

Ranjha and anr. Vs. the State

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Court : Himachal Pradesh

Decided On : Jun-27-1951

Reported in : AIR1951HP75

Judge : Chowdhry, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 164(3), 367(2) and 537; ;Indian Penal Code (IPC) - Sections 34 and 302; ;[Evidence Act, 1872](#) - Sections 9, 114, 118 and 133; ;[Indian Penal Code \(IPC\), 1860](#) - Section 34

Appeal No. : Criminal Appeal No. 4 of 1951and Murder Ref. No. 1 of 1951

Appellant : Ranjha and anr.

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Adv.

Advocate for Pet/Ap. : K.C. Pandit, Adv.

Judgement :

Chowdhry, J.

1. The learned Sessions Judge of Mahasu has by his judgment and order dated 21.4.1951 convicted Ranjha aged thirty, and Bhura, aged eighteen, under Section 302, read with Section 34, Penal Code, for having committed the murder of one

Durga on the night between the 23rd and 24th August, 1950, and sentenced the former to death and the latter to transportation for life. They have both appealed, and the Sessions Judge has also submitted the proceedings to this Court for confirmation of the sentence of death passed on Ranjha.

2. That Durga met a violent death admits of no doubt. In the opinion of the doctor who performed the post-mortem, death was due to asphyxia caused by pressure on the wind pipe-obstructing respiration. According to him Durga died within a few minutes of suffocation.

3. The scene of murder was the deceased's doghari, or cattle-shed used also for human-habitation, in the jungle of Sawahu about ten miles from the nearest police outpost at Narkanda. Except for the dogharis of one Atma Ram, situate at a distance of about seventy yards, the deceased's doghari stood in a lonely spot. Atma Ram's , sister's son Harinand (P. W. 12) and servant Ohaunru (P. W. 10) were occupying his dogharis with his bullocks, and it is said that on the night in question Durga's younger brother Bala (P.W.3), a young boy aged about ten years, was also sleeping with him in his doghari. The deceased himself was a young lad of only twenty years. The permanent residential house of the deceased was in village Khola, It was a moon-lit night when the murder is said to have been committed since the full moon came on 27-8-1950.

4. Ranjha appellant is the other appellant Bhura's uncle, and besides them, the murder is said to have been committed by Bhura's father and Banjha's brother, Mohammad Ali, and the latter's son-in-law, Laldin. Mohammad Ali's house was in village Jarahi about two miles away from the scene of murder. All the four were committed to sessions to take their trial for the murder, but Mohammad Ali died after the commitment and before commencement of the trial in the Sessions Court. Laldin pleaded guilty to the charge & the Sessions Judge convicted him thereon on 17-4-1951, and thereafter proceeded with the trial of the present appellants & convicted and sentenced them as aforesaid.

5. The prosecution version is that two buffaloes of Mohammad Ali had been killed about a fortnight before the murder by falling over a precipice, and that he believed that Durga had chased them to death. Mohammad Ali accused Durga of the

mischievous and asked him for compensation. Durga persisted in denying the accusation and Mohammad Ali threatened him with dire consequences. Mohammad Ali and his brother Banjha went and complained to Bhagat Ram Saildar (P. W. 5) but without avail. They also went to Theog only a day or so before the murder to lodge a complaint before the Magistrate, but they were unable to do as because the Magistrate's Reader Lachminand (P. W. 4) informed them that the Magistrate was ill. On being thus frustrated, Mohammad Ali & Ranjha decided to take the law into their own hands and to wreak vengeance on Durga by murdering him, and they prevailed upon Mohammad Ali's son Bhura and son-in-law Laldin to help them in achieving the object.

6. Actuated by the common intention of murdering Durga, all the four left Jarahi after night fall on 23-8-1960. They waited for some time outside the deceased's doghari and were seen doing so by Jonki (P. W. 6), who had been benighted on his way from Narkanda to his village Baug, and who knew and recognised Ranjha. At about midnight they forced their entry into the doghari by Eanjha breaking open its door with a kick. Durga and his brother Bala were asleep on the floor but away from each other. After forcing entry into the doghari Mohammad Ali safe on Durga's chest, Bhura held him by the arms and Laldin by his feet while Banjha strangled him to death.

7. Bala, who had hid himself among the bullocks, witnessed the occurrence, and, whilst the culprits were still busy, made good his escape and went to Ohaunru and Harinand in the doghari of Atma Ram and told them what he had seen. Bala returned to his doghari accompanied by Chaunru and Harinand, and the two latter shouted who was inside the doghari. Thereupon, the four culprits rushed out & ran away towards Jarahi, threatening the intruders with dire consequences if they dared to meddle with them. All the four were known to, and therefore recognised by, Ohaunru and Harinand.

8. After the four culprits had made good their escape, Chaunru and Harinand called out to Durga from outside but received no response. They did not enter the doghari but returned to Atma Ram's doghari out of fear. Next morning Chaunru went to village Kholi and informed the deceased's father and brother Paras Ram

(P. W. 2), and they all came to the doghari which was the scene of the murder and found Durga dead but without any marks of injury on this person. Chaunru gave the names of the four assailants to Paras Ram and the latter went and lodged the first information report at Narkanda at 2 P. M. on 24-8-1950. In this report Paras Ram described the incident as related to him by Atma Ram's servant (meaning Chaunru) and by Bala. The assailants were not named but were described as the Gujjars of Jarahi. The aforesaid motive for the murder was also mentioned. A. S. I. Bhagat Ram (P. W. 16), in whose presence the report was lodged, at once commenced the investigation. Meanwhile the village lambardar Sadh Ram (not produced) and the village Chowkidar Kaunla (P. W. 15) left for Jarahi on coming to know that the assailants were Gujjars of that village. Mohammad Ali and Ranjha had absconded, but they found Laldin and Bhura there & both of them made an extra-judicial confession before the lambardar & the chowkidar, Laldin and Bhura were arrested in the forenoon of 26-8-1950 and Mohammad Ali and Ranjha in the evening the same day. The four accused were put up for identification by Shri Jit Ram (P. W. 11) Tehsildar-Magistrate at Narkanda on 1-9-1950 before Bala witness, who correctly identified all of them without any mistake. On 5-9-1950 confessions of Bhura and Laldin were recorded by Shri Deokinandan (P. W. 14) Magistrate first class Kasumpti. The police submitted a charge-sheet against all the four under Sections 302 and 460, read with Section 34, Penal Code, and the inquiry commenced before the Magistrate first class Theog on 22-9-1950. In that Court Bhura retracted his confession on 20-12-1950. They were recommitted to sessions on 15-1-1951 under Section 302, read with Section 34, Penal Code.

9. There is no question of the application of Section 34, Penal Code, in the case of Banjha appellant, for the prosecution case against him is that he was the person who strangled Durga to death. It has to be seen whether that allegation is correct. In the case of the other appellant, Bhura, it will have to be seen whether he is liable under Section 302, read with Section 34, Penal Code, in as much as the allegation is that he held Durga by the arms whilst Ranjha strangled him to death.

10. There was an objection taken in limine by the learned counsel for the appellants against the judgment of the Sessions Judge under Section 367 (2), Criminal P. C., since he failed to specify the offence of which and the section of

the Indian Penal Code under which, the appellants were convicted and sentenced by him. He also cited in this connection the ruling reported as *Munski Lal v. Emperor*, A. I. R. (9) 1922 ALL. 21, There is no doubt that the judgment of the learned Sessions Judge suffers from that omission, but it was not shown before me that the omission had occasioned a failure of justice. The appellants were charged with, prosecuted and convicted for an offence under Section 302, read with Section 34, Penal Code, and the learned Sessions Judge also commenced his judgment with a mention of that fact. The appellants were, therefore, perfectly aware throughout of the case against them. The defect in the judgment is, therefore, cured under Section 537, Criminal P. C. The case in the aforesaid ruling was a peculiar one, The Magistrate had failed to specify under which of the alternative and inconsistent sub-sections of Section 60, U. P. Excise Act, the conviction had been made, and for that reason it was held that the conviction was bad for duplicity. There were no such alternative or inconsistent provisions in the present case under Section 302, I. P. C.

11. From what has been stated above as being the prosecution case against the appellants it is clear that the evidence against them is of a threefold nature : (1) the direct eye-witness testimony of the deceased's brother Bala and of the accomplice Laldin, (2) the judicial and extra-judicial confessions of Bhura appellant and (3) the circumstantial evidence of (a) Jonki, who saw the appellants near the deceased's doghari immediately before the occurrence, (b) Bala, Chaunru and Harinand, who saw them rush out of the said doghari after commission of the crime and (c) Bala, Sadh, Chaunru, Harinand, Lachmi Nand and Bhagat Ram relating to the motive for the crime. Each of these may now be considered separately.

12. The first and foremost argument put forward by the learned counsel for the appellants was in regard to the absence of the names of the appellants and their two associates-in-crime Mohammad Ali and Laldin in the first information report in spite of the admitted fact that Chaunru had given the names of all the four to Paras Ram before the latter left for the police outpost to lodge the report. I propose to deal with this point after considering the various kinds of evidence against the appellants mentioned above.

13. I would take up the direct evidence of eyewitnesses Bala and Laldin first. I have no reason to doubt that Bala was asleep in the doghari where the crime was committed on the night in question as he is the deceased's own brother. He was therefore in the best position to witness the crime being committed in the manner stated above and described by him in detail. As there was bright moonlight outside, and as one of the four assailants is said to have lit a match before pouncing upon Durga, there was no wonder that Bala saw every detail of the crime. Reference was made to the statement of Chaunru in his cross-examination to the effect that Bala did not disclose to him the part played by each accused. The witness however did say that Bala told him that the Gujjars were assaulting his brother, and that was quite sufficient. It is not said that the boy was asked about the respective parts played by the four assailants. In the Court of the committing Magistrate Bala referred to the assailants as the Gujjars of Jarabi but not in his statement under Section 161, Criminal P. C. The learned counsel for the appellants referred to this discrepancy. But the boy Bala never professed that he knew the assailants as Gujjars of Jarabi. True, he admitted in cross-examination before the Sessions Judge that these Gujjars used to come to the doghari of Chaunru and Harinand to have a smoke and he had seen them previously, but that does not mean that he knew those Gujjars as residents of Jarahi. Paras Ram, Chaunru and Harinand are the persons to whom he spoke of the assailants, and all of them are unanimous that the boy mentioned the assailants to them merely as Gujjars. It is possible that by the time of his examination in the Court of the committing Magistrate the boy had come to know that the Gujjars belonged to Jarahi. There is, therefore, nothing in the fact that in his statement under Section 161, Criminal P. C., the boy did not describe the assailants as residents of Jarahi. It was next argued that identification of the alleged assailants by this witness before the Tehsildar Magistrate on 1-9-1950 has, firstly, not been proved and, secondly, is of no use as the accused had been shown to the witness at Khola, as stated by the appellants in the Sessions Court. The first contention has no force because although, no doubt, the Tehsildar-Magistrate merely proved the identification memo but omitted to say that Bala identified all the four accused, that fact has been proved from the statement of Bala himself. Further more, both the appellants have admitted it. As regards the other objection, there is no defence

evidence in support of it. There is no doubt that after arrest the accused were brought to Khola, but the A. S. I. has stated that he was guarding the accused. Had the allegation been true, the appellants would not have failed to make it before the Tehsildar Magistrate at the time of the identification. The identification memo contains no such objection, and no question was put to the Tehsildar-Magistrate in cross-examination suggesting that any such objection was raised. Another criticism levelled against the identification proceedings was that the proportion of the other persons mixed with the accused came to only 5 to 1. That is, however, not a bad proportion and has been referred to as the minimum desirable proportion in *Naubat Singh v. Emperor*, A. I. R. (22) 1935 ALL. 653. Even if the identification parade had failed to satisfy the above standard, the proceedings would not have been discarded for that reason, as observed in the same ruling, and the only effect would have been to subject the evidence of identification to a more rigid scrutiny. It was further contended that the proceedings of identification were useless since the four accused were already known to Bala. There is no doubt that Bala admits having seen the four Gujjars previously when they used to come to the doghari of Ghaunru and Harinand for a smoke, but the amount of previous knowledge ascribable to a boy of 10 or 11 who could not possibly have associated with the smokers must be very little indeed. The police were therefore not unjustified in putting the testimony of this boy witness to a test by means of an identification parade. In any case, the defence cannot criticise the police for having done so. The only advantage which the defence could have taken of the identification proceedings was to destroy the value of the testimony of Bala witness by showing that he had failed to identify the appellants in the proceedings; but that advantage is not open to the appellants in this case. None of the criticisms levelled against the identification proceedings has therefore any force. Lastly, it was argued by the learned counsel for the appellants that the testimony of Bala was unworthy of credence because he was only a child witness aged eleven years, and in support of this contention he relied upon a quotation from the outlines of Criminal Law by Dr. Kenny in *Abbas Ali v. Emperor*, A. I. R. (20) 1933 Lah. 667. In that quotation children have been described for various reasons as a most untrustworthy class of witnesses. At the same time, it has been remarked that each case would depend upon its particular facts and

circumstances. It cannot, therefore, be said that each and every child witness must without distinction be discredited as untrustworthy. The real tests for either accepting or rejecting the testimony of a child witness, as laid down in *Bhojraj v. Sita Ram*, A.I.R. (23) 1936 P. C. 60, are how consistent the story related by him is with itself, how it stands the test of cross examination and how far it fits in with the rest of the evidence and the circumstances of the case. Applying these tests, Bala was not confronted in the Sessions Court with any portion of his statement in the committing Magistrate's Court to show that it was in conflict with his statement in the Sessions Court. He was confronted with his statement before the police in regard to only two matters. One related to whether he had referred to the assailants as the Gujjars of Jarahi, and that has already been dealt with. The other related to whether he had stated to the police that the accused used to come to Chaunru's doghari to smoke. The witness replied that he did make a statement to that effect before the police, although the Sessions Judge's note shows that no such statement had in fact been made. That was, I however a minor detail and therefore it is immaterial that the police put no question to the witness about it or the witness himself did not refer to it. It is clear, therefore, that the story given by this boy witness Bala was consistent with itself throughout. As regards his having stood the test of cross-examination, a perusal of the cross-examination shows that the witness was not at all shaken. The learned Sessions Judge has also appended a note at the foot of the statement of the witness to the effect; that he was cross-examined for nearly an hour and a half and answered the questions in a very intelligent manner. The testimony of this witness also fits in with the rest of the evidence and circumstances of the case. According to the tests set forth in the aforesaid Privy Council ruling, therefore, the testimony of the boy witness Bala is fully worthy of credence.

14. The other eye-witness of the occurrence was Laldin. He is an accomplice who was not made an approver, for on his pleading guilty to the charge on 16-4-1951 he was convicted thereon by the learned Sessions Judge on 17-4-1951. There, after the Sessions Judge proceeded with the trial of the present appellants, and Laldin was produced as a prosecution witness on 18-4-1951. In this statement Laldin has supported the prosecution version in all its material particulars, and even as regards his having made an extra judicial confession before the lambardar

and the chowkidar. As stated above, Laldin as well as Bhura made confessions before the first class Magistrate at Kasumpti on 5-9-1950. There is no doubt that corroboration of Laldin's statement in the Sessions Court must be found elsewhere and not in his confession, for an approver (and in this connection an accomplice is in the same position as an approver) does not corroborate himself (*Khairo v. Emperor*, 88 Cr. L. J. 995), but the confession, can certainly be referred to in order to show that the story related by the witness in the Sessions Court has in its material particulars been throughout consistent: *Nitai Chandra v. Emperor*, A.I.R. (24) 1937 Cal. 433. The witness further stated that he made a similar statement in Court when he pleaded guilty to the charge. It was no doubt elicited in the cross-examination of this witness that in one particular his statement before the Sessions Court differed from that made by him under Section 164, Criminal P. G., and from the statement of Bala. According to his confession and Bala's statement Laldin was catching hold of Durga by his legs at the time that Banjha was throttling Durga to death, but in the Sessions Court Laldin abated that he only kept guard outside the doghari. As to how far this discrepancy affects Laldin himself I would not like to express any opinion at this stage, for setting aside his conviction on his plea of guilty. I have ordered his retrial. This much at least can be said that the discrepancy is immaterial for the purposes of the present case inasmuch as it has no bearing upon the part played by the present appellants. Not only has the statement of this accomplice witness been in the main consistent throughout, but he admitted in the Sessions Court, and that in the course of his cross-examination, that the statement he made in his confession was the truth. He has no doubt stated in his cross-examination that he made his confession on the promise of being made an approver, but there is nothing on the record to support this statement. In any case, any hopes based on such a promise ought to have been completely shattered when instead of being pardoned and made an approver he was arraigned along with the other three accused before the committing Magistrate from 22-9-1950 onwards. In spite of being so arraigned and committed to sessions and even convicted by the Sessions Judge on 17-4-1951, he supported the prosecution version in all its material particulars in his abatement he made before the Sessions Court on 18-4-1951. It cannot by any stretch be said therefore that on 18-4-1951, when he made his statement before the Sessions

Court, Laldin had any reason to be biased in favour of the prosecution in the hope of being pardoned and made an approver. On that date the initial suspicion attaching to an accomplice's evidence had been totally removed, and therefore his evidence was entitled to be treated as on the same footing with that of any other witness. *Ratan Dhanuk v. Emperor*, 8 Pat. 235. It was held in *Nga Po Aung v. Emperor*, 38 cr. L. J. 948 at p. 949, that the evidence of an accomplice who has been convicted and sentenced and has nothing to gain or lose deserves greater weight than that of an approver. On being examined in the Sessions Court under Section 342, Criminal P. C., the present appellants were specifically asked if they had to say anything with regard to the evidence of Laldin, and both of them stated that Laldin had given evidence against them out of enmity. No evidence whatsoever was, however, produced in support of the alleged enmity. It is further to be noted that although Laldin had already made a confession on 5-9-1950 implicating the present appellants as well, the appellants did not plead enmity against him in the Court of the committing Magistrate. Their allegation of enmity in the Sessions Court was therefore quite unfounded and only an afterthought. It is to be noted that Laldin is Bhura appellant's own sister's husband, and that Ranjha appellant is Bhura's own uncle. It is inconceivable therefore that he should try to implicate the appellants falsely. In these circumstances, the maxim contained in illustration (b) to Section 114, Evidence Act, does not apply to Laldin, and the conviction of the present appellants would, as laid down in Section 133 of that Act, not be illegal merely because it proceeded upon his uncorroborated testimony. As it is, however, Laldin's testimony does not stand alone but has been fully corroborated in all its material particulars by the testimony of the other eye-witness Bala and by, the circumstantial evidence which has been referred to above and which I shall deal with presently.

15. The above direct evidence of two eye-witnesses is by itself sufficient to warrant the conviction of the appellants. The rest of the evidence may however be now briefly dealt with. There is firstly the circumstantial evidence of the prosecution witness Jonki who saw Ranjha appellant with three others sitting close to the deceased's doghari immediately before the occurrence, and of the prosecution witnesses Chaunru and Harinand who along with Bala saw the appellants with their two companions rush out of the doghari after commission of the crime. Laldin

admitted before the Sessions Judge that he and his party met a man as they were sitting near the doghari. The learned counsel for the appellants pointed out that in their confessions Laldin and Bbura had spoken of meeting a man after the occurrence. This discrepancy can however be explained on the ground of lapse of memory. Jonki's testimony is however not so important as that of Chaunru and Harinand. Both these latter lived in the only habitation close to Durga's doghari, and it is natural therefore that they should have reached the spot in response to Bala's appeal as the culprits were making good their escape after the commission of the crime. These witnesses say that they already knew all the four accused. It was elicited in cross-examination from these witnesses that they had no social or commercial dealings with the accused, but that by itself does not exclude the possibility of the witnesses having known them. A reference to the map Ex. P. O., the details of which were stated by the A. S. I. to be correct, shows that the place of occurrence was only about two miles from Jarahi. That being so, I have no reason to doubt the statements of Chaunru and Harinand that they knew all the four accused. The evidence of these two witnesses fully establishes, in my opinion, that the appellants along with two others emerged from the deceased's doghari after murdering him on the night in question.

16. The evidence relating to motive consists firstly of the testimony of Bala, Sadh, Chaunru and Harinand, in whose presence Mohammad Ali and Ranjha appellant are alleged to have accused Durga of having killed their buffaloes and asked for compensation from him, and, secondly, of the testimony of Lachmichand and Bhagat Ram, to whom they are said to have complained of the alleged mischief committed by Durga. There was a good deal of argument had, that the former set of witnesses were unworthy of credence because of certain discrepancies, Even if their testimony be left out of account, there is no reason to doubt the evidence of the second set of two witnesses Lachmichand and Bhagat Ram, They find corroboration from Laldin. Of these two witnesses Lachmichand is the more important. He was the Reader in the Court of the first class Magistrate at Theog, and he has stated that only a day or two prior to the present occurrence Mohammad Ali and Ranjha appellant went to that Court and told him that they wanted to file a complaint against Durga as the latter was responsible for the death of their buffaloes. The witness told them that the Magistrate was ill, and then

no complaint was filed. The statement of this witness finds support from Ranjha appellant's own statement in the Sessions Court. Ranjha admitted having gone to the Magistrate's Court along with his brother Mohammad Ali and having met Lachmichand there. He further admitted that Laahmichand told them that the Magistrate was ill, and that Mohammad Ali wanted to make a submission before the Magistrate. He further admitted that they did not get the opportunity of making the submission although they even went to the residence of the Magistrate. What that submission was to be, was not stated by Ranjha, but he admitted that he was told by his brother Mohammad Ali at Theog about the falling down of the buffaloes. The statement of Lachminand must, therefore, be accepted in its entirety. The motive for the crime alleged by the prosecution, namely, that Mohammad Ali & his brother, son & son-in-law wanted to be avenged on Durga for the real or supposed grievance of Mohammad Ali's buffaloes having been killed by him, therefore stands proved.

17. Lastly, there are the judicial & extra judicial confessions of Bhura appellant, which can also be considered against the other appellant Ranjha. So far as the latter is concerned, that has been proved by the statement of Laldin. I have no reason to doubt him on this point because he also professes to have made the confession along with Bhura. Another witness who proves the extra-judicial confession is the chowkidar Kaunla to whom along with the lambardar the confession was made. Of greater importance, however, is the confession of Bhura appellant recorded under Section 164, Criminal P. C., on 5-9-1960 by Shri Deokinandan Magistrate first class at Kasumpti. The Magistrate was produced as a prosecution witness, & he has stated that before he recorded the confession he put all the necessary questions to Bhura & satisfied himself that the confession was being made voluntarily. The questions & answers are also recorded in the confession. These questions further show that the Magistrate had, before recording the confession, explained to Bhura that he was not bound to make the confession, & that if he did so it might be used as evidence against him, The learned counsel for the appellants contended that Bhura's confession was admittedly recorded immediately on his being produced from police custody & without any time having been given to him for reflection, & that no question was put to Bhura as to the reason why he was going to make the confession, & in

support of this contention he cited *Gurubaru Praja v. The King*, A.I.R. (36) 1949 Orissa 67. Now there is nothing in Section 164 (3), Criminal P. C., as to the nature of the questions that are to be put to the deponent by the Magistrate. It was, therefore, not necessary that the Magistrate should have asked Bhura as to why he was going to make the confession. All that was necessary for the Magistrate to do was to have satisfied himself by questioning him that he was making the confession voluntarily. And this the Magistrate had done, as proved by his own statement and by one of the questions and its answer contained in the confession itself. There is, however, no doubt that the other objection of the learned counsel for the appellants has force. Bhura was certainly produced from police custody, and there is nothing on the record to show that any time was given to him for reflection before he was asked to make his statement. For this reason, and also because Bhura is a young lad only 18 years of age, I am not satisfied that the confession made by him was a voluntary one, although, for want of proof, I do not accept the further contention that the confession had been extorted by torture. *Jagmal v. Emperor*, A.I.R. (35) 1948 ALL. 211. The so-called confession of Bhura appellant will therefore have to be discarded.

18. Before I sum up the evidence against the appellants it is necessary to dispose of certain points raised in appeal before me. The first related to the absence of the names of the accused in the first information report although admittedly Chaunru had given the names of all the four assailants to Paras Ram, the deceased's brother who lodged the report. Paras Ram has explained it by saying that he had forgotten the names because he has a weak memory. That this explanation is worthy of credence is shown by the fact that he had also forgotten the name of Chaunru who had related the occurrence to him, as mentioned in the report itself. True Paras Ram admits in cross examination that he had seen Mohammad Ali & Ranjha as the former used to come to sell milk & the latter purchased a buffalo from a resident of his village, but that does not necessarily mean that he knew their names when he went to lodge the report. It was not elicited from him in cross-examination that Mohammad Ali used to sell milk to him. As to Ranjha, he had seen him only once before when he went to his village to purchase a buffalo. So far as the two other accused are concerned, Paras Ram stated clearly that he had not seen them previously. In the circumstance, there is nothing strange or unlikely

in the fact that Paras Ram had forgotten the names by the time he reached the police outpost ten miles away after several hours journey, especially in his then perturbed state of mind on account of the murder of his young brother.

19. One other point argued by the learned counsel for the appellants was that the requisite intention had not been proved in the case of Ranjha appellant, nor Bhura's participation in furtherance of a common intention within the provisions of Section 34, Penal Code. Now, the intention of an accused person must be judged from the proved facts of a case, as laid down in *Nga E v. Emperor*, 8 Rang. 603. The proved facts in the present case are that, before leaving for the deceased's doghari on the night in question, Mohammad Ali & Ranjha appellant held a meeting in which it was decided that they would avenge themselves by killing Durga, that they persuaded Bhura appellant to help them in carrying out that intention, & that in furtherance of that common intention Bhura appellant held the deceased by the arms & Ranjha appellant throttled him to death. There was thus both the common intention to kill Durga & that unity of criminal behaviour in carrying out the criminal act which has been referred to in the leading Privy Council case of *Barendra Kumar v. Emperor*, 52 Cal. 197.

20. I, therefore, hold that, even on discarding Bhura's confession, it has been conclusively established by direct evidence of the two eye-witnesses Bala & Laldin, & the circumstantial evidence of Chaunru & Harinand, who saw the appellants leave the scene of murder immediately after the murder & of Lachminand respecting the motive for the crime, that Ranjha appellant did commit murder by intentionally strangling Durga to death & that Bhura appellant is also liable for the offence because he held Durga down in furtherance of the common intention of himself & his accomplices of murdering Durga while the latter was being throttled to death by Ranjha. Ranjha is, therefore, guilty under Section 302, Penal Code & Bhura under that section, read with Section 84, Penal Code.

21. Bhura has already been given the lesser penalty of transportation for life on account of his age & of his having taken part in the murder under the influence of his father & uncle. As regards the other appellant Ranjha, there are no extenuating circumstances, as rightly remarked by the learned Judge. He has, therefore, been

rightly awarded the extreme penalty provided under Section 302, Penal Code.

22. The appeals of Ranjha & Bhura are therefore dismissed & their conviction & the sentence of death imposed upon Ranjha & of transportation for life imposed upon Bhura are upheld. Ranjha appellant shall be hanged by the neck till he is dead, & this order shall be carried out according to law.

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