

Harmal and anr. Vs. State

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Court : Allahabad

Decided On : Jan-15-1971

Reported in : 1971CriLJ1215

Judge : M.H. Beg, J.

Appellant : Harmal and anr.

Respondent : State

Judgement :

M.H. Beg, J.

1. The appellants, Harmal and Mata Prasad, have been convicted by the Sessions Judge of Saharanpur Under Section 201, IPC and sentenced to four years' R.I. and to pay a fine of Rs. 500/- each, and, in default of payment of fine, to undergo nine months' further R.I. They were tried for the murder of a man called Hukain Chand living in a part of village That which is inhabited mainly by Harijans, The murdered man was a Jat and the two appellants are Harijans.

2. A summary of the first information report lodged at police station Manglore, ten miles from village Thoi, at 8.11 p.m., on 30-10-1967, may be usefully given here because the learned Counsel for the appellants has argued that the appellants, who were acquitted of murder, could not even be convicted of an offence punishable Under Section 201, IPC as, among other reasons, the F.I.R. itself

shows that the corpse of the deceased had actually been found before the F.I.R. was lodged and that there was no eye witnesses of either the murder or the removal of the corpse. The suggestion was that, as there were no eye witnesses of the occurrence and the names of the appellants were mentioned out of suspicion, the F.I.R. itself was written out after deliberation and after the police had actually visited the place of occurrence. The contents of the long F.I.R. lodged by Ilam Chand, P.W. 1, giving the names of six persons, namely Mata, Harmal, Atru, Nagina, Indaram, and Jai Kishan, in the column of the accused, may be summarised as follows:

Ilam Chand's brother had gone at about 7 a.m. to plough his cherry field which is about three furlongs from village Thoi. Ilam Chand also followed and cut some cherry crop but came back home at about 10 a. m. When his brother, who was also expected to return, did not come back until 12 noon to 1 p. m. Ilam Chand went to look for him at the field and found the bullocks and the plough in the field but not his brother. He also found the shoes and the chadar of his brother at the boundary. Furthermore, he found blood lying in the field and also marks of dragging over which also blood was scattered. These marks continued upon the south-eastern boundary of the field but could not be found after that. Ham Chand came running home and gave an account, of what he had seen to his mother who told him that he should go and search for his brother and expressed her fear that Harijans may have murdered Hukam Chand because she had heard, on the previous evening, the sister of Phullu saying that Hukam Chand will reap, in a day or two, the consequences of having beaten Phullu Harijan. Birnal and Jhanda, Gujers, of the village had also heard this conversation. Ilam Chand went into the village and spread the news and started looking for his brother. In the course of the search and enquiry by Ilam Chand and his brother Ram Swarup, they met Sandal who said that his son Rajpal, aged about 10-11 years, had. when he had gone to drink some water at a spring, seen Hukam Chand being dragged towards the East by six persons out of whom he had recognised Harmal and Mata, Harijans, but he did' not recognise others. Later, Ilam Chand met Gyan Singh of Barhalpur who told him that Mata, Harmal, Atru, Pahal Singh, Nagina, Indaram, and Jai Kishan were seen by him going with lathis and ballams between 11 and 12 in the day from the village towards the jungle, and, behind them, came the father

of Pahal Singh. The father had called and brought back Pahal Singh. Ilam Chand, therefore, contacted Pahal Singh and his father but they told him nothing. Mata and Harmal and other persons, mentioned in the column of the accused, are accused of murder and causing the body of Hukum Chand to disappear. Previous to this occurrence, Hukam Chand had given 2-3 lathi blows to Phullu Harijan after an exchange of abuses after Phullu had abused him for having been reprimanded over breaking some sugarcane stems. This was the grievance of the accused persons who had killed Hukam Chand and made the corpse disappear. Harmal is the real brother of Phullu.

3. The first information report, the substance of which is set out above, after eliminating some details about what Ilam Chand was himself doing in the morning, is couched in the village dialect and gives every indication of being quite genuine. The most important part of it, according to the learned Counsel for the appellants, is that Ilam Chand has already stated there that Hukam Chand had been killed and that his corpse had been hidden. It is true that Ilam Chand makes that statement in the first information report, but, it is obvious that this is the inference of Ilam Chand from facts set out in detail in the F.I.R. It is difficult to understand why, if a case was being concocted with the aid of the police after the Sub-Inspector had visited the village, so that even the F.I.R. was written out after the recovery of the corpse of Hukam Chand from a sugarcane field, the concoction should not proceed further so as to make at least Ilam Chand and his brother Ram Swarup eye-witnesses of the murder. It is well established that a first information report can only be used to contradict or corroborate the maker of it. The very lengthy and thorough cross-examination of Ilam Chand, P.W. 1, could elicit no contradiction, much less a material contradiction, between his statement made in the F.I.R. and that made by him at the trial. Ilam Chand refuted the suggestion made to him that the corpse was found in the day-time first and that the F.I.R. was concocted afterwards with the help of the police. Ilam Chand was not even asked why he had stated in the F.I.R., that the accused, mentioned in the F. I, R., had murdered and then hidden Hukam Chand's corpse. The reason for this failure seems to be that Ilam Chand would have probably stated that this was a very correct and natural inference for him to arrive at from the facts he had discovered of which he gave such a detailed account.

4. It was contended that the corpse must have been discovered easily during the day as it was shown to have been recovered by Satya Pal Singh P.W. 13, at 3.5 a.m., on 31-10-1967, at the pointing out of the two appellants, from a field which was not far from the field where the murder was probably committed. The spot from where the corpse was recovered was also near a path running along the sugarcane field. The Sessions Judge had attached sufficient importance to this submission on behalf of the accused persons and went to inspect the site. The learned Judge observed, in his inspection note, as follows:

The place from where the dead body is alleged to have been recovered is situated at a distance of about two furlongs on the south-eastern side of the field of Ilam Chand. The place is far removed from the places which can be frequented by the people.

5. The recovery memo of the corpse (Ex. K.a-2) shows that the corpse was tied up in a dhoti. Ilam Chand, P.W. 1, stated that the corpse could only be found after the two appellants had gone inside the sugarcane field and indicated where the body was put by them. Apparently, it was not visible from the path by the side of the field. The place where the corpse was concealed was slightly inside the field and hidden by the sugarcane plants. It is apparent that Ilam Chand and his brother had looked for their brother Hukam Chand in the jungle and other places, but they had not thought of going to this particular field as there were no clues to indicate where the corpse was lying. The evidence is very clear and convincing that the corpse could only be recovered after the police had come to the village and interrogated the two appellants who agreed to point out the corpse after making a confession of guilt which had not been used to convict the appellants of murder as it was held to be inadmissible in evidence.

6. The time at which the corpse of Hukam Chand, covered with deep incised and stabbed wounds in the chest and abdomen, was recovered, was challenged on the strength of some discrepancies in the statements of the prosecution witnesses. Ilam Chand had no doubt stated, in the committing magistrate's court, that the corpse was recovered between 12 p.m. and 1 a.m. But, at the trial, he explained this discrepancy as the result of a mistake on his part. Such discrepancies in

estimating the time at which recovery was made do not materially affect the fact of the recovery at the pointing out of the accused. They only indicate that the witnesses were not tutored.

7. Satya Pal Singh, P.W. 13, the investigating officer stated that he arrived in the village Thoi at 11 p.m. at the Gher of Ham Chand and sent the second officer Malkhan Singh to arrest the accused. According to him, while Malkhan Singh and some constables had gone to arrest the accused, he took down statements of Ram Swarup and Ram Dei, P. W 3, brother and mother of Ham Chand, and Gyan Singh, P.W. 4. In the meantime, the two appellants were brought under arrest by Malkhan Singh. After interrogation, the statements of the two accused were taken down. He stated that the accused then took the party assembled there to the field of Devi Sahai Jolaha from where the corpse of Hukum Chand was recovered tied up in a Dhoti after the accused had shown the actual spot. This statement was corroborated not only by Ham, Chand but also by Nagina, P.W. 8, of Brahampur. who stated that he too reached Thoi at 11 p.m. Nagina also corroborated the statement of the investigating officer about the order in which the events took place. It appears that, after the recovery, the party proceeded to the cherry field of Ham Chand from where the recovery of blood was made and the inquest report and site plan were prepared. The mere fact that Ham Chand put the site inspection before the recovery of the body could be explained by lapse of memory on his part. It is also possible that the Sub-Inspector may have first merely seen the field of Ham Chand on the way and then carried out a thorough inspection afterwards so that the 'site inspection' Ham Chand meant was something earlier than ' the one when the preparation of the site plan took place. The trial court had rightly concluded that the alleged discrepancy was not material.

8. After the investigating officer had prepared the inquest report and the site plan the party was taken next day to a guava grove adjoining a field. From there, Mata Prasad appellant is shown to have taken out a blood stained spear (Ex. 2) hidden beneath some grass and earth and Harmal was shown to have taken out a lathi (Ex. 3). This recovery was shown to have been made at 11 a. m in the recovery memo (Ex, Ka 3) duly prepared on 31-10-1967. It appears from the statement of the investigating officer that he had, together with others, spent the night in the

field of Ilam Chand, and he had visited the guava grove on the next day. It was submitted that this was also a suspicious feature. It was contended that the investigating officer appears to have been waiting for other accused persons to be found so as to show some fictitious recovery at their instance too because Harmal and Mata were alleged to have revealed that they had hidden a Ballam and a lathi at the guava grove during the interrogation before starting for the field of Devi Sahai. It was also contended that one of the two alleged incriminating articles was fictitiously shown to have been recovered at the pointing out of each of the two appellants in order to create evidence against each. The contention that the investigating officer was actually waiting for the arrest of other accused rests on the assumption that the two appellants had already mentioned the Ballam and the lathi. The investigating officer had admitted having spent the night at the field of Ilam Chand. He must have taken some rest during the night although he was not asked about it. It is too much to believe that, without any evidence to support it, evidence was being fabricated wholesale by the investigating officer who was not even alleged to have any animus against the appellants. The recovery at the guava grove was also supported by the evidence of Ham Chand, P.W. 1, and of Kali Ram, P.W. 2, and Nagina. P.W. 8.

9. The statement of Nagina, P.W. 8, was criticised on the ground that he had stated that the investigating officer, after completing his work, had left the village at 3 or 4 p.m. (that is on 31-10-1967), with not only the two appellants but also Atru, Indaram, Nagina and Jai Kishan accused, after arresting the last mentioned four from their Ghers between 2 and 3 p.m. Ham Chand had stated that Icha Ram and Nagina and Phullu and Jai Kishan and Atru were arrested between 8 and 9 a. m. on 31-10-19(37). He was also confronted with his statement before the Committing Magistrate that the police had arrested all the accused and questioned them. Ham Chand explained that his answer was due to a confusing question put to him. Apparently, Ham Chand meant that he had given the gist of the visit of the police and not the actual times at which arrests of the two sets of accused were made. I do not think that the time at which suspected persons other than the two appellants were arrested or interrogated is really material at all. Nagina may have been mistaken about the exact time at which the other suspected persons were actually arrested as he may have seen them with the investigating officer only

latex in the day after their arrest and imagined that they were arrested then. The other suspects were not tried at all. It seems that the evidence against them was not sufficient. The suggestion, therefore, that the police was waiting for the other accused persons to be found before showing the recoveries of the lathi and the ballam is utterly baseless. If the police was really fabricating evidence against the two appellants it could create evidence against others similarly because they were arrested next day probably before the recovery of the lathi and the ballam. It is apparent that the police had acted quite honestly in not prosecuting the other suspected persons as the evidence against them was insufficient. Why should it have been dishonest about the two appellants only? There is no satisfactory answer given by the appellant's counsel to this question. Courts presume honesty and truthfulness of all witnesses deposing solemnly on oath, including policemen, until the contrary is shown. Indeed policemen can be expected to be more truthful than interested witnesses.

10. The trial court had itself rejected all those parts of the evidence which appeared to it to be doubtful. It had rejected the evidence of Ilam Chand, P.W. 1, about an alleged incident during the Holi of 1967 when the accused, the youngest of the three brothers, was said to have reprimanded Nagina and Mata and then to have beaten both of them as these two Chamars were said to have come to his Gher demanding 'Phagwa' in a state of intoxication and Nagina was said to have fallen on the Hukka of Hukam Chand. It had rejected the allegation that a few days before Deevali Hukam Chand had beaten Phulloo the brother of Harmal appellant as Phulloo had broken some sugarcane stems. It had also rejected the allegation that, after this beating on 31-10-1967, there was a Panchayat at the house of Phulloo, apparently just before the murder, at which Phulloo had shown his injuries and had threatened to commit suicide because Mata, on an earlier occasion, and his brother Phulloo, after that, had been beaten by Hukam Chand. These allegations were discarded either because they were based on hearsay or were insufficiently corroborated or not mentioned in the F.I.R. lodged by Ilam Chand after obtaining the help of Dev Pal, P.W. 11.

11. It appears from the statement of Ilam Chand that he had gone to village Nasirpur nearly two miles away, to get the report written out by Dev Pal in whom

he had confidence. It was contended that the presence of Devpal next morning at village Thoi, while the police was there, is very suspicious and indicates that the F.I.R. could have been drawn up next morning. It is true that Devpal admitted that he went to village Thoi while the police was there. He also stated that he went to village Thoi with the brother-in-law of Ham Charid, but he denied the suggestion that he wrote out the F.I.R. next morning. The trial court had eliminated the evidence of Sandal, P.W. 7, and his son Rajya Pal, P.W. 6, aged 14 years, as they gave conflicting accounts before the committing magistrate and the Sessions Judge as to how Rajya Pal either had or had not seen the six Harijans including the two appellants. It also discarded the evidence of Kali Ram, P.W. 2, one of the witnesses of the two recoveries, on the substantial ground that he had made statements in conflict with the much more reliable statements of Ilam Chand, P.W. 1, and Nagina, P.W. 8, corroborated by evidence of the investigating officer Satya Pal, P.W. 13, about recoveries.

12. One of the contentions was that, after rejecting so much of the evidence against the appellants and acquitting them of the charge of murder, the residue could not reasonably be accepted as this would amount to rejecting the grain and accepting the chaff. After having carefully examined the statement of each of the prosecution witnesses, I am unable to accept the suggestion that the trial court had really accepted the chaff and rejected the grain. It is true that the charge for murder failed against the appellants. But, the reason for this was that, as the trial court seems to have rightly held(the confessional parts of the statements of the two appellants, made before the recoveries of the corpse and the Ballam and the lathi at their instance, were not admissible in evidence. Another reason for the acquittal of the accused from the charge for murder was that the other circumstances alleged against the appellants, such as their having been seen by Rajya Pal, P.W. 6, dragging the body of Hukam Chand were either not established or were consistent with the possibility that the appellants had only helped in the disposal of the corpse of Hukam Chand after the killing. After accepting the recoveries at the pointing out of the appellants, the court had to determine the effect of such evidence as it had accepted as correct beyond any reasonable doubt. Such a process of sifting could not correctly be described as rejecting the grain and accepting the chaff. Any such characterisation of the scrupulously fair

and careful judgment of the trial court appears to me to be quite unjustified.

13. It was contended for the appellants that the evidence of Ham Chand and Nagina about the recoveries of the corpse of Hukam Chand and the Ballam and the lathi at the pointing out of the two appellants could not be said to be sufficiently corroborated by the evidence of Satya Pal, P.W. 13, as the investigation was not above board. One of the grounds for attacking the honesty of the investigation and the actions of the police, in addition to the grounds already discussed above, was that the mortuary box was ordered by S. I. Satya Pal to be brought to village Thoi ten miles away at the time when he was starting for the village. It is true that the mortuary box was so brought. But that did not necessarily mean that the body of Hukam Chand had also been found already. The Investigating Officer had explained that the mortuary box had been brought as a necessary precaution. The Sub-Inspector might have relied upon his own estimate of probabilities about the fate of Hukam Chand and finding his corpse. The facts mentioned in the F.I.R. were certainly sufficient to infer that Hukam Chand had been murdered. The bringing of the mortuary box to village Thoi could not demolish the credibility of the investigating officer which seems to me to be above board.

14. Moreover, the trial court had also, quite rightly in my opinion, relied upon the statement of Gyan Singh, P.W. 4, who had said that he had seen Mata, armed with a spear, and Harmal armed with a lathi, going towards Chader along with four other suspected persons and Phulloo who had been called back by his father Sodal. This witness had seen them at about noon on the date of murder of Hukam Chand. He had felt sufficiently curious to enquire from Sodal what the matter was. A villager is bound to become curious when he sees 'persons, one of whom is armed with a spear, moving suspiciously in a group, and then sees the father of one of the members of the group preventing his son from joining the company. He also stated that Sodal did not answer his queries. Evidently, Sodal, who was also a Harijan, knew that something nefarious was afoot. Gyan Singh is a resident of village Brahampur which is only three or four furlongs away from village Thoi. He had gone towards the Khader of river Sulani to bring flowers from the jungle. He is also a Jat like Ham Chand. But, these reasons are not, as the trial court observed, sufficient for assuming that the witness is untruthful. Indeed, if his evidence is

accepted, as it was by the trial court, Mata, appellant, who was the only member of the group who carried a spear which he subsequently produced, could have been convicted for murder. In my opinion, the trial court had not erred in accepting this evidence. The trial court has erred, if at all, on the question whether at least Mata should not be convicted of a very brutal murder. As there is neither an appeal by the State against the acquittal on the charge of murder nor an application for an enhancement of sentences passed, I will not consider these Questions afresh at this stage.

15. learned Counsel for the appellants then contended that the evidence of recovery at the pointing out of the two appellants, even if accepted, could not sustain a charge Under Section 201, IPC Both sides cited cases about the correct inferences to be drawn from facts proved which differ from case to case. However, I proceed to examine these cases. 1220

16. In Emperor v. Autar : AIR1925 All315 , it was held that an offence Under Section 201, IPC is not confined to destruction of evidence and that even removal of a dead body from one place to another may amount to causing evidence of an offence to disappear. It was found there that the accused was not acting voluntarily but under a threat of immediate death held out to him if he did not remove the body. Hence, it was held that the accused did not possess the required intent for committing an offence punishable Under Section 201, IPC In the instant case, the accused have not taken any such plea. They have not explained either the circumstances in which the body was hidden by any one or how they came to know that the body was there. In Emperor v. Mst. Piari : AIR1926 All737 , it was held that even removal of traces of evidence of an offence amounts to an offence punishable Under Section 201, IPC In Mata Din v. Emperor A.I.R. 1930 Oudh 113, the inference to be drawn from conduct and other circumstances was held to be a question of fact. In Chander Giani v. State , it was held that removal of a corpse from one place to a road, so as to suggest that the murder had been committed by a passerby, would be an offence punishable under' Section 201, IPC These cases, therefore, do not help the appellants at all. It is always a question of fact whether, upon the proved circumstances of a case, the accused could be said to have had an intention to screen the offender or to cause evidence to disappear.

17. learned Counsel for the appellants advanced an argument based upon the assumption that, even if an accused is charged with an offence Under Section 201, IPC no presumption Under Section 114 of the Evidence Act, that he had actually participated in the removal of the corpse and its concealment could arise without proving possession just as no presumption of guilty knowledge of the character of stolen goods would arise in similar circumstances. The argument seemed to be that, in the process of disposing of or concealing a corpse, the accused would be deemed to be in possession of it, either singly or jointly with others, at some stage. Reliance was, therefore, placed upon the rule supposed to have been laid down by a Division Bench of this Court in *Queen Empress v. Gobinda* (1895) ILR 17 All 576. That was a case in which some stolen property was found partly in the house and partly in the field of a man called Dhankua whose conviction Under Section 411, IPC was upheld by the Division Bench as he gave 'no reasonable explanation how he came to be in possession of the articles found in his house.' But, another man called Gobinda was acquitted on the ground:

The mere fact that a person points out a place where stolen property is concealed, if that place is not in his own house or in his own field, but is in the field of another man, is not sufficient, in our opinion, to entitle the Court to find out that the person who pointed out the stolen article had received it, or retained it, knowing it to be stolen. There must, to support a conviction in such a case, be some evidence which suggests that the accused himself concealed the articles in the place where it was found. It is not sufficient for a conviction that the accused pointed out the stolen articles, if it is left doubtful whether the- accused or some other person concealed the stolen article, or that the accused obtained in some other way information that the stolen property was in the place where it was found.

18. I am unable to find in the above mentioned case the statement of any rule of law. This decision merely indicates the circumstances in which a presumption of guilty knowledge of the stolen character of the goods could or could not be said to reasonably arise. It is true that this case was commented upon by Munir, J. in *Sher Mohd. v. Emperor* A.I.R. 1945 Lah 27 at p. 31 in connection with the presumption which may or may not arise against an accused person of participation in the concealment or removal of a dead body. In that case, the corpse pointed out by

the accused, without offering any explanation, was concealed in a cave, the mouth of which was covered with stones. The cave was situated at a considerable distance from his own village. No doubt, Munir, J., held there that: 'the rule enunciated in (1895) ILR 17 All 576, and reaffirmed in several cases is stated too broadly and is a definite hindrance in the way of those who in the administration of criminal justice seek guidance from circumstantial evidence.' The learned Judge held, having regard to the facts of the case before him:

The outstanding fact in such cases is that the discovery of the incriminating article from a place which is hidden from public view but is pointed out by the accused unmistakably shows that the accused was in some way privy to the /' felony. This is the most natural and prominent inference which the Court will draw Under Section 114, Evidence Act, and the fact being within the peculiar knowledge of the accused it is for him to show that he acquired knowledge of the place of concealment in some other way. If, therefore, the prisoner makes no attempt to explain how he acquired knowledge of the place, leave aside the question of proving the truth of the explanation if given, there is nothing in law to prevent the Court from convicting him if after considering all the surrounding circumstances and bearing in mind the other possible hypotheses and the principle that it is better that ten guilty men should escape than one innocent man be punished (Starkie's proportion of 100 to 1 is in modern times considered to be an exaggerated statement) the Court comes to the conclusion that the accused himself must have put the article or articles there; It not only may but it is its duty to convict.

19. With great respect, as I have already pointed out, there appears to me to be no rule of law laid down by the Division Bench of this Court in Gobinda's case (1895) ILR 17 All 576 (supra). I also doubt whether it is at all necessary to refer to the presumption arising Under Section 114 Illustration (a) which is confined to cases of stolen property. Recently, in Shivappa v. State of Mysore : 1971 CriLJ260 the Supreme Court pointed out that the presumption Under Section 114 Illustration (a) of the Evidence Act need be used only in those cases where the connection between the accused and the crime of receiving property with guilty knowledge cannot be established from evidence, other than that of possession. In other words, the utility of the particular presumption mentioned in Illustration (a) of

Section 114 of the Evidence Act is confined to certain cases. The question whether any presumption Under Section 114 of the Evidence Act should or should not be raised against an accused person depends upon the particular facts of a case as these are always presumptions of fact. The facts vary from case to case.

20. *Trimbak v. State of Madhya Pradesh* : AIR 1954 SC39 which was referred to by the learned Counsel for the appellants was also a case of a presumption from recent possession of stolen goods. In the context of a prosecution for an offence Under Section 411 I. P, C. their Lordships had held

When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.

21. In cases falling Under Section 201, IPC the question of any presumption from unexplained possession of relevant evidence, such as the corpse of a murdered man, could only arise in those cases where an accused was actually found in possession of the material evidence. In these cases, the accused, far from being found in possession, generally tries to get rid of any trace of any possession by him of the incriminating objects or property. The knowledge that the offence of murder has taken place could, quite naturally, be presumed as soon as it is proved that the accused had knowledge that a corpse was concealed either in his own field or in somebody else's field. It is not the possession in such cases but the totality of facts and circumstances and the conduct of the accused in relation to the incriminating evidence of which he is shown to have knowledge which provide the basis of any presumption raised against him under the general provisions of Section 114 of the Evidence Act itself.

22. For the reasons given above I do not, with great respect, share the view expressed by Munir, J., in *Sher Mohd.'s case* A.I.R. 1945 Lah 27 (supra), that there was a rule enunciated by the Division Bench of this Court in *Gobinda's case*

(supra). Even if any rule could be found to have been laid down in Gobinda's case (1895) ILR 17 All 576, I do not think that it has a bearing on a case Under Section 201, IPC in which the accused himself is not found in possession of the incriminating evidence but points out where it was concealed. I, however, do very respectfully adopt the method indicated in Sher Mohd.'s case (supri) by Munir, J., an acknowledged authority on the law of Evidence, on the way in which every reasonable hypothesis except that the accused had participated in the concealment of the corpse of Hukum Chand had to be and was eliminated in the case before me as it was in Sher Mohd.'s case. learned Counsel for the appellants tried to distinguish Sher Mohd.'s case on the ground that the corpse in that case was found, concealed in a cave whose mouth was covered with stones and lying at a considerable distance from the village of the accused. I do not think that this makes any difference on the question of principle as the facts in this case also indicate that the corpse Was concealed from public view in a field lying in another village. The accused had given no explanation as to how they had obtained any knowledge of the whereabouts of the corpse. On the other hand they falsely denied having even pointed out where the corpse was lying and there was no evidence whatsoever that the accused had informed anyone that they had found a corpse in a field before they were interrogated by the police. The only natural and reasonable inference in these circumstances, when the accused had failed to discharge the burden of proving facts especially within their knowledge, which lay upon them by reason of Section 106 of the Evidence Act, was that the accused had themselves concealed the corpse in the sugarcane field.

23. It was also submitted that the statements of the two accused should not have been recorded together so as to make them admissible Under Section 27 of the Evidence Act. Reliance was placed on the decision of a Bench of the Patna High Court in Moti Lai v. State : AIR1959 Pat54 , A Division Bench decision of this Court, in Nathu v. State : AIR1958 All467 , indicates that the statements may be jointly recorded. In any case there was no prejudice shown to have been caused to the accused by adopting this procedure. The only question was whether the statements led to the discovery of relevant facts. In the instant case, the statements of both the accused are shown to have led to the discovery of relevant facts. Those parts of the statements which, in the opinion of the trial court, did not

lead to the discovery of any relevant facts were actually excluded. The fact, however, that both the appellants knew where the dead body was and where a lathi and a spear, which could have been used in the attack, were hidden, has been satisfactorily proved.

24. I do not think it necessary to discuss the cases cited before me on the extent to which the statements made by the accused before the recoveries were made were admissible in evidence Under Section 27 of the Evidence Act. These cases were: Udai Bhan v. State of U. P. : AIR 1962 SC1116 ; K. C. Reddy v. State of Andhra Pradesh : [1963]3SCR412 ; and Prabhoo v. State of U. P. : [1963]2SCR881 . I am proceeding on the assumption that the confessional parts of the statements of the appellants were rightly excluded by the trial court. There is no appeal before me against the acquittal of the appellants.

25. In the result, I affirm the convictions and the sentences of the appellants and dismiss their appeals. The appellants, who are on bail, shall surrender forthwith and serve out the remaining periods of their sentences.

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