

SUPREME COURT OF INDIA

Ram Chandra

Vs.

State of U.P.

C.A.Nos.133 and 134

(B. Jagannadhadas, S. J. Imam and P. Govinda Menon, JJ.)

26.11.1956

JUDGEMENT

JAGANNADHADAS, J. - These are two appeals by special leave against the judgement of the High Court of Allahabad confirming that of the Sessions Judge of Allahabad. Both the appellants were convicted and sentenced for having committed various offences inclusive of the offence under S. 302 of the Indian Penal Code and sentence of death therefore against each. At the trial there were five other co-accused charged in respect of the same offences but they were all acquitted. The victim of the offences was a boy named Om Prakesh aged about 14 years. He is the son of one Chauhan, a civil gazetted officer in Ordnance Depot, Chheoki, Allahabad, drawing a pay of about Rs. 600 per month and believed to be rich. The case against both the appellants is that they, along with the five others who have been acquitted, conspired to extort a sum of Rs. 10,000 from Chauhan by kidnapping and murdering his son, Om Prakash. The appellant, Ram Chandra, is a person about 25 years in age, who has received education up to Matriculation standard and was working at the time as a clerk in the Accountant-General's office U.P. He is said to have been a native of Kohaat now part of West Pakistan. Appellant, Ram Bharosey, is a person, about 49 years in age and was a clerk in the Municipal Office at Allahabad. Both of them were living in the same street in Allahabad as Chauhan. It is in evidence and not disputed, that the boy, Om Prakash, was in the habit of going to appellant, Ram Chandra's house now and then and mixing with the members of that family, including Ram Chandra. It is also beyond dispute that the boy, Om Prakash, left his house about noon on the 9th June 1952, and is missing since then. In spite of strenuous efforts to trace him he has not so far been found. The prosecution case is that in pursuance of a conspiracy between the two appellants and the acquitted accused, the boy was taken by the two appellants and one Satya Prakash, to the river Jumna on the evening of the 9th June 1952, and that the two appellants took him into the river pretending to teach him swimming and drowned him them forcibly and stabbed him with a knife. Having thus brought about his death and disappearance on the evening of 9th June 1952, they sent a series of threatening letters purporting to be from one Zalim Daku on various dates commencing from June 10, up to July 4, 1952 and pretending that the boy was in his possession and that if a sum of Rs. 10,000 is paid he will be restored or otherwise he will beheaded. During this period they were constantly moving with Chauhan posing themselves as his friends to help him in tracing the boy but in fact misleading him from the right track and persuading him to agree to pay up the amount in order that he may be able to recover the boy. Chauhan ultimately agreed to pay Rs. 5,000 and in fact arranged to pay up the same in the manner which the letters from Zalim Daku indicated. The letters also undertook that the boy will be restored the next day after the payment. But ultimately the boy was not restored though the money was taken away. During this period the police were also on the track. Chauhan lodged a complaint to the police about the disappearance of

the boy on June 30, 1952, the very next day. Chauhan was also keeping the police in touch with all the stages and was handing over to them then and there every letter that he was receiving from Zalim Daku. When he paid the ransom on July 4, he took the step of previously producing before the Additional District Magistrate the currency notes of Rs. 5,000 and getting their numbers noted by him. The police traced the possession of some out of these notes to the appellants. A substantial number of those notes were recovered from the appellant, Ram Chandra, and one note was traced to the appellant, Ram Bharosey. Investigation showed that all the letters received by Chauhan purporting to have been sent by Zalim Daku, were in the hand-writing of the appellant Ram Chandra, according to the opinion of the handwriting expert. No trace, however, of the boy could be found. Not only was the dead body not found but absolutely no other material has been discovered which would indicate either the factum of murder or the perpetrator thereof. Both the appellants were arrested on July 6, 1952. Appellant Ram Chandra made a confession before a Magistrate on October 10. The appellants were thereafter tried and convicted in respect of charges under S. 120-B, Ss. 302, 201, 364 and 386 read with S. 120-B or in the alternative with S. 34 of the Indian Penal Code. They were sentenced as follows, to death under S.302, I.P.C., to transportation for life under S. 364, I.P.C., to ten years' R.I. under S. 368, I.P.C. and to seven years R.I. under S. 201, I.P.C. No separate sentence was awarded in respect of the offences under S.120-B. These convictions and sentences were confirmed and upheld by the High Court on appeal, and hence this appeal by both the appellants.

2. For a proper appreciation of the case, it is necessary to set out briefly the contents of the various letters admittedly received by Chauhan by post and purporting to be from Zalim Daku. Altogether seven letters were received, Exs. P 2 to P. 8. The first of these, letter purports to have been sent by post on June 10, 1952, and is as follows: -

"Lala Kishan Das Ji,,

Your son Om Prakash reached me through the cleverness of my disciples, and by the time this letter reaches you, he will be several hundred miles away from here. For this reason if you want to see your son safe and sound, you should send a sum of Rs. 10,000 to any place, where we may ask you to do so. You should bear it in mind that if you inform the police, etc., your son will be beheaded and his head will be sent to you. My men are following you constantly and I am regularly getting information regarding every minute. If you agree to pay the sum of Rs. 10,000 you should put a mark = on the wall in front of your "kothi". Put the mark resembling such two lines. If you do not agree (to pay the amount) put a mark like X. In case the money is not given, the head of your son will be cut off and you would receive the same within 15 days. When I see the mark like this = a letter will be sent to you again wherein the name of the place and the names of the persons will be mentioned. You will have to come with those men and hand over the money at that particular place. Let me remind you that if you inform the police it will be harmful to you. In that case the head of your son will be cut off and will be sent to you. You should particularly bear this thing in mind.

Sd, Zalim Daku."

The next letter is dated June 17, and informs Chauhan about the futility of running after the police to help him to trace his son and tells him that the writer will give him only three chances, this letter being the second chance and the third chance to be given by a letter to be written after the 20th. It asks him to make up his mind quickly whether he will part with his money or will have the head of his son. He instructs him to place quickly on the wall in front of his house the mark = indicated in his letter so as to convey his consent to pay the ransom. It also assures him that the writer has no

personal grudge against him and that his boy will not be put to any trouble but that he must unfailingly get the ransom of Rs. 10,000. The letter contains a number of other details indicating knowledge of the writer about the movements of Chauhan and his contacts with the police and the movements of various other persons along with Chauhan including the two appellants. The third and fourth letters dated June 22 and 23, were received on the same day enclosed in one cover. The third letter dated June 22, informed him, that in spite of his writing to him that his son is with him, he is trying to approach the police and that the police cannot trace his son, that his son is sad and deteriorating in health, that he has written to him for the last time and that he cannot delay the matter for more than a week at the most and that in case his terms are not acceptable he will not hesitate to put an end to the life of the boy and that he should paste a paper on the outside of his door containing the mark of two lines and that all this must be done by the evening of the 24th. The fourth letter dated the 23rd purports to offer a concession and undertakes to accept Rs. 7,000 as the ransom instead of the original demand of Rs. 10,000 and asks that the mark on the wall should be placed by the 24th and promises thereafter to send a letter on the 25 indicating the place, time and date where the money is to be kept for the writer to get it. It is in evidence that after the receipt of these letters a poster was pasted at the instance of Chauhan on the 25-26th June in front of his gate compound wall with the words "I can pay Rs. 3,000 up to 1st July" and along with it the mark indicated in the previous letters was put. Thereupon another letter dated the 28th June was received which intimated that the mark put by him has been seen, but that nothing less than Rs. 5,000 would be received and giving detailed instructions as to where the money should be kept and who all are to accompany for his assistance. It is to be noted that the two appellants are to be amongst those who, according to the writer of that letter, are insisted upon for accompanying Chauhan when he goes to deposit the money at the appointed place and at the appointed time. A sketch also was attached to the letter indicating the place where the money in a bag was to be kept. The place indicated is a small culvert after passing over the rail-way bridge on the river Jumna. This letter was accompanied by another letter dated the 1st July reiterating that he cannot take anything less than Rs. 5,000 and reiterating also the instructions given in the previous letter as to the place where the money is to be kept, the persons who are to accompany, and other details and precautions. This was followed by another letter dated 8-7-1952, containing some further instructions. It is in evidence that in pursuance of the various instructions, Chauhan with his party, including the two appellants, went to the spot. i.e., the culvert near the Jumna railway bridge and placed there the sum of Rs. 5,000 in a bag. But before doing so he got the numbers of the actual currency notes which he was about to give to the person purporting to be Zalim Daku, noted by the Additional District Magistrate on the 3rd and 4th July. After having deposited the amount, these persons in two batches were waiting at each end of the Jumna railway bridge. It was found that the money was lifted away by some unknown person at about 8.30 p.m. and that in its place a letter dated the 4th July was placed. This letter indicated that Chauhan should go to the (Allahabad) Junction railway station "tomorrow" (i.e. 5th July) at 3 O'clock and take his son away. There was no indication whether this meant 3 p.m. or 3 a.m. Chauhan went to the Junction railway station at 3 p.m. and did not find his son. He waited on till 3 a.m. The two appellants came there at about 12 in the night ostensibly to keep company with him. The police came on the spot and arrested both the appellants at the station and recovered one ten rupee note from a betel shop keeper close by who stated, at the time, that the appellant Ram Bharosey gave that to him for the purchase of betel-leaves. That currency note was subsequently found to be one of the notes whose numbers had been noted. Thus both these appellants were arrested on the early morning of the 6th July. On a search of appellant Ram Chandra's house, a sum of Rs. 115 was recovered out of which eleven ten rupee notes tallied with the noted numbers. On the 7th July the police officer interrogated both the appellants. Following that interrogation, Ram Chandra with the police proceeded to his house. He went into a room therein and dug the ground

and brought out two bundles containing currency notes of ten rupee denomination. The notes totalled a sum of Rs. 4,650 and the numbers thereof tallied with the noted numbers. It may be mentioned that on the 7th July Chauhan received another letter purporting to be from Zalim Daku bearing dated 5th July. This letter informs about the receipt of the ransom and intimates Chauhan that he need not be anxious about the boy, that he should not search for him in vain and that he can shortly meet his son and be satisfied. The appellants were arrested before receipt of this letter.

3. As already stated previously, the various letters with the addresses on the envelopes relating thereto purporting to have been written from Zalim Daku have been found by the hand writing expert to be the writing of the appellant Ram Chandra. In addition, to this opinion there were certain items of internal and external evidence which confirmed this opinion. For instance the letters contain information about the movements of Chauhan most of which, on the evidence, were known only to the two appellants. The evidence disclosed also conduct of the appellants which disclosed advance information of the contents of the letters to be received. There was found in the letters the fairly constant use of the word Bagi, which is found to be the characteristic of the appellant Ram Chandre's undisputed letters. There was the fact of his ability to supply certain obvious omissions in the letters such as Nahi when he was asked to read them in the normal course, on the ground of illegibility. These and other features enabled the courts below to find to their satisfaction that all these letters were written by the appellant Ram Chandra. On the basis of the above material the main facts relating to the case, found concurrently by both the courts below are that (1) a substantial portion of the currency notes, whose numbers had been noted and which formed the ransom were found in the possession of the appellant Ram Chandra, (2) one of such notes has been traced to the possession of the appellant Ram Bharosey, who, on the evidence, gave it to the betel shop keeper at the Allahabad Junction Railway station for purchasing betel leaves and (3) all the ransom letters were in the hand-writing of the appellant Ram Chandra. The further important evidence in the case was that relating to the confession made by the appellant Ram Chandra while he was in jail custody. Now as judgment show, the conviction in respect of the offences charged against both these appellants is based mainly on this confession corroborated by the above facts. The first question, therefore, that arises is how far the reliance on the confession for the conviction and sentence relating to the various offences was safe on the facts and circumstances of this case. To appreciate the position, thus arising, it is necessary to set out the confession and the attendant circumstances.

4. The confession of the appellant Ram Chandra, which was recorded on 10-10-1952. is as follows:

"The schemes for kidnapping Om Prakash and for getting money had been prepared between Ram Bharosey and myself several days before the boy was kidnapped and we were in quest of an opportunity. On Sunday the 8th June 1952, Om Prakash, Satya Prakash and I started from the house. Ram Bharosey had left for the direction of the temple of Someshwar Mahadeo, before us. After that all the three of us went to Ram Bharosey near the temple after passing over the Yamuna Bridge, behind Arail and along the canal. After that all the four of us went to the bank of the Yamuna on the pretext of bathing, Our purpose was to kill Om Prakash, but we did not get an opportunity there. For this reason after bathing in the river we went for some distance ahead along the bank of the river down the stream. Some men were present there also. We returned afterwards as we did not get in opportunity on that day. Ram Bharosey again reached home before us. We reached home afterwards on foot. Ram Bharosey came on a bicycle. Om Prakash was scolded by his mother for his coming late to his house. He then came to my house and took me with him. I told his mother that he had gone out with me. On the same night Ram Bharosey and I prepared a scheme for the next day, that is, for the 9th of June, that Om Prakash should be taken to the bank of the Yamuna, further ahead of Dariyabad, and should be killed. We wanted to do so in order to facilitate our getting money.

On the same day, i.e., the 8th of June, it was explained to Satya Prakash that he should bring Om Prakash near Dariyabad through Atarsuiya at about 2 O'clock the next day,. Ram Bharosey said that he would meet me at the crossing of Katghar at 3 O'clock. According to this programme Satya Prakash started from home with Om Prakash at about 2 O'clock on the 9th June, and I reached the crossing of Katghar at about 3 O'clock passing by the Christian College. Ram Bharosey also reached there by a rickshaw shortly after I reached there. He left the rickshaw there. From there both of us reached a little ahead of Dariyabad after passing through Dariyabad. Both of us began to search for a safe place there. After seeing the place both of us began to wait for Satya Prakash and Om Prakash, on the road side. Both of them reached there at about 4.30 p.m. From there we took Satya Prakash, and Om Prakash to the place which we had seen. All the four of us began to have a bath there.

After that we made Satya Prakash to sit on the bank of the river to keep a watch. Ram Bharosey and I began to teach swimming to Om Prakash. His knee part of the body was towards me and the rest was towards Ram Bharosey. In the course of teaching him swimming, Ram Bharosey and I drowned him in the water. I caught hold of his feet so that he might not move them and Ram Bharosey put his feet on his neck and pressed it. He continued making movements for some time in the water. It might have taken 5 or 7 Minutes. Thereafter his movements stopped. After that he was taken towards the bank and then Ram Bharosey struck him with a knife on his ribs towards the right side.

He dealt another blow on his stomach. He dealt the third blow also on the stomach. On this occasion the blade of the knife was left in the stomach and the handle remained in his hand. After that the clothes of Om Prakash were tied on him. He was taken a little ahead in the water and was pushed ahead there. His shoes were filled in with wet earth and were thrown into the water. The handle of the knife was also thrown in the water. Thereafter Satya Prakash returned home through the way of Dariyabad and Ram Bharosey and I reached the Chowk, via Atarsuiya. Afterwards Ram Bharosey went to the Civil Lines and I returned home. On the next day, that is, on the 10th of June the scheme of writing the letters for extorting money was prepared. I wrote the letter after coming to office. I dropped it in the letter box after showing it to Ram Bharosey. Many such letters were sent in the same way. On the day on which the money was kept on the bridge in front of the Agriculture College (?) picked up the money and put a letter in the bag which I had written before. Thereafter all of us i.e. K.D. Chauhan, Diwan Chand, Durga Das, Ram Bharosey and I my-self returned from there and reached the house. Shri K.D. Chauhan, Ram Bharosey and I stood up from there and went to our houses. After the money was taken out it was put into the box of Ram Bharosey. On the following day, i.e., on the 5th of July, that is the day on which the boy was to be, received Ram Bharosey and I went to the railway station. K.D. Chauhan and Durga Das also reached the station When in spite of waiting for the boy till night he could not be Found, Ram Bharosey and I went home at about 10 O'clock on the pretext of taking our food. Ram Bharosey had some suspicion at the railway station on account of some talks between K.D. Chauhan and Durga Das to the effect that they were suspecting Ram Bharosey. For this reason he said to me that I should take the money and keep it with me. After taking the money from there, Ram Bharosey and I reached the house and buried the money under the ground. Thereafter both of us returned to the railway station. On reaching them Ram Bharosey took out a ten rupee currency note, which was out of the same money and purchased cigarettes at the railway station from the shop of the cigarette vendor. All of us remained sitting at the railway station throughout the whole night. At 5 a.m. on the 6th of July the police arrested Ram Bharosey and me. Then both of us were reached at the Kotwali. The searches of our houses were also taken. We were then sent to jail.

I can lead to and point out all the places where we took Om Prakash and where he was killed. After

taking off our clothes, we had put them on the bank of the river. After coming out from the water we put them on".

The confession was retracted at the trial. The circumstances relating to the recording of this confession are the following. The appellant, Ram Chandra, as already stated was arrested on the 6th July 1952. The recoveries of the notes from his possession were partly on the 6th and mostly on the 7th, the total amount so recovered being Rs. 4765 (Rs. 115 plus Rs. 4650). The appellant was sent to Naini Central Prison on the 13th July.

On a police report that he was willing to make a confession he was produced from the jail before a Magistrate on the 17th July. On that date he did not confess. He appear to have been again produced before a Magistrate on the 22nd July 1952, but again to have refused to make any confession. The learned Sessions Judge states this as a fact. But the High Court notes this and states that there is no evidence to support this observation of the learned trial Judge. We find, however, that the appellant Ram Chandra in his examination under S. 364, Criminal P.C. by the trial Judge states as follows:.

"After 8 days of my arrest I was sent to Jail. On 16th or 17th July I was examined there by Sri. Chaturvedi. After 5 or 6 days I was called alone in the Court. Here Sri K.P. Srivastava and two or three Sub-inspector took me to a room. For two or three hours they were interrogating about the boy and about this case. In the evening I was sent to Jail at 4 or 5 p.m."

The appellant Ram Bharosey in his examination under S. 364, Criminal P.C. says as follows:

"This much I know that Ram Chandra had given a statement before the City Magistrate on 16th July or 17th July. He was summoned to the Court on the 22nd July. After that he was sent to the solitary cell in August".

These statements seem to confirm the observation of the trial judge that Ram Chandra was brought up before the Magistrate again on the 22nd and was not prepared to confess even then. However this may be, there is clear indication of the state of his mind as regards his willingness to make a clean breast of his alleged guilt as late as on the 30th August 1952. The prosecution has given evidence that on that date he had written a letter to some one of his people to be surreptitiously smuggled out of the jail, and that this letter was seized from his possession by the Assistant Jailor. That letter has been exhibited. Therein he gives instructions that there need be no worry about him, that they cannot cause him any harm in the case, that arrangement should be made quickly to obtain for him an order for bail and that the other suspects in the case such as Balakrishna, etc. should be told not to make any statements. This letter clearly indicates that even by the 30th August he was in no mood to make any confession. It appears, however, that on the 7th October a letter signed by the appellant Ram Chandra was sent to the District Magistrate, Allahabad, through the Superintendent of the Jail to the effect that he wanted to make a confession and asked for its being recorded at an early date. It would appear that at about this time he was kept in solitary confinement and that the police officer, Shri K. P. Shrivastava, P.W. 40, who was investigating this case, went to the Naini Jail on the 8th and 9th October. These facts are stated in the judgment of the learned Sessions Judge and there is nothing in the judgment of the High Court to show that the statement is not correct. Indeed the Superintendent of the Jail in his evidence admits that the appellant Ram Chandra was kept in a separate cell for one night. He says as follows :

"He (Ram Chandra) had been kept aloof, that night, be that segregation or separate confinement. I cannot give the reasons why he had been kept in separate confinement."

On receipt of the application of the appellant for the recording of his confession, the District Magistrate deputed Shrimati Madhuri Shrivastava to record the confession. The confession was actually taken by her on the 10th October. She went to the jail and recorded the confession inside the jail. The recorded confession shows that her questioning was very meagre and that she did not attempt to ascertain why he was making the confession after such a long lapse of time. In cross-examination she says that she thought it improper to record his statement in Court and during Court hours. Presumably she was not even aware of the standing orders issued by the Government of Uttar Pradesh which are printed as Appendix 19 at page 566 of Manual of Government Orders Uttar Pradesh (1954 Edition). The first rule thereof says that confessions may ordinarily be recorded in the open Court and during Court hours unless for exceptional reasons it is not feasible to do so. This is very important provision which emphasises that the Magistrate in recording confession is exercising part of his judicial function in the manner prescribed by law. One of these instructions also stated that the Magistrate should enquire the reason why the accused is making the confession knowing that it may be used against him. The Magistrate has appended the usual certificate that she was satisfied that the accused made the confession voluntarily. Quite clearly the Magistrate is an inexperienced officer. The High Court itself recognised this and says as follows:

"It is unfortunate that the Magistrate did not make a satisfactory enquiry into voluntary nature of the confession. She did not ask him why he was making the confession, which is the most important question to be put to a person who wants to confess She did not care to find out for how long he had been in jail and police custody, what was the treatment meted out when he was in police custody and whom he had interviewed in jail. The recording of a confession is an important matter and ought to be entrusted to an experienced Magistrate. In a serious case, such as the present one, every precaution ought to have been taken by the District Magistrate to see that the confession was taken down in a proper manner in accordance with law and he should not have entrusted the task to an inexperienced Magistrate like Shrimati Madhuri Shrivastava."

Neither of the Courts below seem to have noticed the impropriety in this case of the confession having been taken in jail without any adequate reason therefor and in disregard of the instructions contained in the Government orders above referred to. Notwithstanding that both the Courts below noticed some of the features mentioned above and relating to the recording of the confession by the Magistrate, they have not only thought the confession was properly recorded but also that it was voluntary.

5. A question has been raised before us whether these concurrent findings of the courts below could be challenged before us. Questions have also been raised whether a retracted confession can be the basis of a conviction without any corroboration and whether, if corroboration is required, such corroboration should be in respect of each of the offences, the commission of which the confession discloses (as in this case, murder kidnapping and extortion) or whether the corroboration by way of material particulars which relate to one or more of such evidence is sufficient, in respect of the entire confessional statement. We do not consider it necessary in this case to go into and decide any of the questions thus raised.

6. In this case the outstanding feature is that there is no tangible evidence, either of a direct or of a circumstantial nature, in support of the fact that the murder has been committed. It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable. But the question before us is whether the confession by the alleged murderer, by itself, and without more is enough as a matter of prudence, if not of law, to base a

conviction for murder thereupon. Normally speaking it would not be quite safe to do so, though we do not wish to lay it down as a matter of law. It appears to us, however, clear that in this case it would be extremely unsafe to base a conviction for murder on the confession of the appellants Ram Chandra which, as pointed out above, is clearly open to a good deal of criticism, and has been taken in the jail without adequate reason, a fact, the significance of which has not been noticed by either of the courts below. We are also of the opinion that the story of murder as given in the confession is somewhat hard to believe. That story is detailed in the portion side-marked 'A,' of the confession* set out above. It is not a case where the accused merely states that he and his confederate forcibly drowned the boy in the river under the, pretext of teaching him swimming. He gives a version of how actually it was done which we consider highly improbable. What purports to have been done to the boy before his body was taken out of the water and struck with knife, etc. is difficult to imagine and follow rationally. We have attempted to understand it with the help of the Advocates on both sides. But none of them have been able to give us a rational view of the thing having been done in the way it purports to have been. It appears to us that this portion of the confession which is crucial as regards the offence of murder, is an indication that the person was saying something out of his imagination rather than from his recollection of what actually he did and saw. Besides, it appears to us unlikely that persons who caused the disappearance of the murder in the way suggested one evening would have ventured to start the campaign of extortion by threatening letters on the very next day and without waiting for a few days to see that the traces of the crime did not disclose themselves by the inevitable search and investigation that would follow. No doubt in a case where there is other clear and reliable evidence of murder such a description of the manner in which the murder was committed might be of no serious consequence. But where the proof of the factum of the murder is itself solely dependent upon the confession, the apparent improbability of the manner in which the murder is said to have been brought about in the confession would be a cogent circumstance against the confession being relied upon. Having given our careful and anxious thought to all the features of the case and to the findings of the Courts below in this behalf, we have come to the conclusion that the confession in this case is not safe to be acted upon, at least, in so far as the commission of murder is concerned. This is not to say, that we are satisfied that the boy is still alive. On the other hand, having regard to the lapse of time, it is not unlikely that the boy has been done away with. But we are not satisfied that the murder, if any, has been committed at the time and the place and in the manner indicated in the confession. One of the learned Judges of the High Court in his very elaborate and leading judgment says as follows:

* In this report please see the paragraph with inset 'A' In Cols. 1 and 2 on page 385-Ed

"They had threatened to kill him and must have killed him even though their demand was satisfied."

This seems to imply that the murder was subsequent to the threats conveyed in the letters. If so, the learned Judge himself has not accepted the truth of the murder having been committed in the manner and at the time indicated in the confession. The truth can only be a matter for guessing. In our opinion, both the appellants are entitled to the benefit of doubt in respect of that offence. Accordingly they must be acquitted in respect of the offences under Ss. 302 and 201 read with Ss.120B and 34, Penal Code.

7. There remain the conviction as against both the appellants under Ss. 364 (kidnapping) and 386 (extortion), Penal Code. We can see no reason to differ from the findings of both the courts below as regards the commission of these offences by both the appellants. It has been strenuously urged before us that once the confession is considered not safe to be acted upon the convictions under these sections also cannot be sustained. To consider the validity of this argument, it is necessary to

deal with the case of each of the appellant separately

8. So far as the appellant Ram Chandra is concerned the circumstantial evidence against him in respect of both the offences is clear. On the finding that the various ransom letters are in his handwriting and on the finding that a very large number of the noted currency notes which formed the ransom money was traced to his possession, there can be no doubt as to his conviction under S. 386, Penal Code. It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction. But in this case the authorship of the letters has been held by the courts below to be that of appellant Ram Chandra, on various items of external and internal evidence already noticed above, in addition to the opinion of the expert. As regards the charge against him under S.364, Penal Code, for kidnapping. though there is no direct evidence. the various ransom letters categorically state that the missing boy is in the custody or control of the writer thereof. It is asserted therein that on payment of the ransom money, the boy will be restored at a particular time and place. We find it hard to believe that this can be mere pretence in order to strike terror in the mind of the father of the buy and to obtain money. It is to be noticed that the ransom letters started from the day next after the disappearance of the boy and they continued pouring in, right up to the 4th July, a period of over three weeks. It appears to us to be extremely improbable that a person can keep up the pretence for so long if he had not the absolute confidence that there was no chance of the boy returning until the time which he had to take for bringing about payment of the ransom. The tone of these letters justifies one of two inferences, viz., either the boy has been already murdered, as the confession suggests, or the boy, having been kidnapped, is kept in effective custody so as not to be able to escape. We have, for reasons already given, felt it unsafe to convict the appellant Ram Chandra of the offence of murder. But there is absolutely no reason why his very admissions in the various letters of which he has been found to be the author, should not be treated as clear evidence against him that he has obtained the custody of the boy by kidnapping. It is true that the boy has not, in fact been restored as promised in the various letters. But this by itself is no indication that the boy had not been kidnapped by persons of whom the writer of these letters is one. It may he recalled that though the boy was not restored on the 5th July as promised, there was a further letter from the same writer dated the 5th July promising to restore the boy later on. This promise may not have fructified since before it was received the appellants were arrested. We are of the opinion that the circumstances lead to the conclusion that the appellant, Ram Chandra is guilty of the offence under Ss. 364 and 386 of the Indian Penal Code. It may also be mentioned that though we have considered it unsafe to act upon the confession as basis for the conviction in respect of murder, there is no reason; why the confession in so far as it relates to the two offences of kidnapping and extortion should not be taken into consideration as against this accused to lend assurance to the conclusion we have reached against him in so far as these offences are concerned based on circumstantial evidence.

9. It is necessary to add that it is admitted before us by the learned counsel for the appellant, that, notwithstanding that we have acquitted the appellants of the offence of murder, this appellant can still be held to be guilty of the aggravated forms of kidnapping and extortion under these two sections and we are also satisfied about it. The modus operandi disclosed in the ransom letters was clearly by putting his father in fright of the boy being murdered. There was throughout the likelihood of the boy being murdered in case the ransom money was not paid for one reason or other.

10. Next as regards the case of the appellant Ram Bharosey both the Courts have for good reasons, found that he along with the appellant Ram Chandra, is guilty of criminal conspiracy to commit the offences charged. This would equally support the case against him under S. 34, Penal Code. In our

opinion there; is no reason to reverse that finding. It is true that in the judgments of both the courts below the confession of the appellant Ram Chandra is relied on against Ram Bharosey for holding him guilty of the offences charged against him. It is rightly urged that under S. 30 Evidence Act confession of a co-accused can only be taken into consideration but is not in itself substantive evidence. But we are satisfied that even excluding the confession as substantive evidence, there is enough against the appellant Ram Bharosey to find him guilty of the offence for criminal conspiracy to commit the offences of kidnapping and extortion along with the appellant Ram Chandra. There is evidence that Ram Bharosey was aware of the contents of at least some of the ransom letters before they were actually received by Chauhan. This is particularly so with reference to the contents of the letter, EX. P-8 received on the 3rd July a portion of whose future contents was disclosed by the appellant Ram Bharosey to Chauhan when he felt a doubt on the 1st July. Similarly also there is evidence that Ram Bharosey anticipated the contents of the letter, Ex. P-7 when on receiving the letter Ex. P.6 Chauhan felt a doubt and expressed it to this appellant. There is also evidence that Ram Bharosey was seen suspiciously moving about on the 26th June examining the place near the Jumna bridge where ultimately the ransom was instructed to be kept. This examination was a few days before the instructions were issued and is very significant. There is evidence about both the appellants being together constantly and repeatedly suggesting to Chauhan the payment of the money during the period when he was receiving the letters and of their getting him to agree. There is also the evidence that when he was arrested, one of the notes which was part of the ransom was traced to him on the contemporaneous statement of the betel shop keeper. All these facts are sufficient to sustain the finding of criminal conspiracy as between both the appellants, Ram Chandra and Ram Bharosey. The concurrent finding, therefore, that he is guilty of criminal conspiracy along with Ram Chandra for the commission to the offences under Ss. 364 and 386, Penal Code is not open to challenge. It is also clear that, on the same circumstantial evidence, both must be held equally guilty of the main offences themselves under S.34, Penal Code. Further, in view of the fact that the offences were actually committed in pursuance of the conspiracy or in pursuance of the common intention the appellant Ram Bharosey would be equally guilty with Ram Chandra of the two substantive offences under Ss.364 and 386, Penal Code and would be liable to the same sentence. (See S. 120-B, Penal Code taken with S. 109 Penal Code.)

11. It has been strenuously urged that so far as the sentence is concerned, if not in respect of conviction, a distinction should be made between Ram Chandra and Ram Bharosey. But in a case like this where the two accused acted in concert by virtue of a common intention and of a criminal conspiracy, their entire activities cannot, in the very nature of things, be brought out in evidence. Obviously such daring offences would necessarily have called for active planning and co-operation of both these appellants together and probably of other. We are, therefore, not able to make any distinction between them even as regards the sentence. We accordingly maintain the convictions and sentences against both the appellants under Ss. 364 and 386. Penal Code taken with Ss. 120-B and 34, Penal Code.

12. In the result the convictions of both the appellants under Ss. 302/34 and 201/34, Penal Code, and the sentence of death and rigorous imprisonment for seven years therefor, are hereby set aside and the appellants are acquitted of these charges. Their convictions and sentences and respect of the other charges are confirmed. Subject to this modification both the appeals are dismissed.

Appeal dismissed subject to certain modifications.

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