

Harbans Lal Vs. the State

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Court : Himachal Pradesh

Decided On : Jul-30-1965

Reported in : AIR1967HP10,1967CriLJ62

Judge : Om Parkash, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 164; ;[Evidence Act, 1872](#) - Sections 24, 27, 154 and 157; ;[Indian Penal Code \(IPC\), 1860](#) - Section 201

Appeal No. : Criminal Appeal No. 14 of 1964

Appellant : Harbans Lal

Respondent : The State

Advocate for Def. : Jai Chand, Govt. Adv.

Advocate for Pet/Ap. : Daulat Ram, Adv.

Judgement :

Om Parkash, J.C.

1. This appeal is directed against an order of the learned Sessions Judge Mandi and Chamba Sessions Division, convicting and sentencing the appellant, under Sections 328 and 201 I. P. C. The case of the prosecution against the appellant, was as follows :

2. The appellant, Birchu Ram, Ramswarup and Rup Lal were employed in the Sutlej-Beas Link Project, at Sundarnagar. The appellant and Mirchu Ram were labourers. Ramswarup was a driller and Rup Lal was a Chaukidar of the store. The appellant, Mirchu Rani and Rup Lal lived in tents at Musahab-Ka-bagh. The appellant and Mirchu Ram were living in one tent, while Rup Lal was living in another adjoining tent. The appellant and Mirchu Ram used to pilfer kerosene oil from the store. Rup Lal used to warn them against their nefarious activity of committing theft. Ramswarup had instigated the appellant and Mirchu Ram to put an end to the life of Rup Lal. He had assured them that he would spend money to save them from any harm and would help them in every way.

3. On the night of the 6th July, 1963, Rup Lal was lying in his bed, in his tent. He had started abusing Mirchu Ram in connection with the stealing of kerosene oil. Mirchu Ram had returned the abuse. The appellant had asked Rup Lal to abstain from abusing. Rup Lal did not desist. The appellant and Mirchu Ram had come out of their tent and had gone to the tent of Rup Lal. The appellant had given a blow with a Danda on the hands of Rup Lal. Mirchu Ram had picked up a shovel from the tent of Rup Lal and had given 5 or 6 blows on the head, resulting in injuries. Rup Lal had become unconscious and had died. The appellant and Mirchu Ram had carried the dead body to a nearby mango tree and had hung it, with a branch of the tree, with a rope round the neck, in order to give the impression that Rup Lal had committed suicide, by hanging himself.

4. Jagdish P. W. 1, was passing by the tent of the appellant on the morning of the 7th July, 1968. The appellant had called out to Jagdish and had pointed out to the dead body of Rup Lal, hanging by the tree. On this, Jagdish had gone to Narotam P.W. 2, President of the Gram Panchayat and had informed him that a man was hanging by the mango tree at Musahab-ka-bagh. Narotam P. W. 2 had sent the Rukka Ex. PD to the S. H. O. Sundernagai. stating that Jagdish had told him that a man was hanging with a branch of the mango tree. S. H. O. Balbir Singh P. W. 19 had arrived on the spot, immediately after. The dead body of Rup Lal was removed from the tree and was sent to the Medical Officer, Sundernagar for post mortem examination. S. H. O. Balbir Singh had taken into possession the blood-stained shovel Ex. P-9, the blood stained woolen Pattu Ex. P-6 and the blood

stained cotton khesi Ex. P 7 from the tent of Rup Lal. The woollen Pattu Ex. P 6 and the cotton khesi Ex. P 7 had been spread on the bed. The appellant and Mirchu Ram were arrested on the 8th July, 1963. The appellant made the statement Ex. PG, to the police, stating that he would discover a Danda, concealed in the tent of Rup Lal deceased. -In consequence of this statement, the appellant had discovered the Danda Ex. P. 14 from beneath the heap of implements from the tent of Rup Lal. Mirchu Ram had made the statement Ex. PH, stating that he would discover two shirts. which he had concealed in the bushes. In consequence of this statement, Mirchu Ram had discovered shirts Exs. P. 16 and P. 16 from a bush behind the tent. No stains of blood were detected, by the Chemical Examiner, on the Danda Ex. P. 14. The stains on the shirts had disintegrated and their origin could not be determined. The appellant had made a confessional statement Ex. PW. 12/C, on the 17th July, 1963, before Shri Swarupa Nand PW. 18, who was Magistrate First Class, Mandi, at the relevant time. The appellant had admitted, in this statement, that he and. Mirchu Ram had inflicted injuries on Rup Lal, who had become unconscious and had hung the dead-body will a branch of the mango tree.

5. The post-mortem examination, one the dead body of Rup Lal, was performed by Doctor B. K. Bennerji PW. 18 on the 7th July 1963. The Doctor had observed six incised looking injuries on the head of the dead-body. The Doctor was of the opinion that Rup Lal had died due to shock and asphyxia.

6. Ramswarup was arrested on the 11th July 1963. After completion of the investigation, the appellant, Mirchu Ram and Ramswarup were challaned and committed. The appellant and Mirchu Ram were committed under Section 302 I.P.C. and Ramswarup was committed under Section 302 I.P.C. read with Section 109 I.P.C.

7. The appellant, Mirchu Ram and Ramswarup pleaded not guilty.

8. For establishing its case, the prosecution had placed reliance on the evidence of Nandu PW 3, who was alleged to be an eyewitness of the incident, the confession Ex. PW, 12/C, made by the appellant, the recovery of the blood-stained shovel Ex. P9, the discovery of the Danda Ex. P. 14 and shirts Exs. P. IB and P.

16 and on the medical evidence. Nandu PW. 3 did not support the case of the prosecution before the learned Sessions Judge. All what he stated was that he had slept with the appellant on the night of the occurrence but had fallen in a sound sleep after 10 p.m. and did not know what had happened afterwards. The statement of Nandu had been recorded under Section 164 Cr.P.C. He had stated therein that the appellant and Mirchu Ram had gone to the tent of Rup Lal, that there was exchange of hot words and that the appellant and Mirchu Ram had killed Rup Lal. Nandu was confronted with his statement made under Section 164 Cr. P. C. He stated that he was beaten by the police to make that statement. Any way, the statement of Nandu, recorded, under Section 164 Cr.P.C., was not a substantive piece of evidence. It could be used only to corroborate or contradict him. The learned Sessions Judge did not accept the discovery of the Danda Ex. P. 14, as genuine. He held that the Danda or the shirts Exs. P. 10 and P. 16 were not in any way connected with the crime. The appellant had retracted the confessional-statement Ex. P. W. 12/C. But the learned Sessions Judge held that the confessional-statement was made voluntarily by the appellant and was true and that as it was corroborated by the medical evidence and other evidence on record, it could form the basis for convicting the appellant. The learned Sessions Judge rejected the plea, put forth, on behalf of the appellant, that Rup Lal had committed suicide, by hanging himself, and held that the confessional-statement Ex. PW. 12/C established that the appellant had given a Danda blow to Rup Lal and had removed the dead body of Rup Lal from the tent and hung it on the tree. The confessional-statement, according to the learned Sessions Judge, established offences, under sections 323 and 201 I. P. C. against the appellant, but not an offence under Section 302 I. P. C. He, therefore, acquitted the appellant of the murder charge but convicted him under sections 323 and 201 I. P. C, The appellant was sentenced to undergo one year's rigorous imprisonment, under Section 323 I. P. C., and seven years rigorous imprisonment and to pay a fine of Rs. 100/-, under Section 201 I.P.C. The sentences of imprisonment were made to run concurrently. The learned Sessions Judge was of the view that the confessional-statement Ex P.W. 12/C could be taken into consideration against Mirchu Ram. but as, there was no other evidence, except the confessional-statement, connecting Mirchu Ram with the crime, he could not be convicted of

any offence. Mirchu Ram was, therefore, acquitted of an offence, under Section 302 I. P. C. Ram swarup was also acquitted of the charge against him

9. The State has not filed any appeal against the acquittal of Mirchu Ram and Ramswarup or against the acquittal of the appellant of an offence under Section 302 IPC. The appellant has come up in appeal against his conviction under Sections 323 and 201 I.P.C. The learned counsel for the appellant contended that the confessional-statement Ex PW 12/C was extracted from the appellant through torture and that the learned Sessions Judge was in error in holding that the confessional-statement was a voluntary one. The contention of the learned counsel does not appear to have any force. The material, placed on record leads to the irresistible conclusion that the appellant had made the confessional-statement Ex P W 12/C voluntarily. The appellant was arrested on the 8th July 1963. He had expressed his desire to make a confession on 'the 15th July. He was produced on that day before Shri Swarupa Nand PW 12, Magistrate First Class. Shri Swarupa Nand committed the appellant to the judicial lock-up and directed that he should be produced on the 16th July at 2. p.m. The appellant was produced before the Magistrate on the 16th July. On that date, the Magistrate was busy with election work and was unable to record the statement of the appellant. He directed that the appellant should be produced before him on the 17th. The appellant was committed to the judicial lock-up. He was produced before the Magistrate on the 17th at 1.30 p.m. The Magistrate got the hand-cuffs removed. The police were sent away from the Court premises. The Magistrate had explained to the appellant that he was not bound to make a confession and that if he did make one, it might be used as evidence against him. The Magistrate had also assured the appellant that he would be sent back to the judicial lock-up, after the recording of his statement. The appellant was given half an hour for reflecting on the consequences of making the confession. After the expiry of half an hour, the Magistrate had again put questions to the appellant for satisfying himself that the appellant was making the confession voluntarily. After the recording of the statement, the appellant was sent to the judicial lock-up. It is clear that the Magistrate had taken all precautions to remove any possible influence of the police from the mind of the appellant and to satisfy himself that the appellant was making the confession voluntarily.

10. The only evidence, on record, that the appellant was beaten by the police is the statement of Nandu PW. 3. This witness had resiled from his statement made under Section 164 Cr. P. C., and had tried to favour the appellant. The evidence of Nandu that the police had beaten the appellant is not worthy of reliance. Excluding the statement of Nandu, we are left with the bald assertion of the appellant that the police had tortured him. It was held by their Lordships of the Supreme Court in *Hem Raj Devilal v State of Ajmer*, AIR 1954 S. C 462, that a mere bald assertion by the accused that he was threatened, tortured or that inducement was offered to him cannot be accepted as true without more. This Court had occasion to observe in *Roshan Lal v. Union of India*, AIR 1965 Him Pra 1. that:

'It is true that an accused person should not be expected to produce definite and positive proof about beating or pressure, as in most cases, such proof is not available. It is also true that the word 'appear' in Section 24 Evidence Act imports a lesser degree of probability than proof. But the laxity of proof permitted does not warrant a Court's opinion based on pure surmise. The accused must point out some evidence or circumstances on which a well-grounded conjecture, at least that there was beating or pressure with respect to the making of the confession may reasonably be based.'

11. In the instant case, excepting the bald assertion of the appellant that he was beaten by the police, there is no evidence or circumstance, on which even a well-grounded conjecture can be based that the appellant had been threatened to make the confession. Balbir Singh PW 19, who had investigated the case, stated, on oath, that the appellant was neither beaten nor threatened. The learned Sessions Judge was right in holding that the confessional-statement Ex. PW 12/C was made by the appellant voluntarily.

12. The relevant part of the confessional statement was as follows:

13. The appellant and Mirchu Ram had quarrelled with Rup Lal on the evening of the 6th July. The appellant had then gone to his relative Madan Lal at Sundarnagar. At about 11 or 11.00 p.m. the appellant had come back from his relative. Nandu of Chamukha was sleeping on the cot of the appellant and Mirchu Ram was sitting on his own cot. Rup Lal and Mirchu Ram were exchanging

abuses. The appellant had asked Rup Lal to stop abusing and to go to sleep. Rup Lal did not stop. The appellant had given a Danda blow on his hand. Mirchu Ram had also come to the tent and had given 5 or 6 blows with the shovel on the head of Rup Lal, who had become unconscious. Thereafter, Mirchu Ram and the appellant had removed the body of Rup Lal to a mango tree and had hung it with a branch of the tree. Jagdish had passed by the tent of the appellant in the morning. The appellant had invited the attention of Jagdish to the dead-body of Rup Lal, hanging with the tree.

14. A comparison of the contents of the confessional-statement, with the other evidence on record, leads to the inference that the confessional-statement is true. Nandu PW. 3 stated that he had slept with the appellant on the night of the occurrence. Doctor B. K. Bennerji PW. 18 had found a bruise on the left hand of the dead-body of Rup Lal. This bruise, according to the Doctor, could have been caused by a Danda. The Doctor had found six incised looking injuries on the head of the dead-body of Rup Lal. These injuries, according to the Doctor, could have been caused by a shovel. The shovel Ex. P9, which was found to be stained with human blood, had been recovered from the tent of Rup Lal, immediately after the occurrence. The dead-body, of Rup Lal was found hung up with the mango tree. Jagdish PW. 1, stated that he was passing by the tent of the appellant and that the latter had called him and had told him that the dead-body of the Chaukidar was hanging with the tree.

15. The appellant had retracted the confessional-statement Ex. PW. 12/C. It is well settled that there is no legal bar in basing a conviction on a retracted confession, if it was voluntarily made and is true. But it is equally well settled that the rule of prudence and practice requires that to form the basis of a conviction, a retracted confession should be corroborated in material particulars, by independent evidence, vide AIR 1965 Him Pra 1 (supra). The learned Government Advocate contended that only general corroboration of a retracted confession, and not corroboration in material particulars, was sufficient for convicting the maker of the confession. This contention of the learned Government advocate does not appear to be correct. A number of authorities lay down that a retracted confession should be corroborated in material particulars even to fasten guilt on its maker. Some of

the authorities may be noted. It was held in *Puran v. State of Punjab*, AIR 1958 SC 459, 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 on its strength alone. Observations to the same effect were made in AIR 1964 SC 482 (supra), and *Balbir Singh v. State of Punjab*, AIR 1957 SC 216. In *Pyare Lal Bhargava v. State of Rajasthan*, AIR 1963 SC 1094, it was laid down as a general rule of practice, that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. Thus, the latest decision of the Hon'ble Supreme Court lays down that a retracted confession cannot form the basis of a conviction unless corroborated in material particulars. It is true that in *Subramania Goundan v. State of Madras*, AIR 1958 SC 66, an authority relied upon by the learned Government Advocate, the words 'general corroboration' were used. But the retracted confession, in that case, was corroborated in material particulars by independent evidence, on record. A blood stained banyan and a drawer had been recovered from the person of the accused, in that case, and a blood stained bed-sheet had been recovered from a rafter, in the garden-shed, at the instance of the accused. The above recoveries corroborated the confession of the accused in material particulars, connecting him with the crime. Similarly, in *Noor Muhammed Abdul Samad v. v. The State*, AIR 1959 Kerala 46, the second authority, relied upon by the learned Government advocate, there were material circumstances which corroborated the retracted confession, vide page 50 of the report. *Himachal Pradesh Administration v. Mt. Shiv Devi*, AIR 1959 Him Pra 3, the third authority, relied upon by the learned Government advocate, does not lay down the proposition that a retracted confession need not be corroborated in material particulars for convicting the maker, thereof. On the other hand, it was observed at page 8, that a retracted confession requires independent corroboration, in material particulars, even against the maker.

16. The appellant could have been convicted on the basis of the retracted confession Ex. P. W. 12/0, only, if it was corroborated in material particulars, by independent evidence. The point which requires consideration is whether the confession was corroborated in material particulars. The first piece of evidence

which corroborated the confessional statement, was the recovery of the shovel Ex. P-9, from the tent of Rup Lal. This shovel was found to be stained with human blood. The recovery of the shovel corroborated the statement, in the confessional statement, that, injuries were inflicted on the head of Rup Lal with a shovel which was lying in the tent. The second piece of evidence, which corroborated the confessional statement, was the evidence of Doctor B. K. Bennerji P. W. 18. The Doctor had stated that he had found six incised looking injuries on the head of the dead body of Rup Lal and that those injuries could have been caused with a shovel. The Doctor had, also, found a bruise on the left hand of the dead body of Rup Lal. This fact corroborated the statement, in Ex. P W 12/C, that a Danda blow was given on the hands of Rup Lal. The third piece of evidence, which corroborated the confessional-statement, that the dead body of Rup Lal was found hanging with a branch of the mango tree. The evidence of Nandu P. W. 3 that the appellant, Mirchu Ram and Rup Lal were in their respective tents on the night of the occurrence also corroborated the confessional statement. The learned Government advocate contended that the discovery of the shirts Exs. P. 16 and P. 16, at the instance of Mirchu Ram, in pursuance of the statement Ex. PH, also corroborated the confessional-statement. As has been rightly pointed out by the learned Sessions Judge, there is no evidence that any of the shirts discovered belonged to the appellant. Mirchu Ram had, no doubt, stated in Ex. PH, that one of the shirts belonged to the appellant. But that statement was not admissible in evidence as it did not relate distinctly to the discovery of the shirts, within the meaning of Section 27, Evidence Act. It was held, in *Prabhoov. State of Uttar Pradesh*, AIR 1963 SC 1113 that a statement made by an accused that the blood stained shirt and dhoti were his was not admissible in evidence under Section 27 Evidence Act. The discovery of the shirts Exs. P. 15 and P 16 at the instance of Mirchu Ram, could not be used to corroborate the confessional statement Ex. P. W 12/C.

17. The recovery of the blood stained shovel Ex. P-9 from the tent of Rup Lal, the medical evidence, and the recovery of the dead body of Rup Lal from the mango tree were circumstances which corroborated the confessional statement Ex. P. W. 12/C, in material particulars, connecting the appellant with the death of Rup Lal

18. The confessional statement Ex. P. W. 12/C was made by the appellant voluntarily and was true and was corroborated in material particulars. The appellant could be convicted on the basis of his confessional statement, though he had retracted it. The appellant was convicted under sections 201 I. P. C., and 328 I. P. C. The ingredients of an offence, under Section 201 I. P. C., are (1) that an offence was committed, (2) that the accused knew or had reason to believe that such an offence had been committed, (3) that the accused caused evidence thereof to disappear and (4) that the accused caused disappearance of the evidence with the intention of screening the offender from legal punishment. The prosecution case was that Rup Lal had been murdered, that the appellant knew this and that he had caused disappearance of the evidence of murder by removing the dead body from the tent and by hanging it with a tree, with the intention to screen himself and Mirchu Ram, from legal punishment. The defence plea was that Rup Lal had committed suicide, by hanging himself. It was, further, pleaded by the defence, that mere removal of the dead body from the tent and hanging it with a tree in an open place did not amount to causing disappearance of the evidence of murder, within the meaning of Section 201 I P C

19. According to the confessional statement, Mirchu Ram had inflicted 6 or 6 injuries with a shovel on the head of Rup Lal. Doctor Bennerji P. W. 18 stated that the six incised looking injuries, found on the head of the dead body of Rup Lal, had caused internal haemorrhage in the brain and were sufficient in the ordinary course of nature to cause death. The Doctor had categorically stated death of Rup Lal was due to shock and asphyxia and was not the result of hanging or strangulation. No internal or external sign, indicating that death might have been due to hanging, was detected on the dead body of Rup Lal. The knot of the rope and the position in which the dead body was found hanging militated against the theory of suicide. The confessional statement and the medical evidence gave a direct lie to the defence plea that Rup Lal had committed suicide, by hanging himself. They proved that Rup Lal was murdered.

20. The confessional statement showed that the appellant knew or had reason to believe that Rup Lal had been murdered. The fact that the dead body was removed from the tent and hung with a tree led to the inference that the appellant

intended to give the crime the appearance of suicide and thus to screen the offender from legal punishment. Ingredients Nos. 1, 2 and 4, set forth above, of an offence, under Section 201 I. P. C., were established against the appellant. But there appears to be considerable force in the defence plea that ingredient No. 3, that the appellant had caused evidence of the murder to disappear, was not established. The dictionary meaning of the word, 'disappear' is to cease to appear or to be visible, to vanish from sight, etc. Disappearance of the evidence will be caused if the evidence ceases to be visible or to be traceable. In the instant case, the dead body was removed from the place of occurrence and hung up on a tree in an open place. The dead body was not concealed or buried. It had not ceased to be visible. The injuries and clothes on the dead body remained as they were. In the circumstances of the case, the appellant could not be said to have caused disappearance of the evidence of murder. His conviction under Section 201 I. P. C., cannot be sustained.

21. The cases, cited by the learned counsel for the appellant and the learned Government advocate, on the point, whether removal of a dead body, from the place of murder, to another place, amounted to causing disappearance of the evidence of murder may be discussed. The cases, cited by the learned counsel for the appellant, may be taken up, first. The facts, in *Empress of India v. Kishna*, (1878-80) ILR 2 All 718 were that after the murder, the dead body was removed from the place of murder to a field, belonging to the deceased. It was held that though the intention in removing the dead body from the place of murder to the field of the deceased was to divert suspicion and to screen the offender from legal punishment, yet the removal did not amount to causing disappearance of the evidence of murder. In *Nagendra Bhakta v. Emperor*, AIR 1984 Cal 144, the corpse of the deceased was removed by the accused from a house to the verandah of a mosque. It was held that the removing of the corpse to the verandah of the mosque did not constitute causing of disappearance of the evidence of murder. Similarly, in *Periaswami Thevan v. Emperor*, AIR 1936 Mad 36, the removal of the dead body to a place two miles from the scene of occurrence was held not to amount to causing disappearance of the evidence of murder. *Thakur Singh v. Emperor*, AIR 1939 All 666 is to the same effect. It was observed in *Upendra Chandra Poddar v. Emperor*, AIR 1941 Cal 456, that :

'The essence of an offence under Section 201 is the causing of evidence of the commission of an offence to disappear and it cannot be considered correct to say that the mere moving of a body of the victim of culpable homicide with the knowledge of that offence having been committed amounts to causing the disappearance of evidence of the offence '

22. AIR 1934 Cal 144 and AIR 1941 Cal 466 (supra) were relied upon in Jit Singh v. The State, AIR 1957 Punj. 278, and it was held that the removal of the corpse of a murdered man from the place of murder to another place is not causing disappearance of some evidence of the commission of murder and the offence would not fall under Section 201 I. P. C.

23. The learned Government advocate had, in support of his contention, that mere removal of the dead body amounted to causing disappearance of the evidence of murder, placed reliance on Emperor v. Autar, AIR 1925 All 315, Emperor v. Mt. Har Piari, AIR 1926 All 737 and Chander Giani v. The State. AIR 1958 Punj 183. In AIR 1926 All 737, the dead body had not only been removed but was buried. That case, is, therefore, distinguishable from the present case, where the dead body was not buried but was removed and hung up on a nearby tree, in an open place. In AIR 1958 Punj 183, the dead body was removed from the village to the Grand-Trunk Road. It was held that the removal of the dead body to the Grand-Trunk Road was presumably with a view to suggest that the man had been done to death by someone who was a passer-by and that this act was an attempt with a view to screen the real offender. There does not appear to be any detailed discussion of the point whether the removal of the dead body to the Grand-Trunk Road amounted to causing disappearance of the evidence of murder. On the other hand, the learned Judge had observed that the view taken in AIR 1934 Cal 144 and AIR 1941 Cal 456 (supra), was unexceptionable. AIR 1925 All 315 lays down that removal of the dead body from the place of occurrence to a distant place amounts to causing evidence of the Commission of the offence to disappear.

24. From the above discussion, it is clear that the balance of judicial authority is in favour of the view that the mere removal of the dead body from the place of murder to another place does not amount to causing disappearance of the

evidence of murder. It is true that, in the present case, the dead body was not only removed but was hung up on a tree. But this fact will not make any difference. The hanging of the dead body did not cause the evidence of murder to disappear. This fact only showed that the intention was to screen the offender from punishment. The appellant could not be held guilty for causing disappearance of the evidence of murder.

25. The conviction of the appellant, under Section 323 I. P. C., is justified. The appellant had admitted, in his confession, that he had given a Danda blow to Rup Lal. The appellant had voluntarily caused hurt to Rup Lal and was rightly convicted under Section 323 I. P. C. His conviction and sentence for that offence are maintained.

26. The result of the above discussion is that the appeal is partly allowed. The conviction and sentence of the appellant, under Section 201 I. P. C., are set aside. He is acquitted of that offence. The conviction and sentence of the appellant, under Section 328 I. P. C., will stand. The appellant is on bail. His bail-bond is cancelled. He is committed to jail for undergoing the sentence of imprisonment, imposed upon him, under Section 323, I. P. C.

27. The order of the learned Sessions Judge, with respect to the disposal of articles, recovered, will stand.