

Vijay Kumar and anr. Vs. State

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Court : Delhi

Decided On : May-09-1995

Reported in : 1995IIAD(Delhi)523; 1996CriLJ2429; 1995(4)Crimes189; 60(1995)DLT261

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 141 of 1988

Appellant : Vijay Kumar and anr.

Respondent : State

Advocate for Pet/Ap. : Sandeep Sethi and; P.S. Sharma, Advs

Judgement :

P.K. Bahri, J.

(1) Vijay Kumar and Prem Singh, two cousin brothers, have been convicted of offence punishable under Section 302 read with Section 34 I.P.C. by an Additional Sessions Judge vide his judgment dated November 5, 1988, they have been sentenced to undergo imprisonment for life each. They have filed this appeal challenging their conviction and the sentences.

(2) Facts of the case are that deceased Balbir was married to PW23-Premwati about 23 or 24 years earlier and five children had been born in this wedlock. Premwati, Public Witness 3, was residing in House No. 34-35, 'G Block, Vishnu Garden, Tilak Nagar, New Delhi with her children. Vijay, appellant, was residing at a short distance from the said house in House No. B-119, Vishnu Garden, New Delhi. It has also come out that deceased Balbir Singh was also having another house bearing No. D-120 adjacent to the house of Vijay. House of Vijay is located at some distance from the house where Parwati was living with her children. The appellant, Prem Singh, was resident at House No. 283/188, Vishnu Garden, New Delhi.

(3) Balbir Singh, deceased, was uncle in relation to the appellants inasmuch as he was matrimonial uncle's son of Jai Lal, DW-1, father of Prem Single, appellant. As already mentioned, Vijay is son of Jai Lal's brother.

(4) On 8th June, 1985, at about 10.37 a.m., one Ashok Sharma from public call telephone, gave information to Police Control Room to the effect that two youths had given beating to one man with hockey in 'A' Block J.J. Colony, Khyala near State Bank of India and they have fled from the spot. This was entered at Daily Diary No. 30 in Police Control Room, copy of which is Ex. PW-15/A. This information was conveyed by Tirlok Chand, Sub-Inspector to Police Station, Tilak Nagar which was recorded at Daily Diary No. 13-A at 10.50 a.m., copy of which is Ex. Public Witness 14/C.

(5) Bal Kishan, Sub-Inspector, Public Witness 19, accompanied by Constable Kailash Chand, on being deputed to inquire into the matter had come to the place of occurrence. S.H.O Jagdish Sharma of the said Police Station, Public Witness 18, is also stated to have come to the place of occurrence soon after Sub-Inspector Bal Kishan reached there. S.H.O. had found injured Balbir Singh lying on the ground near State Bank of India and had found Premwati present and he had sent the injured Along with Premwati to the hospital.

(6) Public Witness 9; Dr. G.S. Kohli, had examined Balbir at about 12.15 p.m. on that day and had declared Balbir singh as brought dead vide his report. Ex. Public Witness 9/A. At the hospital, it is averred, that the statement of Premwati was

recorded which is Ex. PW3/Ain which she disclosed that she was living in the aforesaid house Along with her children and was earning her livelihood by ironing the clothes and her husband and Vijay Kumar were on very good terms as they used to eat and drink together for the last about two years and her husband was also on visiting terms at the house of Vijay Kumar frequently and Vijay was plying a three-wheeler scooter and her husband had developed illicit relations with Vijay's wife Kanta. She further went on to mention that she used to advise her husband not to visit the house of Vijay Kumar but he did not pay any attention to her objections and eve.. Kanta some time used to call and take away her husband. She further narrated that about four or five days prior to the present occurrence, her husband had visited the house of Vijay Kumar in the evening and there took place a quarrel between her husband and Vijay and her husband had sustained some injury on his face but no report was lodged with the police.

(7) She further mentioned in the F.I.R. that Vijay had met her husband a day earlier and had asked him to meet him at 10 a.m. on the day of occurrence and her husband had told her about this meeting and in the morning, after her husband had taken breakfast, he left at about 9 a.m.to meet Vijay and at about 10.30 a.m., as she was ironing the clothes at her house, her brother-in-law i.e. her husband's brother Kamal came running and informed that Vijay Kumar and Prem Singh were giving beating to Balbir Singh in 'A' Block, Khyala, J.J. Colony with hockey and immediately she and Kamal rushed to the spot and saw that her husband was being pressed on the ground by Prem, appellant, and Vijay Kumar was giving him beating with hockey and kicks with his feet. On their raising an alarm, Public Witness 4, Raspal and Public Witness 11, Basant came and tried to save Balbir Singh from such assault but Vijay and Prem shouted that as Balbir had violated the chastity of Vijay's wife, they would take revenge by killing him at that time and thereafter they having killed her husband at the spot, ran away and she brought her husband to Willingdon Hospital in the police vehicle where the Doctor declared her husband as dead. On the basis of this statement, an F.I.R. was registered at 2.05 p.m., copy of which is Ex. Public Witness 14/A.

(8) From the place of occurrence, the Investigating Officer had taken into possession a broken piece of hockey lying near the toilet which he converted into

sealed parcel vide Memo No. Public Witness 4/B which memo was attested by Basant and Raspal. He had recorded the statements of Mr. Kamal Kumar, Public Witness 6 on the following day in the morning and had recorded the statements of the other two eye witnesses. He held the inquest proceedings and had sent the inquest papers and the dead body of Balbir for post-mortem. The post-mortem was performed by Dr. BharatSingh.PW 1 on 9th June, 1985 at about 2 p.m. Balbir was aged about 36 years at the time of his death and he found the following injuries:-

(I) Multiple abrasions over the forehead, nose, right cheek, left cheek, both lips and on the chin; (ii) Abrasion over the left side of the neck in the middle area size 2' x 1'; (iii) Abrasion on the right shoulder on the top size 3' X 2'; (iv) Abrasion on the back of both elbows and forearms, brown in colour; (v) Multiple elongated contusions on the front and outer side of right thigh varying from 4' X 1' in size with central pale area and 2" X 1', placed obliquely, clotted blood was present in soft tissues; (vi) Contusions on the outer side of left thigh near the knee joint, placed obliquely, size varying from 3' X 1' to 2' X 1' with reddish colour in centre. Clotted blood was present in soft tissues; (vii) Contusions on the back of left arm in the middle area, size 3' x 1'; (viii) Seven contusions on the back scattered all over in various directions, size varying from 5' X 1' to 3' X 1'.

(9) The internal examination indicated that there was clotted blood in the chest wall on the front over the external area, size 3' X 2' and there was fracture of sternum with plenty of clotted blood at the side of fracture and there were also fracture of seven to nine ribs on the right side at the posterior end and fracture of third to sixth rib on the left side. The pericardium was torn underneath the fracture of sternum with plenty of blood in the pericardial cavity. Heart was bruised over the left ventricle on the interior surface. Middle lobe of the right lung was lacerated due to penetration of the fracture of ribs on that side. Chest cavity contained about 400 ml - of blood and clotted blood. Stomach contained two ounce of semi digested food.

(10) The Doctor opined that all injuries were ante-mortem. While injuries No. 1 to 4 were caused by rubbing the body against hard surface and the contusions were

caused by blunt object such as hockey stick which was broken near its curved part. The said broken piece of the hockey stick was also seen by the Doctor. He also opined that the internal injuries to the chest were possible by kicks or heavy pressure with knee, etc. and injuries to the heart and the lungs were sufficient to cause death in the ordinary course of nature. Death had occurred due to haemorrhage and shock resulting in death and time since death was about 26 hours. He preserved the sample blood of the deceased and also the clothes which he converted into sealed parcels and handed over the same to the police and he gave his report. Ex. Public Witness 1/A in this respect.

(11) It came out from his evidence that the dead body had been received in the mortuary on 8th June, 1985 at about 8.30 p.m., whereas the inquest papers and other papers were received in the mortuary on 9th June at 9.15 a.m.

(12) Both the appellants were arrested on 8th June, 1985 itself and in presence of Public Witness 7, Bhagwan Dass, Pw, Birdi Chand, the disclosure statement of both the appellants came to be recorded which have been exhibited as PW18/C and Pw 7/A. Vijay, appellant, is stated to have got recovered the other piece of the hockey, Ex. P 2 from underneath the cot lying in his room which was taken into possession vide Memo Ex. Public Witness 7/B.

(13) According to the case of the prosecution, Vijay, appellant had also made an extra-judicial confession to Bhagwan Dass and Birdi Chand that he, and Prem had killed Balbir by giving blows with hockey as Balbir was having illicit relations with his wife and a revenge had been taken in that respect.

(14) The case property was sent to C.F.S.L. and the reports, Ex.PW 18/D and PW18/E of C.F.S.L. indicated that the said two broken pieces of the hockey were part of one hockey.

(15) The learned Additional Sessions Judge has brought home the offence to the appellants in placing reliance on the oral testimony of the wife and brother of the deceased and also corroborated with the recovery of the piece of hockey stick at the instance of the appellant, Vijay.

(16) The learned Counsel for the appellants has vehemently argued that it was a blind murder and no eye witnesses were available to the police when the police had come to the spot and the police deliberately delayed the recording of the F.I.R. and finding no eye witnesses were coming forward, had introduced four false eye witnesses out of whom two had turned hostile and did not support the prosecution case. He has urged that neither Premwati nor Kamal had witnessed the occurrence and had become convenient tools at the hands of the police in showing themselves as eye witnesses against the appellants on being convinced that perhaps appellants were the culprits. He has urged that in the present case, all legal safeguards incorporated in the various provisions of the Criminal Procedure Code and the Police Rules have been violated which could only lead to an inference that F.I.R. was not recorded at the time it is purported to have been recorded and the time by which the F.I.R. had been delayed was utilised by the prosecution to introduce false story against the appellants and also introduce false eye-witnesses. He has urged that in the substance of the F.I.R. neither the names of the accused nor the names of the alleged eye witnesses have been incorporated. In the brief facts prepared Along with the inquest papers, neither the names of the accused nor the names of the eye witnesses nor the manner in which the occurrence had taken place have been incorporated and the inquest papers were also prepared belated as they came to be handed over in the mortuary on the following day at 9.15 a.m.

(17) It is also pointed out by learned Counsel for the appellants that Balbir Singh admittedly has succumbed to his injuries at the spot and the police had even gone ahead to get the dead body photographed at the spot, still the police had delayed the recording of the statement of the alleged eye witnesses. He has pointed out that in case Premwati, Kamal and other two eye witnesses were available at the spot when police arrived, there was no earthly reason for the police to have not recorded the statement of any one of them in order to bring about the F.I.R. and there was no earthly reason for having sent the dead body with Premwati to the Hospital when admittedly Balbir had expired at the spot as is evident from the statements of all the alleged eye witnesses and also from the statement of the photographer who took the photographs of the dead body at the spot.

(18) It is also alleged by learned Counsel for the appellants that there has been no disclosure statement made by Vijay leading to recovery of another piece of hockey from underneath the cot of his room and the Additional Sessions Judge was wrong in exhibiting the confessional statements of the two appellants which were hit by Section 25 of the Indian Evidence Act. He has also urged that there was no extra-judicial confession by Vijay to the said witnesses as there could be no occasion for Vijay to have made any such extra-judicial confession and even otherwise, the said part of the evidence of the prosecution cannot be used against the appellant in as much as no question has been put to appellants, while recording their statements under Section 313 of the Criminal Procedure Code. Learned Counsel for the appellant has also pointed out to various discrepancies appearing in the statements of material witnesses which, according to him, would show that they were not the eye witnesses of the occurrence and so he has urged that prosecution had failed to bring home the offence to the appellants beyond shadow of reasonable doubts.

(19) Learned Counsel for the State, on the other hand, has contended that the prosecution case is established, beyond shadow of reasonable doubt and Additional Sessions Judge was right in coming to the conclusion that the statements of Premwati and Kamal were trustworthy and there was no reason for them to have allowed the real culprits of Balbir to go scot free and unnecessarily involve the appellants for the murder of their close relation. He has urged that there have been some lapses of the Investigating Officer in not complying with statutory provisions but that would not lead to inference that Premwati and Kamal had not witnessed the occurrence or they had been shown as false eyewitnesses.

(20) A note of warning was given by the Court in a case reported in *Gurdev Singh v. M.C.D.* 1963 P.L.R. 409. It was held in this judgment that delay in recording the F.I.R. not only gets bereft of its spontaneity but danger also creeps in introduction of coloured version and after thought stories. The delay in sending the special report in a murder case to the Magistrate concerned also some time leads to doubt the Truthfulness of the case of the prosecution. The non-incorporation of the names of the eyewitnesses or the names of the accused in the substance of the F.I.R. which is the requirement of Criminal Procedure Code also in some cases

leads to inference that perhaps the prosecution story is not true.

(21) In some of the cases, it has been held that even not giving the names of the accused or of the eye witnesses in the brief facts which are sent along with the inquest papers also would some time result in doubting the prosecution version. (See State of Punjab v. Tarlok Singh, : 1971 CriLJ1063 ; Ishwar Singh v. The State of Uttar Pradesh, : 1976 CriLJ1883 Marudanal Augusti v. State of Kerala, : 1980 CriLJ446 ; Vijinder Singh v. The State, 1984 (1) Crimes 237; Lala Ram & another vs. The State, : 36(1988)DLT8 ; Jagjit Singh v. State, : 41(1990)DLT436 ; Arjun Mank & Ors. v. State of Bihar, : [1994]2SCR265 ; State of Gujarat v. Patel Mohan Mulji & Anr., : 1994 CriLJ280 ; Bandi Mallaiah & Ors. v. State of Andhra Pradesh, .)

(22) It is true that in case the Court, on perusal of the statements of the eye witnesses and keeping in view the other circumstances, comes to the conclusion in a particular case that eye witnesses are truthful and are reliable and trustworthy, then ignoring the lapses of the Investigating Officer in not complying with such safeguards, as are provided in the Criminal Procedure Code with regard to recording of the substance of the F.I.R. in the daily diary, sending of the special report promptly to the Metropolitan Magistrate and recording of brief facts containing the names of the accused and eye witnesses in the inquest proceedings, could be ignored. (See feet Singh v. State of Delhi, 1995 (1) Apex Decisions(Delhi)569; Naresh Kumar v. State, 1995 (1) Apex Decisions (Delhi)524.)

(23) In the present case, it is evident that none of the safeguards, which have been laid down by the law so that false stories are not introduced by the prosecution belatedly, have been adhered to by the prosecution. In the substance of the F.I.R., copy of which is Ex. PW14/B, apart from mentioning that F.I.R. is registered on the statement of Premwati, neither the names of the accused nor the names of the eye witnesses have been incorporated.

(24) The special report, in the present case, had reached the Metropolitan Magistrate on the following day at 11 a.m. It appears that the Constable, who was deputed to hand over the special report to the Metropolitan Magistrate, was examined after the close of the prosecution evidence and defense evidence, as

Cw 1 who deposed that on getting the special reports, he first gave the special reports to Additional Commissioner of Police, Deputy Commissioner of Police and had come to the Tis Hazari Courts at about 5 p.m. to hand over the special report to the Metropolitan Magistrate but he found the Courts closed and thereafter he went to the house of Chief Metropolitan Magistrate but found his house locked. Then he went to the house of Additional Sessions Judge but was told that Additional Sessions Judge was away to Mussorie and as he was not aware of the residential address of the Ilaka Magistrate, he came back to the Police Station and made the entry Ex. Cw 1/A at 9.10 p.m. and the S.H.O., later Realizing that special report had not been sent, deputed the Naib Court of that Court to hand over the special report to the Magistrate and thus, it was handed over to the Magistrate on the next day at 11 a.m.

(25) In case the F.I.R. is registered at 2 p.m., as is the case of the prosecution, the special report could have reached the Metropolitan Magistrate during the Court hours itself because the Courts function up to 4 p.m. It is not possible to believe that the local police would not be aware of the residential address of the Metropolitan Magistrate.

(26) At any rate, in the inquest proceedings and the brief facts, which came to be delivered to the mortuary on the following day at 9.15 a.m., no names of the accused or of the eye witnesses are mentioned. Moreover, in the present case, it is not understood at all or explained by the S.H.O. the Investigating Officer, as to why the dead body of Balbir was sent to the Hospital. It is not that Balbir was lying in an injured condition that had prompted the S.H.O. to send him for getting any medical help with Premwati to the Hospital. Premwati, Kamal as well as Raspal and Basant had deposed that Balbir had died at the spot.

(27) Public Witness 17, WazirSingh, who is the Photographer Constable posted in Police Station, Tilak Nagar, deposed that he was summoned to the place of occurrence by the Investigating Officer i.e. Sub-Inspector Bal Kishan and on reaching the spot, he took the photographs of the dead body which are Exs. Public Witness 17/A to Public Witness 17/D and the negatives are Exs. Public Witness 17/E to Public Witness 17/H. So, if we look at the photographs and the statement

of Public Witness 17, there remains not even a lingering doubt that Balbir had died at the spot. The only inference possible in the present case from the facts is that the S.H.O, the Investigating Officer, deliberately for no reason whatsoever had sent the dead body of Balbir to Willingdon Hospital with Premwati obviously with a view to gain time to find out the eye-witnesses, if any.

(28) It is significant to mention that Kamal had not gone to the Hospital, as per the statement of S.H.O. If that is so, even if dead body of Balbir was being sent to hospital to have him finally declared dead from the Doctor, there was no reason as to why the S.H.O. had not recorded the statement of Kamal at the spot which could have been the basis of the F.I .R. instead of proceeding with the dead body to the Hospital and then record the statement of Premwati to make it as a basis of the F.I.R.

(29) There has been a delay in recording the statement of Kamal. According to Kamal, he had, soon after the occurrence, gone to his own house for informing his father. His father Ghasi Ram appeared as Public Witness 5 and deposed that at about 11.30 a.m. Kamal had come , his house and informed him that Balbir had died but he does not say that Kamal had given any details of the occurrence. In case Kamal had known the names of the culprits, it is not natural conduct that he would not narrate the facts to his own father as to the manner in which his brother Balbir had died. According to Kamal, he had gone to the Hospital with his father. It is obvious then that Kamal was available to the Police a tall times on the day of occurrence but still the S.H.O. deliberately delayed the recording of his statement which came to be recorded on the following day.

(30) It has been stated by Premwati that four or five days earlier also, Vijay had caused injuries on face of Balbir but in the post-mortem examination, no such injuries, which could have been caused 4 or 5 days earlier, were found on the person of Balbir. In the F.I.R. there is no mention that hockey had broken into two pieces and if that is so, whether with the broken piece of the hockey any blows were given. Rather in the F.I.R., nothing has been mentioned as to how many blows or kicks have been given by Vijay and on what part of the body. The F.I.R. had been kept sweetly vague to introduce more particulars later on after finding

out the injuries present on the dead body of Balbir from post-mortem. There is no mention in the F.I.R. that any broken piece of the hockey had remained back at the spot and the other piece of hockey had been taken away by Vijay.

(31) In Court, Premwati had deposed that in fact appellants had come to her house and then had taken away Balbir whereas in the F.I.R. it was mentioned that Balbir had himself left the house for meeting Vijay at the appointed place and time. Vijay was neighbor and a relation. It does not appear to any reason as to why a particular place and time had been fixed by Vijay for meeting Balbir. In case Balbir had suffered injuries at the hands of Vijay four or five days prior to the date of occurrence, it is not possible that Kamal and Premwati would have allowed Balbir to go alone and meet Vijay again at a place pre-fixed by Vijay.

(32) Be as it may, according to Premwati, as per F.I.R., Prem was pressing Balbir on the ground but the manner in which Prem was allegedly pressing Balbir on the ground was not indicated but in Court, Premwati had deposed that Prem was sitting on the chest of Balbir and Vijay was giving hockey blows as well as kicks. If that is so, it is not possible that hockey blows or kicks could have landed on the chest of the deceased or deceased could have any injuries on his back. Prem would not have been escaped being hit by hockey blows being given by Vijay if Prem was sitting on the chest of the deceased at the time of the said assault.

(33) In the F.I.R., an extortion has been imputed to both the appellants which was uttered by them simultaneously, but in Court Premwati had mentioned that only Vijay gave such extortion and not Prem. She also came out with the story that both the appellants had run away in a scooter while there was no mention in the F.I.R. as to how the appellants had run away from the spot. At one point of time, in evidence, she stated that appellants had run away on seeing her coming to the spot. If that is so, it is not understood how she could have witnessed the occurrence, raised the alarm attracting the other two eye witnesses at the spot and appellants continued to assault Balbir while giving threats to the said eye witnesses.

(34) Significantly enough that Premwati as well as Kamal have deposed that Balbir had not bleed from his injuries. However, Public Witness 19 has stated that Balbir

was bleeding from his injuries. The human blood was found on the clothes of the deceased as per C.F.S.L. report.

(35) There is some doubt as to the house in which Balbir was living at the time of the occurrence. Kamal had stated that deceased Balbir was living in house No.A-120, Vishnu Garden, New Delhi whereas Premwati has deposed that he was living in House No. 34-35, Block 'G' Vishnu Garden, New Delhi. Suggestions have been given in cross-examination of Premwati, Kamal that Balbir was of loose character and was teasing girls of the locality which was being presented to by Premwati and Balbir was living separately in his House No. A-120, Vishnu Garden, while Premwati with her children continued to reside in her own house i.e. 34-35, Block 'G', Vishnu Garden, New Delhi. If we peruse the F.I.R. and the statement of Premwati, it appears that she also had not mentioned that she was living in that house with her husband. She had categorically mentioned that she was living in that house with her children and was earning her livelihood by ironing clothes and she has not referred to avocation of her husband or that her husband was financially supporting the family.

(36) It is true that in the Hospital, Doctor had declared Balbir as brought dead and had also mentioned in his report that Premwati had come Along with the dead body but that by itself would not show that Premwati was an eye-witness of the occurrence. The occurrence had taken place at about 10.30 a.m. At 10.37 a.m. information had been given to the Police Control Room and according to Premwati, it was Kamal who came running to the house and informed that Balbir was being assaulted at near State Bank and thereafter she accompanied Kamal. The assault of Balbir would not have consumed more than 5 to 10 minutes. It had taken about 6/7 minutes in reaching the place of occurrence from the house of Premwati. In all probabilities, the occurrence must have been over before arrival of Premwati at the spot.

(37) As far as Kamal is concerned, his conduct from the very beginning till end had been unnatural. If he was the eye witness, he would not have made himself scarce and not available to the Police for recording his statement on the day of occurrence itself and would have helped the police in taking articles from the place

of occurrence by witnessing the memos.

(38) According to Kamal, he had come back from his work that he was informed on the way by some unknown persons that his brother was being given beating by someone. Instead of rushing to the spot to save his brother from such assault, he claims to have come to the house of Premwati to inform and then to take her with him. His statement also suffers from same infirmities as the statement of Premwati and it becomes very doubtful to place any implicit reliance on the statements of Premwati and Kamal keeping in view all these discrepancies which are material.

(39) As far as extra-judicial confession of the appellant Vijay is concerned, same cannot be taken into consideration inasmuch as the same has not been put to the appellants while examining them under Section 313 of the Criminal Procedure Code (See *Sharad Birdhichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738).

(40) The two other eye witnesses have turned hostile and did not support the prosecution case. Basant, while he was declared hostile and was cross-examined by the Public Prosecutor, had, at one point of time, stated that the appellants had given beating to Balbir with hockey but when cross-examined by the accused, he deposed that he had not recognised the assailants and he was told the names of the appellants by Raspal. Raspal, on the other hand, had deposed that he had not witnessed the occurrence. So, their statements were of no help in bringing home the offence of murder to the appellants.

(41) So, in the present case, the fact that the police had tried to delay the recording of the F.I.R. and had also given a go-by to all the safeguards provided in the statute lead us to hold that in fact the eye witnesses were not available to the police at the time the dead body was discovered and ultimately the false eye witnesses have been introduced. It may be that the police was convinced that crime has been perpetrated by the appellants and even Premwati and Kamal were also having some suspicion that the appellants were perhaps the culprits, thus they became pliable eye witnesses for the prosecution.

(42) As far as recovery of a piece of hockey from the room of the appellant, Vijay, is concerned, the said piece of hockey was not lying hidden anywhere. A casual

search of the room by the police would have yielded the said piece of hockey. Section 27 of the Evidence Act could make such disclosure statement of the accused in custody admissible which leads to discovery of a material fact but if a material fact is self-evident to the police, the disclosure statement of the accused of such material fact becomes inadmissible. In case a particular material fact is in exclusive knowledge of the accused and he makes a disclosure statement pertaining to the same which leads to recovery of such material fact, then and then only such disclosure statement of the accused is admissible in evidence. So, this recovery of piece of hockey cannot be linked to the accused Vijay in view of the above reasons. Moreover, Premwati had stated in Court that Vijay had thrown away the second piece of hockey outside his house. If that is so, the disclosure statement of the appellant, Vijay, becomes all the more doubtful.

(43) In view of the above discussion, we hold that conviction of the appellants is not well based. The prosecution has not been able to bring home the offence of murder of Balbir Singh under Section 302 read with Section 34 Indian Penal Code . to the appellants beyond shadow of reasonable doubts. We allow the appeal and set aside the conviction and the sentence of both the appellants and acquit the appellants of the said charge. The appellants are on bail. They need not surrender. Their bail bonds are cancelled.

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