

Parag Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-02-1981

Reported in : 1981CriLJ1244; 1981()WLN274

Judge : M.L. Sarimal and; Mahendra Bhushan, JJ.

Appellant : Parag

Respondent : The State of Rajasthan

Judgement :

Mahendra Bhushan, J.

1. Accused Parag aged about 22 years, has been convicted under Section 302, I.P.C. by the learned Additional Sessions Judge (2), Jaipur City, Jaipur, and has been sentenced to undergo imprisonment for life,

2. Mahavir Prasad (PW4) is the father of Raiesh, a boy aged about 12 years. The accused Parag is the real sister's son of Mahavir Prasad. Mahavir, Prasad (PW4) and his sister, i. e., the mother of the accused, were partners in a business M. P, Sales Corporation, Station Road, Jaipur. Rajesh (deceased) at the relevant time was studying in Mahavir School, Mahavir Marg, C-Scheme, Jaipur in 6th Class. In the month of April, 1978, his annual examinations were going on. On April

26. 1978, he had his examination of Sanskrit Paper. Mahavir Prasad (PW 4), his father, left Raiesh on his scooter at the school at about 9-30 A. M as his paper was to commence from 10 A. M, It was a routine with Raiesh to return to the shop of his father situated at Station Road, Jaipur, or to his house in the afternoon after his examination. But, on April 26, 1978 Rajesh did not return to the shop or to his house. At about 1 P. M., Raiesh came out of the examination hall along with Raiu Kaul (PW

7) and Raiendra Agrawal. They took snacks (Gol Gap-pas) outside the school, and in the meantime a boy riding a scooter came there. Raiesh left with him saying to Raiu Kaul and Raiendra Agrawal that he was going with his brother. When Raiesh did not return to his house, a report was lodged in Police Control Room. Jaipur. When he could not be traced in spite of search, a report (Ex. P.

1) was lodged by Kishan Gopal. before the Inspector General of Police, Jaipur. It was signed by Mahavir Prasad (PW 4), elder brother of Krishan Gopal (PW 3), and father o deceased Raiesh. As the case related to Police Station. Ashoknagar, the report (Ex. P.

1) was forwarded for necessary action to that Police Station, where Suraimal (PW

1) Head Constable was deputed to make enquiry. The said Suraimal, after making an enquiry, submitted the report (Ex. P.

3) to the Station House Officer, and on it a case Mo. 160 under Sections 364, 365 and 383, I.P.C. was registered. The Station House Officer of Police Station, Ashoknagar, Shri Inderpal Singh (PW 18), took over the investigation. During the investigation of the case, various slips containing some writing in Roman (English) in capital letters, which were found either in the shop of Mahavir Prasad or in his lawn³, in the scooter and the car were produced. During the investigation of the case, it was gathered that Pepsingh (PW 13), the Chowkidar of Clark Amer Hotel, Jaipur, had seen the accused along with a boy, aged about 12 years on a scooter on the day of the incident. The accused-appellant was arrested on May

4. 1978 under Ex. P. 47, and he was directed to remain Baparda as his identification parade was to be held. After about 1½ hour of his arrest, the accused gave an information under Section 27 of the Evidence Act that the dead body of Raiesh was lying in a well on Sanganeri road near Clark Amer Hotel, and he would get it recovered. His discovery statement was recorded in Memo (Ex. P. 50), and in the presence of Motbirs, Ramsarup (PW

5) and one Aslam, the accused got recovered the dead body of Raiesh from the well. The dead body was taken out of the well by Shyamlal Harijan (PW 10). It was identified by Mahavir Prasad, father of the deceased, to be his son Raiesh. A memo of recovery of the dead body (Ex. P.

51) was prepared and was signed by Inderpal Singh (PW 18), Investigating Officer, Motbirs and Shyamlal Harijan. Inquest Report (Ex. P.

14) of the dead body of Raiesh was also prepared. The dead body was sent for post-mortem examination to the S. M. S. Hospital, Jaipur, where Dr. M. R. Goyal (PW

20) conducted the autopsy on the dead body. In the opinion of the doctor, Mr. M.R. Goyal, the body was in the state of high decomposition. Various Visceras were preserved. As there was an injury to the rectum, two slides of rectal smears and one sealed vial containing rectal swab were preserved. The visceras were sent to the Chemical Examiner for detection of poison, if any, whereas the aforesaid slides were sent for detection of Spermatozoa and gonococci, blood and seminal stains. In the opinion of Dr. Goyal, the presence of blood in the rectal swab and smear, which was reported by the Chemical Examiner, was suggestive of the act that some hard and blunt object might have passed in the rectum. Dr. M. R. Goyal could not say as to what was the cause of death.

3. On May 6, 1978 the accused further gave an information under Section 27 of the Evidence Act that one Geometry box and a pair of shoes of deceased Rajesh were also in the same well from which the dead body of Rajesh was taken out. His information was recorded in Ex. P. 52. The accused led the police party and the Motbirs to the well and a Geometry box and a pair of shoes were recovered from

the well. There was a paper of Sanskrit subject of class 6th in that box. A seizure memo (Ex. P. 23) was prepared. The accused yet gave another information on May 7, 1978 to Inderpal Singh (PW 18) that a Science copy of his sister Seema was in the room in the second storey of his house and he could get it recovered. This discovery statement was recorded in memo (Ex. P. 53), and in the presence of Motbir Girdhari Singh (PW-19), and one Kishan Chand the accused got recovered the Science copy (Ex. P. 57) from which some sheets had been torn. The accused also got recovered one copy (Ex. P. 22) from the house of his maternal uncle Mahavir Prasad in Amba Bari. It was seized under memo (Ex. P. 21). Both the copies (Ex. P. 57) and (Ex. P. 22) were sealed. A scooter was also recovered on the information and at the instance of the accused. Identification parade of the accused was conducted by Shri Sauan Singh Magistrate (PW 21) and Pepsingh (PW 13) is said to have identified the accused in that parade. Identification of the articles. Geometry box and the shoes, was also conducted by the said Magistrate.

4. Ex. P. 5 sheet torn from a copy and the copy Ex. P, 57 were sent to the Handwriting Expert Mr. N.C. Puri (PW 22). During the investigation of the case, specimen handwritings of accused Paras were also taken for comparison with the various slips containing the writings in Roman (English) in capital letters. Mr. N.C. Puri (PW 22). the Handwriting Expert on comparison could not opine about the handwriting in the various slips recovered during the investigation of the case. In his opinions, the sheet (Ex. P. 5) was torn out from the copy (Ex. P. 57).

5. The accused was examined under Section 313, Cr.P.C. to explain the circumstances appearing in the evidence of the prosecution witnesses. He stands on a bare plea of denial. According to him, he neither gave any information to the Station House Officer, nor got recovered the dead body of Raiesh or the Geometry box, shoes, copy (Ex. P. 57). copy (Ex. P. 22), as alleged by the prosecution. He stated that his signatures on various discovery rmemos were obtained by the Investigating Officer after torturing him. The accused came out with a plea that he was shown to Pepsingh (PW 13) when he was taken by Inderpal Singh (PW 18) to Clark Amer Hotel on two occasions on May 4, 1978 when the dead body was recovered, and on May 6, 1978 when the Geometry box and the shoes were

recovered. He also came out with a case that during the investigation of the case he had a quarrel with the Investigating Officer, as the investigation, according to him, was not proceeding in a proper manner, and the Station House Officer was showing lethargy in the investigation of the case. He had threatened the Station House Officer that he will complain about his conduct to the superiors, and the Station House Officer got enraged and has falsely implicated him. The accused gave out that he will submit his written statement, which he did. The accused examined Dr. S. M. Dugar (DW 1).

6. The learned Addl. Sessions Judge framed as many as five points for determination, and placing reliance on the prosecution story convicted and sentenced the accused appellant under Section 302, IPC. as aforesaid, but the accused was acquitted of the other charges under Sections 364 and 387. I.P.C.

7. We have heard Mr. Frank Anthony, the learned Advocate for the accused-appellant as well as Mr. M. I. Khan, the learned Public Prosecutor for the State.

8. Mr. Frank Anthony has challenged the conviction of the accused on the ground that the various circumstances brought on record against the accused in the first instance have not been proved, and they are not such which conclusively prove the guilt of the accused. According to the learned Advocate, the circumstance that the accused was last seen in the company of the deceased is not borne out on record, and the evidence of Pepsingh (PW 13) has wrongly been relied upon. There was an opportunity for Pepsingh to see the accused prior to the identification parade, and this alone makes his statement unreliable, so far as the identification of the accused is concerned. Dealing with the other circumstantial evidence, namely, the recovery of the dead body at the instance of the accused and the recovery of Geometry box and the shoes, the learned Advocate has contended that the Investigating Officer. Inderpal Singh (PW 18) is not supported by the witness of recovery, and he is not such a truthful witness on whose evidence alone the recoveries can be held proved. Therefore, the recoveries cannot be relied upon, and the accused cannot be convicted. So far as the recovery of a copy (Ex. P. 57) from which the sheet on which Ex. P. 6 is written is said to have been torn is concerned, the submission of the learned Advocate is

that this recovery also is not proved and cannot be held proved only on the evidence of Inderpal Singh (PW 18). It is further contended that the opinion, as to whether the sheet of paper has been torn from a copy, is not an expert opinion under Section 45 of the Evidence Act, and Mr. Puri (PW 22) cannot be said to be an expert of that branch. That apart, according to the learned Advocate, it is not proved that the sheet on which Ex. P. 5 is written was torn out from the copy (Ex. P. 57), and as such it is not an incriminating evidence against the accused. Lastly, the learned Advocate submits that the conduct of the accused throughout the investigation was not of a guilty man, and, therefore, it cannot be a circumstance to connect the accused with the crime.

9. Mr. M. I. Khan, the learned Public Prosecutor, has referred to various books on 'Questioned Documents' in support of his contention that the opinion as to whether a paper has been torn from a copy is an opinion which is admissible under Section 45 of the Evidence Act. He submits that the various circumstances on which reliance has been placed by the learned Sessions Judge are proved by convincing evidence, and the chain of those circumstances conclusively proves the guilt of the accused.

10. The learned Additional Sessions Judge has based the conviction of the accused-appellant on various circumstances (1) that the deceased Rajesh Dhamani took a lift on the scooter of the accused on April 26, 1978 at about 1 P. M. from, Mahavir School after his Sanskrit examination, and was also seen in the company of the accused at about 2-30 or 3 P. M. by Pepsingh (PW 13) at Clark Amer Hotel. He (Rajesh) was thereafter not seen alive. Thus, the deceased was last seen in the company of the accused; (2) that the dead body of Rajesh, the Geometry box and a pair of shoes were got recovered by the accused from a deserted well on his information and at his instance, and, (3) that the paper of the slip (Ex. P. 5) written in Roman English has been torn out from the Practical book (Ex. P. 57) recovered at the instance of the accused and on his information, and is the counter page of page B-18 (R), and it connects the accused with the crime.

11. While dealing with the circumstantial evidence against the accused, we will also take into consideration the other circumstances brought to our notice by the

learned Public Prosecutor in order to see as to whether the circumstances have been proved, and, if so, whether the chain of circumstances is such which conclusively proves the guilt of the accused.

12. The law is well settled that the conviction of an accused solely on circumstantial evidence can only be based, if all the circumstances are proved, and the chain of circumstances so proved is of conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. It is not necessary that every one of the proved circumstances by itself must be decisive of the complicity of the accused in the crime. It may be that a particular circumstance relied upon by the prosecution may not be so, yet that circumstance along with other facts, which have also been proved, may tend to strengthen the conclusion of the guilt. Thus, the Court has to judge the total cumulative effect of all the proved circumstances, each of which reinforces the conclusion of the guilt and if the combined effect of such circumstances is taken to be conclusive in establishing the guilt of the accused, the conviction would be justified.

13. We will take up the various circumstances allegedly appearing against the accused in this case. But first we will like to deal with the argument, as to whether the death of Rajesh was homicidal or not? Death can either be natural, accidental, suicidal or homicidal. Depending on the facts of each case by process of elimination, the court on the basis of circumstances appearing on the record can conclude that the death was homicidal. Mr. M. R. Goyal (PW20) has not been able to give opinion as to what was the cause of death of Rajesh. But, he found bruises on his body and the cloths of the deceased, which were seized from his body were found to be blood stained by the Chemical Examiner, and stained with human blood by the Serologist. The post-mortem on the dead body was conducted on May 5, 1978 at 10 P. M. by Dr. M. R. Goyal (PW 20). The bruises as per Mr. Goyal were deep anti-mortem on the front of chest, on the back of right elbow, over right side frontal region and right temporal region. In the opinion of Dr. Goyal, the injuries Nos. 3 and 5 were not possible by a fall into the well directly into the water,

but injury No. 4 was possible by a fall on touching the sides of the well. He has also stated that the presence of blood in the rectal swab and smear is suggestive of the fact that some hard and blunt object might have passed in the rectum. A look at Ex. P. 61, the post-mortem report, will show that Dr. Goyal has mentioned that the deceased had died 6 to 9 days prior to the post-mortem examination. He was not seen alive after 26th of April, 1978. He was a boy aged about 12 years and had not gone for a picnic to the jungle where the well, from which the dead body was taken out, was situated, and it cannot be even faintly suggested that the body committed suicide, or there was any cause for committing suicide. The death could not have been accidental in the facts and circumstances of this case, and definitely is not natural. Therefore, the presence of anti mortem bruises on the various parts of the dead body, the presence of blood on the clothes of the deceased is only suggestive that the death of Rajesh was homicidal. The ruling *Hira v. State of Rajasthan* 1978 Rai Cri C 226 on which reliance has been placed by the learned Advocate for the appellant that the prosecution has not been able to 1981 Cri.L.J.79 IX prove that the death was homicidal does not apply to the facts of the instant case. In the *State of Rajasthan v. Inder Singh* 1968 Raj LW 147 a Division Bench of this Court has held that it is not necessary for the prosecution to prove that the deceased was killed by direct proof of death, or of the violence or of any other act of the accused, which is alleged to have caused the death. The fact that the deceased was killed may be proved by circumstantial evidence, as any other fact. We are, therefore, of the opinion that in the facts and circumstances of this case, and on the evidence on record it can safely be concluded that the death of Rajesh was homicidal. The dead body was in high state of decomposition, but still on the basis of the clothes etc which were found on the dead body of Rajesh, Mahavir Prasad (PW 4), his brother Krishan Gopal (PW 3) and Smt. Lata wife of Krishan Gopal identified the dead body. It can, therefore, be said that the dead body was of none else but of Rajesh son of Mahavir Prasad.

14. Before we proceed to take up the various circumstances appearing against the accused in the evidence of the prosecution witnesses, we will like to note the circumstances other than the three on which the learned Sessions Judge has convicted the accused, which the learned Public Prosecu or has brought to our

notice. They are, (1) various misleading statements of the accused to the father of Rajesh (deceased) and other members of the house; (2) statement of deceased Rajesh to Raju Kaul (PW7) that he was going with his brother; and (3) wrong explanation of the accused about the various circumstances appearing against him.

Last Seen:-

15. It can be said from the statement of Raju Kaul (PW7) that Rajesh (Deceased) went on a scooter at about 1 P.M. from Mahavir School after his examination. But, Raju Kaul (PW 7) does not state that the accused was driving that scooter. He states that he could not identify the boy, who had taken away Rajesh on his scooter, as he had only seen the back of that boy. Apart from the statement of Raju Kaul, there is no evidence about taking of Rajesh from the school on a scooter. Thus, it cannot be said positively that it was the accused, who had taken Rajesh from the school on a scooter. We will later on deal as to what is the effect of Rajesh saying that he was joking with his brother, and whether from that it can be inferred that the brother was none else but the accused. As per the case of the prosecution, at about 2-30 or 3 P. M. the accused went with a boy aged about 12-13 years to Clark Amer Hotel, and was seen by Pepsingh (PW13). The learned trial Court has relied on the evidence of Pepsingh and has held that the deceased was last seen with the accused at about 3 P. M. at Clark Amer Hotel. But we are unable to agree with the learned trial Court, firstly because even Pepsingh (PW13) does not state that along with the accused was Rajesh deceased. He has only stated that with the accused there was a boy aged about 12 years, and secondly because there is material on record that on May 6, 1978 the statement of Pepsingh was recorded by Inderpal Singh during the investigation of the case. Pepsingh was on duty at the gate on that day. The accused was taken on that day to Clark Amer Hotel, and it can, therefore, be said that there was an opportunity for Pepsingh to see the accused on that day, and the learned Additional Sessions Judge was wrong in holding that mere opportunity to see the accused was not sufficient. It has come in the evidence of Rampal (PW11), one of the motbirs to the recovery of Geometry box and the shoes of the deceased that he had seen the face of the accused on the well as well as in Clark Amer Hotel. As already

observed above, this recovery took place on May 6, 1978, and the statement of Pepsingh under Section 161, Cr.P.C. was also recorded at the gate of the hotel on the same day. Therefore, to us, on the material on record, the evidence of identification of the accused by Pepsingh (PW13) does not inspire confidence. Thirdly, Pepsingh is unable to give features of other drivers of the cars, which were parked outside the hotel on that day. Pepsingh has not said that because of fair complexion and good physique, he could identify the accused, and the observation of the learned Judge to that effect was not warranted. The accused, during the identification parade, told the Magistrate, Shri Sajjan Singh (PW21) that he might have been shown to Pepsingh on two occasions, firstly when the dead body was recovered, and secondly when the Geometry box and shoes were recovered and he was taken to the hospital. We are, therefore, unable to place reliance on the evidence of Pepsingh even to the extent that he saw the accused at about 3 P. ML in Clark Amer Hotel, though he does not say that the deceased was also with him. Therefore, the first circumstance on which the conviction of the accused is based by the trial Court, to our mind, is not established by cogent and reliable evidence.

Recovery of dead body:-

16. We will now take up the evidence of recovery of the dead body, the Geometry box and the pair of shoes on the information and at the instance of the accused. Mr. Frank Anthony, the learned Advocate for the accused-appellant has contended that the witnesses of recovery have not supported Inderpal Singh (PW18) and rather falsify him in material particulars, and therefore, only on the statement of Inderpal Singh the recoveries cannot be held proved. It is further contended that the various discovery statements of the accused do not appear to be voluntary and were as a result of torturing by the Investigating Officer. The accused was arrested on May 4. 1978 after interrogation for about two hours. After one and a half hours of his arrest he gave the information (Ex. P. SO) of the recovery of the dead body from the well. He also gave information on May 6, 1978 for the recovery of the Geometry box and the shoes, also gave information to get a copy (Ex. P. 17) recovered and also the information about the scooter. But. it cannot be said that the various discovery statements were secured by the Station-House Officer, Mr. Inderpal Singh (P W 18) as a result of constant torturing. Inderpal Singh has

denied to have done so. There is nothing to hold that the various discovery statements were not voluntary. The law does not require that the discovery statements should be witnessed by the Motbirs. It is during the investigation of the case on interrogation that the accused makes a discovery statement. It is not expected of the Investigating Officer to keep the witnesses in attendance in the hope that the accused may make a discovery statement or to rush up to call the witnesses to witness the discovery statement of the accused. In the instant case, though some persons were present outside the room where the discovery statement is alleged to have been made to Inderpal Singh (PW 18) by the accused, but it cannot be said that they were present in the room where the discovery statement was made. Therefore, on this ground, we are unable to hold that the various discovery statements, as a result of which various facts were discovered, are inadmissible into evidence.

17. Human impulse is to speak the truth. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect a police officer without good grounds therefor. Merely because a police officer can be said to be interested in the success of the case, if his statement is trustworthy, it will not come in the way of acceptance of his statement by the Court. (See *Aher Raja Khima v. State of Saurashtra* : 1956 CriLJ426 , *Dalbir Kaur v. State of Punjab* : 1977 CriLJ273 and *Ajiz Khan v. The State* 1958 Raj LW 527. The learned Additional Sessions Judge has placed reliance on the testimony of Inderpal Singh (PW 18), so far as the various recoveries are concerned. The discovery statement of the accused to the effect that the dead body of Rajesh is lying in a well on Sangneri road near Clark Amer Hotel, and he could lead the police to that place is contained in memo (Ex. P.50). The two Motbirs, who accompanied Inderpal Singh (PW 18), were Ramsarup and Aslam. Aslam has not been examined, and Ramsarup has been examined as PW 5. It has come in the statement of Inderpal Singh (PW 18) that the accused led him and the Motbirs to the well and pointed it out. Though, Ramsarup (PW 5) has not stated anything about leading him and the police by the accused, but it has come in the statement of Ramsarup that he read over the recovery memo of the dead body (Ex. P. 14), and whatever was written therein was correct and then he signed it. No doubt, he has also stated that by the time he

reached the well, one person was going into the well to take of the dead body. Therefore, even if it may be said for a moment that he reached the well after all others including the accused had reached, and as such the accused did not point out the well in his presence, but there is no reason to disbelieve the statement of Inderpal Singh (PW 18). The suggestion on behalf of the defence that during the investigation of the case. Inderpal Singh (PW 18) had come to know about the dead body being in the well and as such it was already within his knowledge that the dead body was in the well and the discovery statement has no effect has no force. There is no material on record that prior to the information (Ex. P. 50) under Section 27 of the Evidence Act of the accused, the Investigating Officer had come to acquire the knowledge of the existence of the dead body in the well. We have held earlier that as there was opportunity for Pepsingh (PW 13) to see the accused prior to the parade, and that the Station House Officer (PW 18) had taken the accused to Clark Amer Hotel, but on that ground it cannot be said that the statement of Inderpal Singh about the recovery of the dead body, and the various other recoveries cannot be relied upon. Inderpal Singh has no ill-will against the accused, and the case of the accused, as set up in his written statement and the statement under Section 313, Cr.P.C. that he told the Station House Officer that the investigation was not proceeding in a proper manner and he was lethargic, and therefore, the S. H. O. became angry with him, does not appeal to us. The charge against the Investigating Officer, Inderpal Singh (PW 18) that he has secured the signatures of the accused on various discovery statements by giving a beating to him. as stated earlier, cannot be relied upon in the absence of any circumstances and only on the mere suggestion of the Advocate for the accused in cross-examination, and the statement of the accused under Section 313, Cr. P. C, as well as his written statement. It appears from the perusal of the various remand papers, which are available on record (File No. 178/78 of the Court of Judicial Magistrate, Jaipur) that the accused for the first time was produced for remand on May 5, 1978, but he did not complain to the Magistrate either then or thereafter that the discovery statement consequent to which the dead body was got recovered by him from a well was secured by the Station House Officer by torturing, No complaint about the beating having been administered by the Station House Officer, Inderpal Singh (PW 18) to the accused

was made. On that day the Magistrate save remand for five days up to May 10, 1978. On May 10, 1978 he was remanded to police custody up to May 12, 1978, and on that day also no such complaint was made. Lastly, on May 12, 1978, when he was produced for police remand, the Magistrate again remanded up to May 15, 1978, and on that day remanded him to judicial custody. In these circumstances, as already observed above, we do not find any force that the signatures of the accused were obtained by the Investigating Officer, Inderpal Singh (PW 18) after giving beating, or that the accused never gave any information. We are, therefore, satisfied that the accused gave information (Ex. P. 50) to Inderpal Singh, Station House Officer (PW 18) on May 4, 1978 to get a dead body of Raiesh recovered, and consequent to his information in the presence of Motbirs, the accused got recovered the dead body of Rajesh from a deserted well unusual from a jungle.

Recovery of Geometry Box and Pair

of Shoes of Rajesh deceased.

18. On May 6, 1978 when the accused was in custody, he gave information (Ex. P. 52) to the Station House Officer, Inderpal Singh (PW 18) that the Geometry box and the pair of shoes had also been thrown by him in the same well from which the dead body was taken out, and that he would get them recovered, Inderpal Singh (PW 18) took the accused and the Motbirs, Rampal and Ramlal to the well, and the accused got recovered a pair of shoes (Article 4) and the drawing box (Article 6). which were seized and sealed by the Station House Officer (PW 18) under memo (Ex. P. 23). Rampal has been examined as PW 11. whereas the other Motbir Ramlal has not been examined. He accompanied Inderpal Singh (PW 18) from Ashok Nagar Police Station to the well. The accused was also throughout with him. He has stated that the drawing box and the pair of shoes were taken out from the well and a seizure memo (Ex. P. 23) was prepared, which is signed by him. Though, Inderpal Singh (PW 18) knew the well having earlier recovered the dead body at the instance of the accused, and therefore, there was no question of the accused pointing out the well to Inderpal Singh, but from the statement of Rampal (PW 11) also it can be said that a Geometry box and a pair of shoes were recovered from the well in the presence of the accused. Thus, it was in

consequence of the information received from the accused by the Station House Officer, Inderpal Singh (P W 18) that the Geometry box and the pair of shoes were recovered from the well, and therefore, the information of the accused with regard to the Geometry box and the pair of shoes is admissible under Section 27 of the Evidence Act. According to the learned Advocate, there is no material on record that the Geometry Box (Article 6) was with the deceased when he left for his examination on April 26, 1978. But, there is material on record on which it can be clearly said that the Geometry box (Article 6) was with the deceased when he came out of the examination hall and left on a scooter with a boy Raju Kaul (PW 7) has clearly stated that, at the time when Raiesh left on a scooter with a boy, he was having a drawing box. Though, he has not stated that Article 6 was the same drawing box, which was with Rajesh. and also did not disclose so in his police statement, but there is no reason to disbelieve his statement. In the drawing box (Article 6) was a Paper of Sanskrit for class 6th. Though, the box has been described as drawing box, but it is a box of some soap (Margo.), in which pencil, rubber and scale etc. along with the Paper of Sanskrit of Class 6th were kept. The drawing box has been identified by Krishan Gopal (P W 3). Thus, to our mind, the Geometry box and the pair of shoes belonged to deceased Rajesh, and were recovered on the discovery statement of the accused furnished under Section 27 of the Evidence Act.

Recovery of Practical Copy Ex. P. 57.

19. The accused gave information to the Station House Officer, Inderpal Singh (PW 18) on May 7, 1978, when he was in his custody, that he had placed the Science copy of his sister Miss Seema in the second storey of his house, and he could get it recovered. This information of the accused was recorded in the discovery memo (Ex. P. 53). The accused led the S. H. O. to the place mentioned in his information memo, and in the presence of Girdhari Singh (P W 19) and one Krishan Chand he got recovered Ex. P. 57, which was seized and sealed by Inderpal Singh (PW 18) and under Memo (Ex. P. 56) Girdhari Singh (PW 19) and has deposed about this fact. He is one of the signatories to the recovery memo of Ex. P. 16. The learned Advocate for the accused-appellant has challenged this recovery on the ground that only on the statement of Inderpal Singh (P W 18) the

recovery cannot be held proved. We have already dealt with this aspect of the matter while dealing with the recovery of the dead body, and we see no reason to take a different view from the learned Additional Sessions Judge that in the instant case the statement of Inderpal Singh (PW 18) inspires confidence. Girdhari Singh (PW 19) was picked up by the police on the spot as stated by him. Then he accompanied the police to the upper storey of the house in a room, and he was standing on the gate of that room. He has stated that the police came out with a copy, which was seized and sealed by the police. We fail to understand as to how he falsifies the statement of Inderpal Singh (PW 18) and does not support him. Therefore, the recovery of Ex. P. 57 on the information and at the instance of the accused is proved.

20. The question is, as to whether the recovery of Ex. P. 57 is an incriminating evidence against the accused. The case of the prosecution is, that a sheet of paper (Ex. P. 5) was torn out from this book and (Ex. P. 5) in Roman English, which was marked by handwriting expert Mr. Puri (PW 22) as 'Q. 2' is an important link in the case. Ex. P. 1 was produced to Suraimal (PW 1) on April 28, 1978 by Krishan Gopal (PW 3) along with Ex. P. 4. Ex. P. 5 is in Roman English and reads. 'WADA PURANAHIN LASH HOTEL KAY ASS PASS'. According to Krishan Gopal (PW 3) Ex. P. 5 was found lying in the lawns of his house. He resides along with his brother, Mahavir Prasad father of deceased Rajesh, in Amba Bari, Jaipur. Though, the authorship of Ex. P. 5 has not been proved to be of the accused, but, as we shall presently show it can be said on the material on record that the sheet of paper (Ex. P. 5) was torn out from the Practical Copy (Ex. P. 57), which was recovered from the possession of the accused on his information under Section 27 of the Evidence Act, from nowhere else but from the house of the accused. Though, apart from the fact that the name of Miss Seema is written on Ex. P. 57, there is no other evidence that Ex. P. 57 belonged to Miss Seema, but the are not concerned with the ownership of Ex. P. 57. and with what we are concerned is as to whether Ex. P. 57 is in any way connected with the crime, and is a piece of substantial evidence against the accused. Mr. Frank Anthony, the learned Advocate for the accused, in support of his submission that the statement of Mr. Puri (PW 22) handwriting expert to the effect that the sheet (Ex. P. 5) was torn out from the their part of the sheet marked B-18 is not an expert opinion within the

meaning of Section 45 of the Evidence Act, has referred to Hanumant Govind v. State of Madhya Pradesh : 1953 CriLJ129 in which it has been held that opinion of expert that a particular letter was typed on particular machine does not fall within the ambit of Section 45 and is inadmissible. This ruling will not apply to the present case, because, here we are not dealing with the question as to whether a typed material was typed on a particular type machine, but we are dealing as to whether the sheet of paper (Ex. P. 5) was torn out from Ex. P. 57 exercise book. We are of the opinion that the Question as to whether the paper on which a document is written has been torn out from a copy is an expert opinion. Under Section 45 of the Evidence Act. when the Court has to form an opinion upon a point of science, the opinion on that point of persons specially skilled in such science is a relevant fact. In 'Webster's' Dictionary 'science' has been defined as possession of knowledge as distinguished from ignorance. Knowledge is acquired through study and practice. In Journal published by the Forensic Science Society in July, 1980 (Vol. 20) at page 149 dealing with Broader Basis of Forensic Science, it has been dealt as to what type of information is produced by forensic scientist. It is (1) information to help in the decision on whether a crime has been committed, (2) corroborative evidence of (1) and (3) evidence to incriminate or eliminate an individual. It has been observed. 'The adjective 'Forensic' which goes back to Roman times, means 'related to, used in or connected with a court of law.' Forensic science is therefore, science used in connection with a - court of law. The application of science to the apprehension and conviction of criminals is only part of the whole field of science applied in this way.' Thus, to our mind, the evidence as to whether a paper which contains incriminating material against the accused has been torn out from another copy is an information connected with the forensic science. Wilson R. Harrison in his book 'Suspected Documents' at page 43 has said. 'If the edge of a suspect document is seen to be irregular, an accurate record of its outline should be preserved, as it may prove of value to match this irregular edge with that of another document which subsequently comes to hand. Evidence such as this has no occasion proved to be of value when anonymous letters are being investigated, for these are often written on scraps of paper torn from sheets which later become available to the investigators'. At the same page (bottom), the author dealing with 'Perforations' has said. 'Paper rarely tears evenly along the

perforations. The slight irregularities in tearing may prove of value should it be required to prove that a sheet was torn from a particular counterfoil', 'The author at page 44 under Fig. 3-10 while explaining has said, 'An enlarged photograph (X2) provides the best evidence of matching through the uneven tearing of perforations.' Fluorescence is one of the item to be observed in the examination and comparison of paper. The same author dealing with. 'The Fluorescence of Paper' has observed at page 90, 'The exposure of paper to ultra-violet light is a useful test when a document consists of several pages and the substitution of one or more is suspected. The forger may be able to match the general colour and appearance of an unwater-marked sheet as viewed under ordinary conditions of lighting, but unless a very similar paper has been chosen, it is unlikely to exhibit the same fluorescence in ultra-violet light. 'The author has again said at the same page, 'The pages of any suspect document should be exposed side by side and their fluorescence compared; no decision should be made until both sides of all the sheets have been examined, for the back and front surfaces may differ in their fluorescence. With a single page document, the actual colour of the fluorescence may have little significance, so that the attention should be concentrated on the discovery of places where there is some modification of either colour or intensity, for these may well be the, sites of erasures.'

21. Osborn in his book, 'Questioned Documents' (Second Edition) Chapter XXVI, dealing with Paper and Questioned documents has observed, 'it has been conclusively shown that several questioned documents of widely different dates were all written on paper that originally formed one sheet, as was clearly proved by the matched indentations on the edges of the several pieces where they had been torn apart. The sheet of paper on which an anonymous letter was written has been shown to have come from a blank book from which it had been torn, which book had been in the possession of one who was accused of writing the letter.'

22. Thus, we are of the opinion that it is possible for an expert, if he is one. to examine and say, as to whether a sheet of paper on which the questioned document is written came from a particular copy or not. No doubt, in order to establish the identity of the papers, one the questioned as well as the others in the

blank copy, from which the sheet, from which the questioned document is said to have been torn out. the colour, thickness, finish or surface, watermark, wove or laid style, cutting, size, ruling, fluorescence have to be looked into. But, it does not appear to be necessary that before the identity of the two papers can be established, all the aforesaid things must be similar, and in a given case only some of the things may enable the expert to give an. opinion about the identity of the two papers.

23. Mr. Puri (PW 22), the expert, is working as an Assistant Director (Documents) in the New State Forensic Science Laboratory, Rajasthan, since June, 1959. He has stated that he is an expert of handwriting and other alleged problems and also received training prior to his appointment in the Puniab C.I.D. Scientific Section, Phillor, Bihar Police Laboratory, Patna, Indian Security Press. Nasik Road and Government of India Mint, Calcutta for over one and a half years. In the year 1971, he also received advance training in the subject in the Home Office Forensic Science Laboratory at Cardiff in U. K. for a period of about six months, having been sponsored by Government of India. He has stated that the page containing disputed writing marked 'Q. 2' (Ex. P. 15), the reverse side of which is marked 'Q. 2' (R) was removed from the not book marked 'B' from the place opposite to page B-18 (R). He has opined that the edges of the side, which was pulled, marked 'Q. 2' (R) match with the relevant edges of the pages B-18 (R). He prepared a comparison chart marked Ex. P. 148, which also contains enlarged photographs. He had examined the documents 'Q. 2 01' (Ex. P. 53 and B-18 (R) (copy Ex. P. 570 by placing them side by side. In his opinion, Ex. P. 5 is the front side of the paper, and paper B-18 (R) is the reverse side. We are, therefore, of the opinion that on the evidence of Air. Puri it can be said that the sheet on which Ex. P. 5 was written was taken out from Ex, P. 57, and the other sheet of it is B-18 (R). We have already reproduced as to what is written in Ex. P. 5, and we are of the opinion that it is an incriminating evidence, and the fact that the copy from which the sheet on which Ex. P. 5 was torn was recovered on the information of the accused at his instance from his house, connects the accused with the crime.

Recovery of Copy (Ex. P. 22) from which the sheets on which Ex. P. 8 and Ex. P. 10 are written.

24. Though Mr. Puri (PW 22) has stated that the sheets, which were marked by him for comparison as Q. 4 and Q. 5 were from the same big sheet, as revealed by the matching of edges, but he is unable to say if the big sheet came out of the copy (Ex. P. 22) recovered from the accused on his information and at his instance. Though the writing of these two documents also relates to the death of Rajesh, but the authorship of the accused has not been proved, and, therefore, the recovery of a copy (Ex. P. 22) cannot be said to be an incriminating evidence against the accused.

Misleading statement of the accused to Mahavir Prasad, father of the deceased Rajesh, and other members of the family.

25. According to Mahavir Prasad (PW 4), Ex. P. 5 was found on the lawns on his (Mahavir Prasad's house and the accused had given Ex. P. 5 to him. His younger brother Krishan Gopal gave Ex. P. 5 to the Police on April 28, 1978. There cannot be any dispute that Ex. P. 5 was handed over by Krishan Gopal to Sarajmal (PW 1), as Sarajmal and Krishan Gopal have stated so. He further states that on May 1, 1978 there was no ring on the telephone, but still the receiver was picked up by the accused and thereafter the accused gave out that they should come with, the money on the place, -which was visited by them last night. Though, this fact was not stated by Mahavir Prasad to the Police, but Mahavir Prasad (PW 4) is corroborated by the statement of Girdharilal (PW 6), who was also present at that time. He has stated that after picking up the receiver without a ring, the accused gave out that somebody has said on phone that they should reach with Rs. 5,000/- at the place which was visited by them last night. Though, the accused has denied to have picked up the receiver, or to have told Mahavir Prasad or Girdharilal, as stated by them, but to us there appears to be no reason to disbelieve their statement. Thus, the accused gave a misleading statement to Mahavir Prasad and Girdharilal.

Wrong explanation of the accused with regard to the various circumstances proved on record against him.

26. Though, the recovery of the dead body on the information of the accused as well as of the Geometry box and the shoes and a copy (Ex. P. 57) out of which Ex.

P. 5 was written was torn out has been proved, but the accused has denied all these circumstances appearing against him. Not only this, he has even stated that the dead body which was recovered from the well was not of Rajesh, a fact which is borne out from the material on record. Thus, the accused has given a false explanation of the various circumstances appearing on the record.

Statement of the deceased to Raja Kaul that he was going with his brother.

27. Mr. M.I. Khan, the learned P.P. (G.A.) has contended that the statement of the deceased Rajesh to Raju Kaul (P W 7) that he was going with his brother is a statement relating to the circumstance of transaction, which resulted in his death, and as such is admissible under Section 32 of the Evidence Act. In support of his submission, he has placed reliance on *Narayana Swami v. Emperor* AIR 1939 PC 47 : 40 Cri LJ 364. In that case, it was held that the statement made by the deceased that he was proceeding to the spot, where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, son to meet him, would each of them be circumstances of the transaction, and would be so whether the person was unknown or was not the person accused. It has also been held that the statement admissible under Section 32(1) of the Evidence Act may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. To our mind, this ruling will not apply to the facts of the instant case, because the deceased has not stated to have told Raju Kaul that he was going with the accused. What is said to have been told by the deceased Rajesh is, that he was going with his brother. No attempt has been made by the prosecution to prove that besides the accused, who is the cousin brother of Rajesh, deceased Rajesh had no other cousin brother. Thus, this is not admissible under Section 32 of the Evidence Act and moreover does not connect the accused with the person, who is said to have taken the deceased on his scooter.

28. We have held above that the death of Raiesh was homicidal. We have also held that Rajesh was not seen alive after 1 P. M. on April 26, 1978:

To sum up, the following circumstances are established against the accused:- '

(1) Recovery of the dead body on May 4, 1978 on the information under Section 27 of the Evidence Act, and at the instance of the accused.

(2) Recovery of Article 6 Geometry box and a Pair of shoes of the deceased on the information under Section 27 of the Evidence Act and at the instance of the accused on May 6, 1978 from the same deserted well from which the dead body was recovered earlier.

(3) Recovery of the Practical Copy (Ex. P. 57) on the information and at the instance of the accused, and the fact that the sheet of paper (Ex. P. 5) 'Q. 2' was torn out from the other part of the sheet B-18 (R) of Ex. P. 57. and Ex. P. 5 contains the writing concerning the crime.

(4) Misleading statement of the accused to Mahavir Prasad and Girdhari Lal with regard to the message allegedly received on phone demanding some money.

(5) False explanation of the accused in his statement under Section 313, Cr. P.C. and written statement with or that he had been invited by such persons with regard to various circumstances proved on record against him.

29. We have said earlier while dealing with the position of law that in case of circumstantial evidence every one of the proved facts may not by itself be decisive of the complicity of the accused. We have taken into consideration the cumulative effect of all the circumstances appearing against the accused. Though, it is a case of purely circumstantial evidence, and motive for the crime has not been held proved by the trial Court, but we are of the opinion that from the circumstances enumerated above, it can be said that the chain of circumstances is complete and conclusively proves the guilt of the accused. The various circumstances are not capable of any explanation consistent with the innocence of the accused.

30. In the result, we hereby dismiss this appeal upholding the conviction and sentence of the accused under Section 302, I.P.C.