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State Vs. Shankariya

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Court : Rajasthan

Decided On : May-05-1976

Reported in : 1977CriLJ684; 1976(9)WLN258

Judge : V.P. Tyagi, Actg. C.J. and; P.D. Kudal, J.

Appellant : State

Respondent : Shankariya

Judgement :

P.D. Kudal, J.

1. Accused-appellant Shankariya has been convicted and sentenced to death by the learned Sessions Judge, Ganganagar by his judgment dated June 27, 1975, The learned Sessions Judge has made this reference for confirmation of the sentence of death. Accused Shankariya has filed an appeal from jail against his conviction and sentence.

2. The facts of the case, in brief, are that First information report Ex.P/7 was lodged on September 9, 1973 at about 7.30 a.m. by one Shyam Singh son of Balla Singh, It was alleged in the First Information Report that the informant went to the Gurdwara of village Takhat Hazari at about 7. a.m. for the purpose of grooming and burning incense. When he opened the doors of the Gurdwara and entered into it, he saw Mada singh lying on a cot, and was groaning with the pain. He saw

three persons lying on three different cots. He went to the village and contacted Jagirsingh, Hari Singh, Sukhdarshansingh, Amar singh, etc. He returned to the Gurdwars, with these persons and saw that Kartar-singh son of Heerasingh was lying dead on the cot, and that he had injuries on his head. Madasingh and Wazirsingh were lying on the cot and had injuries, Both these prrsons were blind. Locks of the rooms in the Gurdwara were found broken and the goods were lying scattered. He then went to the police station accompanied by Jagirsingh and Sukhdar shan Singh. A case under Sections 302/ 360/459, IPC was registered and investigations commenced. Accused Shankariya was arrested on 3/6/1974 vide Ex. P. 56-A. On 10-11-1975, accused Shankariya was charge-sheeted to stand his trial under Section 302/307 and Sections 459 and 460, IPC, He was also charge-sheeted under Section 380, IPC. A confession of guilt by the accused Shankariya was recorded on 14-6-19-74 by the Munsiff and Judicial Magistrate, Baisinghnagar. The accused, however, retracted the confession and claimed to be tried.

3. The prosecution examined 23 witnesses. Shri Bahadursingh, SHO, Thana Sadar filed an affidavit on 14-6-1975, but he was examined under Section 311, Cr.P.C, The accused did not lead any evidence. The learned Sessions Judge on June 27, 1975 convicted the accused Shankariya under Section 302, I.P.C. for the murders of Kartarsingh and Madasingh and sentenced him to death. He was also convicted for the offence under Section 307, I.P.C, for making the murderous assault on Wazirsingh and for the offences under Sections 359, 460 and 380, IPC for committing lurking house trespass by night in the Gurdwara. The learned Sessions Judge, however, did not prescribe any sentence for these offences as the accused-appellant Shankariya was condemned to death.

4. On behalf of the accused-appellant it was contended that the learned S?ssions Judge seriously erred in law and on facts in convicting the accused-appellant It was also contended that there is no direct evidence regarding the commission of the offence. It was also contended that the entire indirect evidence is extremely weak and untrustworthy, and the prosecution has failed to bring the guilt home to the accused-appellant. It was also contended that the medical evidence does not corroborate the prosecution version. It was also contended that the confession of

the accused dated 14-6-1974 was not a voluntary confession. It was also contended that as the confession has been retracted by the accused-appellant, it has lost all its force. It was also contended that no evidence has been led by the prosecution regarding the manner in which the iron 'dibbi' was kept on which, it is alleged, there were finger prints of the accused-appellant. It was contended that there was no evidence regarding the fact that the seal remained intact and it was despatched to the expert at the earliest. On the contrary, it was contended that the iron 'dibbi' was despatched to the fingerprint expert after a great delay which has not been explained. As regards the foot-prints, it was contended that it is a very weak type of evidence and that too in the Instant case, the evidence is not at all convincing. It was also contended that the learned Sessions Judge has not properly evaluated the evidence' on record and has not met the various pleas which were raised by the learned Counsel for the defence, Under such circumstances. It was contended that there is absolutely no case against the accused-appellant Shankariya.

5. O behalf of the State, it was ton tended that linger prints on the iron 'dibbi' have conclusively established the guilt of the accused.. It was also contended that the medical evidence corroborates the confession, and as such, the conviction could be based even on retracted confession, It was also contended that after the arrest of the accused-appellant, who was responsible for spreading a great panic in that area such incidents stopped which conclusively goes to show that it was the accused-appellant alone who had committed these crimes. It was also contended that the statement of PW/8 Jagar-singh lends a great support to the prosecution story, and conclusively proves that it was the accused-appellant alone who was responsible for committing these two murders, in the Gurdwara on the night intervening 8th and 9th September, 1973.

6. The respective contentions of the learned Counsel for the parties have been considered and the record of the case carefully perused PW/l Dr. N.P. Agarwal stated that Madasingh was brought to the Ganganagar Hospital on 9-9-1973 at 6.10 p.m. Madasingh had head injuries, and so he was admitted in the hospital. Madasingh died on 11-9-1973 at 6 a.m. He conducted the post-mortem on the dead body of Madasingh on the requisition from the police on 11-9-1973 at 10.30

a.m. Madasingh was blind with both eyes. Rigor Mortis was present in all the extremities and neck. There was bleeding from the right ear, He had the following external injuries;

1. Bruises 2 1/2' x 1/2' on both the right eyelids.

2. Incised wound 1/4' x l/4' x 1/2' at the outer angle of right eye.

3. Incised wound 1 1/2' x 1/2' bone cut (brain matter deep) obliquely, placed on the right frontal eminence 1 1/4' above the right eyebrow.

4. Lacerated wound 1 1/2' x 1/8' x 1/2' in front of the trangus of right ear.

5. Soft tissues swelling 6' x 3' all over the right face and front of temporal region.

7. On opening the body he found soft tissue haematoma all over the right temporal, frontal, parietal and occipital region. Linear oblique fracture of right temporal region with multiple fracture pleces and fracture of right front-parielal region under the external injury No. 3. membranes cut under this injury and brain matter with clotted blood herniate ing out of this cut meninges. There was sub-dural haemorrhage in right parietal, temporal and frontal region. There were multiple fractured pieces of the bones at the base of the skull in right middle and both anterior craneal fossae with intra craneal haemorrhage in these areas, Brain and membranes were congested. The injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. The post-mortem report was contained in Ex P./2 Injuries Nos. 2 and 3 could be caused with Kassi Art, 1 by sharp edge of it. Injury No. 4 could be caused from the blunt side of the Kassi Article 1 Injuries Nos. 1, 2 and 3 were caused by separate blows.

8. PW/2 Dr. S.S. Bhargava is the Radiologist who got the injuries of Wazirsingh x-rayed. On examination of x-ray plates he submitted his report Ex, P/6. According to this report, there was fissure fracture on the right side of the scalp involving frontal and parietal bone, which was accompanied by a fracture of the zygomat'ic bone and the maxillary bone of the right side.

9. PW/3 Shyam Singh Is the person who lodged the first information report Ex. P/7. He saw Kassi Article 1 lying near the cot on which Wazirsingh was lying. The site-plan Ex. P./8 was prepared in his presence, and it bears his signatures. The police also took the iron 'dibbi' Article 2 in its possession, and sealed it vide Ex. P/14, which bears his signatures. When the police had brought, the 'dibbi' Article 2, It was wrapped.

10. PW/4 Amar singh is the person in whose presence the blood-stained earth was taken into possession. Arts. 5, 6 and 7 foot-print moulds were also taken into possession in his presence

11. PW/5 Shri Giriraj Prasad was the Munsiff Magistrate, Hanumangarh. On a request by Shri Kasi Prasad, S.P CID, vide Ex. P/24, he called the accused from jail on 15-6-1974 for identification. He further stated that PW 8 Jagarsingh correctly identified the accused in the identification parade. On being cross-examined, he stated that during the identification parade the accused had told him that he was shown to the public, and to the prosecution witnesses. He has also made an endorsement Ex. P./25 to this effect in the identification proceedings. He had sent the accused in judicial custody on 14-6-1974. when he had gone to the jail for identification parade the witness Jagarsingh was already present outside the jail.

12. PW/G Shri Sukhdarshan Kumar Bansal was posted as Munsiff and Judicial Magistrate, Raisinghnagar on 13-6-1974. An application Ex. P./6 was presented by Shri Bhanwarsingh praying that the accused Shankariya wishes to give confessional statement under Section 164, Cr.P.C. The accused was directed to be produced before him on 14-6-1974 at 7 a.m. He had told the accused on 14-6-1974, when produced before him, that he is a Magistrate and that any statement given by him may be used against him and that he is not under any obligation or compulsion to make a confession. He had also inquired from the accused whether he was put to any torture bodily or whether he has been threatened or whether any kind of promise has been given to him. The accused was given time to think over and his statement was recorded at 8.45 a.m. He has further stated that when he was satisfied that the accused was making a confession voluntarily his

statement was recorded, At the time when his confession was being recorded no person of the police department was present in the Court room. Accused Shankariya is the same person whose statement (Confession) was recorded. On being cross-examined, he has stated that this case pertains to the police station Sadul Sahar, which is about 70 to 80 miles from Raisinghnagar. Ganganagar is about 20 to 25 miles from Sadulsahar, and in Ganganagar there is District Jail, while in Raisinghnagar there is only a small sub-jail. When one goes from Sadulsahar to Raisinghnagar by train he passes through Ganganagar. In Ex, P/27 the accused has been shown to have been arrested on 3-6-1974, and the application by Shri Kashi Prasad has been signed on 13-6-1974. The Judicial lock-up in Raisinghnagar is about 150 to 200' from the compound wall of the court - The Police Station is adjacent to the judicial lock-up in Raisinghnagar. The witness could not state whether the common wall between the judicial lock-up and the police station was only 4' high, and that a person in the judicial lock-up is visible from the police station. After the confession of the accused Shankariya had been recorded he was sent back to the judicial lock-up. The witness was not in a position to state whether the accused was taken to the judicial lock-up Raisinghnagar or Ganganagar or Hanu mangarh. Before recording the confession of the accused, the witness did not examine his body as to whether there were any marks of injury. Neither his body was got examined by anybody else. The accused Shankariya had also given 2 or 3 other confessional statements before this witness.

13. PW/7 Baldeo Raj Bansal was posted as Assistant Station Master at the Sadulsahar railway station. He has stated that ticket No. 46092 was issued on 9-9-1973 ex-Sadulsahar to Bhatinda.

14. PW/8 Jagarsingh stated that Shyam Singh came to him at about 6 O'clock in the morning on 9-9-1973 and told him that one person has been murdered in the Gurdwara, and that the other two have been seriously injured. He had gone to the police station along with Shyam Singh who has gone there to lodge the First information Report Ex. P./7. In the night preceding the incident he had gone to a Doctor to get medicine for his son who had stomach-ache. When he was returning from the Doctor, he saw the accused going along with the railway line. He inquired

from the accused as to who he was, on which he replied that he was a walker. Jagarsingh then flashed his torch light and saw the accused. He has further stated that the police had seized the iron, 'dibbi' Article 2 in his presence and had sealed it. The place from where this 'dibbi' was taken, some change was scattered there. The 'dibbi' Art, 2 was recovered vide Ex. P/14 which does not bear his signatures. The police had also taken into possession some foot-moulds. His signatures were also not taken on foot-moulds. The witness did not suspect the accused when he met him near the railway lines. When he had gone to the Police Station accompanying Shyam Singh for lodging the report he did not state that he had seen a person in the night going along the railway lines. The witness was confronted with his statement before the police Ex. D/l, where he had not stated that he had torch with him, wherein he had also not stated that the accused was going from Gurdwara towards the railway lines, and also that some foot-prints were visible from the Gurdwara to the railway lines. On this question, the witness stated that he did make there statements, but the police did not record the same. In Ex. D/l he had also stated that he had not cared to look at the accused carefully, but in his statements before the Court he had stated that he had also given the description of the accused to the police, but the police did not record it.

15. PW/9 Mithusingh stated that the iron 'dibbi' was seized by the police in his presence. The police had sealed the 'dibbi' in his presence. Ex. P/14 bears his signatures, which is the recovery memo. The 'dibbi' was seized on 9-9-1973 and the accused was arrested after 7-8 months of this incident.

16. PW/10 Karamcliand Sood is the Chief Booking Clerk at the Railway Station, Bhatinda. He stated about the sale of the railway ticket on 9-9-1973.

17. PW/11 Dr, Bahadursingh examined the injured Wazirsingh on 3-9-1973. He had the following injuries:

1. Incised wound 1 l/2' x 1/5' up to brain right parietal bone 2 1/2' above the ear obliquely upward downward. Grievous in nature caused by sharp weapon.

2. Incised wound l 1/2' x 1/2' bone deep right side of frontal bone 1 1/2' above the eye-brow. Grievous and sharp.

3. Lacerated wound curved shape 31/2' x 1/4' bone deep right eye orbit in a curved shape outer part of eye starting from lateral side of eyebrow upto maxillary prominence. Doubtful grievous caused by blunt weapon.

18. The patient was brought in an unconscious state to the hospital, X-ray was advised for right parietal bone, frontal bone, right eye orbit and any bony region. Ex. P./32 is the injury report which is in his hand and signed by him.

19. On the same day, he examined the injuries of Madasingh. who had the following injuries:

1. Incised wound 1 1/2' x 1/2' upto brain matter deep. Right side of forehead 1' above the eyebrow. Doubtful grievous caused by sharp weapon.

2. Incised wound 1/4' x 1/4' x 1/2' right eye outer angle. Doubtful grievous caused by sharp weapon.

3. Lacerated wound 1/1/2' x 1/4' x 1/2' in front of right ear in a curved fasion convexity towards ear. Doubtful grievous caused by blunt weapon.

Ex. P./33 is the injury report which is in his hand and signed by him. He has further stated that the lacerated wound of Wazirsingh and Madasingh could be caused by 'Kassi' Article 1. He has also stated that the lacerated wounds of Wazirsingh and Madasingh could be caused from the blunt side of Kassi Article 1. On the requisition of the police, the witness went to the Gurdwara of Takhat Hasara, and conducted the post-mortem examination on the dead body of Kartarsingh at 4.30 p.m. He found the following external injuries on the body of the deceased Kartarsingh.

1. Lacerated wound 21/4' x 1/2' upto brain matter on the frontal bone 2 1/2' above the medial end of right eye-brow upward downward brain matter seen from the wound and the bone fractured. Caused by blunt weapon.

2. On right and anterior and lower part of parietal bone there was circular injury of diameter 1 1/2' half anterior part shows lacerated wound of size 11/2' x 1/4' x brain matter deep and other half shows abrasion mark caused by blunt weapon.

3. Incised wound 1/2' x 1/4' x 1/4' just above the lateral side of right eyebrow caused by sharp weapon.

20. On post-mortem multiple fracture of right half of frontal bone detected. Meninges injured and brain matter lacerated, coagulated blood present. All the injuries were ante-mortem and were sufficient to cause death in the ordinary course of nature. He has furthar stated that in all the three cases the blunt weapon injuries could be caused with the base of the wooden handle affixed to the hook of the Kassi Article 1. In the case of the incised wound of Madasingh Wazirsingh and Kartarsingh there is no curve. The dimension of the incised wound is also very small in proportion to the length of the weapon Article 1.

21. PW/12 Kishanlal is the Manager of the Dayavanti Bhawan, Haridwar. On 13-9-1973 Ratanlal son of Shamlal and Sitaram stayed there. Ex. P/36 is the agreement from which is filled in by the passenger or the pilgrims who stay there, Ex. P./36 bears the signatures of Sitaram. An entry is made in the register regarding the persons who came and stayed. As the register was full, it has been deposited with the Municipal Board, Haridwar. and as such, the witness could not bring the register. On 21-6-74, the police had brought the accused to Haridwar, and had shown the accused to the witness. The witness stated that he was the same person who stayed there, Regarding the differences in ink in Ex. P/36 the witness stated that sometimes while writing with the same pen, the colour of the ink varies.

22. PW/13 Sitaram is the person who went with the accused to Haridwar and stayed with him in the Dayawanti Bhawan, Haridwar. The witness was declared hostile at the request of the prosecution and was cross-examined.

23. PW/I4 Wazirsingh is the person who survived the onslaught of the accused. Wazirsingh is blind from his childhood. He has stated that he did not regain consciousness for 10 or 15 days. He had Rs. 600/- with him in the Gurd-wara and a gold ring. The ring and the money were missing. These were lying in the box in the room. He had received injuries on his head.

PW/15 Karnailsingh stated that he was living in the Gurdwara Takhat Hazara for the last 12-13 years as a 'granthi' He had got Rs. 400/- in currency notes of Rs.

100/- each and change of Rupees 100/-. The money was missing.

24. PW/16 Bhagwansingh is the Assistant Sub-Inspector of Police posted at Hindumalkot. He has seized the bloodstained earth and sealed i.e He had seized the broken locks vide Ex. P/12 and had sealed them. The place where the change was scattered the iron 'dibbi' Article 2 was found. It had finger prints. He had seized the iron 'dibbi' vide Ex. P/14 and has sealed it. He had kept this article in the malkhana and nobody tampered it there, so long as he was there. The Police Station, Sadulsahar is about four furlongs from the place of occurrence. He had kept the foot-moulds and the 'dibbi' Article 2 in the mal-khana. The enquiry was taken ever from him by Shri Bhanwarsingh on 12-9-1973. He had not produced the papers regarding the investigation, that is, the site-plan, the inquest report and recovery memo of Article 2 'dibbi' before any Magistrate.

25. PW/17 Surendra Kumar was posted as SDM, Hanumangarh in June, 1974. The foot-print of the accused Shankariya were taken in his presence on 16-6-1974.

26. PW/18 P.M. Tankha is the person who had examined the foot-moulds and the finger-prints. He stated that he had received letters Ex. P/45 and Ex. P./46 from the SP CID Shri Kashi Prasad on or about 29th June, 1974 along with foot-moulds and Articles duly sealed The seals were intact. He has stated that the specimen fingerprints of the accused tallied with the chance finger-prints on 'dibbi.' Article 2. With regard to foot-moulds, the witness stated that out of the three foot-moulds Arts. 5, 6 and 7 only Article 5 was decipherable, The witness has opined that the foot-mould Article 5 resembled to the foot-prints of the accused. He has further stated that it is not possible to completely reproduce one chance foot-mould into several other chance foot-moulds. But by recasting the impression of the cast mould some foot-prints can be reproduced.

27. PW/19 Krishna Pal Singh was posted as the Finger Print Expert at Jaipur and was in Government Service. He passed the Fingerprint and Footprint Examination from Ajmer in 1951 He stated that he had not sealed the specimen foot-moulds, but had given the foot-moulds to PW/21 Bhanwarsingh.

28. PW/20 Shyam Pratapsingh Kathore was posted as Superintendent of Police from April 1973 to September, 1974. He arrested the accused Shankariya on 3-6-1974 at 2.30 P.M The accused Shankariya had changed his name as Ratanlal. He has further stated that a great panic had spread in the District of Ganganagar, Punjab and Haryana regarding these murders, A joint operation of the police of Rajasthan, Punjab and Haryana was, therefore, launched for the arrest of the culprit.

29. PW/21 Bhanwarsingh was posted as SHO Sadar Ganganagar on 3-6-1974 The accused Shankariya was known by the name of Ratanlal also. The accused was kept 'baparda' after his arrest and instructions were issued to keep him 'baparda'.

30. PW/22 Kashi Prasad Shrivastava is the Superintendent of Police, CID posted at Jaipur. On 12-6-1974, the accused was sent to the judicial lock-up in 'baparda'. On 13-6-1974 an application for recording the confessional statement of the accused was submitted before the Magistrate, Raisinghnagar, and his statements (confessional) were recorded on 14-6-1974. An application was also submitted for obtaining the foot-moulds of the accused in Sessions Case No. 236/1974. The Fingerprints and foot-moulds were then sent to the expert vide Ex P/45 and Ex. P. 46. The accused remained in Raisinghnagar till he was presented before the Magistrate for recording his confessional statement. The confessional statement of the accused was recorded in four or five cases. But this confessional statement was recorded before the Munsif Magistrate. Raisinghnagar Shri Bansal.. The other confessional statements were recorded before the other Magistrate.

31. PW/23 Subhash is the person who was in jail with Shankariya accused when he was also in jail. He has identified the accused, and stated that in a theft case the accused was arrested.

32. The statement of the accused under Section 342. Cr.P.C. was recorded on 14-6-1975. With regard to his confession Ex. P/27, he stated that the Superintendent of Police, Shri Kashi Prasad Shrivastava had threatened him, Shri Kashi Prasad was staying in the Raisingh nagar Police Station, and he was often meeting him before his statements were recorded. He stated that the statement Ex. P/27 was

not a voluntary statement and that he had given the confessional statement in this case under duress and threats. He has further stated that the police had obtained his foot-prints and he was made to hold many articles in his hands, whereby the finger-prints on these articles were caused. On 23-6-1975 his further statements were recorded with regard to the specimen finger prints of his right and left hand fingerprints taken on 5-6-74. The witness stated that the police had obtained his finger-prints and had made him to hold many articles in his hand, and as such a number of finger-prints on many articles were forcibly obtained.

33. On behalf of the accused-appellant Shankariya, it was strenuously argued that the confession Ex, P/27 was not a voluntary confession. It was further argued that the confession has been retracted and that is not corroborated by any other independent witness on material particulars. Reliance was placed on Puran v. State of Punjab (I) : AIR 1953 SC459 wherein it has been held that, 'It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone." Reliance was also placed on Nathu v. State of Uttar Pradesh : 1956 CriLJ152 , wherein it was held as under:

The prolonged custody immediately preceding the making of the confession is sufficient, unless it is properly explained to stamp it as involuntary. The fact that the accused made various suggestions in the cross-examination of the C.I.D. Inspector such as that he was given bhang and liquor, or shown pictures, or promised to be made an approver, and they have been rejected as unfounded does not relieve the prosecution from its duty of positively establishing that the confession was voluntary and for that purpose, it is necessary to prove the circumstances under which this unusual step was taken.

34. Reliance was placed on Medu Sekh v. State of Assam 1972 Cri LJ 362 (Assam), wherein it has been held as under:

Where accused had all along been in police custody for three days prior to his making statement under Section 164. Criminal P.C. and half an hour before his production in Court he was in active company of the police in which he produced incriminating articles. Under these circumstances it would not be said that the

accused was free from police influence in making the statement, although the Magistrate recording the statement had given the accused four hours time for reflection. The confession of the accused in such statement could not be said to be voluntary. The Magistrate ought to have sent the accused to judicial custody for a day with sufficient safeguard against mixing with other persons before recording his confession.

Reliance was placed on Sarwan Singh v. State of Punjab : 1957 CriLJ1014 , wherein it was held as under:

It must be established that a confession is voluntary and also that it is true. For the purpose of establishing its truth it is necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities of the case.

35. On behalf of the State, it was contended that the confession was voluntary, and there is nothing on the record to suggest that the confession was not voluntary. Reliance was placed on Abdul Razak v. State of Maharashtra : 1970 CriLJ373 . wherein it has been held as under:

The accused was kept in remand for about a fortnight after his arrest. Thereafter he was kept in jail custody for three days and then on fourth day he was produced before the Executive Magistrate for recording confession. The Magistrate made the preliminary questioning of the accused, gave him a warning and sent him back to jail. On the next day the accused was produced before the Magistrate and the confession was recorded. During the trial the accused in answer to question regarding the confession merely said that he did not make the confession. He did not say that it was made on account of any inducement or coercion on the part of the police. On the contention that the confession was not voluntary as the accused was in prolonged police custody for at least a fortnight before making the confession.

Held that the confession of the accused was voluntary. It was clear that the had spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days. Again he had 24 hours to think after he

was told by the Magistrate that he was not bound to make any confession and if he made one it would be used against him.

36. Reliance was placed on Subramania Goundan v. State of Madras : 1958 CriLJ238 , wherein it has been held as under:

Though under Section 133 of the Act a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to Section 114 lays down that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repentance and contrition, was voluntary and true or not and it is with that object that ccrroboration is sought for. Not infrequently one iz apt to fall in error in equating a retracted confession with the evidence of an accomplice and, therefore, it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the Court must feel that the reasons given for the retraction in the case of a confession are untrue.

37. Reliance was placed on State v. Dhanna Ram 1974 Cri LJ 1123 (Raj), wherein it has been held as under:

A retracted confession may form the legal basis of a conviction if the Court is satisfied that it is true and was voluntarily made. The Court may in a particular case, be convinced of the absolute truth of the confession and act upon it without corroboration.

38. Reliance was placed on Raja Khima v. State of Saurashtra : 1956 CriLJ426 , in which it was held as under:

A confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and while the Court is considering the question the question whether it is true or false does not arise. It is abhorrent to notions of justice and fair play and is also dangerous to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realises that anything he says may be used against him, and any attempt by a person in authority to bully a person into making a confession or any threat or coercion would at once invalidate it if the fear was still operating on his mind at the time he makes the confession and if. it would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

39. There is evidence on record that the accused Shankariya was arrested on 3-6-1974, and was in police custody upto 12-6-1974. He was sent in judicial custody on 12-6-1974, and his confessional statements were recorded on 14-6-74. The confessional statement was recorded by PW/6 Shri Sukhdarshan Kumar Bansal. He has clearly stated that the accused was called from the Sub-jail Raisingh-nagar at about 7 a.m. on 14-6-74, and that all the necessary warnings were given to him, and that he was clearly told that he is under no obligation to make a statement, and that if such a statement is made it might be used against him, and that he was making such a statement before the Magistrate. The statement was recorded at 8.45 a.m. when there was no police man in the Court. He has further stated that when he was satisfied that the accused was making the statement voluntarily, it was then alone that his confessional statement was recorded. As against this, the accused has stated that he made the confessional statement under threat of Shri Kashi Prasad Shrivastava Superintendent of Police, CID, who was staying in the police station, Raisinghnagar. He has further stated that the judicial lock-up is adjacent to the police station and that he was under contant threats of the police to make such a statement. Having given our most anxious consideration to the nature of the confession, we have no hesitation in holding that the confession Ex. P/27 was made by the accused Shankariya voluntarily.

40. The retracted confession Ex, p/27 made by Shankariya finds corroboration from the recovery of Kassi Article 1 from the place of occurrence It finds further eorroboration from the medical evidence. The Medical Officer Dr. Bahadursingh (PW/11) has clearly stated that the incised wound of Madasingh, Wazirsingh and Kartarsingh could be caused by the Kassi Article 1. PW/l M.P. Agarwal has also stated that the injuries Nos. 2 and 3 on Madadngh could be caused by Kassi Art.].. Thus, the medical evidence lends sufficient corroboration in material particulars to confession Ex. P/27 made by the accused Shankariya.

41. As regards finger prints on the 'dibbi' Article 2, it was contended that there is absolutely no evidence to show that the finger-prints were not tampered. It was vehemently argued that the prosecution has led no evidence to show that the finger prints on the 'dibbi 1 Article 2 remained intact from the date of seizure to the date they were sent to the finger-print expert. It was also contended that the finger-prints were sent after an inordinate delay. Dibbi Aricle 2 was seized on 9-9-73, but it was sent to the finger-print expert on or about 29-6-74 vide Ex. P/45 and Ex. P/46. The seal with which these finger-prints were sealed was not kept with any independent person. Beliance was placed on Mohamood v. State of U.P. : 1976 CriLJ10 , wherein it has been held as under:

In a case dependent wholly on circumstantial evidence, the court before recording a conviction on the basis therefor must be firmly satisfied:

(a) that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;

(b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

In the instant case these conditions have not been satisfied. The solitary piece of circumstantial evidence on which the prosecution have staked their case, was too shaky, suspicious and fragile to furnish a sound foundation for conviction. The

conviction for the murder rested on the solitary circumstances, viz.; that the finger prints of the accused were found on the handle of the gandasa which was found lying near the dead body at the scene of occurrence. But it was found that the investigator did not take all the necessary precautions which could be taken to eliminate the possibility of fabrication of this evidence, or to dispel suspicion as to its genuineness. Admittedly, he sealed the box with his seal which thereafter remained with him throughout.

Furthermore, the specimen fingerprints of the accused were, not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act.

Even if it is assumed that the handle of the gandasa bore the finger-prints of the accused, then also it would not inexorably and unmistakably lead to the conclusion that the accused, and none else was the murderer, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this gandasa, and that blood was of human origin. But this was not done.

Further, the Inspector of the Scientific Laboratory has not given any reasons in support of his opinion. Nor has it been shown that he has acquired special skill, knowledge and experience in the science of identification of finger-prints. It would be highly unsafe to convict one on a capital charge without any independent corroboration, solely on the bald and dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45, Evidence Act.

42. Reliance was also placed on the State v. Motia ILR (1953) 3 Raj 655, wherein it has been held as under.

Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the chemical examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them, and evidence should be produced by the prosecution that from the time the articles came into possession

of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused and the same reliance cannot be placed on the discovery of bloodstains on the articles recovered as would be done if necessary precautions are taken.

Further, it is also necessary for the prosecution to prove by evidence that the articles sent to the Chemical Examiner for analysis, were the very articles which were recovered from the accused.

43. Reliance was placed on Hanuman v. State 1974 Raj LW 159, wherein it was observed that the delay in sending empty cartridge cases and other incriminating articles to forensic expert was not explained, the accused could not be convicted where the prosecution has been guilty of such dereliction of duties.

44. On behalf of the State, reliance was placed on Ukha Kolhe v. State of Maharashtra AIR 1963 SC 1531 : 1963 (2) Cri LJ 418, wherein it was held as under:

Rules 3, 4 and 5 of the Bombay Prohibition (Medical Examination and Blood Test) Rules deal with medical examination of a person who is produced before a registered medical practitioner under Sub-section (1) of Section 129A. To an examination to which Section 129-A does not apply, the rules would have no application. The law not having prescribed a particular method of submitting specimen of blood collected from an accused person when blood has been collected before any investigation has started, it is unnecessary to consider the argument whether the expression 'duly admitted' used in Section 510 of the Code of Criminal Procedure means merely in the manner prescribed by rules in that behalf or submitted after taking adequate precautions for ensuring its safety and for securing against tampering, Where the blood specimen was collected by a medical practitioner before investigation and thereafter it was handed over to the police officer on demand by him and ultimately submitted to the Chemical Examiner for his examination, it wouldbe regarded as 'duly submitted' within the meaning of Section 510, Cr.P.C.

45. There is no doubt that the prosecution has failed to lead evidence that the finger-prints on the 'dibbi' Article 2 were not tampered with from 9-9-73 to 29-6-74 when they were sent to the Fingerprint Expert. As stated above, there is ample evidence on the record that when the 'dibbi' Article 2 was recovered it was sealed. PW/22 Kashi Prasad has stated that the seals of Article 2 were intact when they were sent to the Finger-print Expert. PW/18 Mr. Tankha has also stated that the seals on Article 2 were intact when they were received by him. The most important thing, which is to be kept in mind, is that the finger-prints of one individual do not tally with the finger-prints of any other individual. The Science of Finger-print is by itself a complete science for the purposes of identification. In what manner the finger-prints of the accused Shankariya on Article 2 'dibbi' could be tampered with, has not been argued or suggested. The fingerprints on Article 2 have, on examination, been found to tally with the specimen finger-prints of the accused. Tampering of finger-prints on Article 2 would mean that some other finger-prints were superimposed or substituted But no other finger-prints could be substituted or superimposed which would resemble and tally with the fingerprints of the accused Shankariya. Accused Shankariya in his statement under Section 342. Cr.P.C. recorded on 14-6-1974 and 23-6-74 has not categorically stated that his finger-prints were obtained on an article like the iron 'dibbi' Article 2. In the absence of such a plea by the accused Shankariya, the non-production of some evidence on the part of the prosecution that the finger-prints were kept intact during all this period, loses all its importance. It was also argued that the finger-prints could not subsist for such a long period of 9 months. It has been mentioned in several books on 'Finger-prints' that finger-prints survive for quite a good number of years. In view of these circumstances, we have no hesitation in holding that the finger-prints on the iron 'dibbi' Article 2 tally with the specimen finger-prints of the accused Shankariya and the non-production of any evidence on behalf of the prosecution to the effect that the finger-prints remained intact during these 9 months, does not in any way detract the veracity of the prosecution version, as the finger-prints on the 'dibbi' Article 2 could not be tampered with. As a matter of fact, as stated above, the finger-prints could neither be substituted nor superimposed, and therefore, the apprehension of the defence that the finger-prints could be tampered with, in the absence of such an evidence, is wholly unfounded.

46. The foot-moulds Arts. 5, 6 and 7 were also recovered. PW/18 Shri Tan-kha has stated that the foot-moulds 6 and 7 were not of such a nature which could assist in establishing the identity of the person. As regards Article 5, it has been stated by him that foot-mould Article 5 corresponds to the specimen foot-mould of the accused Shankariya. On behalf of the accused Shankariya it was contended that the science of foot-prints is in a very rudimentary state, and no conviction can be based on this. Reliance was placed on Bhulakiram Koiri v. The State 73 Cal WN 467 : 1970 Cri LJ 403 and Pritam Singh v. State of Punjab : 1956 CriLJ805 . In Bhulakiram v. State, it has been held that the science of identification by foot-print impression is still an imperfect science and it is inexpedient to place reliance on the result of such identification. It was further held thut it is unsafe to base a conviction on the basis of experts' evidence alone regarding the foot-prints or sole prints. In Pritam Singh v. State of Punjab 1956 Cri LJ 805, it was held that the evidence of identification of footprint is no doubt rudimentary science and much reliance cannot be placed on result of such identification. The track evidence, however, can be relied upon as a circumstance which, along with other circumstances, would point to the identity of the culprit though by itself it would not be enough to carry conviction in the minds of the Court. In view of these circumstances of the case, it would be unsafe to place any reliance on the foot-mould Article 5. for the purpose of identifying the accused Shankariya.

47. The learned Counsel for the accused for the accused-appellant Shankariya vehemently criticised the evidence of PW/8 Jagarsingh. It is not necessary to examine the evidence of PW/8 Jagarsingh in the light of the criticism made by the learned Counsel for the accused, as at this stage the learned Public Prosecutor frankly conceded before the Court that he would not rely on the statement of PW/8 Jagarsingh.

48. Having gone through the record of the case very carefully, and having carefully analysed and marshalled the evidence, as indicated above, we have absolutely no hesitation in holding that the prosecution has succeeded in bringing the guilt home to the accused Shankariya under Section 302, IPC for having committed the murders of Kartarsingh and Madasingh. The manner in which these murders were committed call for the imposition of the extreme penalty of death. In these

circumstances, we have no hesitation in holding that the learned Sessions Judge was correct in ordering the imposition of the penalty of death on the accused Shankariya.

49. We accordingly confirm, the sentence of death awarded to the accused Shankariya. He shall be hanged by his neck till he dies. The reference made by the learned Sessions Judge for confirmation of the sentence of death is hereby accepted. The death sentence is accordingly confirmed.

50. For the reasons stated above, the appeal filed by the accused Shankariya against his conviction and sentence of death is hereby dismissed.

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