**Gopal Vs. the Crown**

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**SooperKanoon Citation** : sooperkanoon.com/888600

**Court** : Himachal Pradesh

**Decided On :** Sep-15-1949

**Reported in** : AIR1950HP18

**Judge** : Bannerji, C.J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 154, 162, 208, 239 and 342; ;Evidence Act, 1872 - Sections 24, 30, 54 and 105

**Appeal No.** : Criminal Appeal No. 12 of 1949

**Appellant** : Gopal

**Respondent** : The Crown

**Advocate for Def.** : Bakshi Sita Ram, Adv.

**Advocate for Pet/Ap.** : D.R. Prem,; Thakur Das Dugar and; Man Mohan Nath, Ad

**Disposition** : Appeal partly allowed

**Judgement** :

**Bannerji, J.**

1. The appellant, Gopal, was tried before the Court of Sessions Judge, Mahasu, on a charge of shooting at a man, named Kharia, of village Kudral (Pargana Mafciana) in Theog, under Section 807, Penal Code, and of participating in the

shooting and killing of a man, named Karam Das, of the same village, under Section 302, read with Section 34, Penal Code.

2. Paras Ram, alias Palta, was also tried with his brother, Gopal, the appellant, on a charge of shooting and killing Karam Dag, under Section 302, Penal Code and of participating in shooting at Kharia, on a charge under Section 307, read with Section 34, Penal Code.

3. The assessors found the accused Paras Bam, alias, Palta, innocent of both the charges and the learned Sessions Judge, agreeing with the opinion of the assessors, observed that 'the guilt of Paras Ram, alias, Palta, has not been brought home to him'. He accordingly acquitted him.

4. Agreeing with the opinion of the assessors, the learned Sessions Judge found the appellant, Gopal, guilty under Section 307, Penal Code and convicted and sentenced him, presumably applying the latter part of the first paragraph of that section, to rigorous imprisonment for six years and to a fine or Rs. 100 (Rupees one hundred) or in default, further rigorous imprisonment for six months.

5. He, however, disagreed with the opinion of the assessors that the appellant, Gopal, was guilty under Section 302, Penal Code, for the killing of Karam Das. He found him guilty 'under Section 304, Part 1, Penal Code as regards Karam Das' and 'sentenced him to rigorous imprisonment for eight years and a fine of Rs. 300 (Rupees three hundred), in default, further rigorous imprisonment for one year.'

6. The accused, Gopal, has appealed from these convictions and sentences, which are to run concurrently.

7. The evidence, which relates directly to the charges of shooting at Kharia and causing him hurt followed by the shooting and killing of Karam Das may be summarized as follows. On 15th November 1948, at about 10 A. M., Kharia along with five others, namely, (1) Lachhi (P. w. 5), wife of Dhania (P. W. 2) who is a brother of Kar'am Dass deceased, (2) Mathu, son of Karam Dass deceased, (3) Dasi wife of Ratia (P. W l1), who is a brother of Karam Das, deceased, (4) Kharia's mother, Dhungri and (5) his wife, Mathi, had gone to his Ghasni to cat grass and

bring it home. In the adjoining Ghasni, Jit Ram (D. W. 1), son of appellant Gopal, was grazing bullocks and Mathi, his sister and Kaunla, daughter of co-accused, Paras Ram, alias, Palta were cutting grass. It is alleged by the prosecution that Jit Bam and Mathi held consultation and Jit Bam left to call his father, the appellant, Gopal, at about noon. Two hours later, Gopal appeared on tha scene with a double-barrel gun. No sooner did he appear than Batia and Kalia (P. WS. 11 and 12) brothers of Karam Das, deceased, who were grazing bullocks nearby and also one Balanand (P. W. 10) shouted at Kharia, who, on seeing Gopal with a gun, dropped the load of gass, which he was carrying and ran into an adjoining field below, where Chaurun and Laguu (father and son, Kohlia by caste) were cutting grass. It is alleged that Gopal took aim at Kharia and fired, hitting him with shots on the left arm and thigh. He then fired the second barrel and Kharia fell down near Langu whose leg he caught to shield himself. Upon this, Chaurun covered both Kharia and Lagnu with his body and offered to take further shots on himself. It is also alleged by the prosecution that Gopal re-filled the gun and called upon Chaurun to get away and leave Kharia. But Chaurun would not listen. Paras Ram, alias Palta, was then seen to be going near his brother, Gopal and taking the gun from him, He and Gopal left together. Soon afterwards another shot was fired, the report of which was heard by the fallen Kharia and also by Chaurun and Lagnu, who were by hia side attending to him, near the depression known as Nalli or Nalla. But the other prosecution witnesses saw Paras Ram, alias Palta, firing and killing Karam Das, who was coming to their direction from his field presumably on hearing the report of two firings. Karam Das dropped down dead and the two brothers left the place at once.

8. The motive, as alleged by the prosecution, and not denied by the defence, appears to be that there was a longstanding dispute over the Ghasni between Kharia on one side and the appellant, Gopal, and his brother, Paras Ram, alias Palta, on the other. Farther, it was suggested that there was bad feeling between the family of Karam Dag and that of the accused, persons. The prosecution has adduced both oral and documentary evidence to this effect.

9. The first information report was laid at 11-15 P. M. (night) at Theog, the nearest police station, at a distance of about eleven and a half miles, by one Dhania (P. W.

2), brother of Karam Das, deceased and the police commenced investigation at dawn, the next day, 16th November 1948. At about 7-30 P. M., on 16th November 1948, the appellant Gopal appeared at the police station at Sanjauli at a distance of about twenty-seven miles from his village Kudral with two swords and made a statement, which, Bishan Singb, D. W. 2, officer in charge, wrote down in the station diary and at the foot of which, the appellant, Gopal, signed his name. A copy of this statement (EX. DF/1) was forwarded by Bishan Singh to the Investigating Officer. From this statement, it appears that his daughther, Mathi, half way from the house shouted at him that twenty or twentytwo persons were cutting grass in the Ghasni and carrying it away. He proceeded with the gun first to the field to scare away the monkeys and from there reached the scene of occurrence, where he saw his son surrounded by Kharia and Karam Das with swords in their hands and also by other persons, including Lambardar, Hari Singh. When he shouted at them and inquired why his son was surrounded, Kharia and Karam Das let go his son and tried to beset him. He felt that his life was in danger and, therefore, fired at them, one at Kharia and the other at Karam Das. They fell down and their swords flew out of their hands, which he picked up. He returned home and took rest and at about midnight set out to make a report at Junga Thana via Sanjauli, a distance of about forty miles from his village. When he reached Sanjauli he came to know that there was no Thana at Junga and consequently, he came to Sanjauli Thana to make a report and surrender the swords to the police.

10. Upon investigation, this report or statement of Gopal at Sanjauli was found false and the police at Theog sent the charge-sheet against the appellant, Gopal, and also his brother, Paras Bam, alias Palta.

11. The prosecution examined twenty-two witnesses, of whom, Kharia, P. W. 1, Lachhi, P. W. 5, Chaurun, P. W. 7 and his son, Lagnu, P. W. 9 and Balanand, P. W. 10, Ratia, P. W. 11 and Kalia, P. W. 12, are eye-witnesses to the shooting at Kharia and excepting Kharia, Chaurun and Lagnu, they also witnessed the shooting and killing of Karam Das. The direct testimony of these witnesses prove that neither Kharia nor Karam Das carried any weapon.

12. After discussing the evidence, the learned Sessions Judge concluded as follows :

'I find it improbable that Gopal accused took the swords, as alleged, from near Kharia and Karam Das, in the presence of several members of the prosecution party. When according to him, he approached Karam Das for removing the swaroop, both the cartridges from the gun had been fired; and he could have been easily prevented from removing the sword. There is also no proof that the swords belong to Kharia and Karam Das. The allegation that Kharia and Karam Das were armed with a sword each is made by the defence witnesses who have been referred to and whose testimony cannot be implicitly relied on, In fact, I do not believe that Kharia or Karam Das was armed with sword.'

13. It will be necessary to revert to this subject when the admissibility and relevancy of the statement made by the appellant, Gopal, at the Sanjauli police station, Ex. DF/l, which the defence and not the prosecution, has produced in evidence, will be considered.

14. One objection which is taken in this Court can be disposed of shortly. It takes the form of an attack upon the joint trial of the two brothers, Gopal and Paras Ram, alias, Palta, upon the evidence on record that the shooting at Kharia and the firing and killing of Karam Das form a part of the same transaction.

15. The authority regarding the joint trial on account of misjoinder of persons and charges is expressed in Babu Lal Chaukhani v. Emperor, A. I. R (25) 1938 P. C. 130 : (39 Cr. L. J. 452).

16. Section 239 (d), Criminal P. C., which was considered by their Lordships, enacts as follows:

'The following persons may be charged and tried together, namely : (d) Persons accused of different offences committed in the course of the same transaction.'

17. Their Lordships of the Privy Council laid down that Clause (d) deals with three matters, accusation, charge and trial. It says nothing about verdict. The condition is expressed in the words, 'persons accused of different offences etc.' It does not

say 'rightly accused' or 'accused and convicted.' 'It is on the basis of what appears on the face of the accusation that the Court may proceed to charge and try.' The stage, therefore, at which it has to be decided whether the accused persons should be tried jointly or severally is the stage of accusation and the stage of accusation according to the authority of Akhil Bandhu Boy v. Emperor, A. I. R. (25) 1938 Cal. 258 : (39 Cr. L. J. 596), is the stage when the 'Public Prosecutor opens the case.' In this case, as in the case of Yusuf Khan v. Emperor, A. I. R. (36) 1948 Pat. 122 : (48 Cr. L. J. 578), the question arises whether for accusation one should depend upon the first information report or statement of the case in the charge-sheet submitted by the police or the evidence adduced in Court and recorded before the charge is framed. With deference, I concur in the view adopted in the case of Yusuf Khan v. Emperor, A. I. R. (35) 1918 pat. 122 : (48 Cr.L. J. 578), where Ray J. held that in order to ascertain the stage of accusation, the first information report, the charge-sheet and the evidence adduced before the framing of the charge should be looked into in order to see that the accusations have not been varied in material particulars from stage to stage.

18. In this case, the first information report, as laid by Dhania, P. W, 2, states that the appellant, Gopal, and his brother appeared simultaneously on the scene of occurrence. No sooner was the firing at Kharia over, than did the firing and the killing of Karam Das take place. The first information report clearly states that Chaurun and Lagnu saved the life of Kharia. The charge sheet also states the same facts that both Gopal and Paras Ram, alias, Palta, were on the scene of occurrence together and were guilty of the crimes. Finally, the evidence adduced before the Magistrate shows that the eye witnesses support the story, in material particulars, as contained in the first information report. It is to be remembered that Dhania, who laid the first information report, is not an eye witness. He related the version of the prosecution story as he heard from his wife, Lachhi, who is an eye witness. It is not found that the accusations have been varied from stage to stage. The material particulars remain unaltered and unmodified through different stages.

19. Further, it is found that Gopal was seen by many persons holding a gun. Kharia did not at first see him but he was warned of Gopal's presence by others. Some eye-witnesses saw Paras Ram, alias, Palta, after the first two firings at

Kharia were over. Some saw him almost simultaneously. It is to be remembered that the place of occurrence is in a valley on a hill-side. In my judgment, the firings at Kharia and causing him injuries and the killing of Karam Das by shots from the gun, form part of the same transaction as both the occurrences were simultaneous. I, therefore, hold that the joint trial was legal and proper and is covered by Section 239 (d), Criminal P. C., as explained by their Lordships of the Privy Council in Balu Lal Chaukhani's case, A. I. R. (25) 1938 P. C. 130 : (39 Cr. L. J. 452).

20. The second objection relates to certain documents received in evidence, produced by the prosecution in the trial Court relating to the previous criminal acts of the accused. It appears that Kharia had made a complaint to the Magistrate against the accused, Gopal and others for criminal trespass. Consequently, Gopal and his brother, Paras Bam, alias, Palta, were fined while others were let off. The prosecution has thought fit to bring the records of this case on the file of the present criminal case. There are certified copies of the judgment yet the prosecution went to the length of bringing the entire records of the case in evidence. It is necessary at first to deal with the matter whether the prosecution is competent to adduce such evidence. The issue in this case is quite different from the issue that was in the criminal trespass case :

'Before an issue can be said to be raised, which will permit the introduction of such evidence so obviously prejudicial to the accused, it must have been raised in substance and the issue so raised must be one to which the prejudicial evidence is relevant. .... The prosecution cannot credit the accused with fancy defences in order to rebut them at the outset with some damning piece of prejudice.'

See Noor Mohammad v. King, A. I. R. (36) 1949 P. C. 161 at p. 163 : (50 Cr, L. J. 770).

21. After fully considering all the facts which, if accepted, would reveal previous criminal acts of the accused, I am not satisfied that the admission of this evidence can be justified. I shall, therefore, reject it.

22. Incidentally, my attention has been drawn to the bringing in of the entire record of that criminal case on the present file. This record is of a case that has been completed and has been consigned to the record-room. The records of decided cases are, under the rules of practice, retained in the record-room to which they belong or to the superior Court of the district and are not to be allowed to pass out of the custody of the officers of such Courts, except when called for by superior judicial authority or required for the purposes of Order 13, Rule 10, Civil P. C., by a civil Court for inspection only. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers. As observed by their Lordships of the Full Bench, in King v. Parmanand, A. I. R. (36) 1949 Pat. 222; (50 Cr. L. J. 474F. B.), an exception of a limited nature has been made in favour of the Divisional Commissioner that when he requires the record of a criminal case in order to satisfy himself whether Government should be moved to direct an appeal against an original or appellate judgment of acquittal, under Section 417, Criminal P. C., the Sessions Judge should comply with the application. It is only for this limited purpose that the Divisional Commissioner may send foe the record. In no other case the Commissioner is entitled to call for a record of a case. There may be other exceptions for a limited purpose only. It is surprising that the committing Magistrate as well as the learned Sessions Judge allowed the record of a decided case to be kept on this file. The committing Magistrate had no authority to call for this record much less for any purpose either for the prosecution or for the defence, even at the request of the Public Prosecutor. This record should be dissociated at once from the file of this case and sent back to the record-room to which it belongs and to be retained there. If a reference to their contents is required, the proper procedure is to obtain copies of the requisite papers.

23. The third objection relates to the first information report. It is said that the informant, Dhania, is not an eye-witness. His information is based on what he heard from his wife, He was accompanied to Theog police station by Balanand (P. W. 10), an eye witness. As Balanand did not lay the first information, it is argued that the first information report is not reliable. The prosecution explains that Dhania, being an office peon, was credited with giving the report coherently and he was, therefore, selected for this purpose by the Lambardar. Be that as it may,

the object of the first information report, as observed by their Lordships of the Privy Council in Emperor v. Nazir Ahmed, A. I. R. (32) 1945 P. C. 18; (46 Cr. L. J, 413), is to obtain the earliest information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and the report can be put in evidence when the informant is examined, if it is desired to do so. I do not think there is any force in the contention, that the first information report contains some irrelevant and conjectural statements which the prosecution has failed to prove. In my opinion, it cannot be treated as conclusive evidence against the appellant. It can be used for the purpose of testing the truth of the prosecution story. It has already been taken into consideration in deciding the appropriateness of the joint trial of the appellant and his brother, Paras Ram, alias Palta:

'The receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases criminal prosecutions are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognisable offence has boon committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157, Criminal P. C. when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to Investigate under Section 156 has been committed shall proceed to investigate the facts and ciroumstances, supports this view,' per Lord Porter in Emperor v. Nazir Ahmad, A. I. R. (32) 1945 P. C. 18: (46 Cr. L. J, 413).

24. In my opinion, the value of the first information report will vary according as it is laid by the complainant or prosecutrix or eyewitness to the crime or a mere stranger used for the purpose of laying the information.

25. I next take up the question of the admissibility or relevancy of the statement made by the appellant, Gopal, at Sanjauli Thana, which has been produced by the defence and exhibited as DF/1.

26. In Pakala, Narayanaswami v. Emperor, A. I. R. (26) 1939 P. C. 47: (40 Cr. L. J. 364), their Lordships define the word confession as follows :

'A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence.'

Their Lordships have further held

'no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory state-merit ia of some facts which, if true, would negative the offence alleged to be confessed.'

27. Bearing the above definition in mind, I proceed to examine the statement which the appellant, Gopal, made at Sanjauli Thana at 7-30 p. m., on 16th November 1948, twenty eight hours after the commission of the crime. This statement purports to convey that he was surrounded by two persons Kharia and Karam Das with swords in their hands and to lend support to his statement, he produced two swords. This exculpatory statement is of some facts, which if true, would bring his act within the general exceptions of Sections 96 to 105, Penal Code. Without doubt this statement cannot be held as a confession because it is

'an admission of a gravely incriminating fact, even conclusively an incriminating fact which is not of itself a confession,'

when it is followed by a self-serving statement. Accordingly, in my opinion, this statement is not a confession. It can, therefore, at best, amount to an admission. The learned counsel for the appellant argues that it was rightly admitted and correctly held as relevant, though the defence and not the prosecution produced it.

28. The question as to its admissibility is either covered by Section 21 (2) or by Section 8, Evidence Act.

29. Section 21 (2), Evidence Act, provides :

'Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the

following cases

(1) .. . ...

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.'

30. It cannot be said that this statement was made at or about the time when such state of mind or body existed for it was made after 'taking rest' (see his statement, EX. DF/1) and walking about twenty-seven miles, twenty-eight hours after the commission of the crime. Under this Section 21 (2), this statement is, in my opinion, clearly inadmissible.

31. The next consideration is, whether it is admissible under Section 8, Evidence Act. Illustration (e) to Section 8, Evidence Act, says;

'A is accused of a crime. The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, . . . . are relevant.'

32. It is argued by counsel for the appellant that this section covers the statement recorded at Sanjauli. But the difficulty is that it was produced not by the prosecution but by the defence. If it were produced by the prosecution, certainly this statement would have been covered by Section 8, Evidence Act. But because it has been produced by the maker, it cannot be said that it is covered by Section 8, though it is not covered by Section 21 (2), Evidence Act, which governs the evidence produced by the maker of the document.

33. In my opinion, it is doubtful if the maker of this document or in other words the defence can adduce it in evidence and rely upon it.

34. The learned counsel for the appellant contends that on merits and also because the learned Sessions Judge considered this piece of evidence, it is

desirable that this Court should along with other circumstances consider it.

35. In this case, I find that a copy of this document or statement, Ex. DF/1, was attached to the charge-sheet. Bishan Singh, who recorded this statement, was cross-examined in detail by the prosecution and for the ends of justice, it is necessary in this case to consider this document along with other evidence.

36. There is no doubt that Karam Das died instantaneously of the gun-shots which hit him on the heart. The medical witness testifies to the different injuries caused to the person of Kharia. According to the medical evidence, barring a few shots that passed right through, causing openings at the entrance and at the exit, most of the shots caused simple hurts only but the pain was intense and Kharia was detained in hospital for twenty two days and could not attend to his usual vocation. Besides the hurts caused by the shots, it will be necessary, in order to adjudge the gravity of the offence under Section 307, Penal Code to consider, whether the appellant, Gopal, intended to kill him. It has, with some force, been argued by counsel for the appellant that Kharia, the injured person, himself states that after the firings, Gopal went upto him to render him any help which he may need. This little piece of evidence has caused some misgiving. Is it true? Why does Kharia alone introduce it? For this purpose, it will be necessary to examine the evidence of other eye witnesses, especially of those, who were at that time beside Kharia, protecting him shielding him from further fires and afterwards attending to him. These two are Chaurun and Lagnu (P. Ws. 7 and 9).

37. From the evidence, it is plain that if, Kharia, while falling, had not caught the leg of Lagnu and used him as a shield, there was every likelihood of his receiving further fire from the gun. Because his son, Lagnu, was also in danger, therefore, Chaurun ran and covered both of them and exposed his breast at Gopal. In my opinion, the evidence of these two witnesses, namely, Chaurun and Lagnu, is straightforward, simple and entirely trust-worthy. The allusion to their evidence by the learned Sessions Judge as being tainted due to 'pressure of Karam Dass party' is unfounded and not borne out by other evidence and is, therefore, absolutely uncalled for. There is not an iota of evidence on record that these two witnesses, father and son, were either interested in the prosecution or in the

defence. If they were interested in the prosecution, they could have easily perjured themselves and said that they had seen Karam Das also shot dead. If they were interested in the defence, questions would certainly have been asked of them if Karam Das or Kharia held a sword or attacked Jit Ram or the appellant, Gopal. But no such questions were put to them. I fail to understand on what evidence the learned Sessions Judge came to this rash conclusion that Chaurun and Lagnu were interested witnesses under the control of Kharia or Karam Das's party. The learned Sessions Judge laments, in the beginning of his judgment, that 'there is hardly any independent witness' whereby he meant to include the evidence of Chaurun and Lagnu into the same category as others. There is no foundation for such a sweeping observation. There is no ground to hold that Chaurun and Lagnu yielded to the pressure of the prosecution. There can be no relationship between Kharia or Karam Das and Chaurun, as the latter is a Kohli by caste. He holds independent possession of his Ghasni where, on the day of occurrence, he was cutting grass with his son. No question has been put to either father or son if he is under any obligation to the prosecution party. No hostility, no ill-feeling has been proved between him and either of the accused persons. In my opinion, the evidence of Chaurun and Lagnu is entirely-reliable.

38. From the evidence of Chaurun and Lagnu, it is nowhere found that the assailant, Gopal, came to fallen Kharia to help him. I would, therefore, hold that the piece of evidence is untrustworthy, though put into the mouth of Kharia, who perhaps volunteered it at the last moment to mitigate the offence committed by the appellant, Gopal, who has married sister of Lachhi, wife of Dhania, brother of Karam Das.

39. There is overwhelming evidence on record that it is Gopal and Gopal alone, who shot at Kharia and caused him hurt. His purpose can be ascertained from his double firings and after refilling, showing an intention to fire again. Chaurun and Lagnu speak of double firings. After firing twice, he refilled his gun. That is also in evidence of other eye-witnesses. Meanwhile, Chaurun ran to Lagnu, whose leg was held by stricken Kharia. More for the sake of saving his son, Lagnu, he offered to take the third fire on his breast. From the evidence, I can come to one and only conclusion that Gopal intended to kill Kharia but was prevented by

Chauran.

40. The prosecution has, in my opinion, traced the movement of Gopal, beyond all reasonable doubt, by the evidence of Bainsroo, P. W. 6, Lachhi, P. W. 5, Ratia, P. W. 11 and Kalia, P. W. 12. I am doubtful if Balanand, P. W. 10, could have arrived on the scene to see the firing of the first shot. He must have arrived at or about the time when Ghaurun was pleading with the appellant, Gopal.

41. I take up the defence version of the story first recorded at Sanjauli Thana and later on, deposed by the witnesses like Jit Ram, D. W. 1, Mathi, D. W. 3, son and daughter of Gopal and two other witnesses.

42. Gopal produced two swords. The prosecution has tried to prove that these belonged to the accused Gopal and his brother, Paras Ram, alias Palta, having been purchased from one Wariyam, P. W. 3.

43. In my opinion, it is not necessary for the defence to prove the ownership of the swords. It can, if it so desires, elucidate this information from the prosecution witnesses and especially from Chaurun and Lagnu. No question was put to them regarding the sword or regarding the attack on himself. His story is that he fired twice with a double barrel muzzle-loading gun and not with a double-barrel breech-loading gun, If it were so, the learned Sessions Judge observed, he would have been easily overpowered before he could snatch the swords, when according to him, there were about twenty persons, In his examination before the Court, he said that be had gone to Simla to see 'Bara Sahib' but because it was a holiday, he could not see him and therefore, he came to Sanjauli. He stated in Court that before he started from home, he left the gun with a woman, wife of one Paras Ram of Shaline. According to his statement at Sanjauli (Ex, DF/l), he left the gun in his own house.

44. It will be necessary here to narrate the steps leading to the discovery of (1) three broken pieces, namely, a trigger, a barrel and a butt-end, respectively exhibited as P-13, P-12, P-11, (2) a double-barrel muzzle-loading gun, Ex. P-3, and lastly, (3) a double-barrel breech-loading gun, EX. P-5. It will also be necessary to identify the gun which was used to commit the two offences and also

to fix its ownerebip. Sardar Sahib Singh, P. W. 21, who was in charge of investigation, stated that the appellant, Gopal, was brought to him at Matiana on 18th November 1948, with the report he had made at Sanjauli police station. He pointed out to Gopal that no gun was recovered from his house, though he had mentioned it in his statement at Sanjauli. Gopal then changed his version and asked him to recover the gun from his brother's namesake, Paras Ram of Shaline. From Paras Ram of Shaline, a double barrel muzzle-loading gun was recovered, which is Ex. P-3. Paras Ram of Shaline, not Paras Ram, co-accused, brother of Gopal, protested that gun to be his, purchased from one Shiv Ram, On 20th November, the house of the accused was searched again and three broken pieces of a gun described above as P-13, P-12 and P-11 were recovered together with one loaded cartridge, Ex. P-7, and one misfired cartridge, Ex. P-8, for a breech-loading gun. On 22nd November 1948, Gopal's brother, co-accused, Paras Ram, alias, Palta, was questioned. After some hesitation, he took a constable with him to his house. Hari Singh, Lambardar, also went with him. Paras Ram, alias, Palta, accused brought the double-barrel breech-loading gun in two pieces, which fitted in and was exhibited as P-5. It bears number 18318. No cross-examination was directed regarding the discovery of the double-barrel breech loading gun, Ex. P-6, and the cartridges found, one unused and one misfired (Exs. P-7 and P-8). Reference will now be made to the evidence of Shiv Ram, P. W. 14, whose evidence is that Paras Ram, alias Palta, reached his house at 6 P. M , four days before the end of Kartik. He recognized the double-barrel muzzle-loading gun, which he had sold for Rs. 240 (Rupees two hundred and forty) to Paras Ram of Shaline. The gun originally belonged to Raja Sahib of Junga from whom it was purchased. In the presence of two Paras Rama, one from Shaline and the other co-accused, brother of Gopal, this gun, Ex. P-3, was tested on a board, which he produced and which was broken into two. These negotiations about the purchase of the gun were made with his brother, Bala Ram, who lives jointly with him. The gun stood entered in the name of his brother and he, therefore, had informed the Thana Sanjauli of the sale of the gun. The village Shaline is within the jurisdiction of Than a Sanjauli. Paras Ram of Shaline, P.W. 4, corroborates the evidence of Shiv Bam. He and Faras Ham alias Palta accused, had gone to Junga. Paras Bam accused's son was a student of the school at Junga. Before the discovery of his

gun, Paras Bam of Shaline had applied for a licence. No strict rule had existed before the formation of Himachal Pradesh regarding the licence of the guns. In his cross examination, nothing was asked of him regarding this double-barrel muzzle-loading gun, ever being handed over either to Gopal or to his name sake, co-accused, Paras Bam, alias, Palta, brother of Gopal. It is, therefore, without doubt that it is an after-thought on the part of Gopal to mislead the police on a false scent to the discovery of a double-barrel muzzle-loading gun, whose owner is a different man. I have before me the broken pieces of the gun, Exs. P-11, P-12 and P-13. It is not disputed that they have taken any part in the crime. Then there are a double-barrel muzzle-loading and a double barrel breech-loading guns. Which of the two was used There is overwhelming evidence that Gopal after firing twice at Kharia, re-charged his gun. It would have been impossible to re-charge a double barrel muzzle-loading gun. Further, from his house, the double, barrel breech-loading gun was recovered at the instance of the co-accused, Paras Ram, alias, Palta. This lends support also to the Statement at Sanjauli that he left the gun in his house. Jit Ram, in his evidence, said that there is only one gun in their house. Further, the possession of cartridges that fit a breech loading gun finally concludes the matter in this respect. In my opinion, the breech-loading gun belongs to Gopal and his brother, Paras Bam, alias, Palta. Gopal also admits the ownership of the breech-loading double-barrel gun in his examination in Court.

45. It has been proved, beyond all reasonable doubt, that this Paras Ram of Shaline had purchased a muzzle, loading gun in the presence of Gopal's brother, Paras Ram, alias, Palta. Before the sale, in order to test the gun two shots had been fired. Shiv Ram, the vendor of this gun, has given evidence and produced the relevant document and a piece of wood hearing marks of two recently fired shots. According to his statement in Court, the appellant, Gopal, claims, as bis own, this muzzle-loading gun, in addition to his double, barrel breech-loading gun. But his own son, Jit Bam, refutes his father's story by Baying that the family possesses only one gun. Gopal's callousness and indifference as stated in Ex. DF/1 is also note worthy. He fires twice, one at Kharia and the other at Karam Das and boldly goes upto them to recover the swords. He then holds a talk with Kharia whom he finds injured but does not care to see if Karam Das was living or dead. No question is put to Kharia, whether he possesses a sword. No question is put to

Dhania, Kalia, Batia or Mst. Lachhi, of the family of the deceased Karam Das, if Karam Das ever possesses a sword. On the contrary, the prosecution has tried to prove that these two swords really belong to Gopal and Paras Ram bought from one Wariyam Singh P. W. 3, There is no identification mark on these swords. So it cannot be held that these swords have been conclusively proved to belong to the accused person. But from the entire circumstances and evidence on record, it can be safely concluded that neither Kharia nor Karam Das ever owned or possessed a sword, or carried a sword on the day of occurrence. There is no suggestion anywhere in the cross-examination of the prosecution witnesses that any of them was armed with a stick, scythe or sword.

46. The learned Sessions Judge is convinced of the firings at Kharia. He discards the right of private defence and the defence version of the story of an attack with swords. He finds Gopal guilty under the latter part of para. 1 of Section 307, Penal Code.

47. According to the first statement made by the appellant, Gopal, at Sanjauli (DF/1), Kharia and Karam Das ran after Gopal but the evidence adduced by him is that Kharia fell and the sword was snatched away and he brought his son, Jit Ram, over the Nalli and then Karam Das and others surrounded him and in self-defence he shot Karam Das. In his examination in Court, he admits the double-barrel breech-loading gun to be his and his brother's. He further proceeds to say that he did not know whom the fires struck. The appellant's daughter, Mathi, D. W. 3, however, in her evidence, says that she distinctly heard her father speaking to somebody to get away and not to stand in the way. This statement of Mathi is fatal to the defence and lends support to the evidence of Chaurun. In my opinion, the defence has not been able to raise a reasonable doubt that his act was unintentional or provoked or that his explanation can be accepted by the Court as satisfactory so far as Kharia is concerned.

48. The learned counsel for the appellant contends that the prosecution has endeavoured to put Jit Ram out of the picture at the time of the commission of the offence in order to refute the defence story of Jit Bam being chased. In this respect, he refers to Mst. Lachhi's statement to the police and her statement in

Court. I do not think that this contention has only force. If a person makes a statement to the police and afterwards denies the statement in the witness box, it is inadmissible either in favour of the accused or against him. (See Walli Mohammad v. The King, A. I. R. (36) 1949 P. C. 103 : 50 Cr. L. J. 340).

49. The learned counsel has taken serious objection to the manner in which the prosecution has tried to make use of the statement in Court of the appellant) Gopal. He has referred to Sections 287 and 342, Criminal P. C. Section 287 enacts:

'The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.'

50. He lays stress on the phrase 'duly re-corded' and in his view, the statement of the appellant, Gopal, was not 'duly recorded' and could not, therefore, be tendered and received as evidence. He refers to a single Bench ruling of the Madras High Court, in Emperor v. Kuppammal, A. I. R. (28) 1941 Mad. 1 : (42 Cr. L. J. 677), which is presumably based on an earlier decision of the same High Court in Subbarao v. Venkata Chalapathi Ayer, A. I. R. (25) 1938 Mad. 904 : (40 Cr. L. J. 69). In Emperor v. Kuppammal, A. I. R. (28) 1941 Mad. 1 : (42 Cr. L. J. 677), it was held:

'Section 209, Criminal P. C., makes it clear that the Magistrate is to examine the accused not for the purpose of filling gaps in the prosecution but for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him. . . Where in a case, the evidence falls far short of making out a prima facie case against the accused and the Magistrate proceeds to examine the accused and records his answers, the examination of the accused was not 'duly recorded' and the presumption under Section 80, Evidence Act, can not apply to it.'

51. In Subbarao v. Venkatachalapathi Ayer, A. I. R. (25) 1938 Mad. 904 : (40 Cr. L. J. 69), it was held as follows:

'The gap in the prosecution evidence cannot he filled by examining the accused persons under Section 342, Criminal P. C. The examination of the accused for this purpose is contrary to law and the prosecution cannot be permitted to rely on admissions obtained from the accused in these circumstances.'

52. In another Madras case, In re Krishnan, A. I. R. (28) 1941 Mad. 296 : (42 Cr. L. J. 402), it has been pointed that the purpose of Court in putting questions to accused under Section 342, Criminal P. C., is to afford the accused an opportunity to explain such circumstances as appear in the evidence against him.

53. From these authorities, it is clear that the scope and the object of Sections 209, 287 and 342, Criminal P. C., taken together are that when a prima facie case is established, the accused will be examined in order that he may have an opportunity to explain such circumstances as appear against him.

54. The statement of the accused Gopal in Court, upon which the objection is founded, nowhere transgresses this salutary principle. The prosecution here had adduced overwhelming evidence as to the commission of the offence of shooting at Kharia and established a prima facie case before the Magistrate. In order to explain such circumstances as appeared in the evidence against him, the accused, during the examination, stated different circumstances, to lend support to his previous statement (Ex. DF/l) at Sanjauli Thana, An accused is not bound to make a statement; he can keep his mouth shut. But where be has set up the right of private defence in a previous statement at Sanjauli, which he is proposing to prove in the Sessions Court, and has instructed his counsel to cross examine with a view to showing a story different from that of the prosecution, it is bound to prejudice the assessors and the judge if he declines to say which of the two stories is true. (See Emperor v. Kasamali, A. I. R. (29) 1942 Bom. 71 : (43 Cr. L. J. 529 F. B.). There is further the Privy Council authority in Dwarka Nath v. Emperor, A I. R. (20) 1933 P. C. 124 : (34 Or. L. J. 322), On the subject. Their Lordships of the Privy Council lay down the following rule:

'If there is a material point in the evidence against the accused, it is the duty of the examining Judge to call the accused's attention to this point and ask for an explanation.'

The learned Magistrate, finding the 'material points in the evidence' especially in regard to the presence of the accused on the scene of occurrence, carrying a gun and firing two shots, was perfectly justified to call the accused's attention to these points and ask for an explanation and if the accused offered it, such explanation cannot fall within the meaning of 'filling gaps' for the prosecution.

55. It is next contended by the learned counsel that the defence need not prove every particular regarding the exercise of his right of private defence. All that the defence need prove is to raise doubt in the mind of the Court so that it may be taken into consideration with other facts proved by the prosecution. To support his contention he has referred to the well known cases of (i) Woolmington v. Director of Public Prosecutions, (1935) A. C. 462 : (104 L. J. K. B. 433), (ii) R. v. Rose, (1884) 15 Cox. C. C. 640 and (iii) R. v. Schama, (1914) 84 L. J. K. B. 396: 11 Cri. App. Rep. 45.

56. In Woolmington's case, (1935 A. C. 462: 104 L. J. K. B. 433), Lord Sankey L. C., held 'if at the end of, and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malacious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. .. , When the evidence of death and malice has been given, the accused is entitled to show by evidence or by examination of circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation, or upon a review of all the evidence, are left in a reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.' (The underline [here italicized] is mine).

57. In R. v. Rose, (1884-15 Cox, C. C. 540), it was held as follows:

'Homicide is excusable if a person takes away the life of another in defending himself, if the fatal blow which takes away the life, is necessary for his preservation, The law says that not only in self-defence, may homicide be excusable but also it may be excusable if the fatal blow inflicted was necessary for the preservation of life.'

58. In the last case cited above, Lord Reading C. J., bold:

'If an explanation has been given by the accused then it is for the jury to say whether upon the whole of the evidence they are satisfied that the prisoner is guilty, If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted.'

59. The learned Public Prosecutor, in this connection, has referred to Section 105, Evidence Act, which enacts as follows:

'When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.'

60. In my opinion, in Section 105, Evidence Act, the phrase 'burden of proving' is used in the sense of introducing such evidence as will over, come the presumption of the absence of circumstances bringing his caae within an exception. The principles laid down in 'Woolmington' and other cases cited above form a valuable guide to the correct interpretation of this section and are a binding authority in India, (See R. v. U. Damapala, A.I.R. (24) 1937 Rang. 83;(38 Cr.L.J. 624 F. B.), Prabhoo v. R., I. L. R. (1941) ALL. 843 : (A. I. R. (28) 1941 ALL. 402 : 43 Cr. L. J. 177 F. B.). In certain cases, the High Courts in India have held that when one man takes away the life of another, the onus of proving is on him to justify his doing so, but following R. v. Schama, (1914) 11 Cri. App. Rep. 45 : (84 L. J. K. B. 896), it has been held in other cases, for example, Holia, Budhu v. Emperor, A. I. R. (36) 1949 Nag. 163 : (60 Cr. L. J. 466) ; Roberts Stuart v Emperor, 61 Cal. 168 : (A. I. B. (20) 1933 Cal. 800 : 35 or. L. J. 156); Basangouda v. Emperor, A. I. R. (28) 1941 Bom. 139 : (42 Cr. L. J. 697); besides R. v. U. Damapala, (A.I.R. (24) 1937 Rang. 83 : 35 Cr. L. J. 524 F. B.) and Prabhoo v. R. (I. L. R. (1941) ALL. 843 : A. I. R. (28) 1941 ALL, 402 F. B.), cases named above, that when the burden of an issue is upon the accused, he is not, in general, called upon to prove, beyond all reasonable doubt, or in default, to incur a verdict of guilty; it is sufficient if he succeeds in proving a prima facie case, for then the burden of such issue is shifted

to the prosecution which has still to discharge its original onus which never shifts, that is, that of establishing the guilt of the accused, beyond all reasonable doubt.

61. Bearing these principles in mind, I shall now examine whether the defence has been able to give an explanation which may reasonably be true, although the Judge may not be convinced that it is true.

62. In India, the Legislature has drawn a sharp distinction between a trial by jury and a trial with the aid of assessors. A jury, aided by the Judge, is the final tribunal for deciding the facts; assessors merely aid the Judge who decides the facts as well as the law. Ramanugrah Singh v. Emperor, A. I. R. (33) 1946 P. C. 161 at p. 153 : (47 Cr. L. J. 905).

63. From the evidence adduced by the prosecution, it is clear that neither Kharia nor Kararu Das held a sword and had attacked Jit Ram before attacking the appellant, Gopal. No question was put in cross-examination to any of the eye-witnesses if they possessed a sword on that day or any day previously. The swords were exhibited in the trial but the witnesses were not confronted with them for identification or recognition or ownership. The main question for determination is if the statement of Gopal at the Sanjauli police station (which inspite of grave doubts regarding its admissibility, I take into consideration) and also his statement under Section 342, Cr. P. C. (which I have already held to have been made according to law) and the defence evidence make the explanation as contained in the statement reasonably true, After reviewing the evidence as a whole and also the explanation offered by the appellant, Gopal, and the evidence adduced by him, the Court is not left in a reasonable doubt. On the contrary, the Court is left with overwhelming conviction that it is Gopal and Gopal alone, who shot at Kharia, not once but twice without any reasonable excuse or justification. I have already, in this connection, referred to the absence of any question put to two disinterested witnesses, named Chaurun and Lagnu against whom nothing has been proved adversely to the accused before the occurrence. I have also shown how the evidence of these two independent witnesses has removed any reasonable doubt that may be entertained on behalf of the appellant. I shall, therefore, hold the appellant, Gopal, guilty of shooting at Kharia twice with the object of killing him.

64. I shall now consider the case of the shooting and killing of Karam Das.

65. It is in evidence that neither Chaurun nor Lagnu, who were devoting their attention to the injured Kharia, could see who shot Karam Daa. It is also in the evidence of Kharia that Paras Bam, alias, Palta, came and took away Gopal. It is also in evidence of Chaurun that the gun was taken from Gopal by Palta, who arrived at that time. He heard the report of a gun almost immediately. Lagnu, his son, says that when his father offered his chest to Gopal for firing, entreating him not to fire any more at Kharia, his brother Paras Ram, alias, Palta, accused came and called Gopal back and took the gun from him. Soon afterwards he heard the fire of the gun. The evidence of Kharia and these two independent witnesses are supported by Lachhi, P. W. 6, Ratia, P. W. 8 and Kalia, P. W. 12. It has nowhere come into evidence or even suggested by the defence that Chaurun and Lagnu ever had any dispute with the appellant, Gopal. I do not think there is much force in the contention that Mt. Lachhi was telling a lie because her sister is married to Gopal and therefore, she tried to save her sister. I may, in this connection, refer to the evidence of Mt. Bainsroo, P. W. 6, who saw Palta returning and carrying the gun. In my judgment, Gopal's gun was taken from him and he did not fire the fatal shot at Karam Das.

66. The next question is whether the appellant, Gopal, can be guilty of the charge under Section 802, read with Section 34, Penal Code. The scope of Section 34, Penal Code has been clearly explained by their Lordships of the Privy Council in Mahbubshah v. Emperor, A. I. R. (82) 1946 P. C. 118 : (46 Cr. L. J 689). In that case Allah Dad, the deceased, while cutting reeds on the banks of the Indus river had been warned by one Mohammad Shah, father of Wali Shah (absconder). There was a free fight between Allah Dad and Quasim Shah. Quasim Shah shouted for help. Wali Shah and Mohammad Shah came up. They had guns in their hands. Wali Shah fired on Allah Dad, who fell down dead and Muhbub Shah fired at one Hamidullah Khan, who was accompanying Allah Dad. Mahbub Shah was convicted under Section 302, read with Section 34, Penal Code. Their Lord, ships of the Privy Council held that under Section 34

'the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention.. . .The section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult, if not impossible, to procure direct evidence to prove the intention of an individual, in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case. . . . On careful consideration, it appears to their Lordships that in the present case there was no evidence and there were no circumstances from which it might be inferred that the appellant must have been acting in concert with Wali Shah in pursuance of a concerted plan when he along with him rushed to the rescue of Ghulam Quasim.'

67. It has now to be seen if the appellant, Gopal, had the common intention as contemplated by Section 34, Penal Code. Prom the evidence of the eye-witnesses and from the evidence of Chaurun and Lagnu, it appears that Gopal was called away by his brother, Paras Kam alias Palta, who was seen to take the gun. The learn, ed Public Prosecutor relies upon the Privy Council case, Mamand v. Emperor, A. I. R. (33) 1946 P. C. 45 : (47 Cr. L. J. 344) where, upon the evidence their Lordships approved and affirmed the conclusion arrived at by the High Court regarding common intention. The evidence consisted of the accused person grappling with the opposite party and running away together and also of enmity between the parties.

68. I have gone through this authority very carefully and am of opinion that it was not a case wherein their Lordships were laying down any new principle of law regarding evidence necessary for proving common intention other than what was explained in Mahbub Shah v. Emperor, (A. I. R. (32) 1945 P. C. 118:46 or. L. J. 689) referred to above. Indeed, the main point for determination was one under Section 164, Criminal P. C. The High Court had already fully examined the facts and accepted them and their Lordships of the Privy Council affirmed the findings of the High Court referring to that evidence in relation to which they concurred in the views of the High Court with respect to common intention. Besides, the facts of each case will have to be examined and judged in order that 'common intention' as

explained by their Lordships of the Privy Council may be inferred. Here the facts show that Mt. Bansru, P. W. 6, saw the appellant, Gopal, carrying a gun going towards the scene of occurrence. She saw both the brothers returning home, but she saw the gun in the hands of Paras Ham alias Palta. The eye-witnesses, who saw the firing and the killing of Karam Das do not implicate the appellant, Gopal. In my opinion, there is not sufficient evidence to connect the appellant, Gopal, with the murder of Karam Das. The appearance of Karam Das might have been due to the report of first two firings made by Gopal. The brothers could not have anticipated his appearance. Secondly, Gopal was called away by Paras Ram alias Palta, as stated by the witnesses. I do not think that the prosecution has proved, beyond all reasonable doubt, his complicity in the murder of Karam Das under Section 302, read with Section 34, Penal Code.

69. The consequence is that Gopal is found guilty of firing and shooting at Kharia twice with a determination to shoot to a finish, if he were not stopped by or prevailed upon by the entreaties of Chaurun. In my judgment, he has rightly been convicted under the latter part of the first paragraph of Section 307, Penal Code.

70. In my opinion, there are no extenuating circumstances to mitigate the crime which was committed in broad day-light with the obvious intention to cause death or such bodily injury as to maim him for life. In the circumstances, I would affirm the conviction and sentence passed on him under Section 807, Penal Code. As regards Section 304, Penal Code of which he was convicted by the learned Sessions Judge, I am of opinion that the reasonings which the learned Sessions Judge gave regarding the death of Karam Das are not sound. The learned Sessions Judge was not able to make up his mind whether he would believe the defence or the prosecution versions. Sometimes he believes the prosecution story and calls it an exaggerated one and soon afterwards, falls back upon the defence version and proceeds to examine such evidence for defence as helps to reduce the offence under Section 302, Penal Code into one under Part I of Section 304, Penal Code. He discards the story of the sword but relies upon his own conjectures that there may have been some apprehension of injury to the person of Gopal or his children. He finally concludes that the appellant, Gopal, bad a right of private defence which he, however, exceeded in shooting and killing Karam

Das. Such vacillating reasonings do not behove a trial Court. Once having said that the defence story does not impress him nor does it raise any reasonable doubt, he should have discarded it in toto and fallen back upon the prosecution and determined if it had proved, beyond all reasonable doubt, the guilt of the appellant, Gopal, regarding the crime of the killing of Karam Das.

71. In my opinion, Gopal had no hand in shooting and killing Karam Das and his conviction under Section 304, Part I, Penal Code, cannot be maintained. I shall, therefore, set aside his conviction and sentence under Section 304, Part I, Penal Code and acquit him.

72. In the result, the appeal partly succeeds; his conviction and sentence under Section 307, Penal Code are maintained and his conviction and sentence under Section 304, Part I, Penal Code are set aside and he is acquitted of this charge.

73. In conclusion, I am asked to make an order which the learned Sessions Judge should have made regarding the disposal of the property, exhibited in Court, under Section 517, Criminal P. C, The double-barrel breech-loading gun, (EX. P-5) (NO. 18318), the property of Gopal and Paras Ram alias Palta, accused will be confiscated to Government. The double-barrel muzzle, loading gun (EX. P-3) which is the property of Paras Ram of Shaline (the name-sake of Paraa Ram alias, Palta) will be returned to him on production of licence. The two swords (Exs. P.1 and P.2) and three broken pieces of a gun (trigger, barrel and butt-end, Exs. P-13, P-12, P-11) and two cartridges, one loaded unused, one misfired, and two empty shells (EXS. P-7, P-8, P-9 P-10) and the kuppi or can of gun powder (EX. P-6) which are presumably the property of Gopal and his brother Paras Ram alias Palta, will be confiscated to Government. The blood stained clothes of the deceased, Karam Das, will be destroyed. The clothes (EXS. P-14 and P-17) belonging to Kharia will be returned to him. The wooden board will also be returned to Shiv Ram of Gharot. The blanket, Ex. P-18, which covered the dead body of Karam Das will be returned to Mathu, son of Karam Das, deceased.