

Balkar Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-27-1989

Reported in : 1990CriLJ77

Judge : H.C. Mital and ;M.M. Lal, JJ.

Acts : Arms Act - Sections 25; [Evidence Act, 1872](#) - Sections 25, 26 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302, 364, 379 and 394; Code of Criminal Procedure (CrPC) , 1974 - Sections 161 and 313

Appeal No. : Criminal Appeal No. 2825 of 1978

Appellant : Balkar Singh

Respondent : State of U.P.

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : Keshav Sahai, Adv.

Disposition : Appeal allowed

Judgement :

H.C. Mital, J.

1. Balkar Singh has preferred this appeal against his conviction and sentence under Section 302. I.P.C. to life imprisonment, under Section 201. I.P.C. for a

period of two years R.I. and fine of Rs. 200 -(in default of payment of fine, one year R.I.) and under Section 379 to two years R.I. passed by Sri C.G. Garg. III Additional Sessions Judge Mathura.

2. According to the prosecution the facts of the case in brief are that Truck No. PUG 2120 belonged to Jagir Singh deceased resident of village Athwal P.S. Dera Baba Nanak district Gurudaspur and appellant Balkar Singh and co-accused Pyara Singh who has been acquitted were drivers thereon. That on 23rd March 1977 along with the Truck and the two drivers Jagir Singh had gone to the Truck Union at Batala and from there he did not return. On 14-4-1977 cleaner Balvendra Singh along with Gurmeet Singh (P.W. 10) owner of another truck informed the complainant. Gurmit Singh (P.W. 2) brother of the deceased Jagir Singh that a quarrel had taken place in between Pyara Singh and Jagir Singh as the latter wanted to remove Pyara Singh from driving the truck and that Pyara Singh had told Gurmeet Singh (P.W. 10) that he would murder Jagir Singh. It is further alleged that on 22-4-1977 he had received a letter of Jagir Singh informing him that he would return on th(Sic) May 1977, When Jagir Singh did not return then on 16-5-1977 complainant Gurmit Singh (P.W. 2) went to enquire at the Truck Union. Batala. Then he met Balkar Singh at his house and the latter told him that Jagir Singh had come to Delhi on 30th April. 1977 to return to the village and he did not know anything about him.

3. On feeling suspicious that his brother had been murdered, he lodged a written report (Ex. Ka-14) at police station Dera Baba Nanak district Gurudashpur. On that basis a case under Section 364. I.P.C. was registered at P.S. Dera Baba Nanak on 23rd May 1977. Thereafter on 25th May 1977 Subba (P.W. 4) along with Budhwa Singh carried appellant Balkar Singh to the Police Station and told the Investigating Officer. Deedar Singh (P.W. 15) that Balkar Singh had made an extra-judicial confession to them having killed Jagir Singh along with Pyara Singh and left his dead body somewhere in the way, within Police Station Chatta district Mathura and that some of his articles he had kept in a bag at his house in Batala. Thereupon Deedar Singh also recorded the statement of Balkar Singh and then Balkar Singh accompanied the Investigating Officer and the witnesses to his house and took out the bag from the pit which contained a Kurta. Pajama Phatauri

Kachcha. Pagri which were in the bag. Balkar Singh is also alleged to have handed over a golden ring and a wrist watch of the deceased. It is, further alleged that thereafter Balkar Singh accompanied the Investigating Officer and the witness to the place in police station Chatta district Mathura where the dead body of Jagir Singh was thrown and from there a skeleton of the dead body having a shirt and shoes lying nearby were also recovered.

4. Co-accused Pyara Singh had however been already arrested on 22-5-1977 in Batala by Batala Police along with the gun of Jagir Singh deceased and a case under Section 25 of the Arms Act was registered against him and that fact subsequently came to the notice of Deedar Singh. S.O. and then he was also implicated in the case. As the dead body was found within the district of Mathura the investigation was entrusted to Police Station Chatta district Mathura and then charge-sheet was submitted by Narrotam Singh Chauhan. S.I. (P.W. 13) and thereafter on committal of the accused both the accused were tried together.

5. To prove its case the prosecution in all examined the following fifteen witnesses :

Karnail Singh (P.W. 1). in whose presence the Skeleton was recovered at the pointing out of the accused Balkar Singh.

Gurmit Singh (P.W. 2) is the complainant. Smt. Balvendra Kaur (P.W. 3) is daughter of the deceased. Subba Singh (P.W. 4) has deposed about the extra-judicial confession made to him by accused Balkar Singh.

Balvant Singh (P.W. 5) in his presence recovery of the bag containing clothes etc. and of ring and a wrist watch from the possession of Balkar Singh was made.

Prem Chandra Sharma (P.W. 6) is the Photographer who had taken snaps of the skeleton at the time of recovery.

Dr. Y.K. Dubey (P.W. 7) had done the autopsy and prepared the post mortem report (Ex. Ka-11).

Dalip Singh Chandra (P.W. 8). a shoe maker, has deposed that the shoes recovered were prepared by him and sold to the deceased.

Jaideo. S.I. (P.W. 9). P.S. Hoshiarpur had apprehended Pyara Singh on 22-5-1979, and recovered from his possession a double, banel gun belonging to the deceased and registered a case under Section 25. Arms Act.

Gurmeet Singh (P.W.10) is owner of another Truck, had seen Truck No. 2120 in Bihar and that Pyara Singh had told him that he would kill Jagir Singh but he had told Pyara Singh not to do so and that on returning to the village he had informed Gurmit Singh brother of Jagir Singh about it.

Gurmes Singh (P.W. 11) produced the chik report and other necessary papers.

Indra Jeet Singh Chauhan (P.W. 12) S.O. P.S. Chatta submitted the charge-sheet (Ex. Ka-15) on 20th July. 1977.

S.I. Narottam Singh Chauhan (P.W. 13), had prepared the inquest report.

Shiv Shanker (P.W. 14) gave the affidavit that he had taken the dead body to the mortuary for post mortem.

Deedar Singh (P.W. 15) is the Inspector who had conducted the investigation of the case till the recovery of the dead body.

6. Besides the above oral evidence P.W. 2 Gurmeet Singh the complainant also on 24-7-1978. i.e. after five and a half months after closure of his testimony filed certain documents a bilty dated 27-3-1977 (Ex. Ka-3) bearing signature of Balkar Singh. (Ex. Ka-1) an inland letter dated 12-10-1977 alleged to be written by accused Balkar Singh. (Ex. Ka-20) another writing in the hand of the accused dated 17-2-1977. (Ex. Ka-21) another inland letter dated January 27. 1977 alleged to have been written in the handwriting of accused Balkar Singh and another paper (Ex. Ka-17) dated 21-7-1976 about the truck in dispute.

7. On the other hand the accused denied the prosecution case and alleged to have been falsely implicated. Then version was that they were not even employed with the deceased on his truck as drivers and that they did not even know driving.

Pyara Singh denied to have been apprehended along with the gun. Balkar Singh denied to have made any extra-judicial confession or made any recovery regarding the skeleton and articles of the deceased. He has also denied the letters etc. to be in his handwriting and has asserted that he was totally illiterate. It was further alleged that Kanrail Singh (P.W. 1) is son of Badhawa Singh and Gurmeet, Singh (P.W. 10) is the grand son of Badhawa Singh, (another prosecution witness not examined in whose presence also the accused is alleged to have made extra-judicial confession) that Satpal Singh Sarpanch is uncle of his father-in-law and Jagir Singh (deceased) had contested election of Sarpanch against him. Jageer Singh was defeated and Satpal Singh was elected, that Daleep Singh is another brother of Jageer Singh deceased that in the murder case of Daleep Singh's daughter-in-law Daleep Singh and his son as well as P.W. 5 Balwant Singh and Badhawa Singh were accused and Satpal Singh Sarpanch had appeared as a prosecution witness, hence it was possible that murder of Jageer Singh might have been committed by some one relating to the deceased daughter-in-law of Daleep Singh; that it was also not proved that Jageer Singh was murdered and the possibility of his being alive also could not be ruled out. In defence, however, any evidence has not been adduced.

8. The learned Sessions Judge, however, believed the prosecution evidence against appellant Balkar Singh and, therefore, convicted and sentenced him under Sections 302, 201 and 379, I.P.C. instead of 394, I.P.C. as stated above. Accused Pyara Singh has been however, acquitted as evidence against him was not found credible. On being aggrieved Balkar Singh has preferred this appeal and on his behalf it has been urged that the prosecution case is based on circumstantial evidence only which is neither credible nor sufficient to bring home the guilt to him;

9. We have heard at length learned counsel for the appellant and the learned Government Advocate. The prosecution sought to prove the following circumstances against the appellant.

1. Motive.

2. Extra-judicial confession.

3. Recovery of clothes, wrist watch and ring etc. from the possession of the appellant under Section 27. Evidence Act.

4. Recovery of the skeleton at the pointing out of the appellant himself along with shirts shoes and licence of the gun.

5. The appellant was last seen with the deceased in Bihar on the truck.

10. We proceed to scrutinise the prosecution: evidence on the above circumstances.

1. MOTIVE :-

11. In the F.I.R. (Ex. Ka-14) dated 23-5-1978 (P.W: 2) Gurmeet Singh, the brother of the deceased had alleged that Balvindar Singh cleaner of the truck and Gurmeet Singh (P.W. 10) owner of another truck had come to him on 14-4-1977 and told him. 'KISI BAAT SE MERA BHAII JAGEER SINGH PYARA SINGH DRIVER KO KISI BAAT PAR NAUKARI SE HATANA CHAHTA THA. INKA AAPAS MEN KAFI KAHAN SUNAN HO GAYA THA. US WAQT BALKAR SINGH AUR PYARA SINGH NE ISKE ALAHDAA MEN KAHA THA KI JAGEER SINGH HAMARI NIGRANI KARTA HAI AUR UNKO TANK KARTA HAI. WAH USE KHATAM KAR DENGE AUR USNE AAPAS MEN BEECH BACHAO KARA DIYA THA.'

12. The above only is the alleged motive for the crime. To prove it there is evidence of P.W. 2 Gurmeet Singh the complainant and P.W. 10 another Gurmeet Singh. Balvindar Singh who is alleged to be the cleaner of the truck and was also present as alleged along with P.W. 10 Gurmeet Singh when the alleged quarrel had taken place in between Jageer Singh and the accused and the accused had threatened to kill Balvinder Singh has not been examined by the prosecution and on the record there is no reason for it. In fact he was not even mentioned in the charge-sheet indicating that even his statement under Section 161, Cr.P.C. was not recorded.

13. P.W, 2 Gurmeet Singh the complainant has made the following statement in support of the above allegation of motive.

'14-4-1977 KO BALVINDAR SINGH WA GURMEET SINGH PUTRA HARPAL SINGH NE HAME BATAYA KI PYARA SINGH KA JAGEER SINGH KE SAATH JHAGARA HUA THA. JAGEER SINGH PAYARA SINGH DRIVER KO GAKI SE HATHANA CHAHATA THA. PYARA SINGH MULZIM NE GURMEET SINGH KO BATAYA KI HAM ISE QATAL KAR DENGE.'

14. Even if the above statement of Gurmeet Singh (P.W. 2) is wholly taken to be true, it does not show any motive for the appellant Balkar Singh against Jageer Singh.

15. P.W. 10 Gurmeet Singh has also made the following statement.

'PYARA SINGH NE KAHA HAMEN SARPANCH (JAGEER SINGH) TANG KARTA HAI KAHTA HAI HAM TUMHARA JALDI HISAB KAR DENGE. PYARA SINGH NE MUJHSE KAHA KI HAM ISE RASTE MAEN KHATAM KAR DENGE. MAINE KAHA AISA MAT KARNA AUR INKA RAZI NAKA KARWA DIYA'.

16. Even if the above statement of P.W. 10 Gurmeet Singh is believed in toto that does not indicate any motive for appellant Balkar Singh to commit the murder of Jageer Singh. Thus, the prosecution has miserably failed to Substantiate any motive for appellant Balkar Singh to commit murder of Jageer Singh.

2. EXTRA JUDICIAL CONFESSION :

17. According to the prosecution appellant Balkar Singh on 25-5-1977 had made an extra judicial confession before P.W. 4 Subha Singh and one Badhawa Singh. The latter has not been examined and there is testimony of P.W. 4 Subha Singh who has stated that he and Badhawa Singh were talking about the Assembly election when appellant Balkar Singh came to him and told him that he and Pyara Singh along with Jageer Singh (Sarpanch) had taken that truck to Bihar. They had quarrelled with Jageer Singh whereupon Jageer Singh showed temper and told them something; that Gurmeet Singh son of Harpal Singh also met them and to him they narrated it and he got their dispute settled even then Jageer Singh remained angry. Hence he with his Kripan and Payara Singh with his knife had killed Jageer Singh near Chatta village in district Mathura and the dead body has

been left behind the bushes in a pit. He further stated that he had approached him as he was a member of Panchayat and could help him as the police was after him. Subba Singh has further stated that he and Badhawa Singh then carried Balkar Singh to police station Dera Baba Nanak district Gurdashpur where he was handed over to the Inspector of police with his Kripan (Ex. 15). In his cross-examination he admitted that Fauja Singh was a maternal uncle of Balkar Singh and that Mahendra Singh was father-in-law of Balkar Singh, that Satyapal Singh uncle of Mahendra Singh was Sarpanch since ever and that Jageer Singh deceased had contested election of Sarpanch against Satyapal Singh, but was defeated. The witness, however, denied that he belonged to the party of Jageer Singh.

18. The witness further admitted in his cross-examination, 'BALKAR SINGH SE MERA US DIN SE PAHILE WASTA NAHIN PARA THA. MEL JOL BHI NAHIN THA. US DIN YAH MERE PAS APANI MARZI SE HI AA GAYA. MAIN KOI KHAS BAAT ISKE AANE KI NAHIN BATA SAKTA.'

19. From the above it is clear that there does not appear to be any reason for appellant Balkar Singh to have gone to P.W. 4 Subba Singh to make a clean breast of the murder alleged to have been committed by him. That apart a strong feature of the alleged extra judicial confession is also the fact that the appellant had also told him that Gurmeet Singh son of Harpal Singh had also met them and settled their dispute with Jageer Singh even then simply because Jageer Singh used to remain angry, they had murdered him. The question of the alleged talk with Gurmeet Singh (P.W. 10) prima facie appears to have been appended to give support to the version of Gurmeet Singh (P.W. 10). Moreover, neither Gurmeet Singh (P.W. 10) nor P.W. 2 Gurmeet Singh to whom the former is alleged to have told deposed that this appellant Balkar Singh had any grouse against Jageer Singh deceased or this appellant Balkar Singh had made, any complaint to Gurmeet Singh (P.W. 10) against Jageer Singh deceased.

20. Badhawa Singh the other witness before whom the alleged extra judicial confession was made by the appellant was not examined. It was urged on behalf of the appellant that he was not examined obviously because he was closely

associated with other witnesses namely, P.W. 1 Karnail Singh witness of the recovery of the dead body is son of that Badhawa Singh and P.W. 5 Balwant Singh witness of the alleged recovery of the articles including ring and wrist watch of the deceased from the house of the appellant Balkar Singh. That Balwant Singh (P.W. 5) had been co-accused and convicted along with Badhawa Singh in a criminal case as admitted by him in his cross-examination (Paragraph 4). P.W. 10 Gurmeet Singh had also admitted himself to be grand-son of Badhawa Singh.

21. In that view of the facts on record it would not be safe to place reliance on the prosecution evidence regarding the alleged extra judicial confession and the learned Sessions Judge had erred in not considering at all the factors pointed out above.

3. RECOVERY OF CLOTHES, RING AND WRIST WATCH ETC. :-

22. According to the prosecution the appellant Balkar Singh had stated before, P.W. 15 Inspector Deedar Singh that he would get recovered the clothes of the deceased. Thereafter along with appellant Balkar Singh (PW. 15), Inspector Deedar Singh and witnesses Chandan Singh and P.W. 5 Balwant Singh had gone to his house and there the appellant had taken out the bag containing the clothes. There is evidence of P.W. 15 Inspector Deedar Singh that the appellant was brought to the police station by P.W. 4 Subba Singh and Badhawa Singh, who said that he had made extra judicial confession before them; that to the Inspector also appellant Balkar Singh had said that he could produce the clothes Kurta, Pajama, Kachchi, Pagdi, Bag from his house; that the gold ring and a wrist watch which the appellant was bearing of the deceased had already been seized by him at the police station and then along with Chandan Singh and P.W. 5 Balwant Singh he had reached Batala and there the appellant brought out the bag containing the aforesaid clothes about which he prepared the memo (Ex. Ka-9). He also prepared a site map of that place (Ex. Ka-16); that on 26-5-1977 he produced the appellant before the Magistrate and then he had taken him back on the police remand till 7-6-1977. According to Inspector Deedar Singh P.W. 15 the appellant was taken to the police station by P.W. 4 Subba Singh and Badhawa Singh on 25-7-1977 and his cross-examination he has stated that he had taken

Balkar Singh into custody at 9.30 a.m. He has further stated that on 26-5-1977 he had sent the accused for remand at 8 a.m. In his cross-examination he has admitted that he did not note the time of recovery in the G.D. nor made any entry in G.D. at the police station when he had taken him to Batala for the recovery. He has further admitted that on 26-5-1977 he had reached the police station and in the G.D. the entry is dated 27-5-1977 at 5.30 p.m. and according to the G.D. dated 31-5-1977 he returned at 5.15 p.m. Thus, the entries in the G.D. prima facie do not appear to be consistent with the statement of the witness. That apart, the witness Inspector Deedar Singh has admitted that at the time of the recovery he did not take any neighbour of that place and he did not give any copy of the recovery memo to the accused or to the wife of the accused who was present. He also did not obtain her attestation on the memo of recovery, that in the map he has also not shown the pit from where the goods were recovered. The witness has also admitted that he had not sealed the goods recovered and brought them to the police station where also they were not sealed and their identification was got done by the witnesses at the police station itself.

23. P.W. 5 Balwant Singh the alleged witness of the recovery has deposed that he had also gone to police station Dera Baba Nanak along with Chandan Singh and there the accused had made statement to the S.O. that he had concealed the articles of the deceased and would, take them out; that a memo was prepared at the police station of his statement on which, he himself, Chandan Singh and appellant Balkar Singh had put their thumb impressions, that he had also gone to the house of Balkar Singh and there he had taken out Pagri, Shirt, Kachcha, Pajama, Ring, wrist watch and bag; that all these articles were kept in the bag. In his cross-examination the witness has admitted that prior to this occurrence he was prosecuted in a murder case along with Badhawa Singh father of P.W. 1 Karnail Singh and that he was convicted and sentenced along with Badhawa Singh. He has also admitted that Sarpanch Satpal Singh might have given evidence against him in that criminal case. He also admitted that Satpal Singh was uncle of the father-in-law of Balkar Singh. He has also admitted that Jageer Singh had contested against Satpal Singh Sarpanch and Satpal Singh had won the election. Thus, the character of the witness stands self-condemned, in view of the fact that he was co-accused and convicted along with Badhawa Singh another

alleged witness of the extra judicial confession. The prosecution evidence j regarding extra judicial confession before j P.W. 4 Subba Singh and Badhawa Singh had already been doubted as discussed above and it is subsequent to that extra judicial confession that the appellant was taken to the police station and alleged to have made the statement for handing over the articles of the deceased. The testimony of Balwant Singh P.W. 5 also suffers with the infirmity that according to him the ring and the wrist watch of the deceased were also recovered at the house of Balkar Singh as stated above from the bag, while according to P.W. 15 Inspector Deedar Singh he had seized them at the police station from the person of Balkar Singh.

24. That apart, admittedly, the articles were not sealed and no witness of the locality was taken and Deedar Singh has admitted that he did not make any effort to take any witness nor mentioned that fact in the recovery memo. That apart, no entry in the G.D. was made before leaving for recovery. He has further admitted not to have sent the goods or their list of the recovery or made any reference to the Magistrate that from the possession of the accused goods have been recovered when his remand was further sought.

25. It is indeed Very surprising that details of the articles recovered were mentioned in the F.I.R. (Ex. Ka-14) dated 23-5-1978 by P.W. 2 Gurmeet Singh, when he has admitted in his cross-examination that he and deceased Jageer Singh were not living jointly and they were living separately. He has also not stated that in his presence Jageer Singh had left. In the F.I.R. he had mentioned that when he had gone he was putting on a Kurta, while in his cross-examination he stated that he was putting on a shirt. P.W. 3 Balwander Kaur, daughter of the deceased could have been the best person to have deposed about the clothes the deceased was bearing when he had left. She had simply identified the clothes and the articles. She did not state that she had given the details about her father's clothes etc. to her uncle P.W. 2 Gurmeet Singh before he had got the F.I.R. scribed nor P.W. 2 Gurmeet Singh has stated he had been told by her. Thus, the prosecution evidence regarding the alleged recovery at the pointing out of the accused is highly suspicious and not worthy of credence.

26. That apart, as already stated above, the articles were not sealed. Hence the alleged identification carried out at the police station of these articles by P.W. 2 Gurmeet Singh and Smt. Balwinder Kaur (P.W. 3) is also of no consequence. Smt. Balwinder Kaur has also admitted in her cross-examination that the clothes mixed with the clothes identified by her did not bear any mark while the clothes which she had identified had Dhobi Mark thereon. Regarding the ring also she has stated that the ring identified by her had the letter J.S. engraved while the other rings which were mixed had no such mark. She has also stated that she recognised the shoes because there was a particular stitch on the shoes which was not on other shoes mixed with those shoes. She further admitted that she had not kept any coloured clothes when her father had left. It is indeed surprising that in the F.I.R. (Ex. Ka-14) even this fact was noted that in the shoes there was a particular stitch and the details of the ring and the wrist watch were also given which normally P.W. 2 Gurmeet Singh could have no occasion to know and that further raises grave doubts about the genuineness of the F.I.R. and the sanctity of the identification. Hence the contention that the F.I.R. appears to have been subsequently prepared after the arrest of the appellant, finds corroboration from these circumstances. It is also pointed out that according to the appellant he was apprehended earlier though his arrest was not shown and that fact was supported from the unsatisfactory maintenance of the entries in the G.D. It was also argued that the articles appear to have been obtained from the complainant and their false recovery has been set up by the prosecution.

27. In view of the facts and circumstances discussed above the prosecution evidence regarding the alleged recovery of clothes and bag and other articles of the deceased at the pointing out of Balkar Singh is also highly suspicious and not safe to be relied upon.

4. RECOVERY OF THE SKELETON ETC. :

28. There is evidence of P.W. 1 Karnail Singh, P.W. 2 Gurmit Singh, P.W. 6 Prem Chandra Sharma, Photographer, and P.W. 15 Inspector Gurmeet Singh on this point. According to the prosecution case Balkar Singh had told the Investigation Officer that he could get the dead body of the deceased Jagir Singh recovered and

then appellant Balkar Singh was taken by Inspector Deedar Singh along with P.W. 1 Karnail Singh, P.W. 2 Gurmit Singh and P.W. 6 Prem Chandra Sharma and others and on the way within the area of police station Chatta behind some bushes a skeleton of a dead body was pointed out to be of the deceased by Balkar Singh. P.W. 1 Karnail-Singh has deposed that on 30-5-1977 along with the Daroga and three four constables, Gurmeet Singh, Ajeet Singh, Jassa Singh and accused Balkar Singh he had gone in the area of Police Station Chatta district Mathura. The accused had taken them to the place where the skeleton was lying. The human skeleton had a terricot shirt, besides a cotton shirt and a pair of shoes were lying nearly that Daroga Deedar Singh prepared the memo as well as inquest report. In his cross-examination he could not give time, even approximate time, when he had gone there. He has further specifically admitted that in his presence no other talk had taken place in between appellant Balkar Singh the Investigating Officer. It is further stated that before the recovery the Investigating Officer did not go to Police Station Chatta even though it falls in the way but sent information subsequently and before the arrival of the police the appellant had pointed out the skeleton. He also admitted that he was son of Badhawa Singh (Prosecution witness of extra judicial confession in the case). He, however, denied that his father Badhawa Singh and Balwant Singh were prosecuted in any murder case and that Satpal Singh, Sarpanch had given evidence against his father Badhawa Singh and Balwant Singh. However, P.W. 5 Balwant Singh has specifically admitted that he himself and Badhawa Singh were prosecuted and convicted in that case and that Sarpanch Satpal Singh might have given evidence against them. Badhawa Singh is the prosecution witness in whose presence and that of Subba Singh the appellant is alleged to have made extra, judicial confession and on that point the prosecution evidence has already been discussed and disbelieved.

29. P.W. 2 Gurmit Singh is the complainant and brother of the deceased. On this point he has also stated that on 29-5-1977 he had also accompanied the police to that place within police station Chatta and there Balkar Singh had pointed out the place where the skeleton was lying. It is also stated that in the right hand of the dead body there was an iron kara, there were also a pair of shoes besides the shirt (Ex. 3) another shirt (Ex. 4) was lying nearby and from the pocket of the shirt

licence of the gun was also recovered. He has further stated that the skeleton was just tied and it was not sealed though it was stitched in a cloth. In his statement on oath he has not stated that the accused had stated at the police station Dera Baba Nanak to the Inspector, the Investigating Officer, that he could point out the dead body where it was lying and thereafter the Investigating Officer had taken him, the appellant and other persons to that place.

30. P.W. 6 Prem Chandra Sharma is the Photographer and has deposed that he had a Studio in Chatta by the name of 'Prem Studio'. That Punjab Police had taken him to take snaps of the skeleton. In his own words : --

'MAY 1977 KI BAT HAL PUNJAB KI POLICE AAI THI. HAMSE KAHA KI EK IASHKA PHOTO EK PINJAR KI USHKA WA MULJIM KA LENA HAL MAI UNKE SATH GAYA.'

From the statement of this witness it is clear that when police had taken him to Chatta to have the snaps the police also knew that the dead body was a skeleton. There is nothing in the statement of the accused recorded at the police station before the alleged recovery that the accused knew that the dead body had become a skeleton. It means that the Punjab police had already seen that dead body and that it had become a skeleton. Hence subsequent statement of this witness P.W. 6 Prem Chandra Sharma that Balkar Singh had taken them to the place where the dead body was lying is, prima facie, of no consequence.

31. That apart, P.W. 1 Karnail Singh has also not stated that this Photographer, Prem Chandra Sharma had also accompanied them to the place where Balkar Singh had pointed out the skeleton. He has specifically stated that only two Sub Inspectors, 3-4 constables, Surmeet Singh, Ajeet Singh, Jassa Singh and accused Balkar Singh had accompanied. The witness has also stated that they had gone to the scene of occurrence where the skeleton of the deceased was lying. Thus it is clear from the statement of P.W. 6 Prem Chandra Sharma that the police knew the fact that the dead body was in the shape of a skeleton. Hence once a fact is discovered from other sources there can be no fresh discovery even if the relevant information is extracted from the accused and the Courts have to be watchful against the ingenuity of the Investigating Officer in this respect so that the

protection afforded by the wholesome provisions of Sections 25 and 26 of the Evidence Act is not whittled down by the mere manipulation of the record of the case diary as observed by the Hon'ble Supreme Court in 'Thimma v. State of Mysore' 1971 Cri LJ 1314 in para 10, page 1320. It would, therefore in the circumstances of this case also be unsafe to rely on this information for proving the appellant's guilt. That apart, it appears highly suspicious that the condition of the licence remained without any damage and even though the dead body had turned into mere skeleton as shown in the Photograph (Ex: 13) while no change had taken place in the licence though it remained exposed to the vagaries of the weather and there is also evidence as noted in the post-mortem report that some of the dead body, had been eaten away by the animals.

32. That apart, the identification of the shirts and the shoes which were not sealed on the spot by the Investigating Officer and the fact that in the first information report even minute detail regarding the stitch on the shoes had been given speaks volumes about the suspicious nature of the prosecution evidence. The prosecution has thus not succeeded in establishing that at the pointing out of the appellant dead body of the deceased Jagir Singh along with his shirts, shoes and the licence of the gun were recovered.

5. THE APPELLANT WAS LAST SEEN WITH THE DECEASED IN BIHAR ON THE TRUCK :

33. To prove this circumstance there is evidence of only P.W. 10 Gurmit Singh, who is grand son of Badhawa Singh, in whose presence the extra judicial confession is alleged to have taken place. P.W. 10 Gurmit Singh has deposed that he had seen on Truck No. 2120 Jagir Singh along with Pyara Singh and Balkar Singh that Pyara Singh had said that Jagir Singh was creating trouble for him and he would kill him. That after, returning from Bihar he had told Gurmit Singh brother of Jagir Singh about it. He has also stated that both Balkar Singh and Jagir Singh were drivers on the truck. According to the defence Balkar Singh was not a driver of the truck and this allegation has been strongly refuted, though P.W. 10 Gurmeet Singh has said that Balkar Singh and Pyara Singh were drivers but he has also stated in para 3 of his statement that both of them used to pay hire charges to

Jagir Singh 'YE DONO JAGGER SINGH KO BHARE KA RUPIYA DETE THE'. If this part of the statement is believed it indicates that Balkar Singh and Pyara Singh had taken the truck from Jagir Singh on hire but that is not the prosecution case.

34. Besides P.W. 10 Gurmeet Singh there is also evidence of P.W. 2 Gurmit Singh, brother of Jagir Singh that Balvinder Singh, cleaner of the truck, had also told him that a quarrel had taken place in between Pyara Singh and Jagir Singh. But Balwinder Singh has not been examined nor he was interrogated by the Investigating Officer to confirm that there was some quarrel between Balkar Singh and Jagir Singh. P.W. 2 Gurmit Singh has also stated that he had received a letter dated 22-4-77 from Jagir Singh that he would come back within fifteen days. However, in his first information report he had given specific date 7th May 1978 when Jagir Singh had written to return, that letter has also not been produced. There is also evidence of P.W. 3 Balvendra Kaur, daughter of deceased Jagir Singh that Balkar Singh was a driver on the Truck and so has also been stated by P.W. 2 Gurmit Singh. P.W. 2 Gurmit Singh on 24-7-1978 i.e. after more than 2 1/2 months of the closure of his testimony filed a 'Bilti' and inland letters alleged to be bearing signatures of Balkar Singh. Balkar Singh denied that they bore his signatures and stated that he was wholly illiterate. The fact that he was illiterate and could not even make his signatures is clear from the record as there is no document bearing his signatures. His statement under Section 313, Cr.P.C. also contains two thumb impressions. P.W. 5 Balvant Singh in para 18 of his cross-examination also stated that Balkar Singh had put his thumb impressions though earlier he had stated in para 1 of the examination-in-chief that Balkar Singh had signed but immediately corrected and said that he had put his thumb impression.

35. That apart, P.W. 2 Gurmit Singh has simply stated that he recognised the handwriting and signatures of Balkar Singh on the documents Exs. Ka-18 to Ka-21. but has not stated that he had seen him reading or writing or that ever in his presence Balkar Singh had made his signatures. On behalf of the defence it was also suggested that the 'Bilty' produced was fictitious and to substantiate it on behalf of the defence through an application dated 17-8-1978 a bilti in duplicate was filed showing the name of Gurmit Singh as driver on Truck No. 2120 P.U.G. The learned Sessions Judge though passed an order that the same be kept on file

did not take notice of them in his judgment. Hence merely because some bilti was filed and the writer of the bilti was not produced nor any one connected with the Transport Company was produced, mere name of Balkar Singh and his alleged signature on the Bilti do not carry any credence. Admittedly as stated by P.W. 15 Inspector Deedar Singh they had gone on the truck of the deceased to P.S. Chatta along with the appellant and other witnesses for the recovery of the dead body of the deceased. However, Inspector Deedar Singh has not deposed when and from whose possession the truck was recovered. There is also no recovery memo on the record about it. It is definitely not the case of the prosecution that the accused had gone to P.W. 4 Subba Singh and Badhawa Singh for making his confession on that truck and that on that very truck they had come to the police station when Balkar Singh was taken into custody.

36. In para 15 of his cross-examination P.W. 15 Inspector Deedar Singh has specifically stated that on 26th May, 1977 when he reached police station in the evening i.e. after getting the remand of the appellant from the Magistrate the truck was not found. Appellant Balkar Singh had been taken into custody admittedly on 25-5-1977 at 9.30 a.m. The recovery of the truck was a material circumstance, but the prosecution for the reasons best known to it has concealed that fact and has not given any evidence nor had connected its recovery with the investigation of the case. Had the truck been recovered from the possession of the appellant that would have been a very strong circumstance that he had been driving the truck of the deceased.

37. In that view of the evidence on record the prosecution has also failed to establish that the appellant was last seen with the deceased in Bihar on the truck as set up by the prosecution.

38. It is also relevant to point out that the conduct of P.W. 15 Deedar Singh during the investigation is not free from suspicion. Deedar Singh, (P.W. 15) had deposed that after the case was registered on 23-5-1978 under Section 364, I.P.C. he searched for accused Balkar Singh at his house on 24-5-1978 but he did not prepare any memo which in the normal course he should have done. He also stated that after the alleged recovery of the skeleton on 30-5-1977 a case was

registered at police station Chatta. There is nothing on record to show why the case was registered at P.S. Chatta on 30-5-1977 and not on 29-5-1977 when the inquest report was prepared at 1.10 p.m. in the afternoon and P.W. 13 Norottam Singh S.I. who had prepared the inquest report has also stated that he reached the place where the skeleton was lying at 12.45 p.m. He has further admitted that crime number was not written in the inquest report and it was even suggested to him that the time has been written subsequently as the ink was different. P.W. 15 Inspector Deedar Singh also stated that on 26-5-1977 he had sent Balkar Singh for remand at 10 a.m. and admitted in his cross-examination that he did not note the time of recovery of articles in the G.D. nor made any entry when he had taken Balkar Singh to Batala for recovery. He further admitted that he reached the police station on 26-5-1977 but in the G.D. entries were dated 27-5-77 at 5.30 p.m. and regarding the return from P.S. Chatta entry in the G.D. is dated 31-5-1977 at 5.15 p.m. though the alleged recovery was made in the noon on 29-5-1977. Thus the entries in the G.D. prima facie are not consistent with the investigation alleged to have been carried out by the Inspector. He also did not bother to have any independent witness of the locality at the time of the recovery nor had sealed the articles which required identification of the witnesses.

39. Lastly, the prosecution has also failed to establish that death of Jagir Singh was homicidal. P.W. 7 Dr. Y.K. Dubey who had conducted the post-mortem on the skeleton could not state the cause of death. He also could not give an approximate time when the death might have taken place. The skeleton was also found to have been eaten by animals. The skeleton according to the prosecution was that of Jagir Singh because of the shirts a licence and shoes alleged to have been recovered from there. The recovery and identification of the articles has already been treated with great suspicion and not believed. The evidence of the extra judicial confession has also been disbelieved. Hence once the extra judicial confession, the alleged recovery of the articles and their identification by the witnesses to be of Jagir Singh is disbelieved it cannot be held that the prosecution has successfully proved the death of Jagir Singh and that the same was homicidal.

40. The conclusion, therefore, is that the conviction of the appellant should not be sustained. The appeal is, therefore, allowed, His conviction and sentence for the

offence under Sections 302 and 201 and 379, I.P.C. are set aside. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

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