

**The State Vs. Debnu and ors.**

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**Court :** Himachal Pradesh

**Decided On :** Mar-07-1957

**Reported in :** AIR1957HP52,1957CriLJ1254

**Judge :** Ramabhadran, J.C.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 39, 40, 164, 367, 417 and 423; ;[Evidence Act, 1872](#) - Sections 5, 24, 26, 30, 105, 114 and 133; ;[Indian Penal Code \(IPC\), 1860](#) - Section 121A

**Appeal No. :** Criminal Appeal Nos. 6 of 1955 and 5 of 1957

**Appellant :** The State

**Respondent :** Debnu and ors.

**Advocate for Pet/Ap. :** B. Sita Ram, Govt. Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Ramabhadran, J.C.

1. Debnu alias Devi Singh was tried by the learned Sessions Judge of Sirmur, sitting with Assessors, of an offence under Section 302, I. P. C. Agreeing with the unanimous opinion of the Assessors, the learned Judge came to the conclusion, that the offence was not brought home, to the accused; consequently, he acquitted

him. The State Government has come up in appeal against this order of acquittal, under Section 417 Cr. P. C. This appeal is numbered as Criminal Appeal No. 6 of 1955.

2. The same Debnu alias Devi Singh was tried, along with 7 others, of offences punishable under Sections 194 and 201 I. P. C. read with Section 149 I. P. C. The learned Magistrate acquitted the accused persons, holding, that their guilt had not been proved. The State Government has come up in appeal against the acquittal of these accused persons. This appeal is numbered as Criminal Appeal No. 5 of 1957.

3. Since, the two appeals arise out of the same transaction, and the evidence is to a large extent common, it would be convenient to dispose of the two appeals, by means of one judgment.

4. The prosecution case, briefly, was as follows:--In Tehsil Pachhad of District Sirmur, there are two Paraos Satamu and Sanog, situated at an altitude of about 10,000 feet above sea level. The grazing rights are auctioned by the Forest Department periodically. During the years 1951, and 1952 A. D., Ajba (said to be the victim of this case) held the lease of Satamu Parao, which is bigger than Sanog, while the lease of Sanog Parao, was with one Gulab Singh of village Jadol.

In March, 1953, when the question of re-auctioning the grazing rights arose, both Ajba, as well as Chunchu Ram alias Chunchu Mian (respondent No. 1, in Criminal Appeal No. 5 of 1957) tried to obtain the lease for Satamu. To settle the dispute, a panchayat was convened and a settlement was effected whereby, Satamu Parao was allotted to Chunchu Ram and Debnu (respondent in Appeal No. 6 of 1955), while Sanog Parao went to Ajba and Gulab Singh.

The Divisional Forest Officer, Rajgarh, sanctioned the leases accordingly. When the permits were drawn up, however, Ajba found," that the names of two more persons, namely Lachhmi Singh and Rati Ram, had been included along with Gulab Singh and himself respecting Sanog, while the names of Chunchu Ram, Debnu, Iلمي Gujar and Gulab Singh were entered in the case of Satamu Parao. Ajba was deeply aggrieved by this and complained to several persons, that he had

been duped by Chunchu Ram and the panchayat.

Ajba also resented the fact, that he was not allotted the Dera situated in Sanog, Chunchu Ram having refused to part with it, on the ground, that he had constructed it at his own cost. The relations between the parties steadily deteriorated. On 6-5-53, it was alleged, Ajba attacked Lachhmi Singh with a lathi and thereby caused his death. Mst. Rukmi, wife of Gianu, tried to intervene but she, too, was attacked by Ajba with a lathi, and as a result of the injuries sustained by her, she also died.

5. It must be noted, that the above mentioned Lachhmi Singh, was the nephew of Chunchu Ram, while Mst. Rukmi, was the aunt of Debnu. Debnu arrived on the scene, shortly after the deaths of Lachhmi Singh and Mst. Rukmi. On seeing their dead bodies lying there Debnu enquired from Gianu, as to what had happened. On being told, that Aj'ba was responsible for their deaths, and that he (Ajba) had proceeded towards Kufu, after the occurrence, Debnu picked up a gun from the Dera of Chunchu Ram and proceeded towards Kufu. On the way, he saw smoke coming out of a cave. He threw out a challenge, and Ajba came out of the cave, armed with a Darant. Thereupon, Debnu, who was thirsting for vengeance, fired the gun at Ajba and killed him at the spot.

6. Debnu then returned to Sanog. Chunchu Ram, accompanied by several persons, also came there, shortly afterwards. He learnt, that Ajba had murdered Lachhmi Singh and Mst. Rukmi and was, in his turn, shot dead by Debnu. Chunchu Ram then rebuked Debnu for taking the law into his hands. It was then decided, that steps should be taken to screen Debnu from legal punishment, and to that end, the evidence of the murder of Ajba, by Debnu should be made to disappear. In pursuance of that conspiracy, the dead bodies of Lachhmi Singh and Mst. Rukmi were carried from the Dera and left in different places in the jungle. Debnu was also instructed to send a message to the people of village Jadol, the next morning, through Man Singh Bari of Kufu, that a Dera had fallen and four persons were missing at Sanog.

Further, Mst. Murtu, daughter-in-law of Chunchu Ram, was to be sent to the forest early the next morning; she was to remain there the whole day and proceed to the

Dera of one Mst. Birju at Kuftu in the evening, and there pretend to be mad, so as to give the impression, that she had been mal-treated by the enemies who had killed Lachhmi Singh and Mst. Rukmi, and thereby she had lost her reason. Accordingly, next day, on receipt of the message through Man Singh Bari, about 150 persons, armed with spades etc., proceeded from Jadol to Sanog.

The dead body of Lachhmi Singh was traced and removed to the Dera on 7-5-53, and that of Ajba on the following day. The corpse of Mst. Rukmi, which had been thrown down a precipice, was brought to the Dera on 10-5-53, at the instance of Chunchu Ram. Debnu was sent to Simla to report the occurrence to the Chief Minister, Himachal Pradesh, while one Madan Singh was similarly sent to Sarahan to inform the police. The prosecution case in a nut-shell, is that, with a view to shield Debnu, the police were put on the wrong track, and six innocent persons were got arrested, so that suspicion would not fall upon Debnu.

7. As stated earlier, the Courts below have held, that the offence of murder, fabricating of false evidence and destruction of evidence of murder, with a view to save Debnu, were not established; hence these appeals.

8. Arguments of the learned counsel for the parties were heard at great length. For reasons to be stated shortly, I am of the opinion, that these appeals cannot succeed.

9. Before I discuss the evidence produced by the prosecution, against the respondents, I must point out that these are appeals against acquittals, consequently, I have to follow the directions given by their Lordships of the Supreme Court in *Bansidhar Mohanty v. State of Orissa*, (S) AIR 1955 SC 385 (A). Therein their Lordships observed that :

"While in an appeal under Section 417 the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses, (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial; (iii) the right of the accused to the

benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses."

10. Similarly, in *Aher Raja Khima v. State of Saurashtra*, (S) AIR 1956 SC 217 (B), the view of the majority was that:

"In an appeal by a State Government under Section 417 against the acquittal of the accused, it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial Court was wrong.

And if the trial Court takes a reasonable view of the facts of the case, interference under Section 417 is not justifiable, unless there are really strong reasons for reversing that view."

11. I may also refer to *State v. M.S. Neseeri*, AIR 1956 Bom. 529 (C), where a Division Bench of that High Court expressed itself in the following terms :--

"In dealing with an appeal against the order of acquittal, it is not enough for the State to show that on proper appreciation of the evidence, the conclusion of the trial Magistrate would appear to be unreasonable. The fact that on examining the evidence the appellate Court might have come to a different conclusion cannot justify its interference with an order of acquittal.

In dealing with an appeal against the order of acquittal the appellate Court must, in effect take into account the double presumption of innocence; and this double presumption of innocence can be rebutted successfully by the State in an appeal against acquittal, only where it is shown that there are substantial and compelling reasons to interfere with the conclusion of the Magistrate. Where the case depends only on the appreciation of oral evidence and the Magistrate disbelieved the oral evidence and has given reason in support of his conclusion, the appellate Court would not normally be justified in appreciating the evidence again for itself with a view to decide whether the conclusion recorded by the Magistrate on such oral evidence is well founded or not."

12. In the light of the aforesaid decisions, let us go through the evidence on the record and see, whether there are substantial and compelling reasons to set aside the orders of acquittal-

13. It is very significant, that Gianu, Jai Singh and Mst. Murto, who according to the prosecution were eye witnesses of the attack by Ajba, on Lachhmi Singh and Mst. Rukmi, resulting in their death, have not been produced by the prosecution. They were cited as PWs. but were given up in the Court of the Committing Magistrate, on the ground, that they had colluded with the accused. It is necessary to remember that Gianu is the husband of Mst. Rukmi (who was allegedly killed by Ajba). Similarly, Jai Singh is the son of Ajba, who according to the prosecution was killed by Debnu. Human nature being what it is, it is difficult to believe, that they would have colluded with persons, who had destroyed the ones nearest and dearest of them. Jai Singh appeared as D. W. 5 (in the murder trial).

He not only failed to support the prosecution case, but also alleged, that he had been threatened and tortured by the investigating officer (Sri Bali) and asked to make a tutored statement. Therefore, there are no reliable eye-witnesses to support the prosecution case. As I shall show subsequently, the testimony of Alam, Mst. Zalmo P. W. 6 and Mst. . Budho P. W. 7 cannot also be relied upon. The case against the respondents rests on a retracted confession of Debnu and certain pieces of circumstantial evidence, to which I shall refer presently. I shall refer to these seriatim.

14. (A) On 27-8-53, Debnu made a confessional statement under Section 164 Cr. P. C. to Mr. Ram Swarup M. II. C. Pachhad, at Sarahan (Ex. PD). That confession, no doubt supported the prosecution case. The learned Sessions Judge, however, has discarded it, on the ground, firstly, that Mr. Ram Swarup was not competent, to record the confession, in the absence of enabling powers and secondly, as it was not voluntary. The learned Government Advocate has argued vehemently, that both these findings are wrong. As far as the question of powers is concerned, he argued, that Mr. Ram Swarup exercised powers of a Magistrate First Class, while serving at Mandi as Revenue Assistant, and therefore, he continued to exercise those powers on his transfer to Sarahan. Reliance was placed in this

connection on the provisions of Section 40 Cr. P. C. and the decision reported in *Queen-Empress v. Viranna*, 2 Weir 36 (C-1).

The last mentioned decision has been reproduced in the judgment of the learned Sessions Judge, and so it is not necessary for me to do so. I agree with the view of the Court below, that when an officer, who is working as a Revenue Assistant, is posted elsewhere as Tehsildar, it would certainly amount to a reversion. Consequently Section 40 Cr. P. C. would have no application. Mr. Sita Ram suggested, that powers to record confessions under Section 164, would be covered by the expression 'additional powers' to be found in Section 37 Cr. P. C. and consequently, they would take effect from the date of the Gazette Notification and not from, the date, they are communicated to the officer concerned--vide Section 39 (2) Cr. P. C. The relevant Notification was issued by the Himachal Pradesh Government on 25-8-53, but it reached the Magistrate concerned 3 or 4 days after the confession had been recorded.

Under the circumstances, I concur with the view of the Court below, that the Magistrate had no power to record the confession, and the position could not be remedied by the issue of a subsequent Notification investing him with powers with retrospective effect. Mr. Sita Ram cited : *Sulaiman v. The King* AIR 1941 Rang 301 (D), where Mosely J. remarked that

"Proceedings under Section 164 Criminal P. C. are not mentioned in either Section 529 or Section 530 as proceedings which are not to be set aside on the ground of a Magistrate not being empowered, or as void owing to that lack of power."

15. Reliance was also placed on 52 Cri. LJ 1425 (Lah) (E), where a Division Bench of Lahore High Court held that

"The statement of witness recorded by an incompetent Magistrate (namely a third Class Magistrate) immediately after the occurrence of an offence can be used to corroborate his subsequent testimony in Court under the provisions of Section 157, Evidence Act."

16. In the present case, however, the confession was recorded three months and 21 days after the occurrence. In my opinion, therefore, the admissibility of this confession is highly doubtful. Even, if we assume for the sake of argument, that the lack of power can be cured as mere irregularity, the fact remains that the confession has not been shown to be voluntary. Mr. Sita Ram, for the appellant, urged, that the confession was retracted after nearly one year, and therefore, it should not be discarded.

I find, that the confession was retracted by Debnu in the Court of the Committing Magistrate on 28-5-54. According to him, he had made that, confession at. the instance of the police. Mr. Sita Ram argued, that this was an after-thought, since no steps were taken by Debnu to retract the confession from the jail. Mr. S.N. Bali, for the respondents, argued that no adverse presumption can be drawn against Debnu, because, he failed to retract the confession from the jail. He contended, that the earliest opportunity to retract the confession came when Debnu was questioned by the Committing Magistrate. Reliance was placed on *Pangamban Kalanjoy Singh v. State of Manipur*, (S) AIR 1956 SC 9 (F), where their Lordships of the Supreme Court observed that a confession, retracted before the Committing Magistrate, would be deemed to have been retracted, at the earliest opportunity.

I further find, that by means of an application Ex. DS dated 9-12-53 Mr. C. Rai, Bar-at-Law, for the respondents retracted the confession on the ground, that it had been obtained under police pressure. Mr. Sita Ram pointed out, that this application was presented, not in the murder case, but in the connected case under Sections 194 and 201 I. P. C. He further urged, that the application was not signed by Debnu and was the result of the lawyer's ingenuity.

The fact, however, remains, that the confession was retracted. If the confession be deemed to have been made voluntarily, then, having been retracted, it would require independent corroboration on material particulars, before it can form the basis of conviction. On the other hand, if it was not voluntary, it would be irrelevant and inadmissible. I agree with the view of the learned Sessions Judge, that the circumstances of the case tend to show, that the confession was not voluntary. Debnu had been in police custody since 18-8-53.

It was also to police custody, that he was handed over after his statement had been recorded. Mr. Sita Ram urged, that the police were not to blame for the fact, that there is no jail at Sarahan. The Court is not concerned with the difficulties and the misfortunes of the prosecution. According to Sri Bali, Investigating Officer, Debnu had admitted his guilt before him on 18-8-53, but expressed his willingness to confess to a Magistrate, only a week later.

It is difficult to understand, why Debnu should have shown any preference for the police in this respect. If the man really was in a penitent mood, he would have confessed to a Magistrate, as readily as to a police officer. Under these circumstances, the mere fact, that the Magistrate had given Debnu three and a half hours' time to think it over, would not make the confession voluntary. I am, therefore, of the opinion, that the confession was not a voluntary one and consequently would not be relevant or admissible. Even if we assume, that it was voluntary and hence admissible, still it would need independent corroboration, as it was retracted. Let us see whether there is any evidence by way of corroboration.

17. (B) According to Chandnu P. W. 15 and Chetu P. W. 17, Dsbnu made an extra judicial confession in their presence to Chunchu Ram and others to the effect, that he had killed Ajba with his gun. This has been denied by Debnu. The question is whether Chetu and Chandnu can be believed on this point or not. I agree with the learned Sessions Judge, that no reliance can be placed on the statements of these two witnesses. Chandnu made no disclosures to the police, during the first part of the investigation.

No doubt he supported the prosecution case, during the second phase. While being cross-examined, however, he again turned a somersault and alleged torture by the police. His statement was recorded under Section 164 Cr. P. C. and was subsequently granted an unconditional pardon by the Government. Mr. Sita Ram contended, that the pardon granted to this witness was not conditional, but unconditional. That might be so, but on his own showing, he is no better than an accomplice, and, therefore, his testimony would need independent corroboration, before it can be acted upon. Therefore, the so called extra judicial confession made by Debnu remains in the air.

18. The same remarks apply to the statement of Chetu P. W. 17 in this regard. In *Sharif Imamdin v. Emperor*, AIR 1944 Lah. 472 (G), referred to by the learned Sessions Judge, it was held by a Division Bench of that High Court :

"The evidence of one approver cannot be corroborated by that of another approver. There must be independent corroboration."

Therefore, this alleged extra judicial confession is no corroboration of the retracted confession, assuming it to have been voluntary.

19. (C) Another circumstance, relied upon by Mr. Sita Ram is, that Debnu was seen proceeding from the cave to Sanog armed with the gun, soon after Ajba's murder. This has been denied by Debnu. To prove this allegation, Mr. Sita Ram relies upon the statements of Chetu and Chandnu PWs, referred to at (B) above. It is unnecessary to repeat, why these two witnesses cannot be believed. This allegation, therefore, remains in the air.

20. (D) Mr. Sita Ram urged, that Debnu was sent by Chunchu Ram, all the way to Simla, with the petition Ex. P/HHH, so that, no suspicion would fall upon him. Mr. Sita Ram relied upon Illustration (e) to Section 8 of the Evidence Act. Learned counsel for the respondent, rightly pointed out, that this Illustration would apply only if it could be shown, that the act of Debnu, in going to Simla would have the effect of giving an appearance favourable to himself. Debnu admitted having taken the application to Simla, but nothing more. Mr. Sita Ram also wanted me to draw an inference adverse to Debnu, because, while in the petition to the Chief Minister, Ex. P/-HHH, it was stated, that the dead body of Laehhmi Singh was found at 12 O' clock, in the report lodged by Madan Singh at Police Station. Sarahan, Ex. P/000, it was given out, that Laehhmi Singh was found alive, although unconscious, and he died shortly afterwards. There was nothing inherently suspicious in taking a petition to the Chief Minister at Simla. I am unable to accept Mr. Sita Ram's argument that this is a pointer to Debnu's complicity. In my opinion, therefore, this is no corroboration.

21. (E) Reliance was then placed, by Mr. Sita Ram on that portion of the petition Ex. P/HHH, (presented to the Chief Minister) which is to the effect, that a shoe, a

piece of rope, a sickle and a scythe belonging to Ajba had been found in the vicinity of Laehhmi Singh's dead body. From this I was asked to infer, that Debnu wanted to create the impression that Ajba had been killed at some spot, other than the cave and he had no knowledge of the actual scene of murder. I am unable, however, to accept this argument. Actually, this argument assumes, that Debnu had murdered Ajba, in the manner alleged by the prosecution. In the absence of such an assumption--which, obviously, cannot be made--this was not an incriminating circumstance, and therefore, cannot form any corroboration.

22. (F) The next circumstance, relied upon by the appellant's learned counsel, is the alleged recovery of the spent cartridge Ex. P. 26, at the instance of Debnu, near the cave. This has been denied by Debnu. Reliance was also placed, on the opinion of Mr. Goel, Director Phillaur Scientific Laboratory, P. W. 40, to the effect, that the spent cartridge Ex. P. 26 had been fired from the gun Ex..P. 29. The latter could not, however, say, how many days earlier the cartridge had been fired. In my opinion, the alleged recovery is not free from suspicion.

From the statements of Hira Singh D.W. 4 and Dip Ram, who was examined under Section 540 Cr. P. C., at the request of the P. P.--which were believed by the trial Court--the gun had been taken away by S. I. Tara Datta for three days, before it was returned to Hira Singh from whom, it was formally recovered by A. S. I. Jagdish Chandar. I agree, under the circumstances, with the learned Sessions Judge, that the possibility of the gun having been used by the police cannot be excluded, and, therefore the recovery must be deemed to be doubtful. Therefore, this would be no corroboration.

23. (G) Mr. Sita Ram urged, that Debnu had a strong motive for killing Ajba, who had murdered Lachmi Singh and Mst. Rukmi (who was his aunt). It was, therefore, contended that the existence of a powerful motive would be a strong piece of corroboration. This argument takes it for granted, that Ajba had murdered Laehhmi Singh and Rukmi. Apart from conjectures and surmises, the alleged murder of Laehhmi Singh and Rukmi by Ajba has not been proved. The Sessions Judge has given good reasons for refusing to rely on the. testimony of Alam, Mst. Zalmo P. W. 6 and Mst. Budho P. W. 7. I see no reason to differ from his estimate of these

witnesses. Therefore, the alleged motive for the murder of Ajba by Debnu also remains in the air. Therefore, his argument is not tenable.

24. (H) Mr. Sita Ram next urged, that there was previous enmity between Debnu and Ajba, and this would be a piece of corroboration. Debnu has denied this. While, it appears that there were disputes between Ajba on one side and Chunchu Ram on the other, regarding the Paraos and the Deras, I am unable to accept the proposition that this was responsible for the alleged murder of Ajba by Dabnu. It is noteworthy, that the prosecution case is, that Ajba was murdered by Debnu, not on account of the dispute regarding the Paraos and the Deras, but because Ajba had murdered Lachhmi Singh and Rukmi. This plea, therefore, cannot stand.

25. (I) The next plea is that Debnu was the first to arrive at the scene i. e., after the murder of Laehhmi Singh and Rukmi by Ajba. This has been denied by Debnu. According to him, he reached Sanog in the evening. He saw no dead body at the Dera. He met Gianu in the forest; but the latter gave him no information. As already shown, Gianu, Mst. Murto and Jai Singh who, according to the prosecution, were eye-witnesses of the attack by Ajba on Laehhmi Singh and Rukmi, resulting in their death, have not been produced by them. Jai Singh appeared as a defence witness and gave a lie to the prosecution case. Therefore, the allegation that Debnu was the first to arrive at the Dera---i. e., after Ajba had killed Lahhmi Singh and Mst. Rukmi, remains unproved. There is thus no corroboration here.

26. (J) Another circumstance relied upon by Mr. Sita Ram is that Debnu is an old licence-holder, and a keen Shikari. From this, I was requested to draw an inference adverse to Debnu. Obviously no such inference can be drawn. I am surprised, that such an argument should have been advanced at all.

27. (K) Another novel argument advanced by Mr. Sita Ram is, that the accused have done away with Ajba's Danda, which he was in the habit of carrying with him. It is suggested, that this was done deliberately, because, if produced, it would have shown that it had been used in the attack against Rukmi and Lachhmi Singh. This argument takes it for granted, that Rukmi and Lachhmi Singh were attacked by Ajba, that the latter had the Danda with him and wielded it, and further that the

accused had done away with it. In the absence of cogent evidence, such a presumption cannot be raised. This argument falls to the ground.

28. (L) It was further urged, that the recovery of a few pieces of charcoal, a handful of grass and four splinters of wood, at the instance of Debnu from the cave supports the prosecution case. This has been denied by Debnu. Even if we assume that the recoveries did take place, I am of the view, that they do not afford anything like corroboration. There was nothing special about the articles recovered. The cave had been visited by several persons, as well as by the police, before the alleged recovery. It was suggested by Mr. Bali, they might have lit a fire to warm themselves. I, therefore, do not regard this as corroboration.

29. (M) According to Kr. Indar Singh, former S. P. Sirmur, (D. W. 1) Chunchu Ram produced a black pyjama, said to have been removed from the dead body of Ajba. Appellant's learned counsel relies upon this as a circumstance to show the existence of a conspiracy to shield Debnu. His argument is, that Chunchu Ram wanted to produce the impression, that the assailants were so desperate and dangerous, that they were not satisfied even after having killed Ajba, i. e., they wanted to desecrate his body by removing his pyjama. This argument takes it for granted, that when Ajba's body was found, the pyjama was on, and it was subsequently removed by Chunchu Ram. I am unable, therefore, to accept this plea.

30. (N) My attention was then invited to a Writ Petition Ex. P/YYYY, made by Chunchu Ram to this Court on 22-8-53. The prayer made in this petition was that the State be directed to proceed against those persons, who had been arrested by Kr. Indar Singh S. P. It was further stated therein that the police were torturing certain witnesses and detaining them illegally. It was prayed that those persons be released. That petition was rejected by this Court on 9-4-54, vide Ex. P/ZZZ. Mr. Sita Ram suggested, that the entire matter was being manoeuvred by Chunchu Ram, in such a way as to shield the guilty persons and to implicate innocent persons. I am unable, however, to draw this inference.

31. (O) Another circumstance, relied upon by Mr. Sita Ram, was this. Debnu was arrested on 18-8-53. On 22-8-53 an affidavit was filed by Jai Singh in this Court to

the effect, that Sri Bali, D. S. P. had called him to Ghamla, threatened him, and directed him to make a statement to the effect, that Lachhmi Singh, Mst. Rukmi and Ajba had killed each other. According to Jai Singh, he was not present at the scene of occurrence and knew nothing about it. Mr. Sita Ram's argument is, that Jai Singh was a tool in the hand of a master brain, who took him to Simla. It may be, that Jai Singh would not have gone to Simla, of his own accord or filed an affidavit. This does not however warrant the inference that Ajba had been murdered by Debnu.

32. (P) Reliance was then placed by Mr. Sita Ram on the statements made by Devi Singh S/o Budhi Singh, Bhup Singh S/o Mehar Singh and Jodh Singh S/o Ram Sahai (respondents in Cr. A. 5/57) under Section 164 Cr. P. C., Exs. P/RR, P/TT and P/UU. It was suggested that these statements support the prosecution case. Mr. Sita Ram also cited *Ganga Ram v. Crown*, 22 Cri LJ 290 (Lah) (H), wherein a Division Bench of the Lahore High Court indicated that:

"The confession of one co-accused cannot be said to be corroborated by the confession of another accused as against an accused person who has not confessed at all; but the confession of one co-accused may furnish the corroboration of the confession of another accused as against the latter and vice versa."

33. As Mr. Bali, for the respondent, rightly pointed out, the statements made by Devi Singh, Bhup Singh and Jodh Singh do not amount to confessions. On the other hand, they were statements of witnesses recorded under Section 164 Cr. P. C. on oath. Further, by means of applications Exs. DP, DQ and DR dated 16-9-53, addressed to the District Magistrate Sirmur, these persons complained, that their statements had been obtained under police pressure. I fail to see, therefore, how these statements can be relied upon for the purpose of corroboration--especially as these three persons did not appear as witnesses in the murder case against Debnu.

34. (Q) The last circumstance relied upon by the learned Government Advocate, was the existence of an alleged conspiracy to save Debnu from legal punishment, (i) In this connection, Mr. Sita Ram stressed that Chunchu Ram wielded great

influence in his locality, and was very much feared by the persons of that locality, so much so, that no one dared to oppose him. My attention was invited to a copy of the judgment Ex. P/AAAA delivered by the Raj Nyaya Sabha, Sirmur on 2-6-45. It was stated, that Chunchu Ram and his companions were so dangerous and desperate, that they organised a rebellion against the Government of H. H. the Maharaja of Sirmur. They were subdued only, after martial law had been proclaimed. Chunchu Ram and his companions were tried and sentenced to various terms of imprisonment. The mere fact, that Chunchu Ram had, at one time been involved in a rebellion, would not necessarily warrant the inference, that he had organised a conspiracy, in the present case to shield Debnu from legal punishment.

(ii) Mr. Sita Ram urged that it was in pursuance of this conspiracy that Debnu was sent to Simla with a petition addressed to the Chief Minister, with a view to divert suspicion. I have already referred to this matter under (D) above. As already held, there was nothing inherently suspicious in this.

(iii) In the next place, it was argued, that Chunchu Ram, had the dead bodies of Lachhmi Singh and Mst. Rukmi carried from the Dera in different directions and thrown in different places in the jungle, to give the impression that they had been killed by some enemies. Chunchu Ram, it is said, also sent his daughter-in-law Mst. Murto to the forest, in a half naked condition, with directions, that she should pretend to have gone mad.

Learned counsel for the respondents argued--and in my opinion with considerable justification, that there was no point in carrying the dead bodies of Lachhmi Singh and Mst. Rukmi to different places, only to bring them back to the Dera, before the police arrived on the scene. Similarly, he argued,--and in my opinion, rightly,--that it is difficult to believe that Chunchu Ram, who was an influential man of the locality, would send his 16 year old daughter-in-law to the forest in a half naked condition, with directions that she should pretend to have gone mad.

(iv) Mr. Sita Ram also urged, that it was under the instructions of Chunchu Ram, that Mst. Murto pretended to be dumb, when interrogated by Mr. Indar Singh, Superintendent Police and Gianu gave unsatisfactory replies. There is, however,

no adequate ground--suspicion apart to hold--that Chunchu Ram was responsible for this.

(v) Mr. Sita Ram also urged, that the various applications sent by the accused persons to the Inspector General of Police and others complaining of torture by the police, were the work of Chunchu Ram. On behalf of the respondents, it was contended, equally vehemently, that the line of police investigation was suddenly changed, along with the transfer of the investigating officers, at the instance of certain interested and influential persons who were anxious to rope them (respondents) in and screen the real culprits, who had been arrested. It seems to me, that wires were being pulled behind the scenes by certain interested persons, some of them in favour of the respondents and some against them. That makes it all the more necessary for this Court to scrutinize the evidence carefully and be on its guard against lightly disturbing findings of fact, arrived at by the trial Courts. Learned Defence counsel cited King Emperor v. Narotam, AIR 1923 Oudh 217, (I), where a Division Bench of that Chief Court held that:

"If the prosecution is to be rejected in substance, there must be some other explanation of the facts that actually occurred. Failing any such explanation, it is not permissible to reject the prosecution evidence owing to immaterial discrepancies or improbabilities."

35. Mr. Sita Ram argued that Debnu was the first to arrive at Sanog, after the occurrence, and therefore, it was for him to tender some explanation of the murders that have been committed. In a criminal case, the onus of proof always lies on the prosecution, i. e., in the present case, it is for the appellant to show affirmatively that Ajba had been murdered by Debnu and he, as well as the other respondents, fabricated false evidence and caused evidence of the murder to disappear, in order to shield him (Debnu) from legal punishment. If the appellant is unable to do this, the appeals must fail. It is not for the respondents to show or explain, how Ajba was killed.

36. The case against respondents rests almost entirely on circumstantial evidence. In Hanumant Govind v. State of M. P., AIR 1952 S. C. 343 (J), their Lordships of the Supreme Court indicated the rules applicable to cases resting on

circumstantial evidence. The gist of that decision is:

"In other words, there must be a chain of evidence so far complete, as not to leave any reasonable ground for a conclusion, consistent with the innocence of the accused and it must be such as to show that, within all human probability, the act must have been done by the accused."

37. Judged by this criterion, I am unable to say that the chain of evidence produced by the prosecution is so complete, as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. In other words the prosecution failed to bring home the offences to the respondents.

38. Having regard to the dictum laid down in (S) AIR 1955 ,S.C. 585 (A) and (S) AIR 1956 S. C. 217 (B), (referred to in the opening portion of this judgment), I am unable to see, that there are substantial and compelling reasons for holding that the trial Courts were wrong in acquitting the respondents. Consequently, these appeals must fail.

## **ORDER**

39. Accordingly, I dismiss both the appeals i. e., appeals 6/55 and 5/57. The respondents are on bail. Their bail bonds are discharged. This judgment will be read in both the appeals.

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