29th May 1959 to the place where Irfan Ali had pointed out two Dhatura roots. The fact that the recovery was made on the pointing out of Irfan Ali from a place where Dhatura plants existed in 1959 has been found established by the courts below and the finding on that matter should be accepted. But the recovery alone could only lead to the inference that Irfan Ali knew where Dhatura plants were to be found and mere knowledge of that fact was not a circumstance of much significance. Irfan Ali was living in the compound of Sri Ashwini Kumar's residence, and the statement of the C.I.D. Inspector indicates that the latrine meant for the servants was at a distance of about thirty paces from the place of recovery. Irfan Ali might, therefore,

easily have known of the existence of Dhatura plants at the place from where the recovery was made without having had anything to do with them. The prosecution, however, also led evidence to the effect that before pointing out the place of recovery Irfan Ali, whilst in police custody, stated that 'the Dhatura plants from which he had extracted Dhatura fruits and which he had subsequently broken were within the limits of the bungalow towards the jail and he would go and show the same.' This fact was deposed to by the C.I.D. Inspector and the recovery witnesses P.W. 20 and P.W. 22. The trial Judge held that the only portion of the above statement which was admissible in evidence was that which related to the existence of Dhatura plants towards the jail within the limits of the bungalow and to the preparedness of Irfan Ali to go and show them. The rest of the statement did not, in his opinion, fall within the 1970 Cri.L.J. 39. purview of Section 27 of the Evidence Act and was, therefore, inadmissible. The learned Civil and Sessions Judge, however, differed on this matter from the trial Judge and, relying on *Chinnaswamy Reddy v. State of Andhra Pradesh* : [1963]3SCR412 and *Brijesh Kumar v. State* : AIR1958 All514 , he held that the entire statement was covered by Section 27 of the Evidence Act and was admissible in evidence.

12. In *Chinnaswamy's case* : [1963]3SCR412 the appellant stood charged with an offence punishable under Section 411 I.P.C. in respect of certain ornaments which were said to have been discovered in consequence of an information given by the appellant whilst in police custody. The statement was to the effect that 'he had hidden them (the ornaments) and would point out the place.' The Supreme Court held the entire statement quoted above to be admissible, but also pointed out that 'these words by themselves though they may show possession of the appellant would not prove the offence, for after the articles have been recovered the prosecution has still to show that the articles recovered are connected with the crime i.e., in this case the prosecution will have to show that they are stolen properties.' In the instant case, Irfan Ali was not alleged to have said that he had kept or thrown broken stems or fruits of Dhatura plants at the place which he would point out and the question of the admissibility of any such statement does not, therefore, arise. Some stems and dry fruits of Dhatura were certainly, according to the prosecution evidence, recovered within a distance of one yard from the place where Irfan Ali pointed out Dhatura roots, but it could not on that

account be correct to construe his statement as meaning that he had kept or thrown the stems near the spot where he had broken the plants. Section 27 of the Evidence Act is in the nature of an exception to the prohibition imposed by the two preceding sections of the Evidence Act, and a statement which is sought to be made admissible under that provision must be construed strictly and with exactitude. Even a slight variation in the language of the statement may substantially change its meaning and import and have a far reaching effect on the inference to be drawn from it. While, therefore, a verbatim reproduction of the words used by the accused may not be expected in the recovery memo prepared by the police officer or in the deposition of the witnesses of recovery, precision is a matter of utmost importance in the interpretation of the statement of the accused as incorporated in the recovery memo and as proved in court. Only such information should be deemed to have been given by the accused as the words used by him expressly conveyed and the scope of the information cannot be extended by reading possible implications in it or by judging its meaning with reference to all the facts that were discovered. The facts discovered may quite frequently exceed and go beyond the information given by the accused and an information cannot therefore, be regarded as having contained all the discovered facts. The statements of Irfan Ali did not contain any information to the effect that stems or fruits of Dhatura plants were thrown by him at the place where he had broken the plants on at the place to be pointed out by him. The stems and the fruit recovered from near the place might not have been of the plants whose roots Irfan Ali pointed out, particularly because the evidence of Sri R.N. Azad shows that there were five or six Dhatura plants at that place. The recovery was made twentyfive days after the commission of the alleged offence and the stems could have been thrown there by anybody and not necessarily by the person who separated the stems from the roots pointed out by Irfan Ali. Again, the throwing might have been done much after the incident and might have been wholly unconnected with the offence. In these circumstances the statement made by Irfan Ali cannot be read as having reference to the stems recovered by the C.I.D. Inspector.

It may also be noted that the C.I.D. Inspector and the recovery witnesses did not state in their evidence that Irfan Ali had pointed out the stems and the fruit. The

statement of Irfan Ali must, therefore, be regarded as having been limited to the information regarding the existence towards the jail side of the bungalow of Dhatura plants from which he had extracted fruits and which he had subsequently broken and regarding his preparedness to go and show them (admissibility to be considered later).

I may here mention that according to the statements of the C.I.D. Inspector and the recovery witnesses Irfan Ali placed his hands on two roots and said that they were of those very plants from which he had extracted Dhatura fruits. The placing of the hands, which amounted only to pointing out, could of course be proved, but the statement made by Irfan Ali thereafter was, apart from the reason to be discussed later, inadmissible also on account of having been made subsequent to the discovery. The pointing out done by Irfan Ali did not, however, cover the stems and mere nearness of the stems to the roots could neither make the pointing out have that effect nor establish any necessary relation between them, particularly when the other Dhatura plants which were seen there by Sri R. N. Azad In January 1959 were not found by him on 29th May 1959, and the stems might, therefore, have been of those other plants. It is significant in this connection that according to the recovery memo Ex. Ka-21 it was only for additional precaution (Ehtiyat Mazeed) that roots of the three other plants (besides the two roots pointed out by Irfan Ali) and stems etc. lying within a yard were taken into possession by the C.I.D. Inspector. I have dwelt at some length upon the recovery of the stems although, in my opinion, the case of the prosecution does not advance even if the information given by Irfan Ali is regarded as having covered the stems as well.

13. So far as that portion of the information is concerned which related to the preparedness of Irfan Ali to go and show Dhatura plants it is undoubtedly admissible, and the question to be considered is only with regard to the admissibility of that portion of the information which related to the extraction of fruits and the breaking of plants. This second portion (which is the first portion in the statement as quoted above) of the information does not, to my mind, stand on the same footing as the information which was mainly in question in Chinnaswamy's case : [1963]3SCR412 , i.e., the information that the appellant in that case had hidden the ornaments at the place to be pointed out by him. The

extraction of fruits and the breaking of plants by Irfan Ali were facts relating to the past user; or the past history of the plants whose roots he was prepared to point out. The present case is, therefore, distinguishable from Chinnaswamy's case : [1963]3SCR412 . In : AIR1958 All514 (supra), the other case relied upon by the learned Civil and Sessions Judge, it has been stated at page 515 of the report that 'On 25-6-1956 Brijesh is said to have told the Sub-Inspector that he could point out the place where the murder was committed and he led him to go with the witnesses to a field near Dubai where blood stained earth was recovered.' At page 520, however, there is a passage indicating that the accused had pointed to a spot in a certain field of Dubai village and said 'This is where we committed the murder,' and that statement was held to have been rightly allowed to be proved. I may, however, with respect, observe that admission in evidence of a statement of the above kind would not be justified in view of the decision, of the Supreme Court in Aghnoo Nagesia v. State of Bihar : 1966 CriLJ100 . The appellant in the Supreme Court case had lodged a first information report at a police station containing a detailed confession regarding the commission of the four murders with which he stood charged. Their Lordships observed that save and except as provided by Section 27 of the Evidence Act and save and except the formal part identifying the accused as the maker of the report no part of the confessional statement contained in the first information report could be tendered in evidence, and then held that out of the facts mentioned in the first information report what was admissible was only the information relating to the discovery of the dead bodies and the Tangi. Their Lordships divided the statement made in the first information report into 18 paragraphs each paragraph containing a separate fact. It would be seen that in respect of each of the four murdered persons the appellant had given information not merely as to the places where their dead bodies would be found but also as to his having murdered them there or near about and as to how the dead bodies happened to be at those places and in the condition in which they were to be found. The only portion of the information accepted as admissible by their Lordships, however, was that which related to the place where the dead bodies were lying and to the place where the appellant concealed the Tangi, and the final position in that case was summed up as follows:

The entire evidence against the appellant then consists of the fact that the appellant gave information as to the place where the dead bodies were lying and as to the place where he concealed the Tangi, the discovery of the dead bodies, and the Tangi in consequence of the information, the discovery of a blood-stained chadar from the appellant's house and the fact that he had gone to Dungi Jharan hills on the morning of August 11, 1963. This evidence is not sufficient to convict the appellant of the offences under Section 302 of the Indian Penal Code,

In the light of this decision of the Supreme Court it must be held that the statement of Irfan Ali containing the information that he had extracted Dhatura fruits and had subsequently broken the plants is not admissible in evidence and that the learned Civil and Sessions Judge committed an error of law in regarding that information as admissible and taking it into consideration. Evidently, none of the informations given by the appellant in Aghnoo Nagesia's case : 1966 CriLJ100 , about the circumstances in which the dead bodies happened to be at the places and in the condition in which they were found was held by their Lordships to be related distinctly to the facts thereby discovered as required by Section 27. The information given by Irfan Ali, in the instant case, as to how the roots of Dhatura plants pointed out by him happened to be in the condition in which they were found, i.e., without stems, cannot, therefore, be regarded as an information related distinctly to the facts discovered and it has to be rejected as in-admissible. Indeed, the object to which the aforesaid information related and the context in which it was discovered make the inadmissibility of the information still more obvious. The two roots pointed out by Irfan Ali had not come to exist there as a result of some act done by him and three other Dhatura roots in a similar condition were also found at that place and taken possession of by the C.I.D. Inspector. The learned Civil and Sessions Judge has observed that if Irfan Ali had not said that he had destroyed the plants there would have been no recovery of the roots because 'the plants would have been looked for and would not have been found.' The evidence shows that even the roots were not looked for but were actually pointed out by Irfan Ali by placing his hands on them; but, quite apart from this, there is no ground for saying that the roots would not have been recovered if Irfan Ali had not said that he had himself destroyed the plants. However, on every view of the situation the decision of the Supreme Court in Aghnoo Nagesia's case : 1966 CriLJ100 ,

precludes the admissibility of the information relating to the extraction of fruits and the destruction of plants.

14. Two other decisions of the Supreme Court should also be referred to in this connection. In *Udai Bhan v. State of Uttar Pradesh* : AIR 1962 SC1116 , the appellant, who stood charged under Sections 457 and 380 I.P.C., was alleged to have handed over to the police a key saying that he had opened therewith the lock of the shop in which the offences were alleged to have been committed.¹ Dealing with the admissibility of the above statement their Lordships observed:

The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the facts discovered i.e., the finding of the key.

15. The other decision is *Prabhu v. State of Uttar Pradesh* : [1963]2SCR881 , The information alleged to have been given by the appellant in that case was that 'the axe with which the murder had been committed and his blood stained shirt and dhoti were in the house and the appellant was prepared to produce them', and with regard to that information their Lordships held:-

The statement that the axe was one with which the murder had been committed was not a statement which led to any discovery within the meaning of Section 27 of the Evidence Act. Nor was the alleged statement of the appellant that the blood stained shirt and dhoti belonged to him a statement which led to any discovery within the meaning of Section 27.

The only portion, therefore, of the information given by Irfan Ali in connection with the recovery of Dhatura roots that is admissible is that which related to the place where Dhatura plants were to be found and his preparedness to go and show them, and the only inference to which this information can lead is that Irfan Ali knew of their existence at the place where they were found.

16. The other recovery made on the pointing out of Irfan Ali was a stone from a pit in the motor garage of Sri Ashwini Kumar. The prosecution led evidence to prove that Irfan Ali whilst in police custody, had also stated that 'he had kept the stone on which he ground Dhatura in a corner inside the pit in the motor garage.' The learned Civil and Sessions Judge agreeing with the trial Judge, observed that the statement to the effect that Irfan Ali had ground Dhatura on the stone related to the past user of the stone and did not lead to any discovery and he, accordingly, held it to be inadmissible. The remaining part of the statement was held by him to be admissible, and undoubtedly it is admissible.

17. The two recoveries coupled with the admissible portions of the information given by Irfan Ali only show that he knew of the existence of two Dhatura roots within the compound of Sri Ashwini Kumar's residence and he had kept a stone, on which Dhatura was detected by the Chemical Examiner, inside a pit in the motor garage of Sri Ashwini Kumar. But there is no evidence at all to connect the Dhatura roots and the stone with the crime in question and, as laid down by the Supreme Court in Chin-naswamy's case AIR 1962 SC 1738, the prosecution has to establish the connection of the object discovered with the crime. A period of fifteen days as noted above, elapsed between the administration of Dhatura and the recoveries, and during that period Smt. Lareti and Irfan Ali were not under arrest. It is not known when the stone was used for grinding Dhatura and when it was kept by Irfan Ali inside the pit in the motor garage. The prosecution examined Sri Krishna P.W. 16, the husband of Smt. Lareti, to prove that while she lived with him eight or nine years before the occurrence she used to give Dhatura to his family in Maththa and that one day Dhatura was recovered from the end of her Saree. The latter fact was proved also by the testimony of Faqir Chand P.W. 17. Smt. Lareti also, in her confession recorded in jail, stated that she used to give Dhatura in small doses to the members of her husband's family with the result that they remained under its stupefying influence and did not trouble her as they were wont. Obviously, therefore, Smt. Lareti was quite familiar with Dhatura and its use. She had illicit relations with Irfan Ali and she bore a grudge against Puran on account of his giving publicity to the fact that he had seen Irfan Ali and Smt. Lareti in a compromising position in the motor garage. Smt. Lareti used to accompany the children of Sri Ashwini Kumar when Irfan Ali took them for a drive and she

must have been freely and quite frequently entering the motor garage. Taking these circumstances into consideration much significance cannot be attached to the recovery of the stone and to the information given by Irfan Ali. A number of situations are easily conceivable in which Irfan Ali might have put the stone where it was found without having been guilty of the crime with which he was charged. It is not, however, necessary to set out the various hypotheses that suggest themselves to the mind, as there is total absence of evidence, direct or circumstantial, to connect the recovered objects with the crime.

18. I may now take up the other three circumstances which were relied upon by the learned Civil and Sessions Judge for his finding against Irfan Ali and see whether they along with the circumstances so far dealt with, taken in their totality, exclude every reasonable hypothesis of Irfan Ali's innocence and establish the charge against him beyond reasonable doubt. But before proceeding to do so I may observe that circumstances which may only in some measure be corroborative of a conclusion of guilt reached on the basis of other evidence have to be distinguished from circumstances which may by themselves constitute the basis for such a conclusion. I may also emphasise the necessity of exercising the caution that a particular conduct, utterance or other circumstance, which may give the impression of being related to and suggestive of the guilt of the accused if an opinion that he is guilty has already been formed, may really be entirely neutral and devoid of any incriminating tendency.

19. The first of the remaining three circumstances is that in the evening 3rd May 1959 at about 7-30 P.M. while Irfan Ali was going somewhere from his quarter Smt. Lareti came out of the residence of Sri Ashwini Kumar and had a talk with Irfan Ali. In the course of that talk Smt. Lareti asked Irfan Ali as to when the District Magistrate was expected to return whereupon Irfan Ali said 'Saheb nau baje tak ayenge. Turn apna kam poora karo tumhen is se kya'. The learned Civil and Sessions Judge observed that this reply was calculated to serve as a reminder to Smt. Lareti that she had to administer Dhatura poison that evening. Clearly, this interpretation pre-supposed the existence of a scheme to administer Dhatura and a presupposition was not warranted. The words used by Irfan Ali could certainly fit into the said [scheme if such a scheme had been conceived and was intended

to be carried out, but they could not in themselves be indicative of any such scheme and had no sinister implication. It is evident that the only word in the reply of Irfan Ali to which any significance may be said to attach is 'poora' and if this word were not there Irfan Ali's reply to the enquiry of Smt. Lareti could not be said to have been at all unusual. (After discussing the point His Lordship proceeded.)

Nothing, however, turns on these linguistic niceties. On no reasonable construction can the words said to have been used by Irfan Ali furnish any basis for inferring the existence of a conspiracy to administer Dhatura. This circumstance is wholly innocuous and at any rate it is too trivial and inconsequential for any inference.

20. The next circumstance is that Smt. Lareti, who had left District Magistrate's House for her quarter after laying the children to sleep on their beds and shortly before Sri Ashwini Kumar started taking his dinner, was seen talking to Irfan Ali under a tree outside District Magistrates House. (After discussing this circumstance His Lordship continued.)

The learned Civil and Sessions Judge observed that Smt. Lareti watched what Sri Ashwini Kumar and Smt. Ashwini Kumar were eating and as she found Irfan Ali under the tree when she was going, 'it was only natural for her to stop there and tell Irfan which items Sri A. Kumar had taken and which of the dishes had been taken by Smt. A. Kumar, because it was necessary to apprise her of the latest developments'. This observation again, presupposed the conspiracy which was required to be proved. What had to be seen was not whether, the conspiracy being there, this conduct could in some manner be related to it, but whether this conduct could contribute to an inference that there was a conspiracy. The approach of the learned Judge was, therefore, fundamentally wrong, and it based too heavily on conjecture.

21. The last of these circumstances noted by the learned Civil and Sessions Judge is that some sixteen or seventeen days after the incident while the C.I.D. Inspector was interrogating Smt. Lareti in District Magistrate's House at about 10 P.M. Irfan Ali looked greatly disturbed and on being questioned by P.W. 5 R.K. Tcwari as to why he was disturbed he replied: 'C.I.D. ke inspector bungle men Lareti se poochh

tanchh kar rahe hain alahda men, Lareti ek aurat hai--aise na ho koi raz khol de--koi uske munh men tala to dal nahin sakta--main bhi na phans jaoon.' R.K. Tewari then said that investigation goes on like that and repeated the enquiry as to why he should feel disturbed. The reply of Irfan Ali was: 'Tewari Ji mere mucaddar he kha-rab hai.'

R.K. Tewari, who was a motor driver in the Information Department, used to live in the servants' quarters attached to the residence of Sri Ashwini Kumar. (His Lordship discussed this piece of evidence and proceeded.)

It will be seen that the words alleged to have been used by Irfan Ali do not mean that Irfan Ali was a party to the 'raz', and the 'raz' spoken of might, therefore, have been confined to Smt. Lareti alone. I have already noted that the statement of Irfan Ali excited no curiosity in the mind of R.K. Tewari and he did not try to know anything further from Irfan Ali. The conclusion naturally is that the statement of Irfan Ali did not convey to him the impression that Irfan Ali had some hand in the matter. The net result in regard to this item of evidence is firstly, the testimony of R.K. Tewari does not appear to be true; secondly, the account given by him of the conversation with Irfan Ali cannot be regarded as an accurate and dependable account, and thirdly, even the words said to have been uttered by Irfan Ali in the course of that conversation are of no material significance and can afford no basis for any inference against Irfan Ali.

22. The evidence against Irfan Ali really consists only of the recoveries made at his instance, and even the learned Civil and Sessions Judge was of the view that they were the most important pieces of the evidence. The inference deducible from the recoveries does not, in my opinion, gain any additional strength from the circumstances discussed above and is not at all supplemented thereby. It is true that what has to be seen is not the effect of each isolated item of circumstantial evidence separately but their cumulative effect, but the three abovementioned circumstances, even if the evidence relating to each of them is accepted, are so neutral and in any case, so meagre in significance that their assemblage adds little to the case against Irfan Ali. It is well to bear in mind in this connection the warning addressed by Baron Alderson in *Reg. v. Hodge*, (1838) 2 Lewis 227 to which

reference was made by their Lordships of the Supreme Court in *Palvinder Kaur v. State of Punjab* : 1953 CriLJ154 . It was as follows:-

The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the Individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

The evidence as to motive for the offence also loses much of its importance by reason of the fact that it was spared by Smt. Lareti and she alone might easily have been responsible for the whole thing.

23. As said above the case really rests on the recoveries, so far as Irfan Ali is concerned. I have already dealt with their effect and the conclusion that may legitimately be drawn from them. The result is that although the case against Irfan Ali is one of strong suspicion the evidence is insufficient for proving the offence with which he was charged. In this state of the evidence the confession of Smt. Lareti, even though it had been found to be voluntary and true, cannot be utilized for making up the deficiency of the other evidence and for completing the case against Irfan Ali. I may again draw attention to the case of : 1964 CriLJ344 (Supra) and refer to the following observations of their Lordships at the end of their judgment:

It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however, grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over

half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

24. On a consideration of the evidence it is clear that the charge against Irfan Ali is not established and he is entitled to acquittal. Revision No. 1166 of 1964 should therefore, be allowed, the conviction and sentence of Irfan Ali should be set aside and he should be acquitted. Since the charge of conspiracy against Irfan Ali fails and one person alone cannot form a conspiracy Smt. Lareti's conviction and sentence under Section 120B, I. P. C. have to be set aside and she has to be acquitted of that charge. To that extent revision No. 1181 of 1964 has to be allowed. The charge under Section 228, I. P. C. has, however, been established against her and her conviction and sentence under that section should, therefore, be maintained, and Revision No. 1181 of 1964, in so far as the conviction and sentence of Smt. Lareti under Section 228, I. P. C. are concerned, should be dismissed.

25. This judgment gives the reasons for the orders already passed in these revisions.