

Chaman Lal Vs. State

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Court : Jammu and Kashmir

Decided On : Jan-12-1976

Reported in : 1976CriLJ1310

Judge : Mian Jalal-ud-din and; Adarsh Sein Anand, JJ.

Appellant : Chaman Lal

Respondent : State

Judgement :

Adarsh Sein Anand, J.

1. The appellant Chaman Lal, has been convicted for an offence under Section 302, R.P.C. and sentenced to death by order of the learned Sessions Judge, Jammu, dated 24-3-1975. He has preferred this appeal against his conviction and sentence. The State of Jammu and Kashmir has also filed criminal appeal No. 6 of 1975 against the acquittal of the co-accused Chaman Lal namely Nanku and Rattan. The appeal so far as Nanku is concerned was dismissed in limine by order of the Division Bench dated 30th April, 1975, but was admitted to hearing in so far as Rattan accused is concerned. The learned Sessions Judge, Jammu, has also submitted the record of the case to this Court for confirmation of the sentence of death passed against Chaman Lal. Both the appeals and the criminal reference shall be disposed of by this judgment.

2. Briefly stated the prosecution case as is evident from the F.I.R. is, that the deceased Shri Isher Datt Baru, a lawyer of Jammu had some land in village Kirpalpur Oharkan. Some of the land of the deceased was in possession of Nanku, Rattan Lal, Chaman Lal, Bishan Dass and Karam Chand sons of Mangu. Chaman Lal and his brothers were not paying the rent to the deceased, and suits were instituted against them for the recovery of rent and for their ejectment from the suit land. The deceased was successful in getting a decree of ejectment against Chaman Lal and others, He got their crops attached. However, in spite of the ejectment decree against them. Chaman Lal. Rattan and Nanku, the three accused used to cut the crop sown in that land. On 25-3-1973. the deceased had gone to the village Kirpalpur Charkan and in presence of Sama Ram P.W. he asked the accused persons to refrain from cutting the crop of 'Chattala' from the land. Chaman Lal accused got infuriated on being so told by the deceased and he threatened the deceased by saying that 'what to speak of cutting 'Chattala', they (accused) will also cut him (the deceased)'. The deceased returned to Jammu instructing Sama Ram, P.W. who was 'Mohitbar' (Manager) of his land also to reach Jammu so that the deceased may initiate proceedings for breach of peace against the accused persons in view of the threat.

3. On the day of occurrence i.e. 26-3-1973. Sama Ram P.W. reached in the Tehsil Office, Jammu, in the afternoon and met the deceased. The deceased told Sama Ram P.W. that he would go to the police station, Gumat for instituting the proceedings against the accused persons after he was free from the court work and asked Sama Ram P.W. to wait there. At about 3-30 P.M. Sama Ram P.W. and the deceased left for the house of the deceased from where they were to proceed to the police station. The three accused persons namely, Nanku, Rattan and Chaman Lal were also seen in the Tehsil; on that day at about 3-30 P.M. When the deceased and Sama Ram P.W. reached in the Pirmitha lane on the way to the house of the deceased, all the accused persons met them. Chaman Lal accused talked to the deceased regarding the giving back of the land to the accused but the deceased did not agree. Sama Ram went to make urine in the lane and the deceased proceeded ahead. The three accused persons followed the deceased quickly and after the deceased had gone a little ahead of the School lane, Rattan accused raised a 'Lalkara' and asked his co-accused Chaman Lal

'now is the chance finish him'. Chaman Lal accused thereupon brought out an iron 'Darat' (an agriculture implement for cutting fodder) from his covering of 'Khesh' and struck two blows on the head and neck of the deceased in quick succession. The deceased fell down. After the deceased had fallen down a third blow was given to him on his head by Chaman Lal accused. Sama Ram P.W. raised an alarm on seeing this occurrence and the accused ran away. The deceased died then and there, almost instantaneously. Sama Ram P.W. thereupon, immediately proceeded to the police Post, Pirmitha and lodged the report Ex. P-A at 3-45 P.M. Sama Ram P.W then went back to the place of occurrence. The report was entered in the Roznamacha and a copy of the same was sent by the Head Constable to the City Police Station for registration of the case. The case was accordingly registered at the City Police Station at 4 P.M. on the same day. Parcha illit was prepared and it reached the court on 27-3-1973. Soon after the report was lodged at the Police Post, Pirmitha. Moharrier constable, incharge at the police post, informed the police authorities about the occurrence. The Deputy Superintendent of Police and the City Inspector of Police thereupon left for the place of occurrence, Sama Ram P.W. was found present at the spot and his statement was recorded by the City Inspector of Police at the spot. The dead body of Shri Baru was taken into custody by the Inspector of Police, A blood stained diary and a complaint dated 26-3-1973, titled Isher Dutt Baru v. Nanaku, Chaman Lal and Ors. under Section 107, Cr. P.C. addressed to the Circle Inspector of Police was also taken into possession from the person of the deceased and seized by the Inspector then and there. The dead body was then taken for post-mortem examination after preparing the inquest report. The post-mortem examination of the deceased was performed on the same day at 7-30 P.M. by Dr. M. L. Gupta.

4. Nanku and Rattan accused were arrested on 26-3-1973, the very day of the occurrence while Chaman Lal accused was arrested on 28-3-1973 at about 4 P.M. At the time of his arrest the shirt which Chaman Lal was wearing was found to be blood stained. The same was seized. Chaman Lal accused also made a disclosure statement (Exhibit PG) under Section 27 of the Evidence Act and in consequence thereof he got the 'Darat' (Exhibit PI) recovered from near the bank of Tawi close to Pirkhow temple. The recovery memo, Exhibit PF was accordingly prepared. The 'Darat' was found to be blood-stained and it was sealed. After

completing the investigation, the accused persons were challaned. Chaman Lal accused was challaned for an offence under Section 302, R.P.C. while Nanku and Rattan accused were challaned for the offence under Section 302/34, R.P.C. The accused were thereupon committed by the City Magistrate, Jammu to stand their trial in the court of learned Sessions Judge, Jammu.

5. The prosecution in support of the charge examined Sama Ram P.W. as an eye-witness of the occurrence. Krishen Chander P.W. and Romesh Kumar Mistri P.W. were examined as they had allegedly arrived soon after the occurrence at the spot. The other witnesses examined by the prosecution were Pt. Om Parkash, Joginder Kumar Sharma, Lala Bala Ram, advocate, Mohinder Nath Khajuria, Durga Dutt, Mohd. Shaffi Khan, Naib Tehsildar Isher Dass, Patwari Kuldeep Raj, Dr. M. L. Gupta, Ishar Dass Thappa Sub-Inspector, Bisher Ahmad Head Constable, Shri Piara Lal Mattu Circle inspector and Shri Dayal Singh, Deputy Superintendent of Police.

6. According to the prosecution the material against the accused persons consists of:

1. Motive:

2. Direct evidence of Sama Ram P.W.

3. Evidence of immediate arrival of Krishan Chander and Romesh Kumar.

4. Medical Evidence.

5. Recovery of blood-stained shirt of accused Chaman Lal at the time of his arrest.

6. Recovery of 'Darat' exhibit P1 and Khes Exhibit P7 on the disclosure statement of Chaman Lal.

7. We have heard Shri R. P. Sethi, for the appellant and Shri Amar Chand, Addl. Advocate General for the State and have also perused the record.

8. Motive :- Motive for the commission of the offence according to the prosecution is the land dispute between the deceased and the accused. The accused had

been dispossessed of the land in village Kir-palpur Charkan by a decree of ejectment of the Court obtained by the deceased which had enraged the accused persons and they had threatened the deceased on 25-3-73, when the deceased stopped them from cutting the 'Chattala' from that land and the threat was such that the deceased wanted to initiate criminal proceedings against the accused persons for apprehension of breach of peace under Section 107, Cr. P.C. and towards that end in view he wrote the complaint Exhibit P-4 on 26-3-1973, but before he could lodge the report he was murdered. The learned Counsel for the appellant, has on the other hand stated that there was no motive to commit the crime and that the deceased had no connection with the land and, therefore, there was no occasion for the accused to murder him for any alleged dispute regarding that land.

9. There is abundant evidence on the record to show that the accused persons were the tenants of Om Parkash and Mst. Jai Devi. Kuldeep Raj Patwari has deposed to that effect. It is also borne out from the evidence that Mst. Jai Devi is the widow of the brother of deceased while Om Parkash is the son of the deceased. Mst. Jai Devi's son Prem Parkash is living out of the State and the deceased was looking after the affairs of the land owned by his son who is a Government servant and brother's widow. According to the unrebutted evidence of Sama Ram P.W. the Patwari and the statement of Om Parkash P.W. it is evident that the deceased was managing the affairs of the land including the institution of and the conduct of cases pertaining to the said land, It also stands established that the cases against the accused persons were also engineered by the deceased and the deceased instituted proceedings for ejectment of the accused from the land and obtained a decree from the court of Assistant Commissioner, Jammu for their ejectment as well as got their crops attached. That the accused persons had given a threat to the deceased on 25-3-1973, is established from the statement of Sama Ram P.W. and the documentary evidence in Exhibit P-4 which is also corroborated by L. Bala Ram Advocate, P.W.

10. In the face of the above evidence we are not impressed with the arguments of the learned Counsel for the appellant that since the accused were not the tenants directly under the deceased they could not have had any motive to commit the

crime. As has already been stated above, the deceased was managing that property which belonged to his brother and his own son, and as a manager of that property had got the accused persons ejected from that land. The accused persons, therefore, would naturally have borne grudge against the deceased. The last submission on this aspect of the case by the learned Counsel for the appellant was that motive was not in any case sufficient and there was not ample proof about motive, and as such, the prosecution case is doubtful is also devoid of substance. Although we are satisfied that the prosecution has established that there was enough motive in the present case for the accused persona to commit the crime, yet even if for the sake of argument it be assumed that the proof about motive is not sufficient or that the prosecution has not been able to establish motive, the prosecution case cannot be thrown out. It has been held by their Lordships of the Supreme Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* 1973 Cri App R 410 : 1973 Cri LJ 1783 (SC):

Proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that courts have to go without clear evidence thereon if other clinching evidence exists.

11. Again a reference in this connection may also be made with advantage to *Nachhittar Singh v. State of Punjab* 1974 Cri App R 307 : 1975 Cri LJ 66 wherein their Lordships of the Supreme Court held:

Failure of prosecution to establish the motive for the crime, does not mean that the entire prosecution case has to be thrown overboard.

It thus follows that no doubt can be cast on the prosecution case even if the motive is absent or is not amply proved. It only casts a duty on the court to scrutinize the other evidence particularly of the eye-witnesses, with greater care. We shall appraise the evidence in this light.

12. Direct Evidence of Sanaa Ram P.W.: Sama Ram P.W., is the solitary eye-witness in the case and, therefore, his evidence is of a great significance in the

present case. Since the witnesses have to be weighed and not counted, as in human affairs quality matters more than quantity, the conviction of an accused person can be sustained on the evidence of a single eye-witness provided the same is found to be convincing and the witness appears to be a truthful witness.

13. Sama Ram P.W. narrated the whole story given by him in the First Information Report, Exhibit PA, which has been reproduced in the earlier part of this judgment. He deposed that the accused who were cultivating some land of the deceased as the tenants had stopped paying rent to him for about four or five years and the deceased instituted proceedings against the accused for their ejectment and recovery of rent and obtained a decree for the same from the court and for that reason the relations of the deceased with the accused were strained. He went on to state that on 25-3-73, the deceased had gone to village Kirpalpur Charkan and the witness had also gone along with him to see the crop of wheat and Chattala, The deceased had deposited the amount of compensation at the time of obtaining possession from the accused persons for the standing crop and the 'Chattala'. He further deposed that the accused persons were found cutting 'Chattala' and were asked by the deceased not to cut the 'Chattala' on which Cha-man accused threatened the deceased by saying 'you are stopping us from cutting Chattala, we will cut you also'. The witness further deposed that the deceased then told him to come to the Tehsil Office, Jammu, on the next day so that the deceased could initiate the proceedings against the accused persons before the police for apprehension of breach of peace. The witness accordingly came to Tehsil Office, Jammu, on the fateful day of 26th March, 1973, in the morning, and on being told by the deceased that he would go to lodge the report with the police after he was free from the court work, he waited there till about 3 or 3-30 P.M. The accused persons were also seen present and were loitering about in the Tehsil premises on that day. The witness along with the deceased left for the house of the deceased on way to the police station, Ghumat. On the way the accused persons met the deceased and they told the deceased to give up the land dispute and to give back the land to them but the deceased declined. The witness went on to state that he went to one side of the lane to urinate and the deceased went ahead of him. The accused persons followed the deceased and when the witness was at a little distance from the deceased and the accused, he heard Rattan accused giving a

'Lalkara' and exhorting his companion Chaman accused that 'it is the time, now finish the deceased'. On this accused Chaman brought out a 'Darat' Exhibit P1 from his 'Khesh' and within the sight of the witness gave the first blow on the head and the second on the neck of the deceased with it. The deceased fell down and then the accused gave the third blow on his neck. On alarm being raised, all the accused ran away and the deceased died on the spot. On the arrival of some persons on the spot immediately thereafter, the witness left for police post Pirmitha to lodge the report of the occurrence and lodged the report Ex. PA within fifteen minutes of the occurrence. The police came to the spot and after taking the dead body into custody, seized the diary and an envelope as also the complaint Ex. P-4 from the person, of the deceased, Some blood was also collected from the spot and sealed by the police. The witness admitted in cross-examination that the deceased was his landlord and he was his 'Mohatbir' (Manager) and was looking after the property of the deceased in village Kirpalpur Charkan, He also admitted that the deceased had gifted, 4 Ghamons of land to Mst. Krishna, who is the daughter of his wife from her previous husband. He also deposed that Rattan and Nanku had no weapon with them. The witness also admitted in the cross-examination that he did not know as to who were the persons mentioned as the owners of the land in dispute in the Revenue records but went on to state that the deceased used to come for managing the said land in the village. The witness also admitted in cross examination that he had never any altercation with the accused except once when the accused had given him beating and a case had been registered against the accused for that reason, which case was dismissed. He admitted that the deceased was his counsel in that case. The witness denied any knowledge whether Mst. Mangi, wife of the witness before her marriage was a servant of the deceased and had developed illicit relations with him. The witness denied the suggestion that the deceased continued to have illicit relation with his wife, and also denied another suggestion to the effect that the witness was not in fact the husband of Mst. Mengi, and had given himself out to be the husband of Mst. Mangi to shield the illicit relations going on between the deceased and Mst. Mangi.

14. The learned Counsel for the appellant had criticized the evidence of this witness on various grounds. In the first place he has submitted that Sama Ram is

a chance witness; that there was enmity of the accused with Sama Ram, that he suppressed the material facts in his statement; that his conduct was unnatural; that he was an interested witness; and that he stood to benefit from the death of Baru and in all probability the witness himself was a culprit.

15. We have given our careful consideration to the criticism levelled by the learned Counsel for the appellant against the testimony of Sama Ram P.W. and we find that the criticism is not valid. After carefully going through the statement of the witness who was subjected to a lengthy cross-examination we are of the opinion, that he is a truthful witness on whom reliance can be placed by us.

16. Although a chance witness is not necessarily a false witness, we find that the label of chance witness cannot be attached to Sama Ram P.W. There is abundant evidence on the record to show that the deceased had called the witness to Tehsil Office, Jammu with a view to initiate proceedings against the accused persons on account of the threat given to him by the accused in the presence of the witness on the previous day. The presence of Sama Ram P.W. also stands amply assured by the prompt lodging of the First Information Report at the Police Post Pirmitha Jammu as the report was lodged by him within fifteen minutes of the occurrence and the police officials including the Deputy Superintendent of Police who had reached the spot within half an hour of the occurrence had also found the witness to be present there. His presence is also corroborated by the statements of the immediate arrivals Krishan Chander and Romesh P.Ws. The witness was subjected to lengthy cross-examination running into about thirteen typed pages of the paper book, but nothing of any substance has been elicited which may throw any doubt on his presence. There is no magic in the word chance witness. If the presence of a witness is assured and the witness is present at the time of occurrence, he cannot be termed a chance witness. We are, therefore, of the opinion, that Sama Ram P.W. is not a chance witness. The submission of the learned Counsel for the appellant to the contrary is, therefore, rejected.

17. The next criticism levelled against the witness that he suppressed material facts is also unjustified. The witness was asked questions regarding some previous litigation and regarding previous statements made in other cases. He

expressed ignorance about those. He was never confronted with those statements and without confronting him with those the witness cannot be condemned. As a matter of fact most of the cross-examination of the witness is based on an attempt to prove omissions made by the witness in his earlier depositions before the police. The learned trial court should not have allowed the use of the earlier statements of the witnesses before the police for that purpose. The witness had showed his ignorance with respect to certain matters but we cannot say without any material on the record that the expression of ignorance was with a view to suppress some facts. We, therefore, repel the criticism made on this score.

18. The next criticism made is that the witness stood to benefit from this land and, therefore, he may be the culprit himself has not been substantiated by any material on the record and appears to be an argument of despair. The mere fact that the deceased had given a donation of some land to Mst. Krishna, would not show that the witness had benefited from the land of the deceased. Mst Krishna is the daughter of his wife from her earlier husband and is no direct relation of the witness. She is not even living with the witness and is living separately from him. This argument of the learned Counsel also deserves to be rejected.

19. We are also not impressed with the argument of the learned Counsel for the appellant that the conduct of the witness was unnatural and, therefore, it would not be safe to rely on his testimony. We do not find any unnatural conduct of the witness. The witness immediately after the injuries were caused to the deceased raised an alarm and ran towards the deceased to find out about his condition and on finding that the deceased had succumbed to the injuries he went to lodge the report at the police post immediately after some persons had reached there on hearing the alarm and who guarded the dead body. This action of the witness shows his conduct to be wholly natural and not at all unnatural. The mere fact that there was no blood found on the clothes of the witness would not give rise to any presumption of any unnatural conduct as has been canvassed by the learned Counsel. The witnesses had explained that after he reached near the body and found that the deceased had expired, he did not wait there and went to lodge the report. Under these circumstances the absence of blood was quite natural.

20. The defence with a view to find some lacunas in the testimony of the witness cross-examined him at length and at times made absolutely wild suggestions to him but the testimony of the witness has remained unshaken. At one place the suggestion given to the witness was that he was trying to shield the illicit relations between the deceased and Mst. Mangi by posing to be the husband of Mst Mangi when in fact he was not married to her (as per statement at page 23 of the paper book) yet at another place, the case put to the witness was that once when the witness was returning, after cutting Chattala from his field, he found the deceased having illicit intimacy with Mst. Mangi and became annoyed and became determined to put an end to the deceased (vide page 31 of the paper book) and actually killed the deceased. Both the suggestions are self-contradictory. The defence, it seems was all the time groping in the dark with a view to create some infirmities in the evidence of the witness but did not succeed.

21. We do not find that any valid criticism is available to the appellant against the statement of this witness. Testing the evidence of this witness on the anvil of the objective circumstances in the case and carefully scrutinizing his statement, we are of the opinion, that Sama Ram P.W. is a reliable witness and reliance can be placed on his testimony. Although the evidence of Sama Ram P.W. by itself would be enough to sustain the conviction of the accused yet, as a matter of prudence and abundant caution we have also looked for the corroboration of his statement and find as we shall presently see that the statement has been corroborated in all material particulars.

22. Evidence of Immediate Arrivals : The third item of material against the accused on which the prosecution relies is the evidence of the immediate arrivals Krishan Chander and Romesh Kumar P.Ws. Krishen Chander: This witness who is a school teacher arrived on the scene of occurrence immediately after the occurrence. He saw the dead body with his face downwards and Sama Ram P.W. standing near the dead body raising alarm. The witness identified Sama Ram P.W. in court as the same person who was present on the spot on the fateful day. On his enquiry as to what had happened the witness was told by Sama Ram P.W. that Clhaman Lal accused had killed Shri Baru with a 'Darat' and had ran away. The witness deposed that the dead body had one injury on the head and two on the

neck and all the injuries were bleeding. He further deposed that the police also reached the spot within fifteen or twenty minutes after his arrival at the spot.

23. Romesh Chander: This witness also reached the spot immediately after the occurrence on hearing the 'Roula' that Baru vakil had been murdered. He found the deceased lying in the lane with his face downward and Sama Ram P.W. was also found present. On enquiry Sama Ram P.W. told the witness that Chaman Lal accused had murdered Baru with a 'Darat'. The witness also found Kalu Ram and two other persons present there, Sama Ram P.W. went to lodge the report in his presence and the police also reached the spot while he was there. This witness has his room near the place of occurrence and therefore, reached the scene of occurrence immediately after hearing the 'Roula'.

24. The learned Counsel for the appellant has not been able to assail the statement of Romesh P.W. at all. Nothing was brought out in the cross-examination to shake the veracity of this witness. He appears to be a truthful witness. It stands clearly established from his statement that Sama Ram P.W. was present on the spot and had told the witness that Chaman Lal accused had caused the death of the deceased by a 'Darat'. We have carefully scrutinized his statement and find that this witness is a reliable witness who had no enmity with the accused or interest in the prosecution case to make a false deposition.

25. So far as Krishen Chander P.W. is concerned the trial court did not place reliance on his testimony in para 37 of the judgment and the learned Addl. Advocate General was not able to advance any reasons before us to induce us to differ from the finding of the trial court with regard to his evidence. His evidence has been rightly and for cogent reasons been discarded by the trial court. For the same reasons we are also not inclined to place any reliance on his testimony. Dealing with this aspect of the case relating to corroboration of the evidence of Sanaa Ram P.W. the learned Counsel for the appellant has submitted that there are discrepancies between the statement of Sama Ram P.W. and these two witnesses with respect to disclosing the name of Sama Ram P.W. to them. Whereas Romesh Chander P.W. has stated that Sama Ram P.W. had disclosed his own name to him, Sama Ram P.W. has stated that he did not disclose his

name to any body. This discrepancy, in our opinion, is wholly insignificant and cannot advance the case of the appellant or throw any doubt on the prosecution case. The learned Counsel for the appellant then contended that Kalu Ram who had according to the statement of Romesh Chander P.W. reached the spot along with him was a material witness. Grievance is made by the learned Counsel as to why Kalu Ram had been withheld by the prosecution and it is urged that an adverse inference should be drawn against the prosecution on this score.

26. It is not the requirement of law that every witness who has something to do with some part of the prosecution story should pass through the witness box. There is a discretion in the Public Prosecutor and the investigating agency to pick and choose. If Kalu Ram was essential to unfold the prosecution story and had been suspiciously withheld from the court, we would and should have drawn an inference adverse to the prosecution but in the circumstances set out earlier, Kalu Ram does not seem to be an eye-witness of the actual attack and his absence from the witness-box is not, therefore, fatal to the prosecution. No sinister motive can be imputed to the prosecution by Kalu Ram not being examined.

27. We, therefore, find that the evidence of Romesh lends assurance to the testimony of Sama Ram P.W. and affords good corroboration to his testimony.

27-A. Medical Evidence: The medical evidence in the case also affords corroboration of the testimony of Sama Ram P.W.

27-B. Dr. M. L. Gupta performed the post-mortem examination on the dead body of Isher Dutt Baru. He found the following injuries:

1. A wound on the forehead above the nose lying oblique $1\frac{1}{2}$ ' x $\frac{1}{2}$ bone deep. The margins were ragged.
2. A wound on the scalp over the frontal region. It was 14 cm X 2 cm and the brain was visible through this wound. The margins were sharp. The frontal bone was also cut.
3. A wound on the scalp over the occipital region extending from a point behind the mastoid process on the left side towards the right side just near the mastoid

process. It was 17 cm X 3 1/2 cm. Occipital bone had also been cut throughout the length of the wound. Margins were sharp.

4. A wound on the nape of neck lying transversely, 7 cm X 1/2 cm bone deep. Margins were sharp. The 2nd cervical vertebra had been cut at the posterior spine.

5. Fracture of the frontal bone just right to the mid line extending from the hairline upto the parietal bone.

6. Fracture of the frontal bone extending from the supra orbital region on the right side to the left side upto the temple. A fragment of the bone had been separated.

7. Fracture of both the parietal bones 5 cm posterior to the frontal parietal suture lying transversely. The two fractures of the frontal bone extended upto this point. The bone was cut sharply.

8. Fracture of the occipital bone at the posterior part. The brain was also cut sharply at this point.

9. The brain substance and membranes cut at various places.

10. Fracture of the 2nd cervical vertebra at its posterior spine.

28. Dr. Gupta opined that all the injuries were ante-mortem. The injuries were fatal and were sufficient in ordinary course of nature to cause the death of the deceased. The witness identified the postmortem examination report exhibit PT and went on to state that the injuries could be caused by the 'Darat' exhibit PI. The witness was subjected to lengthy cross-examination but nothing of any use was brought out from the cross-examination which could throw any doubt on the substratum of the prosecution case. From the medical evidence it stands fully established that the deceased had suffered wounds on the head as well as on the neck and the injuries were fatal. The medical evidence, therefore lends enough corroboration and assurance of the statement of the P.Ws. about the nature of the injuries caused by the accused to the deceased. The medical evidence fully supports the ocular version given by Sama Ram P.W.

29. Recovery of Articles and Disclosure Statement of the Accused: Cha-man Lal accused at the time of his arrest was wearing the shirt which was found to be bloodstained. Cihaman Lal accused also made a disclosure statement under Section 27 of the Evidence Act that he had buried the blood-stained 'Darat' and 'Khesh' near the temple on the Tawi under bushes and in consequence of that information, he led the police party to the place of concealment, from where 'Darat' and 'Khesh' both blood-stained were recovered.

30. The learned Counsel for the appellant has submitted that the witnesses of recovery Mohinder Nath P.W. and Om Parkash P.W. were both interested witnesses and the police had not found any independent and respectable persons of the locality which throws doubt on these recoveries. The learned Counsel for the appellant further submitted that the alleged disclosure statement had been induced by the investigating officer under fear of God and was as such inadmissible. The learned Counsel further submitted that there were discrepancies and contradictions in the statement of the recovery witnesses and, therefore, the disclosure statement and the consequential recovery of 'Darat' should be ruled out of consideration. While challenging the recovery of bloodstained shirt of Chaman Lal it was argued by the learned Counsel that that piece of evidence was clearly an afterthought and no person would be so foolish as to keep on wearing a bloodstained shirt on the third day of the occurrence and that it was a fabricated piece of evidence. We have considered the contention raised by the learned Counsel and have given our anxious considerations to the statement of the witnesses of disclosure statement and recovery.

31. Om Parkash P.W. is the son of the deceased and an employee in the Teacher Training College. After learning the news of his father he had reached Jammu from Srinagar and came to know about the murder. He went to the police station along with his friend Mohinder Nath Khajuria P.W. and there he found Chaman Lal accused under arrest and the accused was at that time wearing the shirt which was bloodstained. The accused also made the disclosure statement Ex. PG in the presence of this witness and the recovery in consequence of the disclosure statement was also witnessed by him. He has attested the recovery memo Ex. PF. The criticism of the learned Counsel for the appellant that this witness being an

interested witness should not be relied upon does not commend itself to reason, It is an established principle of law that the relationship of the witness with the deceased is no ground to disbelieve the witnesses. A close relation of the deceased would normally be reluctant to spare the real assailant and falsely mention the name of another person as the one responsible for causing the injuries to the deceased in such a serious offence. A careful reading of his evidence has created an impression in our minds that he is a truthful witness and there is no serious infirmity in his evidence. Similarly Mohinder Nath P.W. is a respectable person being & teacher. He is a friend of the son of the deceased and, therefore, is no doubt an interested person but that by itself cannot make the evidence of this witness questionable. The question of credibility of a witness is primarily to be decided by referring to his evidence and finding out as to how the witness has fared in the cross-examination and what impression is created by his evidence taken in context of the other facts of the case Nothing has been brought to our notice which may throw any doubt about the veracity of the witness. Criticism of the learned Counsel for the appellant against the testimony of both these witnesses of recovery based on the discrepancies between their statements on the one hand and the statement of the Investigating Officer on the other hand is not at all justified. Whereas it is correct that there are discrepancies between their statements regarding the route from which the accused took the police to the place of concealment for effecting recovery and the relative position of the witness in the party which went to effect the recovery yet such like discrepancies are possible due to lapse of memory of the witness as they were deposing after a considerable lapse of time and it is possible that they were not able to properly recollect the route of their relative positions. No fault can be found with the testimony of the witnesses because of these discrepancies when we find that otherwise their evidence is cogent, reliable and trustworthy.

32. We are also not impressed with the argument of the learned Counsel for the appellant that the disclosure statement was not admissible as the same had been obtained after inducing fear of God in the accused. Om Parkash P.W. stated in his deposition that Mr. Matoo told Chaman Lal accused that 'It is good to speak the truth. Fear from God and tell the correct thing'. The precise argument of the learned Counsel for the appellant is that such a statement is hit by Section 24 of

the Evidence Act. After carefully considering this aspect of the case and the argument of the learned Counsel, we are of the opinion that the disclosure statement is admissible in evidence and the same does not attract the bar under Section 24 of the Evidence Act. In order to exclude a statement, the inducement whether it assumes the shape of a promise, a threat or mere advice, must relate to the actual charge and be such as is calculated to influence the mind of the accused with respect to his escape from the charge. The inducement must have reference to escape from the charge. Mere exhortation to speak out the truth in the name of God cannot of itself amount to an inducement. Such an exhortation is merely moral exhortation and is not objectionable so as to render the statement made in consequence thereof inadmissible.

33. We are equally not impressed by the argument of the learned Counsel for the appellant that since according to the statement of Om Parkash P.W. the Inspector had told him that the accused had already told the Inspector the place where the articles were hidden, the statement Exhibit PG made by the accused was not admissible under Section 27 of the Evidence Act as it was a second statement. The argument is without any substance. Reference in this connection may be made with advantage to the observation of their Lordships of the Supreme Court in *Karan Singh v. State of U.P.* 1973 Cri App R 145 : 1973 Cri LJ 1136 (SC) wherein under similar circumstances it was held that such a statement is not inadmissible under Section 27 of the Evidence Act, on the ground that police already knew about the place from where weapon could be found. This argument is, therefore, repelled.

34. We are, therefore, satisfied that the recovery of 'Darat' Ex. PI and the 'Khes' and blood-stained shirt afford good corroboration to the evidence of Sama Ram P.W. and also lend further support to the substratum of the prosecution case.

35. In view of the discussion above and after carefully considering the evidence on the record we are of the opinion, that the case of the prosecution against 'Chaman Lal, accused stands fully established and his conviction is well founded and, therefore, we confirm his conviction for the offence under Section 302, R.P.C.

36. Coming now to the question of sentence, we are of the opinion, that the sentence of death in the circumstances of the case is not called for. Occurrence took place on 26-3-1973. Nearly three years have elapsed since the occurrence and during all this long interval between the day of the offence and now, the appellant must have undergone a period of mental agony and that by itself has influenced our mind to consider the desirability of modifying the sentence awarded to the accused. The appellant was condemned to death on 24-3-73 and during all this period of over nine months sword of Damocles was all the time hanging on Ms head.

37. There has been a considerable amount of re-thinking about the crime and punishment in the recent times. Their Lordships of the Supreme Court in *Chawala v. State of Haryana* 1974 Cri App B 275 : 1974 Cri LJ 791 (SC) took this aspect into consideration while commuting the sentence of death to that of imprisonment for life. The following passage from the said judgment which shows the latest trend in the field of crime and punishment be read with advantage:

Death penalty has been brooding over the heads of these young men for an agonisingly long period. They were committed for trial two years in February, 1972, and were condemned to death by the trial court in April 1972. By cold logic, this circumstance, as a mitigating factor, more often, than not, being the unwanted work of law's delays, is vulnerable. But humane considerations of administering justice tempered with mercy have impelled the courts to recognise it as an ameliorating circumstance. In the last half a century the science of criminology has taken great strides. There has been rethinking about crime and punishment. The process is continuing. Winds of compassion for the criminal blowing the world, over, are affecting law and logic, the Judge and the Legislator, alike Dra-conian notions and retributive relics of *lex talionis* are yielding to 'Mankind's concern for charity'. In every creature, 'born but to die', it is 'blindness to the future, kindly given' that keeps life going. But in a condemned, man, the Book of Fate open before him constantly telling of the doom prescribed, the life-stream of hopes and aspirations rapidly starts drying under the excruciating heat of the mental desert. With passage of time, the prisoner painfully awaiting execution, becomes no better than a 'life less' mummy. It was in this perspective that this Court in *State of Bihar*

v. Pashupati Singh (supra) ruled that if there has been a long interval between the date of the offence and the consideration of appeal by the Supreme Court, the capital sentence for the commission of an offence under Section 302, Penal Code for which the accused has undergone a long period of mental agony, the sentence of death may not be exacted. A similar note was struck by a Bench of this Court constituted by both of us in Edigna Anamma v. State of Andhra Pradesh 1974 Cri LJ 683 (SC).

38. Apart from the time factor, the appellant seems to have been agitated by the fact that he had been ejected from the land by the deceased and on that score seems to have lost his head when told by the deceased that he would not reconsider the giving back of the land to him. It was as a result of sudden impulse that he committed the crime. The murder was not pre-planned as no other more formidable weapon of offence was in the possession of the accused and the mere possession of 'Darat' which is a normal agricultural implement generally in possession of any agriculturist cannot give rise to the presumption that the murder was premeditated or pre-planned. In view of these circumstances while confirming the conviction of the appellant under Section 302, B.P.C. we set aside the sentence of death and instead sentence the appellant to imprisonment for life for the offence under Section 302, R.P.C. The reference made by the learned Sessions Judge is accordingly disposed of.

39. Coming now to the question of appeal against acquittal filed by the State against Rattan accused.

40. Mr. Amar Chand, the learned Addl. Advocate General has vehemently argued that the charge under Section 302/34, R. P. C. stands clearly established against Rattan Chand accused from the evidence of Sama Ram P.W. and that he has been wrongly acquitted.

41. The evidence against Rattan accused is that he accompanied his co-accused Chaman and just before the blows were struck by Chaman accused on the deceased, he (Rattan) instigated him to finish the deceased. No other overt act except the raising of the 'Lalkara' is attributed to him. It is not unknown that when the prosecution wants to charge a person with constructive liability in the absence

of any evidence against him, such like 'Lalkara' is generally attributed to such persons. The attribution of 'Lalkara' is generally a method adopted by the prosecution to supplement its case with a view to show the participation of the person in the crime or to supply the evidence of intention against the accused. In these circumstances when the tendency to implicate innocent with the guilty is peculiarly present in this part of the country, the court has to be on its guard while scrutinizing the evidence to find out if there is convincing and reliable evidence regarding the participation of the accused in the crime specially in a case of appeal against acquittal. Although the powers of this Court in an appeal against acquittal are in no way different from its powers in the ordinary appeal against conviction to re-appraise the evidence, yet this Court has to consider all other matters including the reasons given by the trial court for acquitting the accused persons. Bearing in mind the initial presumption of innocence of an accused person, which presumption stands strengthened by the acquittal of the accused, this Court has to carefully scrutinize the evidence to set aside an order of acquittal.

42. The statement of Sama Ram P.W. that Rattan accused gave 'Lalkara' has not been corroborated by any other evidence on the record. Romesh Kumar and Krishen Chander P.Ws. who had reached the spot soon after the incident have deposed that on their enquiry from Sama Ram P.W. about the assailant they were told that Chaman Lal accused had killed the deceased with a 'Darat'. These witnesses do not say that Sama Ram P.W. told them about any instigation by Rattan accused or even about the presence of this accused. This apart, Krishen Chander P.W. has stated that when he reached down the slope of the lane, he saw two persons running down from the lane. The prosecution case on the other hand, as is deposed by Sama Ram P.W. is that there were three persons i.e. Chaman, , Nanku and Rattan accused. Who was the second person about whom the witness Krishen Chander P.W. deposed is not known? That person could be Nanku and he could also be Rattan, It is difficult to suppose that the other person with Chaman accused was Rattan only. The learned Sessions Judge, while acquitting Rattan accused was influenced by the fact that the statement of Sama Ram P.W. regarding the participation of Rattan accused had not been corroborated by any other evidence, and that reason in our opinion, is not irrelevant for acquitting him. The participation of Rattan accused is not free from

doubt. After carefully considering the evidence on the record we find that there is no sufficient and reasonable cause to believe that Rattan accused gave the 'Lalkara' or that he participated in the crime. All that can be said from the uncorroborated statement of Sama Ram P.W. is that there is a strong suspicion against this accused about his participating in the commission of crime, but suspicion, however, strong cannot take the place of proof. We find it difficult to convert the finding of acquittal into that of conviction on mere suspicion. The Courts of Justice cannot be swayed by sentiments or the prejudice against the person accused of a serious crime of murder. In view of the above discussion, we are of the opinion, that no fault can be found with the acquittal of Rattan Chand accused and accordingly the appeal filed by the State against the acquittal of Rattan is without any merits and is hereby dismissed. Rattan accused is on bail he shall be discharged from bail bond.

Mian Jalal-ud-din, J.

43. I agree.

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