

The State Vs. Ramchandra Bhoi

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Court : Orissa

Decided On : Nov-17-1964

Reported in : AIR1965Ori175; 1965CriLJ520

Judge : S. Barman and ;G.K. Misra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 164(3);
[Evidence Act, 1872](#) - Sections 8, 24, 27 and 45

Appeal No. : Death Ref. No. 2 of 1964 and Criminal Appeal No. 148 of 1964

Appellant : The State

Respondent : Ramchandra Bhoi

Advocate for Def. : G. Bhoi, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Misra, J.

1. Appellant Ramchandra Bhoi has been convicted under Section 302/34 I. P. C. and sentenced to death. He has also been convicted under Section 120B, I. P. C. and Section 25(1)(a) of the Arms Act, 1950 and sentenced to R. I. for five years

and 1 year respectively. Though he was convicted under Section 392, I. P. C. no separate sentence has been awarded. Kaliram Agarwalla, Srinivas Khejriwal and Sentha Prasad Pandey were jointly tried with him under different charges.

2. Prosecution case may be stated in brief. Sometimes before 21-6-1963 there was a conspiracy to commit dacoity in the house of Narendra Barik amongst the four accused persons, the approver Sompal Sharma (P. W. 15), Ranjit and a Punjabi. The latter two are untraced. Sentha Prasad P. W. 15, Ranjit, Ramchandra and the Punjabi gathered on the road leading from village Topigaon to village Bakatpur with the object of committing dacoity in the house of the deceased Narendra Barik, the Gauntia of the village Bakatpur. They waylaid themselves to kill him first as they had the apprehension that if Narendra would be present at his house, at the time of commission of dacoity, he might attack them with his gun (MO. V). At about 6 p. m. Narendra Barik came on a cycle from the side of Topigaon. The approver P. W. 15 was standing alone on the road. Sentha Prasad, Ranjit and the Punjabi were near him. When Narendra reached them, Sentha Prasad gave a blow with a lathi on his head. The deceased fell down from the cycle. Ramchandra directed Sentha Prasad and the Punjabi to kill him. They dragged him inside the jungle and killed him. Ranjit took the cycle and threw it in the jungle. All of them there after proceeded to village Bakatpur. On the way Santhaprasad and the Punjabi washed their hands and cleansed the blood stains. At the house of Narendra Barik, Ramchandra called Pravakar Pujhari, a Sadu (co-son-in law) of the deceased, who was residing in Narendra's house, and asked him for some water. They drank the water at the threshing floor. Ramchandra asked Pravakar as to when Narendra would come back. Pravakar replied that he would return very soon from Topigaon. Ramchandra again asked for some more water. When Pravakar got into the house to bring more water, the dacoits followed him. P. W. 15 stood at the entrance gate. Santhaprasad demanded the keys of the iron chest from Pravakar on show of a revolver. Pravakar told them that the keys were with Narendra, Ramchandra directed Santhaprasad to do away with Pravakar. Santhaprasad fired two shots from the revolver which hit on the chest whereafter Ranjit and the Punjabi dragged him inside the house. The sound of the gun shots brought the villagers in front of the house of Narendra. Ramchandra seized the gun (M. O. V) belonging to the deceased and threatened the villagers

with firing if they would further proceed. The villagers dispersed in fear. Narendra's wife Hemlata (P. W. 3) was cooking inside the kitchen. She got frightened and left her house for Sundhipara, an adjoining hamlet. The dacoits ransacked the iron safe and different boxes and decamped with the booty. Some of the villagers P. Ws. 1 and 2, deceased Krushna Chandra Sahu and others went to Topigaon to call Narendra. Narendra was not traced and the people of Topigaon said that Narendra had left for his village in the evening. One Krushna Chandra Sahu, since deceased, lodged the plain paper F. I. R. (Ext. 1) before the S. I. of Lanjigarh who had come to Topigaon in connection with another case. The S. I. of Police (P. W. 43) with the A. S. I. of Police (P. W. 14) and some Constables came to village Bakatpur. They found Pravakar lying injured with two gun-shot wounds on his chest and a cut injury on his ear. Pravakar died in the Ambadola dispensary the very night. The defence plea was one of complete denial.

3. The learned Sessions Judge held that death of Narendra Barik and Pravakar Pujhari was homicidal and that there was a dacoity in the house of Narendra Barik. These two findings have not been questioned by Mr. Bhoi. The medical evidence fully supports the fact that the death was homicidal. There is abundant evidence about the dacoity being committed in the house of deceased Narendra. As the aforesaid findings are not challenged, it is unnecessary to discuss the relevant evidence on the point which has been fully considered by the learned Sessions Judge. We endorse the findings.

4. The only point for consideration is whether the appellant Ramchandra is involved in the murder and the dacoity. The conviction of the appellant is based mainly on his confession (Ex. 8). It has been retracted. The confession having been retracted, it is incumbent upon the prosecution to prove that the confession is voluntary and true.

It was vehemently contended that the confession was not voluntary. To appreciate this contention certain facts may be mentioned. Ramchandra appeared before the Police on 19-7-1963 in response to police requisition. He was arrested on 20-7-63 as he made certain statement implicating him in the offence. He was taken to village Bakatpur on the same day. There he disclosed in presence of P.Ws. 2 and

4 that he had concealed the gun (M. O. V.) in his own village Saria. He was accordingly taken to his own village and he gave discovery of the gun M. O. V at 6-30 P. M. On 21-7-1963 he was taken to village Utkela where he stated to have left torchlight (M. O. VI) belonging to deceased Narendra. The torch-light was recovered at about 10-30 a.m. At about 11-30 a.m. he was produced before the Magistrate who remanded him to police custody. According to the I. O. (P. W. 63), on 22-7-63 he was again taken to village Utkela for confronting with the statement of one Golap Marwari who was suspected to be in the conspiracy for the commission of the dacoity. On 23-7-1963 he was produced before the Magistrate (P. W. 16) at 1 P. M. for recording his confessional statement (Ext. 8). On the statement of P. W. 63 to the effect:

'I examined accused Ramchandra on 19-7-63 and he did not make any confession on that day. On 20-7-63 he made confessional statement before me.'

Mr. Bhoi contends that when Ramchandra had made the confession on 20-7-63, the gun M. O. V had been recovered on 20-7-83 and the torch-light 21-7-63 P. W. 63 should have sent Ramchandra for recording his confessional statement before the Magistrate on 21-7-63, and his detention from 21-7-63 till 23-7-63 was merely with the object of extorting a confession. In cross examination, P. W. 63 gave the following reply:

'As his statement was to be verified with the statement of Sompal I did not request for recording his confessional statement on 21-7-63, though he was produced in court that day.....I moved for remand of accused Ramchandra to police custody on 21-7-63 on the ground that he would be taken to Ambadola for verification of his statement*** * * * It is not a fact that accused Ramchandra did not confess on 20-7-63 and gave recovery of the gun, recording of his confessional statement was deferred till 23-7-63 and he was put to police torture from 19-7-63 to 23-7-63.'

The learned Government Advocate contends that till 21-7-63 no comment can be made on the conduct of the police for not recording the confession earlier and that prosecution is only to explain the detention in police custody on 22-7-63. He relies on the explanation of P. W. 63 that Ramchandra was remanded to police custody

for the purpose of confronting Golap Marwari. The learned Sessions Judge has found that the complaint of the appellant that there was police torture on him from 19-7-63 to 23-7-63 is wholly unfounded and false. Mr. Bhoi did not attempt to assail this finding due to lack of materials. He merely stressed on the detention in police custody for one day more and asked us to draw an inference that it must be with a view to extorting the confession. The explanation given by the I. O. appears to be quite satisfactory.

It is then contended that the Magistrate(P. W. 16) did not comply with the mandatory provisions of law prescribed in Section 164(3), Criminal P. C., that he did not give sufficient time to Ramchandra for reflection and that he made no endeavour to ascertain if he was free from extraneous influence. The confession (Ext. 8) does not show that P. W. 16 asked any question to Ramchandra as to the motive and reason why he was making confession. In court, however, P. W. 16 deposed that he asked the question though he had not recorded it. It would be pertinent to quote the question put by the Court and the answer given by P. W. 16.

'Q. Can you tell why you did not record the question and the answers given by the deponent as to the reason, purpose or motive for making the confessional statement ?

A. I cannot assign any reason for not recording questions and answers.'

Section 164, Criminal P. C. prescribes that confessions shall be recorded and signed in the manner provided in Section 364 which in its turn lays down that every question put and every answer given shall be recorded in full and that the Magistrate shall certify under his own hand that the record contains a full and true account of the statement made. In view of this mandatory provisions of law, the statement of P. W. 16 that he put the question and got the answer, though he had not recorded the same, cannot be accepted as true. We are constrained to hold that the Magistrate did not put the question and his answers to the Court to the contrary is untrue. A further question was put to P. W. 16 as to why he did not give 2 or 3 days time to Ramchandra for reflection. The question and answer in that regard may also be quoted:

'Q. Will you tell why the statement of the accused was recorded on the very date of his production in Court and why sufficient time, say, 2 or 3 days was not given for reflection ?

A. I have read in law report that sufficient time means two or three hours. I do not remember the reference to any law report.'

It is somewhat surprising that to cover up his defect P. W. 16 ventured to give an answer that there are authorities to show that sufficient time means two to three hours. In fact, in *Sarwan Singh v. State of Punjab*, (S) AIR 1957 S C 637 their Lordships have clearly ruled that though it would be difficult to lay down any hard and fast rule as to the time that should be allowed to an accused person in a particular case before recording the confessional statement under Section 164, Criminal P. C., in general it would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused had been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In *Ram Parkash v. State of Punjab*, AIR 1959 S C 1, only one hour's time was given for reflection and the reflection was accepted as voluntary in the particular facts and circumstances of that case. The position of law has been settled in a series of decisions of this Court and of the Supremo Court that each case must be judged on its own facts and no hard and fast rule can be laid down. The true purpose in each case, however, must be to ascertain whether the confession recorded is voluntary and no Magistrate shall record any confession unless upon questioning the person making it he has reason to believe that it was voluntary. Section 164 (3), Criminal P. C., lays it down in unmistakable terms.

In view of our conclusion that the Magistrate (P. W. 16) did not put any question to Ramchandra as to the motive or reason as to why he was making a confession and gave an untrue answer that he put such a question and further that he gave an untenable answer that law reports have determined that sufficient time means 2 to 3 hours, we had to carefully examine whether the conclusion of the learned Sessions Judge that the confession was voluntary is correct. From the

confessional statement (Ext. 8) it would be noticed that P. W. 16 told the deponent that he himself was a Magistrate and that deponent was not bound to confess and that if he confessed, the confession would be used as evidence against him. The Magistrate gave 2 to 3 hours' time for reflection. In the Court room and the verandah there were no police officers. The accused was placed in charge of the Magistrate's peon Jagannath Gouda. The Magistrate also signed the prescribed memorandum and stated therein that he believed that the confession was voluntarily made. He added a brief statement for believing that the statement was voluntarily made. There he has noted :

'I have given caution twice and even after that he confessed.'

On this aspect of the case there was thorough and searching cross-examination of P. W. 16 and he stood the test. We are satisfied that confession is voluntary in the facts and circumstances of this case.

5. It is now necessary to examine if the confession is true. The confessional statement is a very long one and in fact it took the Magistrate about 1 1/2 hours time to record it. It narrates the genesis and history of the conspiracy for performance of dacoity at various places. That portion is irrelevant to the discussion of this case. The broad outlines of the confession, so far as they are pertinent, may be quoted by excluding unnecessary details for proper appreciation as to how far they are corroborated by the rest of the prosecution evidence and the broad probabilities of the case. Law is well settled as to the nature of corroboration of a retracted confession. It need not be in material particulars. It would be sufficient if the general trend of the confession is established by some evidence which would tally with the contents of the confession. Each and every circumstance mentioned in the confession regarding the complicity of the accused is not to be separately and independently corroborated. For, in that case the conviction can be based on the independent evidence itself and not on the retracted confession. The corroboration may be obtained also from the facts and circumstances discovered before the confession is made. In the light of these principles the confession Ext. S must be tested.

6. Mr. Bhoi concedes that there is no conflict or contradiction between any part of the confessional statement and rest of the prosecution evidence and the broad probabilities of the case. He, however, contends that there is no corroboration. I propose to notice the main parts of the confessional story and examine how far there is corroboration. A part of the confessional statement is as follows :

'With him (meaning Ganapati Kaviraj) I came to Ambadola. I slept in the railway station and he went to his house. In the following morning (21-6-63) I went to Ganapati's house and took food there. With him I went to the railway station. Three persons got down by that train. I had talk with them and I told them to remain in some hotel. I went with Ganapati to his house, I returned at 4 P.M.'

Ganapati (P. W. 41) states :

On 20-6-63 I had been to Muniguda Society Office. When I went out to attend the call of nature I met accused Ramchandra near about the railway station at about 5 P. M. and he told me that he had gone there to fix a Gunia (wizard) On 21-6-63 morning I came to attend the train and found accused Ramchandra in the company of another person (The witness identifies this person to be accused Srinibas). They were talking near the station. I left for my house. Sometime after accused Ramchandra came to me. I gave him food. He slept in my house till 4 P. M. He told me that he would go out to case and had some other work. To my query accused Ramchandra told me that the person with whom I was talking was a petrol supplier to bamboo Company.'

The evidence of P. W. 41 thus fully corroborates the confessional statement as to the movement of Ramchandra and some of his associates on 21-6-1963 and the previous day. P. W. 41 is a respectable person who was practising as a Kaviraj of Ambadola for three years and for the last one year he is the Supervisor of the Forest Marketing Society at that place. He has previous acquaintance with Ramchandra. P. W. 7 had a Ganja shop at Ambadola. He identified accused Srinivas as one of the persons who went to his Ganja shop. He saw Ramchandra in the house of P W. 41. He is also a respectable person and proves the movement of Ramchandra on 21-6-1963. P. W. 11 had his hotel very near the Ambadola station. He identified P. W. 15 to have gone to his hotel about 2 days

before the Car festival. The evidence of P. Ws.. 7, 11 and 41 thus corroborates the confessional statement that on 20th and 21st June 1963 Ramchandra: was moving at the Ambadola Station with some other persons.

The confession contains the following statements:

We all went and sat on the junction where Ambadola Road and Topigaon Road meet. We sat under a tree. One person came on a cycle and went towards Topigaon. The Secretary went from Topigaon to Bakatpur. The A. S. I. of Lanjigarh and Chowkidar were coming towards Topigaon.

The A. S. I. asked Some and Santhu and they replied that they are going to Pokhirikunda Bhati, South and I had kept our shirts and umbrella when we attended call of nature.

The A. S. I. (P. W. 14) corroborates the confessional statement that at about 5 p. m. he was returning on foot from Topigaon. Jadu Ganda Choukidar was also with him. After a distance of about a furlong from Topigaon, we saw accused Santh Prasad. At a distance of 20 to 30 yards he found near a culvert a dhoti and two umbrellas. One of the two persons whom he met told him that they were coming from Kantabanji and going to Pokharibandha bhati. Thus the evidence of P. W. 14 fully corroborates the aforesaid part of the confessional statement.

The confession proceeds further to the effect:

'We all went to attend call of nature and hid ourselves. Then the deceased Gauntia came from Bakatpur side. I told that he is Gauntia of Bakatapur. The Gauntia went to Topigaon side. We had programmed first to kill him as he is also armed in his house. He returned. Sontha took the knife of Some and cut a pole and we selected the site. Sontha was holding the pistol and that lathi. I remained at the junction and watching. Those three persons got up and Gauntia got down from his cycle. They caught hold of him and with one lathi of Sontha he fell down. Some and Sontha carried him to the forest. Ranjit caught hold of the cycle and took it inside the forest. They then came to me. Some told me that the neck of the deceased was cut. They all said that he was killed.'

The evidence of the Doctor (P. W. 64) and the postmortem report (Ext. 56) clearly established that the injuries resulting in the death of the deceased Narendra Barik were caused both by lathi and sharp cutting weapon. This is consistent with the confessional statement that the deceased fell down by the lathi stroke and subsequently was killed inside the jungle by being cut with a sharp cutting weapon. The recovery of the dead body of the deceased inside the jungle at the particular place and of the cycle near about it fully corroborates the confessional statement. The recoveries are established by the evidence of P. Ws. 65, 21 and the seizure list Ext. 14. The blood stained lathi (M. O. XXVII) was also recovered from near the dead body. This part of the confessional statement is therefore fully corroborated.

The next phase of the confessional statement is-

'Then we came towards Bakatpur. There was water on the way and they washed their hands which were stained with blood. I gave soap to them. Near the Khola (threshing floor) we saw the Secretary and an old man. We went there. I asked Secretary if the Gountia was in his house as they might have heard the cry of the deceased. He said that he has gone to Topigaon. Ranjit said that he had got work with the Gountia and also asked for water. After asking for water 2 or 3 times the Secretary went and we also went with him. We remained outside and he brought water. We drank water and left the lota and glass. When he came again he (Ranjit) again asked for water and the Secretary again went for water. He brought water and we took water. When he was returning with lota and glass they entered inside the house with him. Santha fired at the Secretary at close range. He fired again and he said that he was dying. There was a hulla. Santha came near me after sometime. At that time the villagers were coming. Santha took my torch light and said that he will shoot the people who will come near them. The people who were coming went away. Ranjit came with the gun and gave the same to me and went inside. After sometime the three persons came out. Ranjit was holding a Gontuli. I was also telling that I will shoot whoever comes.'

The evidence of P. W. 3 and of the villagers (P. Ws. 1, 2, 5 and 9) fully corroborates the confession. P. W. 3 deposed as to how water was supplied to the

dacoits by Pravakar. She also deposed that Pravakar died as a result of the gun shot wounds. This is also the evidence of the villagers and of the S. I. (P. W. 65) who reached the spot soon after the incident. The evidence of the villagers clearly establishes that on hearing the gun-shot sound they came in from out of Narendra's house but dispersed on being threatened that they would be shot down if they would proceed further. The gun (M. O. V.) of deceased Narendra had been taken away by the miscreants. The iron chest and the boxes were found to have been opened and ransacked. Thus this part of the confessional statement resulting in dacoity and murder of Pravakar is satisfactorily corroborated.

In Ext. 8 Ramchandra stated :

I left my umbrella near that house. Santha also left his umbrella.

Admittedly two umbrellas belonging to the dacoits were seized (Seizure List Ext. 11--evidence of P. Ws. 21, 22 and 65). These umbrellas have not been satisfactorily identified as belonging to Ramchandra and Santha. The absence of identification evidence is, however, immaterial. The factum of recovery of the umbrellas belonging to the dacoits is sufficient corroboration of the confessional statements.

Ext. 8 further proceeds to the effect--

'We went to the house of the Sarpanch at Sauntpur who is my somundhi. We took rest thereMy somundhi asked why he had gone at that night. I told as I wanted money as there is a warrant (distress) I am going with my mitho (friend) for money. They washed their clothes and took bath. We took tea. Some went away in the morning and went towards Norola. I and Santha remained stating that the truck will come to go to Rampur for money which I told to my Sammandhi. In the night we took food there and went to my village.'

Satya Padhan (P. W. 27) is the Sammandhi of Ramchandra and is a resident of the village Sauntpur. He fully corroborates the confessional statement that Ramchandra came at an unusual time of the night with two persons. He introduced the two strangers as his friends. He gave tea to all. One of them left the

place in the morning and the other two left his house at about nightfall in the evening. Whether the identification of the strangers made by him is accepted or not, his statement substantially corroborates the confessional statement.

Ramchandra further stated-

'In the night we took food there and went to my village. I hid the gun in the bush near the school and left Santha at Kandal Road. He asked me to keep the pistol with me. I slept there for the night. In the morning I returned to the temple and attended the Ratha-jatra and in the evening came home. Then I took the gun and hid the same in a wooden pipe in my lands.

As to the statement when Ramchandra hid the gun in the bush near the school and subsequently removed it to the place where it was found, there is some discrepancy between the prosecution evidence and the confessional statement. This is not, however, very significant. The recording of the confessional statement is not conducted like deposition of witness in court. The accused goes on making statement in his own way. It is not subjected to cross-examination or clarification by re-examination and the accused cannot be directed to follow the chronology exactly in the manner it happened. If the contradiction goes to the root of the matter on a material link of the case, it may be vital. A part of the confessional statement might, however, be rejected and other part accepted if the part to be rejected is proved to be false by other prosecution evidence. No hard and fast rule can be laid down. The ultimate conclusion will depend upon the facts and circumstances of each case. The discrepancy leading to the timings is not, however, very material. The statement of the accused that he hid the gun in a wooden pipe in his own land receives corroboration from the discovery given by him in the evening of 20-7-1983. P. Ws. 2 and 4 state that the accused admitted before them at Bakatpur that he had kept the gun in his village and that he would produce it. P. W. 4 is the son of deceased Narendra. P. W. 2 works under P. W. 4, They are thoroughly independent. They had no axe to grind against accused Ramchandra. They have no previous enmity with nor even they knew Ramchandra from before. Mr. Bhoi is not in a position to convince us why they would falsely implicate Ramchandra. After this statement was made, the I. O. (P.

W. 63) took Ramchandra to his village and in the presence of P.Ws. 24 and 30 the discovery was given. P. W. 24 is in terms of litigation with Ramchandra and we do not place much reliance on his evidence. But P.W. 30 is a reliable witness. He stated-

'The vehicle proceeded up to the Nala and it was stopped there according to the direction of the accused Ramchandra. From there the party proceeded to the place where the gun was kept hidden. Accused Ramchandra could not bring out the gun as the earth was hard. With the help of a spade which was brought out from the Police vehicle he removed earth and brought out the gun, in our presence. Accused Ramchandra led us to the place where the gun was kept. Police prepared the seizure list (Ext 17)The land from which the gun was recovered belonged to accused Ramchandra. It is known as Padarbhatta. The gun was kept inside a hollowed trunk meant for discharge of water. One of its mouth was closed with earth. The other end was open. As the trunk was long the gun could not be taken out from the open mouth.'

Nothing has been suggested against this witness. Ramchandra filed a criminal case against his Maha- parasad Simachal. He denied the suggestion that he had supported the case of Simachal. Though he admits that at times he attends the Akhda (rehearsal) of P. W. 24, he is not a member of the Natch party. We accept his evidence as reliable and also accept the corroborating evidence of the I. O. (P. W. 63) and P. W. 59 on this point. It is not disputed that the gun M. O. V belonged to deceased Narendra. The licence (Ex. 42) and the entry in the Gun License Register (Ext 61) also prove the ownership of Narendra.

7. Mr. Bhoi, however, contends that the discovery of the gun given at the instance of Ramchandra is not admissible under Section 27 of the Evidence Act inasmuch as he did not specifically mention the place where he had concealed the gun, but merely stated in a general manner that he had kept the gun in his village. This information, according to him, would not distinctly relate to the factum of discovery from the place from where it was found out. The scope of Section 27 was fully considered in Pulukuri Kottaya v. Emperor, AIR 1947 P C 67 which has been followed by the Supreme Court in a series of decisions. In Chinnaswamy Reddy v.

State of Andhra Pradesh, AIR 1962 S C 1788 the statement made by the accused was that he would show the place where he had hidden the ornaments and he dug out the ornaments from the garden which he owned along with others. Their Lordships held that the statement was admissible under Section 27 even though in the information the accused did not specifically mention the particular place where the articles were concealed. It was further held in that case that the words by themselves indicated the possession of the appellant of those articles. The extent of the information admissible must depend on the exact nature of the fact discovered to which such information relates. The fact discovered embraces the place from which the object is produced and the knowledge of the accused about it. The information given must relate distinctly to that fact. There is no substance in the contention that Ramchandra's statement is not admissible in evidence.

The statement is relevant under Section 8 of the Evidence Act. Illustration (i) appended to the section is as follows :

'(i) A is accused of a crime.

The facts that after the commission of the alleged crime, he absconded, or was in possession of the property or the proceeds of property acquired by the crime or attempted to conceal things which were or might have been used in committing it, are relevant.'

There is no dispute that the gun M. O V belonged to deceased Narendra and had been taken away by the dacoits in course of the commission of the crime. Under Section 8, the concealment of such a gun is relevant in terms of Illustration (i).

8. To sum up, though general corroboration of the retracted confession of the accused is sufficient to hold that the confession is true, in this case there is corroboration even in material particulars not only with regard to the commission of the crime but also with regard to the complicity of Ramchandra. The confessional statement is true and the conviction is well founded on the retracted confession alone.

9. The learned Sessions Judge placed some reliance on the extra-judicial confession of Ramchandra before P. W. 41. We are not, however, much inclined to place reliance on it as it is uncorroborated. We do not also place reliance on the recovery of the torchlight as the evidence of identification regarding its ownership is not very satisfactory.

10. We cannot part with this case without making reference to certain defect in the investigation and in the conduct of the Doctor (P. W. 64) who held the post-mortem examination on the dead-body of Pravakar. According to the post-mortem report, there were gun shot wounds. The entrance wound was noticeable but not the exit wound. It was the duty of the Medical Officer (P.W. 64) to have directed X-ray examination of the dead body to determine if bullets were located in the body. It was the duty of the I. O. to see if bullets were inside the dead body and if those bullets, if recovered, were proved by ballistic examination to have been shot from the revolver (M. O. XXXVI) which admittedly belonged to Srinivas and from whose possession it was recovered. We cannot disabuse our mind of the impression that this omission cannot but be deliberate. The matter was so patent that no Investigating Officer would ignore it.

In this judgment, we have made no discussion of the evidence of the approver (P.W. 15). The learned Government Advocate stated that he would not rely upon the approver's evidence so far as this appeal is concerned as the other evidence for the prosecution was sufficient for conviction. Mr. Bhoi stated that he would not rely on the evidence of the approver. We accordingly express no opinion on the conclusion of the learned Sessions Judge that the approver is unreliable.

11. Coming to the question of sentence, Mr. Bhoi made an earnest appeal that death sentence should not be imposed. He contended that the conviction being based on the confessional statement, which indicates that Ramchandra was not the brain behind the dacoity and murder, and that much bigger and richer people were involved in it, who have not been brought to book, Ramchandra should be visited upon with lesser sentence of imprisonment for life. The contention appeals to us.

12. In the result, Death Reference is discharged and the Criminal Appeal is dismissed subject to the modification on the question of sentence. The sentence of death is set aside and the appellant is sentenced to imprisonment for life.

Barman, J.

13. I agree.

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