

Jodhu and ors. Vs. State and ors.

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Court : Delhi

Decided On : Sep-13-1968

Reported in : 5(1969)DLT68

Judge : Hardayal Hardy and; V.S. Deshpande, JJ.

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

Appeal No. : Criminal Appeal No. 1 of 1968

Appellant : Jodhu and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : Inder Singh,; Hem Chand,; K.C. Pandit and;

Judgement :

Hardayal Hardy, J.

(1) The appellants (1) Jodbu son of Sarjan Ram (23 years), (2) Chandu Ram son. of Jai Kishan (19 years) and (3) Roshan Lal son of Dheba Ram (16 years) were tried together by the Sessions Judge, Mandi, Kulu and Lahaul & Spiti Districts at Mandi for an offence punishable under section 302 read with section 34 Indian Penal Code, for having committed the murder of one Gulab Singh in the morning hours of August 19, 1966 at village Gahar, Tehsil Sarkaghat, District Mandi, in

complicity with one Parma son of Munshi, a young lad of 17 years who was granted pardon and was examined as an approver at the trial. All the three accused have been found guilty and have been sentenced to life imprisonment and also to pay a fine of Rs. 200.00S each; and in default of payment of fine to undergo rigorous imprisonment for a period of three months each. The accused have appealed against their conviction and sentence to this Court.

(2) The prosecution case as accepted by the learned Sessions Judge is that the deceased Gulab Singh was living with his mother-in-law Smt. Pan Dei in village Chhota Samahal and was managing her affairs. The family of Jodhu accused and the mother-in-law of the deceased were owners of contiguous Rutas (grasslands) in village Gahar. This led to constant quarrels between them. The prosecution also suggested that Jodhu accused suspected the deceased of having illicit intimacy with the wife of his brother and examined Kehar Singh (P.W. 15) who stated that there were rumors in the village about illicit connection between the deceased and Jodhu's sister-in-law. This suggestion is also reflected in the confessional statements of the approver and accused Roshan Lal. But the learned Sessions Judge does not appear to have referred to it in his judgment nor has it been pressed before as by the learned counsel for the State. On the nights of 17th and 18th August, 1966 all the three accused including Parma who named approver met at the residence of Jodhu and decided to murder Gulab Singh. In the morning hours of 19th August, 1966 when the deceased left his house to cut grass from the Ruta, the accused including the approver followed him. Accused Jodhu armed himself with a dagger (Ex. P. 1) while accused Chandu was armed with axe (Ex. P. 2). The other two, namely Roshan and Parma were each provided by Jodhu with danda (Exhibits P. 22 and P. 23). Jodhu accused was leading the party, On seeing the deceased, they lay in ambush. After a little while Jodhu pounced upon him and snatched from his hands the sickle (Ex P 7). All of them then made a concerted attack on the deceased. Roshan Lal held him from one arm while Parma took hold of the other arm Chandu held him from one leg and testicles while Jodhu managed to put the parna cloth belonging to the deceased (Ex. P. 8) into his mouth and gagged him. Jodhu then pressed the chest of the deceased with his leg with the result that the deceased became unconscious. The articles belonging to the deceased i.e. chhiki (the net for tying grass), sickle parna cloth and chappals

(shoes) were thrown away and the body was dragged and brought near a small Alsan tree and a water spring. After laying the body on stone with its face downwards, Jodhu accused gave blows with drant (Exhibit P. 1) on the head of the deceased while Chandu gave blows with the axe (Exhibit P. 2) on the legs of the deceased. After committing the murder they left the dead body there and climbed up the ridge where Jodhu loosened and rolled down a stone to make it appear that the deceased had met his end by a fall from the precipice. All of them then returned to the village. While returning from the place of occurrence they were seen by one Gokal (P.W. 9). The blood on the blades of the axe and the drant was washed and all the four weapons of offence were hidden by Jodhu accused in an open place behind his house.

(3) The dead body of the deceased was seen at the place of occurrence by one Kanshi Ram (Public Witness . 3) who informed the relatives of the deceased and they all quickly repaired to the spto. One Biptu Ram (PW. 22) was sent to the police station Sarkaghat where he lodged the report (Ex. Public Witness PW. 22/A). The police reached the spto, took charge of the dead body and the articles of the deceased. The body was then sent to the Civil Hospital Sarkaghat where Dr. B.K. Banerjee, Medical Officer (PW. 1), conducted the post-mortem examination on 20th August, 1966 and submitted his report (Ex. Public Witness PW. 1/A), The police arrested the accused on 24th August, 1966 and took into possession one used poplin shirt of blue colour and a used striped pyjama belonging to Jodhu accused with stains of blood on them. During investigation Jodhu made on 25th August, 1966 a statement under section 27 of the Evidence Act (Ex. Public Witness 26/D) which led to the discovery of the dandas (Exhibits P. 22 and P. 23) the axe (Ex. P. 2) and the drant (Ex. P. 1) which were taken into possession vide recovery memo. (Ex. Public Witness 26/F). Rosban Lal accused also made on 25th August, 1966 a statement under section 27 of the Evidence Act, pursuant to which the police recovered his shirt (Ex. P. 26) which was taken into possession vide recovery memo. (Ex. P.W. 26/G). He also made a confessional statement (Ex. Public Witness 13/E) which was recorded by Shri Doni Singh, Magistrate Second Class, Sundernagar (P.W. 13) on 30th August, 1966.

(4) Parma accused turned approver and was granted pardon under section 337, Criminal Procedure Code, by the District Magistrate, Mandi by his order dated 1st September, 1966 (Ex. Public Witness PW. 29/A). On 2nd September, 1966 his statement (Ex. Public Witness 2/G) was recorded by Shri Bar, Jeshwar Paishad, Magistrate first class Mandi (P.W. 29) under section 164, Criminal Procedure Code. The clothes of the deceased and the accused and other articles recovered by the police were sent for Chemical examination to the Serologist who reported (Ex. P.B.) that the clothes of the deceased, the stone? and earth removed by the police from the scene of occurrence and the shirt and pyjama of Jodhu accused had stains of human blood on them. No stains of blood were, however, reported to be present on the axe (Ex. P. 2) and the drant (Ex. P. 1). Parma when examined as a witness at the trial (Public Witness 2) resiled from his statement (Ex. Public Witness PW. 2/G) and stated that he had been tutored by the police to make that false statement. He added that he had been beaten and tortured by the police and was told that if he did not make a statement of their choice he would be again taken to the police station where he would receive the same treatment.

(5) Rosban Lal also retracted the confession made by him earlier as soon as the accused were produced before the committing Magistrate. All the three accused denied their complicity in the offence Jodhu accused denied that he had made any statement which had led to the discovery of the alleged weapons of offence or that the shirt (Ex. P. 15) and the pyjama (Ex. P. 16) belonged to him. The defense of the accused at the trial which was rejected by the learned Sessions Judge, was one of denial of the offence. All of them stated that they had been falsely implicated by the police. The accused also examined defense witnesses to prove that there was no enmity between Jodhu's family and the deceased. Evidence was also adduced to prove that Jiwanu (P. W. 28) who was one of the witnesses to the alleged discovery of drant (Ex. P. 1), axe (P. W. 2) dandas (Exs. P. 22 and P. 23) and shirt (Ex. P. 26) in consequence of the disclosure statements made by Jodhu and Roshan Lal accused, was not an independent witness. Parma's brother Brahma appeared as D. W. 7) to depose that all the accused were arrested on 21st August 1966, and were tortured and that he had been called by the S.H 0 to persuade Parma to become an approver. One Kanhu son of Madan was also examined as a defense witness. He stated that the police wanted him to give evidence that he

had seen the accused committing the murder but since he refused he too was tortured.

(6) Some of this evidence appears to be an almost amateurish attempt at lying and therefore does not deserve any serious consideration. The fact that the deceased met his end as a result of violence can also not be seriously disputed. The presence of so many injuries of different kinds and different Dimensions at different parts of his body, particularly a lacerated injury 2'x2' on his left sole, the absence of any tear in his clothes which were already old and used, and the non-existence of any fracture of a limb of his body are clear indication of the fact that his death was not due to a fall from the ridge. These injuries could also not be self-inflicted. We are therefore, in agreement with the learned Sessions Judge in holding that the death of the deceased was the deliberate act of an assailant or assailants.

(7) The only real question in the case is whether there is any evidence to connect the accused with the crime.

(8) All the accused are near relatives. Jodha accused is the maternal uncle of the approver Prama. Roshan Lal accused is a cousin of the approver and it is in evidence that the approver who belongs to village Sadwai had come to stay with Roshan Lal's parents for a few days. Chanda accused is brother-in-law of Jodha. There can thus be no doubt about the previous association of the accused with one another or about the possibility of their getting together. Their personal interest in one another can also not be doubted. This may, however, furnish an opportunity for previous concert among them and also suggest that the cause of one was the cause of all and may therefore go to strengthen the motive which Jodha accused is alleged to have had in taking the life of the deceased but can hardly take the case any farther.

(9) The evidence of Gokal (P. W. 9) and Sakh Ram (P. W. 14) who deposed that they had seen all the four persons, Jodha, Roshan Lal, Prama and Chanda on the morning of the day of occurrence, armed with drant, axe and dandas, is not worthy of credence at all and has not even been relied upon by the learned trial Judge. Apart from the fact that they are both related to Lachhman who was the father in-

law of Gulab Singh deceased, both of them are old men of 72 and 60 years of age and they admitted that they could each see with one eye only. Gokal first stated that he could not identify the accused present in Court but then immediately corrected himself. Learned Sessions Judge has appended a note at the foot of Gokal's deposition that the witness had no straight answer to the question put to him by the defense counsel and was evasive in his replies. Sakh Ram has a joint Khata with Smt. Pan Dei, mother-in-law of the deceased and was examined mainly to prove that there were previous quarrels about the boundary of Rtoa between Galab Singh and Jodha. He was also confronted with his statement under section 161, Criminal Procedure Code about the weapon which each of the accused was seen by him to be carrying when he saw the accused on the morning of the occurrence. He stated that his statement as recorded was incorrect to the extent that Chanda accused was carrying a danda. Even this evidence, if accepted, does not go very far. All that it establishes is that the accused were seen together on the morning of the occurrence. There is nothing unusual about persons in this part of the country carrying sticks, axes and drants when going about in small groups towards the forest.

(10) The position, therefore, is that the approver having given a complete go by to the prosecution case there is no direct evidence connecting the accused with the crime. The conviction of the accused by the trial Court is based firstly, on the statement of the approver (Ex. P.W. 2/G) as recorded by Shri Barjeshwar Parshad, Magistrate First Class Mandi (P. W. 29); secondly on the retracted confession of Roshan Lal accused (Ex. Public Witness 13/C) as recorded by Shri Duni Singh, Magistrate Second Class, Sundernagar (P.W. 13); thirdly on the disclosure statement (Ex. Public Witness 26/D) made by Jodhu accused leading to the discovery of the axe (Ex. P. 2), the drant (Ex. P. 1) and the dandas (Exhibits P. 22 and P. 23/ as per recovery memo, (Ex. Public Witness 26/F) ; and the disclosure statement (Ex. Public Witness 26/E) made by Roshan Lal accused leading to the recovery of a shirt (Ex. P. 16) as per recovery memo. (Ex. Public Witness 26/G).

(11) It may be mentioned straight-away that the learned Sessions Judge has fallen into a grave initial error in using the statement of the approver recorded under

section 164, Criminal Procedure Code, as substantive evidence in the ease and in finding corroboration for it in medical evidence. He has also fallen into a serious error in finding similarities between the statement of the approver and the retracted confession of accused Roshan Lal for coming to the conclusion that the said confession was believable and true and could thus form the basis of conviction of not only Roshan Lal but also the other two accused who were jointly tried with him. In doing so, the learned Sessions Judge, has not only misdirected himself in law but, with all due respect to him, he has also completely misunderstood what was laid down by their Lordships of the Supreme Court in Sarwan Singh Rattan Singh v. State of Punjab, a passage from which as summarized in paragraph (b) of the report has been extracted by him in his judgment.

(12) Basing himself on that passage the learned Judge has gone on to observe:-

'PARMA Approver (P.W. 2) is a lad of 17 years. He is a 10th class student. He has the intelligence to understand the nature of statement which he makes and its consequences. He is sufficiently of matured understanding. He is a competent witness and reliable as well.'

What the learned Judge has unfortunately failed to notice is that the observations of the Supreme Court were with regard to the competency of the approver as a witness and related to the appreciation of his evidence at the trial. They had nothing to do with the statement made by the approver elsewhere and not as a witness examined at the trial. In the present case, the approver not having been examined at the stage of committal proceedings, there was no statement of the approver even before the Committing Magistrate which could have been brought on record as evidence under section 288 of the Code of Criminal Procedure.

(13) The approver having denied at the trial his own participation in the offence as well as the participation of the accused therein and having resiled from his testimonial statement (Ex. Public Witness 2/G/ there was no evidence of the approver before the trial Court which called for the application of the double test laid down by their Lordships in appreciating the evidence of the approver, viz. that he is a reliable witness and that his evidence is corroborated in material particulars.

(14) The proposition that the approver's statement under section 164, Criminal Procedure Code, can never be used as substantive evidence of the facts stated in it and that it can only be used to support or challenge the evidence given by him in Court is too well known to need any authority to support it. It is also well settled that such a statement does not even amount to corroboration of his statement in Court which the Courts invariably require in relation to the evidence of an accomplice.

(15) In *Bhuboni Sahu v. The King*, the Judicial Committee of the Privy Council observed :

'A statement made under section 164 can never be used as substantive evidence of the facts stated, but it can be used to support or challenge evidence given in Court by the person who made the statement. The statement by the approver under section 164 plainly does not amount to the corroboration in material particulars which the Courts requires in relation to the evidence of an accomplice. An accomplice cannot corroborate himself; tainted evidence does not lose its taint by repetition.'

The approver's statement under section 164, Criminal Procedure Code, can also not be used to corroborate the retracted confession of accused Roshan Lal under section 157 of the Evidence Act nor can it be used under section 30 of that Act. Section 33 of the Evidence Act renders the confession made by one accused admissible against the other accused provided both of them are being tried jointly. The approver in this case was not being tried jointly with the accused. His confessional statement under section 164, Criminal Procedure Code, cannot therefore be used as evidence against the accused.

(16) The confession of Roshan Lal accused is no doubt admissible as evidence not only against himself but also against the other two accused Jodha and Chandu. As to the weight to be attached to such evidence, for that a reference may again be made to *Bhuboni Sahu's* case where it was held :

'SECTION 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his

confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in section 3- It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act : but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case ; it can be put into the scale and weighed with the other evidence, the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction.'

As regards retracted confession their Lordships observed :

'RETRACTION of a confession by an accused is a common phenomenon in India. The weight to be attached to it must depend upon whether the Court thinks that it was induced by the consideration that the confession was untrue, or by realization that it had failed to secure the benefits the hope of which inspired it.'

The Privy Council's decision in *Bhuboni Sahu's case* was cited with approval by their Lordships of the Supreme Court in *Kashmira Singh v. State of Madhya Pradesh* and the same view was expressed in *Harieharan Kurmi etc. v. State of Bihar*.

(17) It is true that the Evidence Act nowhere provides that if the confession is retracted it cannot be taken into consideration against the co-accused or the confessing accused. But it is one thing to take a retracted confession into consideration and quite another thing to make it a basis for conviction. As has been held in a recent judgment of the Supreme Court in *Haroon Haji Abdulla v. State of Maharashtra*.

'A retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance (not for retraction as

erroneously stated in same cases) are on the face of them false. Once the confession is proved satisfactorily any admission made therein must be satisfactorily withdrawn or the making of it explained as having proceeded from fear, duress, promise or the like from someone in authority. A retracted confession is a weak link against the maker and more so against a co-accused.'

Accused Roshan Lal is alleged to have/made his confession on August 30, 1966. On August 28, 1966, the Investigating Officer Nika Ram (P.W. 31) applied to the Magistrate first class, Sundernagar that accused Roshan Lal wanted to make a confession. The accused was produced before the Magistrate on August 29, 1966 and was remanded to judicial custody with a direction that he should be produced before Magistrate second class on August 30, 1963 at 10 A.M. According to the police all the accused had absconded and were arrested on August 24, 1966. The record of the case, however, abounds in evidence that this is not correct and that the accused were all along present in their Village and were arrested on August 22, 1966, or earlier and were being detained in custody without any entries being made in the lock-up registers.

(18) Roshan Lal's own statement before the Magistrate who recorded his confession is that he was arrested by the police on August 23, 1966. Kartar Dei (Public Witness . 5,) a close relative of the deceased stated that the police recorded her statement next day after the occurrence. The accused were also therein to hand cuffs. Hari Ram (Public Witness . 12) stated that he made his statement before the police on the 4th day of the arrival of the police. The accused were in hand-cuffs at that time. Sukh Ram (Public Witness . 14) stated that on 4th Bhadon (August 19, 1966) he went to village Doll. From there he went to his father-in-law's house in village Paprol from where he returned next day and went to the police station where his statement was recorded the same day. The accused were also arrested on the same day. Kehar Singh (Public Witness . 15) deposed that the accused were arrested at Gahar on the fourth day of the occurrence. Munshi Ram (Public Witness . 17) who is nephew of Smt. Pan Del, mother-in-law of the deceased and who rushed along with others to the spot where Galab Singh's dead body was lying, stated that he saw the accused on the third day of the occurrence when they were arrested and when his statement was also

recorded by the police. Nika Ram Sub Inspctor of Police (Public Witness .31) who investigated the case stated in cross-examination that he had come to know on August 20,1966 when he had visited the spto that the accused had committed the crime. The approver Parma (Public Witness . 2) also stated in his cross examination by the Public Prosecutor that he was arrested on August 22, 1966. Chandu accused was also arrested on the same day. It is too much to believe that the Investigating Officer who knew on August 20, 1966 that the crime had been committed by the accused would have waited till August 24. 1966 to arrest them. On the toher hand, it is highly probable that all these witnesses and the accusd are telling the truth when they say that the arrest was.made on August 22, 1966. What could be the possible object behind this apparent falsehood unless it be that the Investigating Officer was anxious to reduce the period of accused's detention in police custody to the barest minimum. This was perhaps all the more necessary from his point of view because of the alleged disclosure statements and discoveries made by accused Jodhu and Roshan Lal. According to the police the disclosures and discovery were made on August 26, 1966 within two days of the arrest of the accused.

(19) It is well known that a discoveiy made after the accused has remained in police custody for a long period is generally viewed with suspicion and is attributed to use of third degree methods or even planting by the police. An experienced but unscrupulous police officer thereforee tries to advance the date of discovery and confession as far as possible.

(20) It is in the evidence of Pan Dei (Public Witness .17) that when the news of Gulab Singh's death was received in the village she along with several toher persons went in search of the dead body. There she met Jodhu and Rosban Lal accused who were already there. Bipta (Public Witness . 22) who lodged the first information report in this case and is a near relation of the deceased also stated that when he and tohers reached the spto Jodhu and Roshan Lal accused and one Munshi son of Hira were there before their arrival. And yet curiously enough a pretence was made that the accused had absconded and a Head-constable of police Hira Lal (Public Witness . 23) was deputed to search for the accused high and low in the villages of Gahar.Chandes, Sarkaghat and toher neighbouring

villages till they were found and arrested on August 24, 1966 on their way from village Molin towards Bhambla side. There is nothing which is likely to shake one's faith in the integrity of police investigation so much as a palpably false story like this which has been put forward by them in this case with regard to the manner and date of the arrest of the accused.

(21) The record also does not show that accused Roshan Lal was sent to judicial lock up after his alleged confession was recorded by the Magistrate on August 30, 1966. Hira Lal (Public Witness . 23) no doubt stated at first that he had himself lodged the accused in judicial lock up on that day although he was not the person who had brought him from Sarkaght to Sundernagar on August 29, 1966. He also could not explain why he was in Sundernagar on August 30, 1966 and added that he was there because he had to take copies of the confessional statement of the accused. After wobbling for some time about the time when he had applied for the copies he admitted that he had personally not lodged the accused in judicial lock-up and finally after he had refreshed his memory from the police diary, ended up by saying that the accused was lodged in the judicial lock-up at 10-30 A.M. This was indeed an astounding statement to make because according to Shri Duni Singh Magistrate (Public Witness . 13) who is alleged to have recorded the confession of the accused it was at that very time i.e. 10.30 A.M. on August 30, 1966 that the accused had been produced before him from the judicial lock-up where he had been lodged earlier on August 29, 1966 under the orders of another Magistrate.

(22) According to Shri Duni Singh, he started recording the confessional statement of the accused at 11.30 A.M. and that he told the accused that after his statement he would be sent to judicial lock -up. The Magistrate also stated that after recording the statement the accused was actually sent to judicial lock-up. He was, however, asked to show from his record if that was so. After looking into his record he stated that the record did not show that. He then stated that he had made a separate remand order for that purpose. But when the remand papers were shown to him and he found that there was no such order among those papers he simply added that he did not know where those papers containing his remand order were. The fact remains that the record produced in Court or shown to the witnesses

concerned. does not contain any order from which it may be inferred that the accused was remanded to judicial custody after his confession was recorded. The necessity for sending the accused to judicial lock-up after his confession has been recorded, cannot be overemphasized. This is one of the essential safeguard which prudence and experience alike enjoin in order to remove from the mind of the accused whatever effect the threat, inducement or promise, if any given to him by the police may have had on him. The High Court of Lahore consistently took the view that the confessing accused should not be returned to the custody of the police (see *Juhana v. Emperor* and *Surat Singh Buta Singh v. Emperor*). In the last cited case *Young C. J. and Monroe J.* observed

'WITH regard to the confessions counsel has argued that the two confessing accused were returned to police custody by the District Magistrate after they had made their confessions. He therefore argues that they ought not to be treated as voluntary. We have pointed out on more than one occasion that this practice might easily under certain circumstances, induce a Court to come to the conclusion that the confession was not voluntary. Circulars have been recently issued to all Magistrates that they must send the confessing accused to the judicial lock-up and not return them to police custody.

(23) The practice of Investigating Officers being supplied copies of the confessional statements of the accused recorded by Magistrates soon after such statements are recorded by them would also appear in the context of section 164, Criminal Procedure Code to be open to serious objection, if not wholly illegal. That section requires that the confession recorded by the Magistrate shall be forwarded by him to the Magistrate by whom the case is to be inquired into or tried. The evidence of Hira Lal (Public Witness 23) shows that a copy of the confessional statement of Roshan Lal was supplied to the police on the same day. In fact, this would also explain in a way the existence of similarities between the statement of Roshan Lal and the statement of the approver Parma under section 164, Criminal Procedure Code, which was recorded on 2nd September 1966 to which so much importance has been attached by the learned Sessions Judge in coming to the conclusion that the confession made by Roshan Lal is true.

(24) The accused in his statement (Ex. P.E) before the committing Magistrate gave reasons for making that statement and stated that he was beaten by the police for several days and then told that if he would make a statement as written for him by the police which he was asked to cram up, he would be set at liberty. He reiterated the same allegation in his examination at the trial,

(25) It is true that no questions were put in cross-examination to the Investigating Officer about the accused having been beaten at the police station but a question like that would have been just an idle formality after the witness had stated that the confession made by the accused was voluntary and no pressure or coercion was used.

(26) The confessional statement, as we shall presently show, is also not compatible with the medical evidence which strangely enough, has been regarded by the learned Sessions Judge as corroborating the confession.

(27) One other circumstance which strongly militates against the voluntary nature of the confession is the continued detention of the accused in police custody for several days before he was produced before the Magistrate for his confession being recorded. Even if it is assumed that the accused were arrested on 24th August 1966, according to the record the entire investigation by the police was practically over by the evening of 26th August 1966 when the last discoveries were made. Why were the accused still detained in police custody after that date, has not been properly explained.

(28) We now turn to the alleged disclosure statements made by Jodhu and Roshan Lal accused. The discovery of shirt (Ex. P. 26) as a result of the statement of Roshan Lal has no evidentiary value at all as the garment has not been found by the Chemical Examiner to contain any blood stains. As regards Jodhu accused that recovery relates to danda (Ex.P. 1). axe (Ex.P. 2) and dandas (Exs. P. 22 and P. 23). The accused is alleged to have made a statement under section 2701 of the Evidence Act (Ex Public Witness PW. 26/0) while he was in police custody. This statement was recorded in the presence of Durga Das (Public Witness .26) and Jiwanu Ram (Public Witness . 28). The recoveries were made vide recovery memo. (Ex. Public Witness PW. 26/F) in the presence of the aforesaid witnesses.

(29) Durga Dass stated that the accused made a statement in his presence in which he stated that one Kulharu (axe), one drant, two dandas, one of bamboo and the toher of Kainth had been kept by him behind his house on a Bir in a field near his house and that these articles were covered with grass. The statement was read over to him, bore his signature and was correct. The accused then led the party to the place and got the articles recovered as per recovery memo. (Ex.PW. 26/F) which also bore his signature and was correct. The statement of Jiwanu (Public Witness . 28) is to the same effect. Apart from what has already been said above about the integrity of police investigation being open to grave suspicion in reference to the arrest and detention of the accused, the evidence with regard to the alleged disclosure statement and discovery of articles is open to still greater suspicion. Neither of the two witnesses can be said to be an independent witness. Durga Daas (Public Witness . 26) appears to be at the back and call of the police at all times. He is alleged to be present on 24th August 1966 when according to the police all the accused were arrested and the clothes on their person were taken possession of in his presence. Although he is a resident of village Rakhoi which is at a distance of 5 miles from Sarkaghat he was again present at the police station Sarkaghat next day at 7 A.M. On his own showing he has appeared in police cases a number of times, may be 15 to 20. He proudly admitted that he had always been a witness to the recovery or the statement of the accused recorded under section 27 of the Evidence Act and had appeared as a police witness in two murder cases before and this was his third case. He is admittedly a stick witness for the police.

(30) Jiwanu Ram (Public Witness . 28) could also not be treated as an independent witness. One Rup Lal who is a cousin of this witness appeared as DW.3 and stated that he had filed a complaint against him but the S.H.O. Niba Ram who was related to Sohan Lal son-in-law of Jiwanu, was not taking any action against him and the complaint was still pending. The witness could not explain why he had visited the police station on that day. All that he stated was that he had gone there for his own work. When further pressed to explain the object of his visit to the police station he stated that he had gone there out of curiosity. The obvious conclusion is that the work was nothing other than to find out what was happening to the complaint filed against him by Rup Lal. It is apparent

that the prosecution case regarding disclosure and discovery which is supported by such evidence can hardly inspire confidence. The recovery of these articles from an open field, even if they were found to have been covered by grass also does not necessarily lead to the inference that they had been kept there by Jodhu accused. According to the report of the Chemical Examiner no blood was found on the drant as well as the axe. A careful analysis of the injuries on the person of the deceased and the evidence of Dr. Banerjee who performed post-mortem examination of the deceased would show that it is highly improbable that any of the injuries were caused by a drant or axe. This also detracts from the evidentiary value of the alleged disclosure statement of accused Jodhu and the discovery resulting from it.

(31) We would now examine the last piece of evidence viz. medical evidence which according to the learned trial Judge completely corroborates the truth of the confession made by accused Roshan Lal. The post-mortom examination of the deceased disclosed the presence of the following injuries on the person of the deceased!- 1. One lacerated injury of about 6' x 2' skin peeled over on the left parital bone. 2. One lacerated injury of 10' x 4* angular in shape, cone towards the occiput on the occiputo parietal region (skin turned over). 3. One lacerated injury of 3' x 2* on the left zygoma. 4. One lacerated injury 2' x ' of the left knee joint. 5. One lacerated injury 2' x 2' on the left sole. 6. Incised looking injury 2* x 1' in the middle of right tibia. Longitudinally. 7. One lacerated injury of 2' x 1' on the right leg below No. 6. 8 One lacerated injury of 2' x " on the right knee joint. 9. On lacerated injury of 2' x 1' below the right knee joint. 10. Multiple bruises on the right elbow joint. 11. Incised looking injury on the dorum of the right index finger. 12. Lacerated injury of " x ' on left elbow joint. 13. Multiple injury ou the dorsum of the left band. 14. Abrasions of various sizes on the left chest. 15. Maltiple a brasions aboat 40 Nos. on the back and but locks. 16. Maltiple abrasion on the back of light thigh. (Ntoe:-No. 1 and 2 started with clean cut lower margin ranged). The ribs, walls and cartilages, pleurace, larynx and trachea, right and left lungs were all found normal Maiks of ligatare on the neck and dissection etc. were nil. Scalp, skull and vertebrae mentioned in page No. 1. Membrances brain and spinal cord were normal. Abdomen (walls, peritoneum, mouth etc. stomach and its contents, small and large intestines, liver, spleen, kidneys, bladder were all found normal,

(32) Dr. Banerjee who performed the postmortem examination appeared in Court and stated that injuries Nos. 1, 2, 6 and 11 could be caused with any sharp-edged weapon like drant and axe. On seeing the drant (Ex. P. 1) and the axe (Ex. P. 2) he stated that injuries Nos. 1 and 2 could be caused by the drant while injury No. 6 could be caused by the axe but not by the whole blade and by a portion of the sharp edge only. Injury No. 11 was also likely to be caused by the axe Ex. P. 2. Injuries Nos. 6 and 11 could also be caused by the drant Ex. P. 1.

(33) Injury No. 1, according to him, started with a single stroke of a sharp edged weapon and then it appeared that irregular force was used and the skin peeled off irregularly

(34) Bruises and multiple abrasions could be caused by a fall. Injuries Nos. 3, 4, 5, 7, 8, 9, 10, 12, 13, 14 and 16 could also be caused by a fall singly. All these injuries could not, however, be caused collectively by falling down from a precipice for the simple reason that the shirt and the Khaki pant that the deceased was wearing were old and were not torn at all.

(35) On further cross-examination he corrected himself and said that it was by oversight that he had mentioned that injury No. 5 could be caused by a fall. The character of injury No. 5 on the sole was such that it could not be caused by a fall.

(36) It is rather unfortunate that neither the medical witness has stated nor the counsel for the State and the accused have elicited from him the correct sizes of the various injuries in length, width and depth. It is, therefore, not possible to say as to whether the sizes of the injuries given above represent the length and width of the injuries or their length and depth. What seems probable is that the injuries represent length and width and not the depth. This is apparent from the size of injury No. 2. If the figure 4' in the injury represents depth then the injury could not have been a mere lacerated injury and would have cut the bone of the parietal region. The same would have probably been the case with injury No. 1 if the figure 2' represents depth and not width. Although the witness stated in his examination in Court that lacerated wounds sometimes look like incised wounds and therefore injuries Nos 6 and 7 did look like incised injuries, this opinion of the witness, however, appears to us to be open to serious doubt because according to his

report injury .No. 6 is 2' long and 1' wide in the middle of right tibia longitudinally. Such an injury could either be an incised injury or a lacerated one, although the correct nature of the injury could only be ascertained if the depth of the injury had also been given.

(37) We have already said that it is not possible to accept the case put forward by the learned defense counsel that the injuries on the person of the deceased were caused by a fall. We have also said that in our opinion which was supported by the opinion of the medical witness, the injuries were caused by one or more assailants. But, as already stated, the question for determination is whether the confession of accused Roshan Lal is compatible with the medical evidence.

(38) According to the confession the deceased was first caught hold of from his legs and his testicles were pressed. Jodhu accused then caught hold of him from his neck and put his foot on his chest. After the deceased became unconscious all the four accused picked him up and dragged him down below. He was then kept in between an Alsan tree and a water spring by keeping his face towards the ground. Jodhu accused then gave two to three drant blows on the head of the deceased while Chandu gave two to three axe blows on his legs. We have seen in Court the drant Ex. P. 1 and the axe Ex. P. 2. Considering the size of the drant and the manner in which drant blows are stated to have been given on the head of the deceased by Jodhu accused it is wholly impossible to bring about the kind of injury which is described in the medical evidence as corresponding to injuries nos. 1 and 2. Likewise it is equally impossible that injuries nos. 6 and 11 could have been caused by the axe blows aimed at the deceased by Chandu accused. The medical evidence also does not disclose any injuries or signs of pressure on the testicles of the deceased which according to the confession made the deceased unconscious. Injury no. 4 consists of abrasions of various sizes on the left chest of the deceased but according to the confession the deceased was felled down after Jodhu had caught hold of him from the neck and put his foot on his chest. If the injuries on the chest would in that case have been practically throughout the length and breadth of the chest and not merely on the left chest alone. The confessional statement would therefore appear to be not only not voluntary but also untrue in material particulars in as much as it is wholly incompatible with the evidence.

afforded by the injuries found on the person of the deceased.

(39) We regret to say that the learned Sessions Judge has, on a mere superficial examination of the medical evidence, come to the conclusion that the confessional statement is corroborated by the medical evidence on record. A close examination of that evidence and its comparison with the nature of the assault and the weapons used to inflict particular injuries on the toher band, clearly establishes the complete falsity of the confession.

(40) We therefore hold that the confession of Roshan Lal accused was neither voluntary nor true and as such it was properly retracted by him as soon as he got the first opportunity of doing so. Such a confession can neither be used against him nor against any of the toher accused.

(41) The result of the foregoing discussion is that the Judgment of the learned Sessions Judge holding the accused guilty is set aside. All the three accused are acquitted and ordered to be released forthwith.

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