SUPREME COURT OF INDIA

Balbir Singh

Vs.

State of Punjab

Crl.A.No.51 of 1956

(N. H. Bhagwati, S. J. Imam, S. K. Das and P. Govinda Menon, JJ.)

27.09.1956

JUDGEMENT

S. K. DAS J. –

1. This is an appeal by special leave from the judgement and order of Punjab High Court dated 27th of April 1955, by which the appellant Balbir Singh a student aged about 19, has been convicted the offence of murdering one Mst. Chinti sentenced to transportation for life under Section 302, Indian Penal Code. By the said order the High Court has also convicted and sentenced him to rigorous imprisonment for four years under Section 457, Indian Penal Code. The High Court has directed that the two sentences shall run concurrently.

2. The appellant Balbir Singh and one Jagir Singh, another boy aged about 16 were tried by the learned by learned Sessions Judge of Hoshiarpur with the aid of four assessors. The charges on which they were tried were the following. Both Balbir Singh and Jagir Singh were charged with having murdered Mst. Chinti and her two sons, Kewal Singh and Autar Singh aged 11 and 5 respectively. Mst. Chinti, a woman aged about 27 or 28, it was alleged, was strangled to death by the appellant Balbir Singh on the night between the, 18th and 19th of February 1954. Her two sons, Kewal Singh and Autar Singh, were also hit by a Kirpan (sword) and died then and there as a result of the injuries caused. Balbir and Jagir were also charged under Section 457, Indian Penal Code for having committed house breaking and theft on the same night in the house of Mst. Chinti. In the Court of Session an additional charge was added, namely a charge under Section 376, Indian Penal Code on the allegation that Mst. Chinti was raped by the appellant Balbir, when the woman had been almost strangled to death. There of the assessors were of the opinion that both the accused persons were guilty of murder. The fourth assessor said that he was not in position to say which of the two accused persons murdered whom, but they did enter the house of Mst. Chinti on the night in question. The learned Sessions Judge did not accept the opinion of the assessors, He held that the prosecution had failed to make out a case against the accused persons on the charges framed against them. Accordingly, he acquitted them of all the charges, by his judgement and order dated the 11th June 1954.

3. Against that order of acquittal there was an appeal by the State of Punjab to the High Court under the provisions of Section 417, Criminal Procedure Code. On a fresh p73 review of the evidence, the, High Court held that the charges under Sections 302 and 457, Indian Penal Code, were made out against the appellant, but not the charge under Section 376, Indian Penal Code. So far as the other accused person Jagir Singh was concerned, the learned Judges of the High Court held that the

charge under Section 457, Indian Penal Code, only was made out. Jagir Singh has preferred no appeal from the conviction and sentence passed against him. Balbir Singh made an application to this Court for special leave to appeal under Article 136 of the Constitution, and this Court granted such leave by an order dated the 6th of October 1955.

4. The case against the appellant rested on a confessional statement said to have been made by him to a Magistrate, named Sri. Lal Singh Kang, on the 22nd February 1954, on another confession said to have been made on the same day and before the same Magistrate by the other accused person Jagir Singh, and on some circumstantial evidence to which we shall presently refer in greater detail. There was no eye witness in the case. In order to appreciate the points which have been urged before us on behalf of the appellant, it is necessary to give some more details of the prosecution case and the defence which the appellant set up.

5. Mst. Chinti was the wife of one Sardha Singh, who resided in village Shergarh, about 2.5 miles from the Sadar Police Station of Hoshiarpur. About a fortnight before the occurrence which took place on the night between the 18th and 19th of February 1954, Sardha Singh left village Shergarh and went to another village Kartarpur in search of work. His wife Mst. Chinti, along with her two sons Kewal Singh and Autar Singh, continued to live in a house in the village. The house consisted of two rooms with a court yard. In another house in the same village lived Mst. Dhanti (P.W.22) the aged mother if Sardha Singh. The prosecution case was that on that night Mst. Chinti and her children were sleeping in the house, and the appellant Balbir Singh and Jagir Singh effected an entrance into the house through an opening like a clerestory window. Balbir strangled Mst. Chinti by twisting her Dopatta (Ex . P-31) round her neck; when she was almost strangled to death Balbir committed rape and then made sure that Mst. Chinti was really dead. The trunks and boxes kept in the house were ransacked and some gold and silver ornaments were removed. The two sons of Mst. Chinti got up and as they had recognised the accused persons, they were also killed by means of a Kirpan. After the commission of the crime, Balbir Singh and Jagir Singh left the house. Balbir, it was stated left the village at about 4 or 5 a.m. and did not come back till the night of the 20th of February 1954. On the morning of the 19th February, Mst. Dhanti came to the house of her daughter-in-law to make enquiries, as nobody had reached her meal to her house and the she buffalo tethered there had also not been milked in the morning. She said that the usual practice was that one of the members of the family took her meal to her house, and the she-buffalo tethered there was also milked in the morning. Mst. Dhanti suffered from weak eye-sight, and when she came to the house of her daughter-in-law on the morning of the 19th, she called out but got no reply. She then called out Mst. Jamna (P.W.21) who lived opposite the house of Sardha Singh. Mst. Jamna looked into the house and found that Mst. Chinti was lying dead with a Dopatta tied round her neck; she found a Kirpan besmeared with blood lying in the court-yard; and when she peeped into the second room of the house she found Kewal Singh and Autar Singh lying dead on a heap of grain and by their side lay a Chaddar (Ex.P-4). On the discoveries made by Mst. Jamna which were communicated to Mst. Dhanti, a hue and cry was raised by the latter. Many villagers came there and one Rattan Singh (P.W.5) went to the Lambardar of the village and informed him of what had happened. The Lambardar, Pritam Singh (P.W.14), went to the Police Station and gave an information which was recorded at about 10.45 a.m. by a Head Constable in the absence of the Sub-inspector and the Assistant Sub-Inspector of Police. This Head Constable came to the village and started a preliminary investigation. He sent information to the Sub-Inspector in charge of the Police Station. This Sub-inspector, one Bakshi Sewa Ram (P.W. 28), came to the village at about 3 p.m. on the 19th February. He saw the dead bodies, sent them for post mortem examination, took possession of the Chaddar (Ex. P- 4) which was lying by the side of the two dead boys and also the blood besmeared Kirpan which was lying in the Court-yard. When the Sub-Inspector was making an investigation

Sardha Singh, husband of the deceased woman, also reached the village information having been sent to him earlier in the day. Sardha Singh was asked if the Chaddar (Ex. P- 4) belonged to him. When Sardha Singh denied that the Chaddar belonged to him, the Sub-Inspector sent for the villagers including the tailors of the village to find out the person to whom the Chaddar belonged. This Chaddar was later identified by two persons, Ramchand (P.W.11) and Bhagat Ram (P.W.10) as a Chaddar belonging to the appellant Balbir Singh. Ramchand (P.W.11) was a tailor of the village. He gave evidence to the effect that some three days prior to the occurrence he had mended the Chaddar in question by sewing it at the instance and request of the appellant. This witness identified the Chaddar by means of the thread used for sewing, part of the thread used was Khaki thread and part was white thread. The witness when examined in the Court of Session, gave an explanation as to why two kins of thread were used in stitching the Chaddar. On the 19th February 1954, the Sub-Inspector went to the house of the appellant Balbir Singh but did not find him there. On the 21st February, Balbir Singh, it was alleged, made an extra judicial confession before certain persons. He was later produced before the Sub-Inspector of Police at about 9 a.m. The evidence of the Sub-Inspector was that on examining closely the shirt which the appellant was wearing at the time, he (that is, the Sub-Inspector) found some faint marks of blood on it. He took charge of the shirt (Ex .P-5). It was later sent to the chemical examiner and found to contain stains of human blood. The appellant then made a statement that he had buried the hold Kantas (ear-rings) near a pathway and "pipal" tree and offered to point out the place. One Shri Ram Lal (P.W. 27), another Sub-Inspector of Police, accompanied the appellant p73, when the appellant produce a second Chaddar (Ex .P-6) from his house. It was stated that the appellant then took the said Sub-Inspector and certain other persons to a certain place which has been described as a "halti" and from near the "pipal" tree he dug out a pair of gold ear-rings which were later identified by Sardha Singh as the ear-rings belonging to and possessed by his wife. The prosecution also examined the gold smith who prepared the ear-rings for Sardha Singh.

6. On the same day, the Sub-Inspector Bakshi Sewa Ram himself went to the house of Jagir Singh who was sitting on a chowki. The Sub-Inspector said that on examining the cloths worn by Jagir Singh, he found that they also contained faint marks of blood. It appears that Jagir Singh also made certain statement to the effect that he had buried certain silver ornaments in his court-yard and could produce the same. The silver ornaments (Exs. P-14 to P-18) were dug out by Jagir Singh from under the earth in his court-yard and these were taken possession of by the Sub-Inspector. They were later identified to be the ornaments of Mst Chinti.

7. The Sub-Inspector said that he returned to Hoshiarpur on 22nd February at about noon along with the two accused persons. On the same day, i.e. 22nd February, Jagir Singh was produced before a Magistrate, Sri Lal Singh Kang, at about 1 p.m. He made a confession which was recorded at about 2-35 p.m. Balbir Singh was produced at about 3 p.m. before the same Magistrate, and he made a confessional statement at about 5 p.m. We shall refer to these two confessions in greater detail in a subsequent part of this judgement.

8. The post-mortem examination of the dead body of Kewal Singh was made on 19th February and the evidence of the doctor showed that Kewal Singh's death was due to an injury on the spinal cord, followed by shock and haemorrhage. The fatal injury was an incised wound, 5" x 1.5" x 3" deep, cutting the second part of the cervical vertebrae, cutting through the spinal cord at that level. The post-mortem examination of the dead bodies of Autar Singh and Mst Chinti was held on 20th February by the Assistant Surgeon of the Civil Hospital at Hoshiarpur. Autar Singh, a boy, about 5, had three incised wounds and died as result of shock and haemorrhage. The post-mortem examination of the dead body of Mst Chinti revealed that there was a well defined and slightly

depressed ligature mark 1.5" wide, situate partly below the thyroid cartilage and encircling the neck horizontally and completely. In the opinion of the doctor, death was due to asphyxia caused by strangulation.

9. Before the Committing Magistrate as also in the Court of Session, the appellant denied the allegations made against him. He denied that he had strangled Mst. Chinti to death. He denied that he entered the house of Mst. Chinti on the night in question. He denied that he had committed rape on her. He also denied that the Chaddar (Ex. P-4) was his. He denied that the Sub-Inspector of Police took possession of the shirt (Ex. P-5) from his person on 21st February. He denied that the shirt belonged to him. He denied that he had taken the Sub-Inspector of Police Ram Lal and some other persons to a "pipal" tree and dug out the pair of gold ear-rings. With regard to his confession the appeal and made following statements:

" I was beaten by the police and my father was maltreated in my presence. They threatened to shoot me in case I did not make a statement as desired by them. I was further told that my hand-cuffs would be removed if I made the statement as told. I was seated in the office of Inspector Indar Singh and was given some thing in tea and I became unconscious. I had knowledge of what happened later and where I was taken. I regained my full consciousness on the next day."

Similar denials were also made by other accused person Jagir Singh. Since he has preferred no appeal, it is not necessary to give details of the denials which he made.

10. There can be no doubt that Mst. Chinti and her two sons were killed on the night in question. Indeed learned counsel for the appellant has not contested the finding that Mist Chinti and her two sons were killed on the night between 18th and 19th February 1954. The learned Sessions Judge also found that Mist Chinti and her two sons were killed that night; he did not accepted the two confession as true, especially in the view of certain contradictory statements contained therein. Neither did he accept as correct the other circumstances alleged against the accused persons, viz. (a) the identity of the Chaddar (Ex .P-4), (b) the recovery of a blood-stained shirt (Ex. P-5) from the person of the appellant Balbir Singh and the recovery of the other blood-stained clothes from Jagir Singh, (c) the extra judicial confession alleged to have been made by Balbir Singh and (d) the recovery of gold and silver ornaments as a result of the statement said to have been made by the two accused persons.

11. The High Court reviewed afresh the entire evidence and, as respect the two confessions, proceeded on the basis that as the confessions refers to several incidents, it was necessary to see to what extent the confession of Jagir Singh was n agreement with the confession of the appellant. The learned Judges of the High Court then proceeded to consider to what extent each of the confessions was corroborated independently by other circumstances. On a review of the evidence, the held that with regard to the entry of the two accused persons into the house of Mst Chinti on the night in question, the confessions were in agreement and they were further corroborated by other circumstances. With regard to the murder of Mst Chinti they held that the confession of the appellant was corroborated by the medical evidence, the recovery of the Dopatta (Ex .P-31) round the neck of the deceased woman and certain other circumstances such as the recovery of the broken locks, etc. They did not however, rely on the extra judicial confession said to have been made by the appellant. With regard to the charge of rape, they held that there was no sufficient corroboration; but so far as the charge under 457, Indian Penal Code, was concerned, they held that the recovery of the ornaments was an independent corroboration of the confessions. As regards the blood-stained clothes found on the accused persons, the learned Judges accepted that the clothes of both the

accused persons were blood-stained, but they expressed the view that as section 34, Indian Penal Code, did not apply and as the confessions did not agree as to which of the two accused persons had killed the two children, the prosecution has failed to prove beyond reasonable doubt the charge relating to the murder of the two children.

12. On behalf of the appellant Mr. Jai Gopal Sethi has submitted that though the learned Judges have set out correctly the principles which should guide the High Court in an appeal from an order of acquittal, they have in fact disregarded those principles while reviewing the evidence upon which the order of acquittal in this case was founded. The power of the High Court in dealing with an appeal under Section 417 of the Criminal Procedure Code is now settled by several decisions of this Court. There is the decision in Prandas v. State, A.I.R. 1954 S.C. 366 (A), a decision to which the learned Judges of High Court have referred; it was observed there that the true position in regard to the jurisdiction of the High Court under Section 417 of the Criminal Procedure Code in an appeal from an order of acquittal was stated by the Privy Council in Sheo Swarup v. Emperor, A.I.R. 1934 P.C.227 (2) (B) The same view was reiterated in Surajpal Singh v. The State, 1952 S.C.R.193: (A.I.R.1952 S.C.52) (C), Ajmer Singh v. State of Punjab, 1953 S.C.R. 418 : (A.I.R.1953 S.C.76) (D) and again in Aher Raja Khima v. State of Saurashtra, 1955-2 S.C.R. 1285: ((S) A.I.R. 1956 S.C.217) (E). It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial judge, as to the credibility of the witnesses must be given proper weight and consideration; and 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 must also be kept in mind and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge.

13. Mr. Sethi has put in the forefront of his argument the following points: firstly, he has submitted that the two confessions contradict each other in material particulars, and the High Court was wrong in dissecting the confessions with regard to the various incidents mentioned therein so as to rely on the modicum of agreement for a particular incident or offence. He has submitted that the two confessions should be read as a whole and as they contradict each other in essential particulars, both should be rejected as untrue, as was done by the learned trial Judge. Secondly, he, has submitted that the High Court was in error with regard to the nature and extent of corroboration required in such cases and the High Court wrongly thought that the medical evidence or the existence of the Dopatta (Ex. P-31) round the neck of the dead woman or the existence of broken locks, etc., afforded sufficient corroboration of the confession of the appellant with regard to his participation in the crime. Mr. Sethi has argued that the corroboration must be of a dual nature: firstly with regard to the commission of the crime in question and secondly, as respects the participation of the accused persons in that crime. His argument has been that there was no corroboration of the confession of the appellant with regard to the second point stated above. Thirdly, Mr. Sethi has contended that the learned Judges of the High Court disregarded the principles which should guide the High Court in reviewing the evidence in an appeal from an order of acquittal, and they accepted the evidence with regard to the three circumstances alleged against the appellant, namely (1) the identity of the Chaddar (Ex .P-4), (2) the recovery of the gold ear-rings and (3) the existence of blood stains on his shirt (Ex. P-5), without displacing the reasons given by the trial Judge for not accepting that evidence. Mr. Sethi has also submitted that the learned Judges of the High Court did not consider the recovery of the gold ear-rings as corroborative of the offence of murdering Mst. Chinti; rather they thought that the recovery of gold ear-rings merely afforded corroboration with regard to the charge under Section 457, Indian Penal Code; similarly, it has been urged that the recovery of the

Chaddar (Ex. P-4) and the blood-stained shirt (Ex. P-5) was not corroborative of the confession of the, appellant regarding the, alleged strangulation of Mst. Chinti.

14. We proceed now to a consideration of these arguments of Mr. Sethi. There can be no doubt that the two confessions, one by the appellant and the other by Jagir Singh, vary in some particulars. One Important point on which they differ is as to which of the two accused persons killed the two boys, Kewal Singh and Autar Singh. Jagir Singh said in his confession that Balbir Singh killed the two boys, though Jagir Singh brought the Kirpan. Balbir Singh, on the contrary, said that Jagir Singh killed the two boys. The benefit of this difference between the two confessions has been given to the accused persons by the learned Judges of the High Court. There are differences with regard to some other points also, namely (l) whether the two accused persons remained standing inside the house for fifteen minutes; (2) whether Balbir Singh went to call Jagir Singh or Jagir Singh himself came to the house of Balbir Singh; (3) whether all the ornaments were made over to Jagir Singh; and (4) whether the Chaddar (Ex .P-4) was left by Balbir Singh or by Jagir Singh at the spot. The differences with regard to the first two points mentioned above are, in our opinion, immaterial as they have very little bearing on the commission of the crime. As to points (3) and (4), there is other evidence on the record which showed that the gold ear-rings were taken by the appellant and the silver ornaments by Jagir Singh and the Chaddar (Ex .P-4) belonged undoubtedly to the appellant. Assuming, however, that Mr. Sethi is right in his submission that the two confessions cannot he dissected in the way in which they have been done by the learned Judges of the High Court, we do not think that such a submission advances the case of the appellant any further. So far as the confessional statement of Jagir Singh is concerned, it may be taken into consideration against the appellant if it fulfils the conditions laid down in Section 30 of the Evidence Act. One of the conditions is that the confession must implicate the maker substantially to the same extent as the other accused person against whom it is sought to be taken into consideration. On reading Jagir Singh's confession as a whole, it appears that he was really trying to throw the main blame on the appellant, though he admitted that he entered into the house of Mst. Chinti, brought out a Kirpan lying there, and took some silver ornaments from that house. He denied that he had anything to do with the murder of Mst. Chinti or even the murder of the two boys; he more or less tried to make out that he was an unwilling spectator of the crime committed by the appellant. In these circumstances, the utmost that can be, submitted on behalf of the appellant is that the confession of Jagir Singh should not be used at all against the appellant. At one stage of his argument Mr. Sethi did submit that the confession of Jagir Singh should be excluded altogether from consideration against the appellant; later, however, he submitted that both the confessions should be read together in order to condemn both as untrue on the ground of the differences between the two confessions. We are unable to accept this submission of Mr. Sethi. We have pointed out, that some of the differences are immaterial; some are due to the desire of Jagir Singh to throw the blame on the appellant-a circumstance of which the benefit has been given to the appellant, and some other differences are clearly resolved by other evidence on the records. We do not think that in these circumstances the confessional statements can be condemned out of hand or in, limine as untrue.

15. In this case, both the confessions were retracted subsequently and the proper approach in case of this nature is to consider each confession as, a whole on its merits and use it against the maker thereof, provided the Court in a position to come to an unhesitating conclusion that the confession was voluntary and true; and though a retracted confession, if believed to be true and voluntarily made, may from the basis of a conviction, the rule of practice and prudence requires that it should be corroborated by independent evidence. It is unnecessary to consider in this case if the evidence of an accomplice stand on a better, equal or worse footing that a retracted confessions; nor need we consider the question of the nature and extent of corroboration necessary for the evidence of an

accomplice. In this case the main points for consideration were (a) whether the confession of the appellant was voluntary, (b) where it was true, and (c) what independent corroboration was furnished by the other evidence on the record.

16. We proceed therefore to consider the finding of the High Court from the aforesaid points of view. The learned Judges of the High Court accepted the confession of the appellant as voluntarily made and substantially true. Nothing has been stated before us which would show that the High Court was wrong in accepting the evidence of the Magistrate who recorded the confession: nor has it been pointed out that any rule relating to the recording of a confession was violated. It appears that the appellant was produced before the Magistrate at about 3 p.m. on the 22nd February 1954 and he was given time till about 4-15 p.m. to think over the matter; he was given again time till about 5 p.m. and then after the necessary caution and questioning, his confession was recorded at about 5 p.m. When examined under S.342 of the Criminal Procedure Code, the appellant said that he was beaten, his father was maltreated and that he was given something in tea which made him unconscious. The learned Judges of the High Court rightly pointed out that no attempt was made to prove or substantiate these suggestions. They further pointed out that there was no time for the police to extract the confessional statement from the appellant, and on the question of voluntary nature of the confession, the learned Judge said that they had no hesitation in rejecting the defence plea that the confession was not voluntary. We see no reasons for holding that finding of the High Court is in any way vitiated.

17. The next question is whether the confession contained a true account of what the appellant had done on the night in question. Apart from some of the differences between the two confessional statements which we have already dealt with, learned counsel for the appellant has not suggested any other substantial ground on which the confession of the appellant should be held to be untrue. The learned Judges of the High Court have set out the circumstances which corroborate the confession as to the manner in which the crime was committed. There is, first of all the Dopatta (Ex. P-31) which was tied round the neck of the women. It undoubtedly corroborates the confession as to the manner in which, according to the appellant's confession, the woman was strangled. Then, there are the broken trunks and locks which also corroborate the manner in which the crime was committed. It is unnecessary to repeat all the circumstances, because they have been set out in full by the learned Judges of the High Court. There was in this case enough corroboration of the manner in which the crime was said to have been committed in the house of Mst. Chinti on the night between the 18th and 19th February 1954.

18. Now, the question is whether there was corroboration with regard to the participation of the appellant in the crime. The learned Judges of the High Court accepted the evidence with regard to at least three of the circumstances alleged against the appellant namely, (1) the identity of the Chaddar (Ex .P-4), (2) the recovery of the gold ear-rings from their hiding place near the "pipal" tree and (3) the recovery of the blood-stained shirt (Ex .P-5) from the person of the appellant. These three circumstances, if accepted as true, undoubtedly connect the appellant with the crime. It is necessary to emphasise here that the rule of prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused person in the crime must be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered after the confessions were made, (see Hem Raj v. State of Ajmer) 1954 SCR 1133; (AIR 1954 SC 462) (F). If the rule required that each and every circumstance mentioned in the confessional statement must be separately and independently corroborated, then the rule would be meaningless in as much as the independent evidence itself would afford sufficient basis for conviction and it would be unnecessary to call the confession in

aid. As was observed in Kashmira Singh v. State of Madhya Pradesh 1952 SCR 526. (AIR 1952 SC 159) (G), "Cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction; in such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

19. The learned Judges of the High Court have given very substantial and compelling reasons why they differed from the trial Judge with regard to the three circumstances mentioned above. We have examined the reasons given by the trial Judge in respect of the aforesaid three circumstances, and we find that he approached the evidence of the witnesses concerned with an initial sense of distrust which has vitiated his findings. For example, the identity of the Chaddar (Ex. P-4) was fully established by the evidence of the tailor Ramchand (P.W.11). The reason which the learned Sessions Judge gave for not accepting the evidence of the tailor was that the police did not get the stitching on the Chaddar compared with the stitching usually made by the machine of the witness. Learned Judges of the High Court rightly pointed out that the reason given by the learned Sessions Judge was unsatisfactory and there was nothing on the record to show that a comparison of the stitching on the Chaddar with the stitching made by the machine of the witness would have served any fruitful purpose. Learned counsel for the appellant took us through the evidence of the tailor and said that there were other reasons why the learned Sessions Judge disbelieved the evidence of the tailor. In our opinion, the learned Sessions Judge discarded the evidence of the tailor from an initial sense of distrust of almost all the witnesses and gave no convincing reasons for disbelieving the tailor. The tailor had no enmity against the appellant and identified the Chaddar (Ex. P-4) at a time when there was not even a suspicion against the appellant. Similarly, with regard, to the blood-stained shirt (Ex.P-5), the learned Sessions Judge disbelieved the very clear evidence on the record merely on the ground that a person who had committed a murder would not continue to put on a blood-stained shirt for two or three days. The learned Sessions Judge forgot that the marks of blood found on Ex. P-5 were very faint marks, and the appellant when he changed his pyjama, as he said in his confession, might not have noticed that some faint marks of blood remained on the shirt. It was argued before us that the appellant did not go into the room where the two boys were killed, and therefore there could not be stains of blood on his shirt. It is clear, however, from the confession of the appellant that he did go into the room where the two boys were killed. When the appellant was examined under Section 342, Criminal Procedure Code, he denied that the shirt belonged to him. There was the evidence of a number of witnesses who proved that the shirt with faint stains of blood was taken from the person of the appellant on the 21st Feb. With regard to the recovery of the gold, ear-rings our attention was drawn to the confessional statement where the appellant said that, the ornaments fell down and were given to Jagir Singh. It is true that the confession of the appellant does not specifically say that he retained the gold ear-rings. The appellant, however, made a statement to the Sub-Inspector of Police to the, effect, that he had buried the gold ear-rings near a "pipal" tree and the ear-rings were recovered from the place pointed out, by the appellant, The learned Sessions Judge drew a distinction between possession and knowledge, and held that the appellant merely knew where, the ear-rings had been concealed but he did not posses them. This distinction drawn by the learned Sessions Judge was not justified on the evidence in the record, and the statement of the appellant that he had buried the ear-rings was admissible in evidence under Section 27 of the Evidence Act. In our view, the learned Judges of the High Court rightly held that the of the gold ear-rings was a circumstance which connected the appellant with the crime in question.

20. With regard to the Chaddar (Ex .P-4), our attention was drawn to the confession of the appellant in which he said that he had entrusted the Chaddar to Jagir Singh, and it was argued that the

recovery of the Chaddar from the room in which the two boys were killed afforded no corroboration of the participation of the appellant in the crime. The Chaddar undoubtedly belonged to the appellant. It is worthy of note that this Chaddar,(Ex .P-4) was also stained with human blood; and the existence of the Chaddar in the room where the two boys were killed is a circumstance against the appellant and does afford corroboration of his participation in the crime.

21. As a matter of fact, the three circumstances found against the appellant, namely (1) recovery of his blood-stained Chaddar from the room where the murder took place, (2) recovery of the gold ear-rings which belonged to the deceased woman and (3) recovery of a blood- stained shirt from the person of the appellant, were all circumstances which, if believed, would connect the appellant with the crime. The confession lends further assurance to the evidence relating to those circumstances. The learned Sessions Judge gave a fantastic reason for not accepting the evidence as to the recovery of the ornaments against the appellant. He said that as there was no evidence that the woman was wearing the ornaments at the time when the crime was committed, the evidence of their recovery did not show that the appellant was in any way connected with the crime. The reason, as we have said, is fantastic. The woman was dead; obviously she could not give evidence to show that she was wearing the ornaments at the time when she was killed. The husband gave evidence to the effect that before he left for Kartarpur, he had seen the gold ear-ring being worn by his wife there or four days prior to his departure for Kartarpur. The prosecution examined the goldsmith who had prepared the ornaments. It is difficult to understand what better evidence the prosecution could give. The way in which the learned Sessions Judge, dealt with the evidence regarding the recovery of the ornaments is only one of what we have already stated, namely, that the Learned Sessions Judge dealt with the evidence in, the case with an initial sense of distrust. Instead of assessing the evidence on its merits he indulged in speculation and drew unjustified distinction in order to discredit the testimony of the witnesses. In our opinion, in reviewing the evidence on which the order of acquittal was founded, the learned Judges of the High court did not disregard principles which should guide a court of appeal, in dealing with an appeal under the provisions of Section 417, Criminal Procedure Code.

22. The appellant is a young student. We greatly deplore the fact that a person like the appellant should have thought fit to commit such a heinous and brutal crime. He is lucky to have escaped the extreme penalty, and it is to be hoped that by his future conduct the appellant will prove that he deserves the good fortune of having escaped the extreme penalty of the law.

23. For the reasons given above, we hold that no grounds have been made out for interference with the judgement and order of the Punjab High Court dated the 27th of April 1955. The appeal fails and is dismissed.

Appeal dismissed.

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