

Mohinder Singh and ors. Vs. the State

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Court : Delhi

Decided On : Oct-08-1970

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Judge : S.N. Shankar and; S. Rangarajan, JJ.

Acts : [Evidence Act, 1872](#) - Sections 25

Appeal No. : Criminal Appeal No. 125 of 1969

Appellant : Mohinder Singh and ors.

Respondent : The State

Advocate for Pet/Ap. : A.N. Mulla,; G.S. Bakshi and; B. Dayal, Advs

Judgement :

S. Rangarajan, J.

(1) This judgment will also dispose of Criminal Appeal No. 122 of 1969 which has been preferred by Kartar Singh, who was convicted under section 364 read with section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for five years but was acquitted of the other charges framed against him under section 302 read with section 34 section 201 read with section 34 and under section 325 read with section 34 of the Indian Penal Code by the learned Additional sessions Judge Delhi

(2) The appellants Mohinder Singh, Piara Singh and Kundan Singh (in criminal appeal No. 125 of 1969), who will hereinafter be called the appellants unless otherwise indicated.. have all been convicted under section 302 read with section 34, section 325 read with section 34 and section 364 read with section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life, five years and two years respectively on each of the above counts : the sentences against each of those accused have been directed to run concurrently. All the four of them were acquitted of the charge under section 201/34 of the Indian Penal Code.

(3) Joginder Singh and his wife Pritam Kaur, who were also charged along with the appellants in both the appeals were acquitted. There has been no appeal by the State or of any of the accused either wholly or of any charge.

(4) The case for the prosecution briefly is that after the death of Tara Singh (the father of appellant Mohinder Singh) about a year and a half prior to the occurrence, Jaswant Kaur, the widow of Tara Singh, became intimate with the deceased, Surjit Singh. Appellant Mohinder Singh and his mother Jaswant Kaur were living at 2/54, Roop Nagar along with two other sons, aged 17 and 6 respectively, and three daughters of whom the eldest is about 15 years old. Gurmit Singh, the elder brother of Surjit Singh, was also living in the same house. Surjit Singh was living with his wife, Sudershan Kaur, in Kingsway Camp stated at the bar to be about three miles away from Roop Nagar.

(5) Naturally this intimacy between the deceased and Jaswant Kaur was resented by her eldest son (appellant Mohinder Singh) and other relations, including her two brothers (appellants Kundan Singh and Piara Singh) as well as appellant Kartar Singh, who had married the sister of Jaswant Kaur.

(6) On 1/07/1968, the day previous to the occurrence, appellants Mohinder Singh, Piara Singh and Kundan Singh went to the house of the deceased in order to take back Jaswant Kaur, who had gone there the previous day. They forcibly took away Jaswant Kaur after beating and fisting her. They threatened the deceased that he should either marry Jaswant Kaur and keep her in his house or else they would kill both Jaswant Kaur and the deceased. The deceased protested that he was

innocent and that Jaswant Kaur was visiting them of her own accord.

(7) Next day (Tuesday, the 2/07/1968) at about 7-30 Am the deceased went to a public hydrant near his house along with his three guests, namely, Sat Pal Singh, Paramjit Singh and Gurlal Singh (PWs 2,3 and 4 respectively) for taking their bath. At about 8-00 AM four Sardarjis (who are stated to be the four appellants) came in a car and took Surjit Singh in that car. Public Witness 4 also got into that car as requested by the deceased. But the car stopped at a nearby petrol pump under pretext of needing petrol for the car; Public Witness 4 who was sitting in the front seat, was asked to get down and the car sped away without him. Public Witness 4 came back to the hydrant and reported the matter to Gurmit Singh (PW12), the father's elder brother's son of the deceased, who lodged a report at the Kingsway Camp Police Station (as per Ex. P W. 12/1) at 8.05 Am concerning what had happened and requested that a search may be made for Surjit Singh.

(8) PW4 went to the same Police Station at 9-30 AM and made a report Ex. Public Witness 4/1, giving some descriptive particulars of the four Sardarjis and referring to his having been asked to get down from the car near the petrol bunk and the car being driven away with Surjit Singh in it, but without him.

(9) Appellant Mohinder Singh lodged a report (Ex. Public Witness 15/1) later the same day at 1-25 Pm at the Roshanara Police Station mentioning that his mother in spite of several warnings did not desist from her illicit relations with deceased Surjit Singh, that her mother and Surjit Singh were sharing bed in the same room that day, that both of them were beaten after opening the door and that they were in the same room even at the time of reporting. He prayed that help may be given to him.

(10) On receipt of the report (Ex. Public Witness 12/1) from Gurmit Singh at the Kingsway Camp Police Station, where a case under section 355 of the Indian Penal Code was registered, Sub-Inspector Rishi Parkash (PW14) set out to trace the missing person (Surjit Singh) along with Public Witness 12. Public Witness 12 got down from the police van at Vijay Nagar Bus Stop since he had to go to New Delhi court in connection with a case. On his way back to the Police Station Public Witness 14 was given a copy of the report (Ex. Public Witness 4/1) by a

constable. He then proceeded to the spot and recorded the statement of Public Witness s 2 and The widow of the deceased Sudershan Kaur (PW6), who had gone out and, therefore, knew nothing about what happened that morning after her husband and their guests had gone to take their bath at the public hydrant, even without taking tea, returned to her house at 1-30 noon. Public Witness 12 also returned from court at about 2-30 PM. Public Witness 14, along with some others, went to the house of accused Mohinder Singh at Roop Nagar, which is within the limits of Roshanara Police Station. Assistant Sub-Inspector Ram Singh of the same Police Station (PW15) met Public Witness 14 there and informed him about Surjit Singh having been killed. Ram Singh (PW18), also of Roshanara Police Station, had gone to the scene of occurrence on receipt of the report (Ex. Public Witness 15/1) given by accused Mohinder Singh at 1-25 PM. Public Witness 18 found the body of Surjit Singh with a kuchha but no banyan lying on the floor and Jaswant Kaur also lying with injuries on a pallang in the same room. He also recorded a statement (Ex. Public Witness . I/A) of Jaswant Kaur. Jaswant Kaur subsequently resoled from this statement & tried to make it appear that Surjit Singh had come home with two guests who were not known to her and when those two guests behaved towards her in an indecent manner Surjit Singh attacked them with a thapi (a wooden stick used for beating, washing clothes.) They attacked and beat Surjit Singh as well as herself and fled away. According to her earlier version to the police, however, the four appellants had arranged to send the children to some other house, brought Surjit Singh (deceased) into a room which they forced her to enter and taunted her to sleep with Surjit Singh in their presence, beat Surjit Singh with shoes, dundas and grinding stick and also beat her. Surjit Singh succumbed to his injuries at the spot. It is this statement of Public Witness 1 which has been treated as the first information report.

(11) Inspector D.D. Sharma (PW19) reached the scene of offence at Roop Nagar at 2-50 PM and took over investigation from Public Witness 18. The body of Surjit Singh had only a kuchha on it which according to Public Witness 19 contained spots which looked like semen. This kuchha, however, was not examined chemically for the presence of semen stains. Public Witness 18 noted that there were marks on the floor of the baithak, i.e., the room adjoining the room in which the corpse was lying which had been freshly scrubbed with a wet and dirty

scrubber (stained with blood) which was recovered from the adjoining bath-room. The blood stained thapi (P1) and dundas (P2 and P3) which were lying in the courtyard were also seized. Some blood stained clothes were found lying soaked in water in the bath-room on the first floor. The clothes included a jumper (P4) Salwar (P5) shirt (P6) and two tehmads (P.7) and (P.8) There were also blood stains on the wooden almirah fixed in the wall of the baithak those blood stains were scraped and sent for Chemical analysis. Appellant Mohinder Singh and Piara Singh, who were in that house, were taken into custody. Public Witness 1 was sent for medical examination to Dr. S. Talwar (PW16). Public Witness 1 had stated to Public Witness 16 that she had been beaten by her relations for two days.

(12) Appellant Kundan Singh surrendered on 12/07/1968 and appellant Kartar Singh, who was absconding, was not available for arrest till 27/07/1968. Proceedings were taken against both of them under sections 87 and 88 of the Code of Criminal Procedure.

(13) At the trial Jaswant Kaur, Paramjit Singh and Gurlal (PWs 1, 3 and 4 respectively) were permitted to be treated hostile by the prosecution.

(14) All the appellants denied the prosecution case in toto. Mohinder Singh denied that he gave a report (Ex. Public Witness . 15/1) though he admitted having gone to roshanara Police Station on seeing his mother, who had injuries, lying down unconsciously and Surjit Singh dead. He asserted that on the body of the deceased there was not merely a kuchha but a banyan also. Nothing, including what has been stated to be bloodstained clothes, was recovered in his presence. His positive case was that his uncle (appellant) Piara Singh came to see him at 11 Am at the transport office, where he was working from 7 Am that day, and wanted to see his mother, brothers and sisters; when he took his uncle to the house at 1-30 or 2-00 Pm they found the door of the house closed but unbolted. When they went in they saw Surjit Singh lying dead in the room and Jaswant Kaur lying unconscious with injuries. Appellant Piara Singh had nothing more to add to what Mohinder Singh had stated. Appellant Kundan Singh stated that he was away at Punjab.

(15) There can be no doubt that Surjit Singh met with his death as a result of the injuries which he had sustained on the morning of 2/07/1968. According to Dr. M.A. Babu, who was examined as Public Witness 2 before the committing Magistrate and whose evidence was transferred to the file of the trial court, death was due to rupture of the spleen and intracranial haemorrhage. Dr. Babu noticed the following injuries in addition to bleeding from nostrils, sub-conjunctival haemorrhage of both eyes, right eye-lid bruised with ecchymosis all round :

1. Contused lacerated wound 3 x ' x scale deep on right parietal region with scattered abrasions over an area 1' x 1' over right side of forehead. 2. Contused lacerated wound "x" behind the right ear with scattered abrasions over back of right elbow over an area of 1' x ".

(16) On opening the abdominal cavity, it was found to be filled with blood, the spleen was found ruptured and the liver was bruised superficially. There was not even a suggestion that the spleen was diseased. Stomach was empty. There was effusion of blood all round underneath the scalp, the sutures of the brain were somewhat loosened but there was no fracture of the skull. Under the skull bone the brain surface was bruised, with a few blood clots in subdural spaces.

(17) There can also be no doubt about the fact that Jaswant Kaur also had received injuries. According to the evidence of Public Witness 6 (Sudershan Kaur) Jaswant Kaur was beaten and fisted by appellants Mohinder Singh, Piara Singh and Kundan Singh on the day previous to the occurrence. Though the doctor (S. Talwar PW 16) who examined her or even Public Witness 11, the Orthopedic Surgeon, were not questioned about which among those injuries were caused on the date of the occurrence and which were caused on the day previous to the occurrence. The injuries found on her were described by Public Witness 16 as follows :-

1. Swelling of both eyes with conjunctival haemorrhage. 2. Stains of blood from the nostrils were present in the nose. 3. Multiple contusional injuries on the face. 4. Three stabs in the middle one-third of the right leg, each stab about an inch in size and 5 cm. apart. 5. Stab wound of size about one inch in the middle of left leg. 6. Fracture left patella with swelling of the knee joint. 7. Lacerated wound about 2

inches size in right thenar region.8. Another wound in the left-hand about 3 inches in the left thenar region. The muscles of the left thenar partially divided.9. Small contusions all over the body.

(18) The wound certificate issued to Jaswant Kaur (a carbon copy of the medico-legal report (marked as PW. 11/1) prepared by Public Witness 16 with reference to those injuries) was proved in the first instance by Dr. S.K. Jagga (PW11) who had also seen Public Witness 1 in the Orthopedic Department, Irwin Hospital, New Delhi, where he was working as Registrar at that time. He also proved that Ex. Public Witness 11/1 was written and signed by Dr. Talwar. Jaswant Kaur was transferred to the Orthopedic Department on 6/07/1968, where she stayed up to 15th July and then transferred to Pant Hospital because of the fracture on both of her kneecaps and she had to undergo surgery. Ex. Public Witness 11/1 mentions the fact of Public Witness 1 being fully conscious when she was examined by Dr. Talwar at 7-20 Pm on 2/07/1968 and about her being beaten by her relatives for 'the last two days'. Public Witness 19 had prepared an injury report (EX. Public Witness 19/1), mentioning the fact of his having noticed the injuries on the person of Jaswant Kaur among which were two injuries which were said to be bleeding, namely, the right and left palm, both of these between thumb and the fingers. This is an indication of the bleeding injuries having been caused on the date of the occurrence. The stab wounds on her left and right legs also could not have been caused on the previous day because Public Witness 6 did not refer to any sharp edged instrument having been used against Jaswant Kaur then. PW19 found that the floor of the baithak (the room next to where the body of deceased and Jaswant Kaur were lying) had been recently cleaned by using wet cloth; blood had splashed on the almirah from which scrapings were taken and detected to contain human blood. All the windows of the room in which the body was lying and which were abutting towards the road were found closed when the police reached the scene. The jumper (P4) and Salwar (P5) said to be the blood stained clothes of Jaswant Kaur were recovered from a Balti on the first floor along with teh mads (P7 and P8). These were also found to contain human blood. The thapi which was recovered from the coat-yard of the ground floor, but not the two dundas (ghonfas) which were also recovered from the same place, contained bloodstains.

(19) Regarding the motive for the occurrence there is the clear evidence of Public Witness 6, even though she did not herself personally know about the intimacy between the deceased and Jaswant Kaur; on Sunday, previous to the occurrence (30/06/1968), Jaswant Kaur came to the house of the deceased and told Public Witness 6 that she had quarrelled with the members of her family and spent the whole day there. When the deceased returned home in the evening he advised her to go back to her house. She went away saying that she would be going back to her house. She however, returned to Public Witness 6's house. On Monday (1/07/1968). On that day appellants Mohinder Singh, Piara Singh and Kundan Singh came to Public Witness 6's house, beat and fisted Jaswant Kaur saying that she was bringing disgrace to them and forcibly took her away. While leaving they threatened that either the deceased married her and kept her in his house or else they would kill both of them. The deceased protested claiming that he was innocent and asserted that she was visiting him of her own accord. It is a fair and obvious inference from Public Witness 6's evidence concerning the events that happened on Sunday and Monday, prior to the occurrence, that the appellants resented Jaswant Kaur going to the house of the deceased and her intimacy with him. On this question we do not even have to depend on the admission of the appellant Mohinder Singh in Ex. Public Witness 15/1.

(20) Roshanara Police Station, he yet admitted when he was examined under section 342 Criminal Procedure Code that he had gone to the Police Station after he found Surjit Singh dead and his mother lying with injuries in his house. In that report he had admitted that his mother had illicit relations with the deceased and they were warned to desist from such relationship.

(21) It has now been authoritatively laid down, (vide *Aghnoo Nagesia v. State of Bihar* reported in : 1966 CriLJ100) that where the accused himself gives the first information, the fact of his giving the information is always admissible against him as evidence of his conduct under section 8 of the Evidence Act. If the information is non-confessional it is admissible against the accused as an admission under section 21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a police officer cannot be used against him in view of section 25 of the Evidence Act. A confession is an admission of the offence by a

person charged with the offence. A self-exculpatory statement cannot amount to a confession. If an admission of an accused is to be used against him the whole of it should be tendered in evidence and, if a part of the admission is exculpatory and a part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only for the accused is entitled to insist that the entire admission, including the exculpatory part, must be tendered in evidence.

(22) This aspect of the matter will be clearer if reference is made to *Faddi v. State of Madhya Pradesh* : 1964 CriLJ 744. It was explained that when a person lodging the first information report regarding the occurrence of murder is himself subsequently accused of the offence and tried and the report lodged by him is not a confessional first information report but is an admission by him of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder was committed or whether the statement of the accused in the court denying the correctness of certain statements of the prosecution witnesses is correct or not, the first information report is admissible to prove against him, his admissions which are relevant under section 21 of the Evidence Act. Reference was also made to the decision of the Judicial Committee in *Pakala Narayana Swami v. Emperor* where it was held that an admission of a gravely incriminating fact is not by itself a confession. *Faddi* was cited with approval in *Aghnoo Nagesia*.

(23) Exhibit Public Witness . 15/1 read as a whole is a self-exculpatory statement, no part of it being confessional. All the facts stated therein could be taken into account against appellant Mohinder Singh as a piece of admission made under section 21 of the Evidence Act because he was not an accused person then and only later on he became an accused; this statement, no part of it, is hit by section 25 of the Evidence Act.

(24) Even without reference to Ex. Public Witness 15/1 the above motive and the threat meted out by the appellants is abundantly proved even by Public Witness 6 alone, whose evidence we can find no sufficient reason to distrust. Regarding the murder and how injuries were caused to Public Witness 1, she having turned hostile, there is no direct evidence concerning the murder.

(25) Among Public Witness s 2 to 4, who came to the house of the deceased on the evening prior to the occurrence, Public Witness s 3 & 4 had turned hostile. Since they went back completely on their earlier statements to the police there is nothing in their present evidence which is useful to the prosecution. We are only left with the evidence of Public Witness 2, with such corroboration as we can find from the evidence of Public Witness 12 concerning the alleged abduction of the deceased by the appellants in both the appeals. Public Witness 6 herself did not witness the taking away of her husband for she was not in her house.

(26) PW2'S brother Iqbal Singh has married the sister of Sudershan Kaur, widow of the deceased. He swore that along with Public Witness s 3 and 4 he had gone to the house of the deceased and Public Witness 6 as their guest the day prior to the occurrence. On the morning of the day of occurrence four persons came in an Ambassador car of black colour when Public Witness s 2 to 4 and the deceased had gone to the public hydrant, which was near their house, for taking their bath. Three out of the four passengers in the car came out and they were greeted by the deceased. They requested the deceased to accompany them for some talks. The deceased, who had just finished his bath, was wearing his clothes-a kachha and a banyan-expressed his regret as he was having guests in the house. On the insistence of those three persons the deceased accompanied them towards the car. He himself and PW4 followed them. Those who came had gone nearly a distance of 100 kadams talking with the deceased when they stopped near the car and the car also which was moving slowly stopped. The deceased requested PW2 to go back and bring his clothes : Public Witness 2 was changing his clothes. They boarded the car. Public Witness 4 also boarded the car at the request of the deceased. When PW2 had just turned his back to them the car, with all of them, sped away. Public Witness 2 waited at the hydrant for the return of Public Witness 4 and the deceased. Half an hour later Public Witness 4 came out of a taxi, ran towards Public Witness 2 and informed him that these persons had played a trick* by dropping him at the petrol bunk and taken away the deceased. Since they suspected foul play they informed Gurmit Singh (PW12) the cousin of the deceased. PW12 immediately went to the nearby Kingswaycamp Police Station and lodged a report at 8-05 A.M.

(27) Taking another person along with them Public Witness s 2 and 4 went to the petrol bunk to find out what happened to the deceased. Not being able to get any information they returned to Kingsway Camp and then went to the Police Station in Kingsway Camp, where Public Witness 4 lodged a report at 9-30 A.M.

(28) PW2 identified all the appellants before the court. PW2 had also gone, on the 6th (and again on 22nd) to the Jail to take part in the identification parade which was not held because the accused concerned had refused to participate. The Magistrate, who was to have held the identification parade, was not examined and his notes were also not filed. The learned Public Prosecutor made a statement before the trial Court, on 27/08/1969, that he was giving up the learned Magistrate because the records prepared by him at the time the accused was alleged to have refused to take part in identification parade were not traceable in spite of best efforts.

(29) It was urged for the appellants that Public Witness 2's statement concerning the appellants refusing to participate in the identification parade was only hearsay and that there was no other evidence about it. A perusal of the cross-examination of Public Witness 2 shows that not even a single question was put to Public Witness 2 concerning his evidence in examination-in-chief that the appellants had 'refused' to participate in the identification parade and the parade not being held for that reason. It was also suggested by Shri Bishamber Dayal for the State that the most obvious inference from the identification parade not being held after the witnesses were also taken for the purpose is that the concerned accused had refused to participate. It was, however, urged by Shri Mulla, the learned counsel for the appellants, that there could be other reasons for not holding the parade like the requisite type of persons, with whom the concerned accused ought to be paraded for being identified, not being available. But, in the absence of any cross-examination of Public Witness 2 on this question one cannot speculate about any other possible ground (than spoken to by Public Witness 2) on which an identification parade, which was arranged, did not actually take place. It was also urged by Shri Mulla that having regard to the provisions of the Rules and orders of the Punjab High Court Volume Iii Chapter 2-C containing instructions to criminal courts about the holding of identification parades Public Witness 2 could not

have himself actually seen the accused and much less his refusing to participate in the identification parade. But this argument overlooks the fact that there was no impediment to his seeing the concerned accused after they had refused to participate. Even if this were not the case the positive evidence of Public Witness 2 that the parade did not take place on account of the refusal of the accused could not be discarded in the absence of any cross-examination on this point as one which was only based upon a statement made to him by other persons about their refusal to participate.

(30) Shri Mulla also complained that the fact of the accused refusing to take part in the identification parade was not put to the appellants when they were examined under section 342 Criminal Procedure Code. But no prejudice can be said to have been caused by reason of the said omission when there was no cross-examination even of Public Witness 2 on this point. That is why Shri Mulla was at pains to characterise the evidence on this aspect as hearsay : we could not agree with him that it is hearsay.

(31) It is no doubt true that in all cases where the concerned witnesses had not seen or known the assailant previously every effort is and has to be made to make those witnesses participate as soon as possible in an identification parade held according to the rules and procedure governing the same. In this case such effort was made but yet the parade could not be held for no fault or lapse on the part of the prosecution. It is no doubt unfortunate that the record prepared by the Magistrate in respect of the identification parade was said to be not traceable ; this alone resulted in not examining the concerned Magistrate by the learned Public Prosecutor. Obviously the Magistrate could only give evidence with his notes before him ; without his notes there was no point in examining the Magistrate. But as explained at length we are unable to find any infirmity on this ground.

(32) Shri Mulla relied in this context, upon *Vaikuntam Chandrappa and others v. State of Andhra Pradesh* (: AIR 1960 SC 1340 .' In that case there was an identification parade consisting of 46 persons ; including among them were seven suspects. An eyewitness while taking out nine persons made three correct identifications and six mistakes. But the said eye-witness, after failing to

identify an accused not only in the parade but also before the committing Magistrate belatedly, identified him in the Session Court. On these facts the Supreme Court observed as follows :-

'In these circumstances, the conclusion cannot be escaped that the three suspects might have been picked out by this witness by mere chance. It is true that when he came to give evidence in Court, the witness did point out to the same three accused as having been seen by him at the time of the murder. It is also true that the substantive evidence is the statement in court; but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There may be exception to this rule where the court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding. But in this case we are not prepared to consider Public Witness 1 as a witness of that exceptional kind.'

(33) The above said observations, particularly those emphasised by us, go to show the value to be attached to the later identification by a witness of an accused person in court, when there was either a failure to hold an identification parade or even when held there is a failure on the part of the concerned witnesses to identify correctly; such a feature will have to be appreciated in the light of the facts of each case.

(34) Shri Mulla also referred to some other decisions, of other High Courts, containing observations about the importance, holding the identification parade soon after the occurrence. The observations in those decisions, which were relied upon, are seen to have been made on the special facts of those cases, such as difficulty in identification owing to poor light or where the incident was a very quick moving one not allowing sufficient time to enable clear and safe identification. The importance generally of holding an identification cannot be minimised; the prosecution has to make every endeavor to hold an identification parade as soon as may be possible after the occurrence so that the witnesses, who did not know

the assailants before, would have an opportunity of identifying them and before they could have any occasion or opportunity to see them. This would also enable the accused themselves to take whatever precautions they might consider necessary in the matter of ensuring that the witnesses who identify them do not get an opportunity of seeing them before the actual parade. But in the present case in the view we take that the prosecution did make its best endeavour to hold an identification parade, which was not held because of the refusal by the concerned accused to participate in the parade, we see no force in the contention that the evidence of Public Witness 2 cannot be safely acted upon merely because he identified the appellants only in court.

(35) The most important question in this case therefore is whether the evidence of Public Witness 2 can be accepted. Guarantee concerning the presence of Public Witness 2, as spoken to by him, is furnished by reference to his presence (along with PWs 3 & 4) in the report (Ex. Public Witness 12/1) which was promptly made at the Kingsway Camp police station by Public Witness 12 at 8-05 AM. Public Witness 12 reported that 'four Sardars' had taken away the deceased in a black Ambassador car and to Public Witness 4, who also went along with them, having been dropped at the petrol bunk. This report was given with such promptitude that unless it is stated that this report itself was concocted at a later point of time, for which no basis at all has even been laid, it is hardly possible to minimise the importance to be attached to Public Witness 2 being mentioned in this report. Public Witness 12 had not even waited to make an inquiry about the identifying particulars from Public Witness 4 for Public Witness 2 along with Public Witness 4 and another person had gone in search of the deceased. Their first concern should have been about the safety of the deceased. The persons who thus took with them the deceased were not known to any of the guests (PWs 2 to 4) of the deceased.

(36) It was noticed that this was followed up, at 9.30 Am, yet another report (Ex. Public Witness 4/1) by Public Witness 4 who was naturally able to give some identifying particulars concerning at least of those persons (Sardars) ; but he was, however, in a position to identify the fourth person if brought before him. He also explained in greater detail the manner in which he was asked to get down from

the car before it sped away without him.

(37) Still further corroboration in this respect is furnished by Public Witness 6 who swore that Public Witnesses 2 to 4 had come to their house on Monday evening and stayed in their house as the guests of their husband. She left next morning (on the morning of the day of occurrence) for her husband's elder brother's house. Just then the three guests along with her husband were taking their bath at a public hydrant near their house. She had not prepared tea for any of them, which fact is confirmed by the stomach of the deceased being found empty during autopsy.

(38) The cross-examination of Public Witness 2 does not disclose anything which may be sufficient to throw doubt on his veracity. It is true that Iqbal Singh, brother of Public Witness 2 had married the sister of Public Witness 6 but that is no reason why he should perjure himself against the appellants, whom he had not even seen. We discard, as false, the claim of appellant Mohinder Singh, when he was examined under section 342 Criminal Procedure Code, that he had previously known Public Witnesses 2 to 4 for a long time prior to the occurrence. Such a suggestion was not made even to Public Witness 2. It is worth recalling in this context that Public Witnesses 3 and 4 (whose names had also been mentioned in Ex. Public Witness 15/1) turned hostile by completely going back on their earlier version to the police.

(39) Shri Mulla was at pains to refer to Public Witness 2's earlier statement of the police (Ex. D.A) wherein he had stated that the Ambassador car was at a distance of 200 or 250 steps from the hydrant. He had mentioned the distance, during examination-in-chief before the trial court, as 100 kadams (steps); he had also said that the three persons who got down from the Ambassador car had gone 100 kadams as they were talking to the deceased. It was no doubt elicited from him during cross-examination that the car came up to the point of the hydrant and stopped on the road right opposite the hydrant, but he had also stated that there were stones for about 2 kadams in width between the hydrant and the road. There was no further suggestion that that portion was passable and yet there was an unaccounted detour to reach the car. Public Witness 2 also stated that the engine

of the car was kept running and the car was moving slowly, the deceased got into the car only after walking a distance of about 100 kadams. In any case on the mere basis of a slight discrepancy as to the actual distance which they walked from the public hydrant to the place where the car was stopped his evidence cannot, in all fairness, be disbelieved.

(40) Shri Mulla next contended that Public Witness 2, who admitted at the trial about his becoming suspicious when the three persons who got down from the car surrounded the deceased as they were talking to him, had not noticed the number of the car which, it is stated, he should have done if he had become suspicious. Since different persons react differently in the same situation we are unable to persuade ourselves not to accept Public Witness 2's evidence on the ground that in spite of his having become suspicious he failed to see or make a note of the number of the car. He admitted, when questioned about it, that he could not even say whether Public Witness 12 left by the same taxi by which Public Witness 4 came back to the hydrant. In a situation like this we do not consider that any significance can be attached to Public Witness 2 not having noticed the number of the car.

(41) PW2 had seen all the four persons who came therefore quite some time in broad day light. He had no doubt that the person, who was sitting in the car when the other three persons had got out and came towards the hydrant, was appellant Mohinder Singh. During the course of cross-examination he mentioned the height of Mohinder Singh as 'above 5 ft' build as 'average': complexion as 'wheatish'; age as '24-25 years' and beard 'trimmed'. It may be remembered that these were the descriptions he had given in the trial court. To the police, however, he is stated to have mentioned the height as 5 ft. 8 inches : build as 'stout' ; complexion as 'fair' age as '18-19 years' and his face as 'well nourished with a trimmed beard'.

(42) It is stated that the age of appellant Mohinder Singh was about 20 at that time. But having regard probably to his growth there could not be said to be any discrepancy on the ground of age nor even regarding his build. PW4 had stated in Public Witness 4/1 that the driver was about 28/30 ; there can also be a difference of

opinion as to whether a person's complexion is only 'v.heatish' or 'fair'. These are only rough descriptions. So far as the appellant Piara Singh is concerned the only point is that he had to mention fact of his having pock marks on his face, a feature which he was able to point out only later, after a closer look, even in the trial court. Public Witness 2 had also omitted to refer to the blue eyes of Kartar Singh. These depend upon the intensity with which (and the setting where) one observes. These discrepancies often occur where a natural account is given of what one observes: a tutored witness could be, and often is, much more exact.

(43) We have referred to the contentions advanced by Shri Mulla pertaining to the evidence of Public Witness 2 in such detail because having regard to the importance of his evidence a very strenuous effort was made to attack his testimony. We have been taken through the entire evidence in this case and we have listened to his elaborate arguments on every minute circumstance ; we were anxious to appreciate the entire evidence and circumstances in the case ourselves, especially having regard to the fact that the trial Judge had in the course of his judgment relied upon even statements in the Fir (given by Jaswant Kaur) practically as if they were substantive evidence in the case. Having heard Shri Mulla as well as Mr. Kohli, who followed him, on behalf of the appellant Kartar Singh, we have no hesitation in accepting the testimony of Public Witness 2, especially when the evidence of PW6 makes out that he, along with Public Witnesses 3 and 4, had come to the house of the deceased on the evening of the occurrence and his name was mentioned even at 8-05 Am on the day of the occurrence so soon after the deceased was taken away by the appellants. He had no animosity whatever against any of the appellants, in fact he was an utter stranger. His evidence and that of Public Witness 6 has to be appreciated in its broadest aspects and we have no difficulty in placing full reliance and in accepting their testimony.

(44) It is yet necessary to refer to another contention of Shri Mulla that it was dangerous to rely upon the identification of a single witness, namely, Public Witness 2, especially when there is not even the guarantee to be obtained in respect of his identification by holding of identification parade. We have discussed at considerable length the circumstances in which the identification parade was not

held in this case. We cannot overlook the fact that if Public Witness 2 now happens to be the sole witness identifying the appellants (in both the appeals) as those who took away the deceased from the public hydrant on that fateful day it is because the two other persons, namely, PWs 2 & 4, to whose presence at that place reference had also been made by Public Witness 12 in the earliest report given at 8-05 Am, had turned hostile.

(45) Regarding the threat, which Public Witness 6 swore the appellants uttered on the day previous to the occurrence, Shri Mulla stated that not all the three persons may have uttered the threat as spoken to by her, but on this aspect, again, there was no cross-examination when Public Witness 6 deposed in examination-in-chief, that all the three of them beat and fisted her. The cross-examination was directed to this aspect of beating but not at all to the uttering of the threat.

(46) It was also contended by Shri Mulla that nothing had happened after the threat and before the occurrence to drive the appellants to give effect to that threat. But this argument entirely fails to take note of the human situation which was over-charged not only by a sense of shame but there was also the added difficulty of Jaswant Kaur having an unmarried daughter aged 15. The two uncles (appellants Kartar Singh and Piara Singh) of appellant Mohinder Singh, who were living in Palwal, about forty miles from Delhi, were present in Delhi even on the day previous to the occurrence as spoken to by Public Witness 6. They had not only taken her away forcibly but had also uttered that threat. When they left the deceased did not say that he had nothing to do with Jaswant Kaur or even assure them that she would not visit him thereafter but had only protested that he was innocent and that she was visiting his house of her own accord. The three appellants had naturally been boiling over this unhappy situation. They were also together then. It is small wonder that they made up their mind to get rid of the deceased in this most unfortunate manner. To draw the above said inference would not, as Shri Mulla suggested, be a case of indulging in fancy; this is only to appreciate how people placed in such a situation react.

(47) The evidence of Public Witness 6 coupled with what Mohinder Singh himself had stated in Ex. Public Witness 15/1 does help establish beyond doubt the motive

for the occurrence and the threat, which have an important bearing upon the manner in which the deceased was taken away from the public hydrant on the morning of the occurrence a day after the threat was uttered. That he was so taken away from the public hydrant is fully established not only by the evidence of Public Witness 2 but also of Public Witness 12 who made a prompt report (Ex. Public Witness 121) about it to the police.

(48) The deceased was murdered in the portion, marked 'B' in the plan, which is seen to be separate, of the house where the appellant Mohinder Singh lived along with his mother, brother and sisters. The brother of the deceased Joginder Singh was living with his wife Pritam Kaur (both of them were acquitted by the lower court) with their family in the portion marked 'A'. Bloodstains on the almirah in the baithak and the floor, found by the police, to be recently scrubbed are some indications of some injuries at least being caused to the victim there. The doors and windows abutting the road in the room where the deceased and Public Witness 1 were lying had all been closed. This suggests the inference that they were so closed so that the cries of the victims would not be heard by the passers-by along the road. The appellant Mohinder Singh had himself gone to the police station at 1-25 Pm and despite his denial had made a report; he is himself a signatory who has signed it in English.

(49) The inferences, which are irresistible and which thus flow from the above said facts and circumstances, were sought to be nullified by a two-pronged attack by the defense : the first was the attempt by appellant Mohinder Singh, in Ex. Public Witness 15/1, to make it appear that both his mother and the deceased were found in a compromising situation when not only his mother but Surjit Singh were attacked ; the second was the attempt to put forward a theory through Jaswant Kaur herself, when she was examined in court, despite her earlier statement to the police, that the deceased and herself were attacked by the two guests, unknown to her, of the deceased and that she became unconscious. This version given by Public Witness 1 is totally inconsistent with that of Public Witness 2 that the deceased was taken away from the public hydrant near his house that morning by the appellants (in both the appeals). That Jaswant Kaur was conscious is clear from the police having recorded a statement from her. On the other hand

appellant Mohinder Singh had not stated in Ex Public Witness 15/1 that his mother was unconscious. In fact he had not referred therein to Surjit Singh having died; when he was examined under section 342 of the Criminal Procedure Code, appellant Mohinder Singh claimed that his mother was unconscious but yet admitted that at the time he first saw Surjit Singh he was dead. He had further asserted that at 11 Am the appellant Piara Singh had come from Palwal to the place, where he was working from 7 Am and expressed a desire to go and see his mother, brothers and sisters in their house, a suggestion which he says he approved. Appellant Piara Singh adopted the above statement of Mohinder Singh because when he was questioned under section 342 Cr. P.C., whether he had anything else to say he had nothing more to add to what appellant Mohinder Singh had already stated. Apart from there being no need for appellant Piara Singh, who was no other than the brother of Jaswant Kaur, to have gone to the appellant Mohinder Singh's place of work in order to see his own sister and her children, we have the evidence of Public Witness 6 that appellants Piara Singh and Kundan Singh were both in Delhi on the previous day itself. The case of Piara Singh coming all the way from Palwal (if that was what Mohinder Singh meant) on the morning of occurrence is thus unacceptable.

(50) The plea of Piara Singh as well as of Mohinder Singh, is, therefore, one of alibi. In answer to a question (No 14) put to appellant Kundan Singh under section 342 of the Code of Criminal Procedure suggesting that he was absconding after the day of occurrence and till he surrendered before the Magistrate on 12/07/1968, he claimed to have gone to Punjab. He did not, however, say when he went to Punjab, whether before or after the occurrence. According to Public Witness 6 appellant Kundan Singh was one of those who beat and firsted Public Witness 1 on the day previous to the occurrence; according to Public Witness 2, he was one of those who took the deceased away from the public hydrant on the morning of occurrence. The case of alibi, if that was the plea of Kundan Singh also, was not even sought to be substantiated.

(51) Where the various links in the chain of circumstantial evidence are satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the

deceased as regards time and situation, and he offers no explanation which, if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of Explanation or false Explanation would itself be an additional link which completes the chain vide the observations of Jagannadhadas J. in *Deonandan Mishra v. State of Bihar* : 1955 CriLJ1647 . The total denial of the accused without explaining the circumstances appearing against him was held to justify an adverse inference against the appellant in *Pershad v. State of Uttar Pradesh* : 1957 CriLJ328 . The (three) appellants have totally denied their presence in the house of Public Witness 6 on the day previous to the occurrence and their presence at the public hydrant on the morning of the occurrence, shortly after which the deceased was found dead in the house of appellant Mohinder Singh, the nephew of the other two appellants; Jaswant Kaur was also lying with injuries near him in the same room. In these circumstances, especially in the light of the motive and the threat uttered by the appellants, the necessary links in the chain of circumstantial evidence have been satisfactorily proved and the inference arising from them is irresistible that all the three appellants in pursuance of their common intention to murder the deceased did commit this murder and achieved this purpose by abducting him from the public hydrant. They also caused grievous injuries to Public Witness 1 in pursuance of their common intention to punish her by even trying to maim her. The appellants did not give any Explanation concerning those circumstances; the absence of Explanation would by itself complete the chain of circumstances against them. It is further seen that appellant Mohinder Singh is seen to have made an exculpatory report, Ex. Public Witness 15/1, merely with a view to explain the circumstance of the deceased having been done to death in his house and Public Witness 1 also having sustained injuries at about the same time. The attempt then was to make it appear, without of course expressly saying so, that they had been done to death in his house by somebody when the deceased and Public Witness 1 were in a compromising position. Shri Mulla rightly urges that from the mere unwillingness on the part of the son to say at the trial that his mother was found in that situation with the deceased an adverse inference against the son could not be harshly drawn. But it is obvious from the other evidence and the proved circumstances that he was only trying to make it appear falsely that both of them were sharing bed in

the room that morning. Resort to such a theory was made in Public Witness 15/1 by appellant Mohinder Singh to nullify the effect of evidence, which was expected to be forthcoming later, that the deceased had been taken away by the appellants. Even this theory was not pursued later because appellant Mohinder Singh did not even stick to such a version when examined under section 342 of the Code of Criminal Procedure: he denied having made that report (Ex Public Witness 15/1) though he admitted that he went to the Roshanara Police Station.

(52) We are unable to find support for the theory, elicited through Public Witness I, even contrary to her own earlier version in Ex. Public Witness 15/1, that two persons unknown to her, who had come to her house along with the deceased, behaved indecently towards her and also belaboured the deceased and attacked her with a thapi. It is worth recalling that her statement in Ex. Public Witness I/A was to the effect that the appellants (in both the appeals) and Joginder Singh (acquitted accused) had after sending away her children, brought the deceased to her house and had taunted her to sleep with him. This portion of her statement, we are afraid, had been relied upon by the learned Additional Sessions Judge to form the impression that the 'decks were cleared' for the murder by sending the children away. Shri Mulla rightly complains that the said statement in Public Witness 1/A could not be taken as substantive evidence, there being no other evidence about the children having been thus designedly sent away from the house. The above view of the learned Additional Judge may, however, be still supported as a matter of inference from the children not being in the house when the police reached there. Shri Mulla also complains that even though Public Witness 19 noticed stains which looked like semen stains on the kuchha of the deceased still the Chemical examiner had not been requested to examine the stains to find out whether they contained semen. As we have already indicated, the version of appellant Mohinder Singh, in Ex. Public Witness 15/1, that his mother and the deceased were sharing bed that morning has only to be stated to be rejected. The testimony of Public Witness 6, which we have accepted, is that on that very morning the deceased had gone to the public hydrant with his guests (PWs 2 to 4) for taking their bath and of Public Witness 2, whose evidence we have also accepted, is that he was taken away from there by the appellants. If the deceased was taken away like that it would be exceedingly improbable that on that

very morning he shared bed with Public Witness 1. There being no evidence that the deceased had washed his kuchha that morning before wearing it, married man that he was, his kuchha containing semen stains, if he was wearing the same overnight, would not help that theory. In the absence of further clarification, by the necessary questions being put concerning this, Shri Mulla cannot seek to derive any support for the theory implicit in Ex. Public Witness . 1/A that the deceased met with his end that morning during the time when he was sharing bed with Public Witness 1 that morning. There is still less support for this theory from there being no banyan on the body of the deceased when The police saw it. Other blood stained clothes had been put inside the balli in the bath room in the first floor. They included the salwar and jumper of Jaswant Kaur. There were two other tahmads also, not stated to belong to the deceased. To whom the two tahmads belonged is not known. It is true that the investigation did not bring out to whom those two tahmads belonged but it has not been brought out that they were capable of being identified. The absence of the banyan, according to Shri Mulla, supports his view that the deceased had gone to P.W1's house that morning to have physical relationship with her. According to Public Witness 2 he had the banyan on him when he was taken from the public hydrant. It is also not possible that he would have gone along with the appellants without even his banyan. We are unable to find any reason why the prosecution should suppress the banyan, when the kuchha was there on his body and there were so many other blood stained clothes, especially when reference was made in Public Witness .15/1 to their having shared bed that morning. The absence of the banyan suited the purpose of the defense. At it was conceived in Public Witness 15/1, more than any other purpose of the prosecution one can think of. Probably realizing that the absence of the banyan would not serve the defense purpose, or may even hinder it, appellant Mohinder Singh had no compunction in saying during his examination under section 342 of the Code of Criminal Procedure, and without suggesting it to any of the prosecution witnesses, that the banyan was on the body of the deceased. If that was so why should the prosecution suppress it. We are left without even any plausible answer.

(53) Yet another argument of Shri Mulla was that even if the evidence of Public Witness 2 was accepted and in the background of the motive and the threat still it

was not possible to draw an inference that Surjit Singh was abducted in order to commit his murder for it was still possible, even at that stage, especially having regard to the appellants having insisted on Surjit Singh marrying Public Witness 1 or living with her that he might have been taken for the purpose of enforcing the said advice given to him or even, at the worst, to give him a severe 'hiding'. Since soon after the taking away of Surjit Singh by the appellants he had been done to death in no other place than the house of appellant Mohinder Singh himself, the inference seems irresistible, in the absence of any other explanation, that the taking away of Surjit Singh from the public hydrant that morning by the appellants was for the purpose of murdering him.

(54) So far as appellant Kartar Singh is concerned it is different because Public Witness 6 did not mention about his having been present at a time when Jaswant Kaur was beaten and the threat was uttered by the other appellants on the day previous to the occurrence. There is also nothing to suggest that Kartar Singh was aware of the intention of the other three appellants that he was being taken for the purpose of being murdered. In this view, especially when the lower court had acquitted him of the charge of murder and there has been no appeal against his acquittal on the charge of murder, we are unable to sustain the conviction of Kartar Singh under section 364/34 of the Indian Penal Code. The said conviction and sentence there under are set aside.

(55) We see no force in the argument of Shri Mulla that the responsibility for the murder could not be laid at the door of the three appellants, especially when Joginder Singh, the brother of the deceased, and the members of his family were living in another portion of the house, both Joginder Singh and his wife who were also prosecuted. Along with the other appellants being acquitted and the possibility of any of those living in the other portion having murdered deceased Surjit Singh and causing injuries to Jaswant Kaur by reason of having become disgusted with their conduct. When the circumstances, which are thus established against the three appellants, are wholly inconsistent with their innocence and are consistent only with their guilt the mere fact that some others, who might have also participated in the commission of the said offence or even aided its commission, have not been prosecuted, or if prosecuted acquitted, cannot affect

the culpability of the appellants.

(56) Dr. Babu was examined in the committing court as Public Witness 2. The Public Prosecutor having stated in the trial court, on 27/08/1969, that his presence could not be secured without unnecessary delay. His evidence before the committing court was transferred to the file of the Sessions Court under section 33 of the Evidence Act and section 509 of the Code of Criminal Procedure. Even at this stage, when the court permitted the said request of the Public Prosecutor no request was made on behalf of the accused that Dr. Babu should be examined again for putting further questions in cross-examination to him. The examination of Public Witness 2 (Dr. Babu), who did the autopsy on the deceased, appears no doubt to have been conducted somewhat perfunctorily in the committing court. After referring to the external injuries on the right parietal region and over the right side of the head he stated they would have been caused by blunt force injury. He also referred to the rupture of the spleen and the liver also being bruised superficially. Regarding the spleen it was not noticed by Dr. Babu in his post mortem report (Ex. Public Witness 2/A), nor was it stated in the course of evidence, that it was diseased or enlarged. There was, however, no corresponding external injury noticed. Modi in his Medical Jurisprudence and Toxicology-1969 Edition--at page 295 states that he had seen cases of ruptures of spleen as a result of falls and blows without any corresponding external injury. So far as the intracranial haemorrhage is concerned Modi has observed, at page 276, that the same can occur, even without fracture of the skull, from a slight blow. Dr. Babu had also referred to the sutures being loosened even without any fracture of skull and effusion of blood all around. Black's Medical Dictionary by William A.R. Thomson, Twenty-Eighth Edition, at page 863, mentions that 'suture' is the name given to the close union between two neighbouring bones of the skull. Dr. Babu states as follows :-

'DEATH, in my opinion, is due to rupture of the spleen and intracranial haemorrhage possible by a blunt force injury.'

(57) He also stated:

'THERE is no external injury on the abdomen. It is possible that a fall on a hard surface can result in a head injury, described by me above.'

(58) The medical evidence, therefore, regarding the head injuries is consistent with the prosecution case, the same having been caused by blunt force injury, and in no wise militates against it. So far as the rupture of the spleen is concerned there was not even a suggestion to Dr. Babu that the same was caused by a fall. Dr. Babu's evidence is that death was due to the above said injuries, on the head, resulting in intracranial haemorrhage, and the rupture of the spleen. The wooden thapi recovered from the court-yard of the appellant Mohinder Singh was found to contain blood stains. In these circumstances the inference is irresistible that the three appellants in pursuance of their common intention abducted the deceased from the public hydrant and also committed his murder intending to kill him. They had also, in pursuance of their common intention, caused grievous injury to Jaswant Kaur as well.

(59) Before concluding we have to record that Shri Mulladrew our attention to the questions (a number of them) for the accused which were disallowed by the learned trial Judge. While he did not, in our opinion rightly, complain that there had been any prejudice caused to the appellants by such questions being disallowed he pointed out that the over-ruling frequently of questions, which were not scandalous or vexatious or not relating to matters which were irrelevant or inadmissible, did not conduce to building up of the public image of a court-trial. We hasten to point out that the trial Judge has a duty not to permit questions which are scandalous, vexatious or even contemptuous, which elicit irrelevant or inadmissible answers, or even those which do not advance the trial but are calculated to hinder or delay its progress. We go further to point out that where the interest of justice clearly requires it, the trying Judge himself has a duty to put questions to clarify matters which are left vague by one or even both sides. But beyond such and other clear situations the trial Judge does not himself enter the arena of combat. His dignity and the public image of a court trial are greatly enhanced by the trying Judge approximating as nearly as he can to the position of an umpire. We have carefully looked into the various questions of the accused disallowed by the learned trial Judge, some of them even without objection from the prosecution, and

have satisfied ourselves that no prejudice has been caused to the appellants. In fact, that was not the complaint before us.

(60) We, therefore, confirm the conviction of each of the appellants under section 302 read with section 34, section 325 read with section 34 and section 364 read with section 34 Indian Penal Code . The sentences of imprisonment for life on the charge of murder were the minimum that could have been imposed, the learned Additional Sessions Judge having taken into account the sense of shame under which the appellants had acted in the manner they did for not awarding the extreme penalty. The sentences on the other two counts also are not excessive. The convictions and sentences of the appellants are confirmed. Criminal Appeal No. 125 of 1969 is dismissed.

(61) In view of the above discussion Criminal Appeal No. 122 of 1969 is accepted, the convictions and sentence of the appellant Kartar Singh are set aside, he is acquitted and directed to be set at liberty unless he is liable to be detained for some other cause.