

Shankaria

Vs

State of Rajasthan

Criminal Appeal No. 561 of 1976

(R. S. Sarkaria, N. L. Untwalia, P. N. Kailasam JJ)

26.04.1978

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Rajasthan, by which the order of the Sessions Judge, Ganganagar, convicting the appellant under Section 302, Penal Code and sentencing him to death for the double murder of two persons in village Takhat Hazara, was confirmed.

2. The facts of the prosecution case are as follows :

3. A First Information Report was lodged on September 9, 1973 at about 7.30 a.m. by one Shyam Singh in Police Sadul Sahar, to the effect, that when he in the morning went to the Gurdwara of his village at about 7 a.m. for brooming and burning incense, as usual, he found three persons, one of whom, Mada Singh, lay groaning on a cot. The informant went back to the village, contacted Jagar Singh, Hari Singh, Sukhdarshan Singh, Amar Singh and others, and in their company, returned to the Gurdwara. It was then detected that Kartar Singh son of Hari Singh lay dead on a cot with injuries on his head. The other two persons, Mada Singh and Wazir Singh, were lying injured. The locks of the rooms were found broken and the goods lay scattered. After registered the case, the Station House Officer, Bhagwan Singh, reached the scene of occurrence. He prepared the site plan (Ex. P-8) and a connected explanatory note in which he recorded the physical facts noticed by him at the spot. Among other things, he found one blood-stained Kassi (Article 1) and a Dabbi (small tin-box) (Article 2). Some coins were also lying scattered there. He noticed some finger-prints on the Dabbi (Art. 2). He, therefore in the presence of witnesses including Sukhdarshan Singh (PW 6), Jaggar Singh (PW 8), prepared the seizure memo (Ex. P-14) in respect of the Dabbi and sealed it into a parcel. He also sealed the blood-stained Kassi into a parcel, vide Ex. P-12. He also took into possession blood-stained earth, clothes and broken locks from the scene. He also prepared the inquest report (Ex. P-12) in respect of the dead body of Kartar Singh deceased and sent it for post-mortem examination. Bhagwan Singh continued the investigation till September 12, 1973 when it was taken over by Bhanwar Singh.

4. A large number of crimes of this pattern involving murders or attempted murders were committed in Rajasthan and in the neighbouring States of Haryana and Punjab. Fifteen cases of crimes of a similar nature were registered in Ganganagar District alone, from February 1973 to May 1974. Naturally, the Police machinery of Ganganagar District came into motion. Bhanwar Singh Station House Officer, Saddar Police Station House Officer, Saddar Police Station, Ganganagar started investigation of some of those crimes. He took over the investigation of this case, also, on

September 12, 1973. Shri Shyam Pratap Singh Rathore, District Superintendent of Police supervised the investigation. Suspicion fell on the appellant who was found absent from his native village Karanpur, District Ganganagar.

5. On June 3, Shri Rathore accompanied by Bhanwar Singh, S.H.O., and one Subhash (PW 23) went to Bhatinda and arrested the appellant, Shankaria who had assumed the alias Ratan Lal. A Rickshaw driving licence issued by the Municipal Committee Bhatinda, dated April 4, 1974, for the period 1-4-74 to 31-3-75 in the name of Ratan Lal son of Jetha Ram, one watch and a golden chain were seized from his person. Bhanwar Singh prepared the memo (Ex. P-56A) in respect of the arrest of the appellant and his personal search. Immediately after his arrest, the appellant was told to keep his face muffled up, which he did. The appellant was then taken by the police to Ganganagar and lodged in the lock-up of the Police Station on June 4, 1974. Under orders of the Inspector-General of Police, the investigation was taken over by Shri Kashi Prasad Srivastava, Superintendent of C.I.D. on June 5, 1974.

6. On June 12, 1974, the appellant was taken by the police to Raisingh Nagar, and under the orders of the Magistrate, lodged in the judicial lock-up there.

7. On June 13, 1974, Shri Srivastava, Superintendent of C.I.D., submitted an application to the Judicial Magistrate, First Class, Raisingh Nagar, requesting that the confessional statement of the accused be recorded. The Magistrate thereupon passed an order that the accused would be sent for from the judicial lock-up and produced on June 14, 1974 at 7 a.m. for this purpose. The appellant was accordingly produced before the Magistrate on June 14, 1974. The Magistrate then put some question to the appellant by way of preliminary examination to ensure that he wanted to make a statement voluntarily. The Magistrate gave him some time for reflection and from 8.45 a.m. onwards, recorded his confessional statement (Ex. P-27).

8. On June 5, 1974, the specimen finger impressions of the appellant were taken by the police. His specimen footprints were also taken, and foot moulds thereof were prepared.

9. Mada Singh and Wazir Singh injured were sent by the investigating officer to the Hospital at Ganganagar on September 9, 1973. Since some argument was made before us with regard to the nature of the inflicting weapon, it is necessary to note the details of the injuries. Dr. Bahadur Singh found these injuries on Mada Singh :

1. Incised wound 1.50 ins. x 0.25 in. brain deep on the right side of forehead 1.00 in. above the eye-brow.
2. Incised wound 0.25 in. x 0.25 in. x 0.50 in. on right eye outer angle.
3. Lacerated wound 1.50 ins. x 0.25 in. x 0.50 in. in front of right ear in a curved fashion, convexity towards ear.

In the doctor's opinion, all these injuries were suspected to be grievous and caused with a sharp weapon, like the Kassi (Art. 1). Mada Singh succumbed to his injuries on September 11, 1973 at 6 a.m. in the Hospital.

10. Dr. M. P. Agarwal conducted the autopsy of Mada Singh and found these external injuries :

1. Bruise 2.50 ins. x 1.50 ins. on both the right eye-lids.

2. Incised wound 0.25 in. x 0.25 in. at the outer angle of right eye.
3. Incised wound 1.50 ins. x bone deep (brain matter deep) obliquely placed on the right frontal eminence 1.25 ins. above the right eye-brow.
4. Lacerated wound 1.50 ins. x 0.33 in x 0.50 in. in front of the tragus of right ear.
5. Soft tissues swelling 6.00 ins. x 5.00 ins. all over the right face and front temporal region.

On opening the body, the Doctor found soft tissue hematoma all over the right temporal, frontal, parietal and occipital region, and a linear oblique fracture of right temporal region with multiple fracture pieces and fracture of right fronto-parietal region under injury No. 3. There was sub-dural hemorrhage and membranes of the brain were found cut under injury No. 3. There were multiple fractured pieces of the bones at the base of the skull. The Injuries 2 and 3 in the opinion of Dr. Agarwal could be caused with the sharp edge and Injury No. 4 with blunt side of the Kassi (Art. 1). The injuries appeared to be caused by separate blows.

11. Dr. Bahadur Singh found these injuries on Wazir Singh (PW 14) on September 9, 1973 :

1. Incised wound 1.50 in x 0.12 and one-half in. upto brain on right parietal bone 2.50 ins. above the ear obliquely upward downward.
2. Incised wound 1.50 ins. x 0.12 and one-half in. x bone deep on right side of frontal bone 1.50 ins. above the eye-brow.
3. Lacerated wound curved shape outer part of eye starting from lateral side of eye-brow up to maxillary prominence.

Injuries 1 and 2, in the Doctor's opinion, could be caused with the sharp side of the Kassi (Art. 1), and were grievous; while Injury 3 could be caused with the blunt side of this Kassi. Wazir Singh was unconscious at the time of his medical examination.

12. Dr. Bahadur Singh performed post-mortem examination of the body of Kartar Singh deceased on September 9, 1973 and found these injuries :

1. Lacerated wound 2.20 ins. x 0.50 in. upto brain matter, on the frontal bone 2.50 ins. above the medial end of right eyebrow upward downward. Brain matter was seen from the wound. The bone was found fractured.
2. On right end anterior and lower part of parietal bone, there was circular injury of 1.50 ins. diameter half anterior part shows lacerated wound of size 1.50 ins. x 0.25 in. x brain matter deep and the other half showed abrasion mark.
3. Incised wound 0.50 in. x 0.25 in. x 0.25 in. above the lateral side of right eyebrow.

In his opinion, Injuries 1 and 2, could be caused with the base of the wooden handle affixed to the hook of the Kassi (Art. 1). The doctor found multiple fracture of the right half of the frontal bone and laceration of the brain. The injuries were sufficient

to cause death in the ordinary course of nature.

13. On June 29, 1974, the sealed packets containing the Dabbi (Art. 2) and the locks, together with the specimen fingerprints of the accused, were sent to the Rajasthan Finger-print Bureau, the Finger-Print Expert, Shri P. N. Tankha (PW 18) examined them and found two chance prints on the Dabbi. He took their enlarged photographs and found the chance print on the Dabbi. He took their enlarged photographs and found that the chance print Q1 on the Dabbi was similar to the left middle-finger specimen print (Marked S2) of Shankaria appellant; while the other chance print Q2 on the Dabbi was not distinct enough to admit of comparison.

14. During his examination at the trial, the appellant denied the prosecution case; he retracted the confession and said it had been made under duress. He also alleged fabrication of evidence of foot-prints, etc. by the Police.

15. The learned Sessions Judge found that the Confessional Statement (Ex. P-27) had been voluntarily made by the accused and that it was true. He further held that the confession had been corroborated by the medical evidence and the circumstantial evidence, namely : (a) the presence of a fingerprint of the accused on the Dabbi (Art. 2); (b) that one Railway ticket was issued from Sadul Sahar to Bhatinda on September 9, 1973; (c) the similarity (as per Expert, PW 18) of the foot-mould prepared from the foot prints found at the scene of crime on September 9, 1973, with the specimen foot-moulds of the accused; (d) Sojourn of the accused to Haridwar after committing the crime and his stay in a costly hotel there, on September 13 and 14, 1973, etc.

16. In the result, the Sessions Judge convicted the appellant under Section 302, Indian Penal Code for the murders of Kartar Singh and Mada Singh and sentenced him to death. He further convicted the appellant under Section 307 IPC for the attempted murder of Wazir Singh and also of offences under Section 459, 460 and 380 IPC for committing lurking house trespass by night and stealing Rs. 1,100 from there but he did not award any sentence on these counts in view of the death sentence imposed for the double murder.

17. Shankaria appealed to the High Court, while the Sessions Judge also made a reference for confirmation of the death sentence.

18. The High Court dismissed the appeal and confirmed the conviction and the sentence of death.

19. Hence, this appeal by special leave.

20. There is no ocular evidence of eye-witness in this case. At the time of occurrence, the three victims were the only inmates of the Gurdwara. Kartar Singh died at the spot. Mada Singh died in Hospital without regaining consciousness. The lone survivor, Wazir Singh (PW 14) was examined at the trial. He was a blind man. He had received the head injuries when he was asleep. On receiving those injuries he lost consciousness and regained it much later in the Hospital on September 9, 1973. In these circumstances, PW 14 was unable to say as to who had caused him the head injuries. He, however, did depose to the theft of Rs. 600 which he had kept in the Gurdwara. This amount had been raised from a contribution for construction of a room in the Gurdwara.

21. Thus the conviction of the appellant mainly rests on his confessional statement (Ex. P-27), which was recorded by the Judicial Magistrate, First Class (Shri S. K. Bansal, PW 6) on June 14, 1974, under Section 164 of the Code of Criminal Procedure.

22. The substantive part of this confessional statement, Ex. P-27, rendered into English, reads as follows :

It is an incident of about ten months back that I had purchased a Railway ticket from Bhatinda to Matili at 3 p.m. in the day and boarded the train from Bhatinda and reached Matil at about 7.30 p.m. Thereafter I took rail track and reached Takhat Hazara. I hid in the nala in the cotton field near Takhat Hazara. There, I kept sitting and stayed there up to 12.30 in the night. At about 12.30 I came out of the nala, crossed the line and reached the Gurdwara. There, I took off my clothes, chappals, and tried to climb the wall by the side of the line but could not succeed. Therefore, I climbed through the side and one Kassi was lying there in a corner. There in the courtyard, three beds were lying. I picked up the Kassi and hit on the head of one person from the back (reverse) side of the Kassi. Thereafter, I hit another person. I hit the third person after running, as he was sleeping very far. I then drank water, entered the kitchen but could not find anything in spite of search. Then I entered another room, opened the kunda (khuta). There a shirt was lying, from which I took out a key. I broke open the lock of another house with the help of a subble (iron bar). There I was able to get Rs. 400, out of which Rs. 300 were in cash and Rs. 100 as change (small coins). I then remained there for much time, drank water, smoked a bidi, brought water from the nearby Johar (tank) in a bucket, and bathed myself.

Then I opened the Gurdwara and searched it, but could not find anything. I then immediately left the village Takhat Hazara and took the railway track again and reached the road and got on Abohar-Sirsa Road. There I stayed up to 7 a.m. In the morning I boarded the bus for Sangria and took tea. Then I boarded the train for Bhatinda at 10 a.m. and reached Bhatinda at 12.30. There I got the clothes stitched. In the evening at 10, I boarded the train for Delhi, (then said) I went to Bikaner and not Delhi. I stayed for two days at Bikaner. After two days. From Delhi, I proceeded for Haridwar and stayed there in a rented room at Rs. 12 per day. I stayed at Haridwar for 8-9 days and then from Haridwar I proceeded for Rishikesh. There I stayed for two days and further proceeded for Lachman Jhoola. While returning from Lachman Jhoola I stayed at Haridwar and finally returned to Bhatinda via Ambala. I did not do any work for one month. Afterwards, I started Rickshaw driving. I used to commit thefts, and the police also used to catch me. I was turned out from the house by the people of my house and that is why I happened to ply the Rickshaw.

23. This confession was retracted by the appellant when he was examined at the trial under Section 311, CrPC on June 14, 1975. It is well-settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 CrPC the Court must apply a double test :

(1) Whether the confession was perfectly voluntary ?

(2) If so, whether it is true and trustworthy ?

Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must, before acting upon the confession reach the finding that what is stated therein is true

and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluation a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

24. Now, let us apply these tests to the confession (Ex. P-27). The first question is, whether the confession was voluntary ? In this connection, some undisputed facts may be noted. The appellant was arrested by Shri S. P. Rathore, Superintendent of Police of June 3, 1974 at Bhatinda. He was then taken to Ganganagar in Rajasthan in connection with the investigation of 15 crimes of similar pattern committed in Ganganagar District. The appellant remained in police custody upto June 12, 1974 on which date in the afternoon, he was brought by the police to Raisingh Nagar, where Shri Sukhdarshan Kumar Bansal, Judicial Magistrate First Class, was when then holding his Court. Under the orders of the Magistrate, the appellant was committed to the judicial lock-up at Raisingh Nagar in the evening of June 12, 1974. Thereafter, he remained there in the judicial lock-up for two days more. On June 13, 1974, Shri Kashi Ram, Superintendent of Police, submitted an application to the Magistrate, requesting him to record the confession of the accused. On that application, the Magistrate passed an order to the effect, that the accused be sent for from the judicial lock-up on the following day at 7 a.m. for recording his confessional statement. In compliance with the Magistrate's order, the appellant was brought from the Judicial lock-up in the morning of June 14, 1974 and produced before the Magistrate. At 8.20 a.m., the Magistrate put some questions to the appellant by way of preliminary examination to ensure whether he wanted to make a confession voluntarily. The questions put to the accused and the answers given by him during this preliminary examination, as recorded by the Magistrate, may be extracted :

#Q.1. From where did the police arrest you ? On what day or at what time ?Ans. I was arrested at Bhatinda. I was arrested on 3rd at 2.Q.2. For how much time are you in police custody ?Ans. I was in police custody from 3rd to 12th.Q.3. What sort of behaviour was given to you during that period ?Ans. I have been extended good behaviour by the police.Q.4. It has explained to you that it is not necessary for you to make any confession. Do you understand that it is at your discretion whether you make the confession or not ?Ans. I have understood that it is not binding upon me to make any confession and it is at my discretion.Q.5. Were you put to any physical torture or shown any fear compelling you to make any confession ?Ans. I was not put to any physical torture or any fear to made confession.Q.6. Were you told that 'you will be released or pardoned or any other benefit will be given, in case you make confession ?Ans. I was not told that I would be released or pardoned or any other benefit will be given, in case of making confession.Q.7. It has been explained to you that you will not be handed over to the police in case you do not make confession and that you will directly be sent to the JailAns. I have understood.Q.8. Do you understand that I am a Magistrate and that if you make any confession, it may be used against you in evidence ?Ans. Yes.Q.9. It has fully been explained to you that you are not bound to make confession and that you may give any statement whenever you like to make it voluntarily and that if you make confession that may be used against you in evidence. Now, tell, what you want to say ?Ans. I have understood that it is not binding upon me to make confession and that it may be used against me in evidence.##

25. After this preliminary examination, the magistrate started recording of the confessional statement at 8.45 a.m. After the completion of the statement (Ex. P-27) (which we have extracted

earlier), at its foot, the Magistrate made a memorandum, which rendered into English, reads as follows :

I have explained to Shankariya alias Ratan Lal that he is not bound to make a confession and that if he does so, any confession whatever he makes, may be used against him in evidence and I believe that his confession of the crime has been made voluntarily by him (Shankariya). This confession has been made in my presence by him (Shankariya). On my reading over, on hearing it, the accused admitted it to be correct. It is a true and full record of the statement which he (Shankariya) made voluntarily.

26. The Magistrate, Shri Bansal, was also examined as a witness at the trial. He proved the record of the confession and testified that he had recorded it after fully satisfying himself that the confession was being made voluntarily.

27. Mr. S. K. Gambhir, appearing as amicus curiae, argued the case very thoroughly on behalf of the appellant. It is contended by him that the confession (Ex. P-27) was not voluntarily made but was the result of police pressure, inducement and coercion. According to him, this inference is deducible from these circumstances :

(1) No explanation is forthcoming as to why the accused was brought all the way from Ganganagar to Raisingh Nagar for getting the confession recorded there. Possibly, the police did not want to give the appellant an opportunity of having independent advice which could more easily be available in the District town of Ganganagar rather than at the Sub-Divisional town, Raisingh Nagar.

(2) The judicial lock-up, Raisingh Nagar, being contiguous to the Police Station is almost a part of it. The appellant therefore, even on the 12th, 13th and 14th of June, 1974, during the time when he was an inmate of the Judicial lock-up, could not be said to be free from police surveillance and influence.

(3) The Magistrate hardly gave 20 minutes to the appellant for reflection before recording his confession. It is maintained that according to the ruling of this Court, the Magistrate should have given at least 24 hours to the appellant, to think and decide, while in the Judicial lock-up, as to whether or not he should make a confession. (Reliance in this connection has been placed on the decision of this Court in Sarwan Singh v. State of Punjab (1957 SCR 953 : AIR 1957 SC 637 : 1957 Cri LJ 1014)).

(4) There is reason to suspect that after recording the confession, the appellant was handed back to the Police Superintendent, Shri Srivastava who then took him to Hanumangarh. If that be a fact, it would amount to a contravention of sub-section (3) of Section 164 of the Code of Criminal Procedure, 1973, giving rise to an inference that the confession was not voluntary.

28. It is proposed to deal with these points ad seriatim.

29. The learned Solicitor-General submits that at the relevant time, Shri S. D. Kumar Bansal was posted as Munsif-cum-Judicial Magistrate First Class at Sri Ganga Nagar, but he used to come to hold his Circuit Court at Raisingh Nagar for 15 days. It is pointed out that on June 12, 1974 when

the question of recording the confession of the appellant arose, no Judicial Magistrate of the First Class, competent to record a confession, was available at Ganga Nagar. Our attention has been invited to the entries in the Roznamacha of Police Station, Sadar Ganganagar which reveal this fact. Stress has also been placed on the fact that no question, whatever, was put to S/Shri Srivastava (PW 20) and Bhanwar Singh (PW 21) in cross-examination to show that on June 12, 1974, a Magistrate competent to record a confession under Section 164 CrPC was available at Ganganagar and that the appellant was taken to Raisinghnagar with a motive or for extorting a confession.

30. There is merit in the submission made by the learned Solicitor-General.

31. The relevant Roznamacha entries of Police Station Sadar, Ganganagar, which were proved by Bhanwar Singh, S.H.O. (PW 21), have been read out to us. From those entries, it appears that the appellant was taken on June 12, 1974 from Ganganagar to Raisinghnagar for getting his confession recorded by a Magistrate, because on that date no Judicial Magistrate of the First Class was available at Ganganagar. It may be noted further, that in cross-examination, no question was put to Shri Bhanwar Singh or Shri Srivastava to show that on June 12, 1974 a Magistrate competent to record a confession, was available at Ganganagar, or that the appellant was taken to Raisinghnagar with a mala fide motive, although the appellant was at the trial properly defended by Shri Ganpat Ram, who, we are told, is an experienced lawyer. There is nothing on the record to indicate that the appellant was taken to Raisinghnagar to deprive him of the opportunity of having independent legal advice, or with any other oblique motive.

32. As regards point No. (2), the appellant during his examination under Section 31 CrPC, stated : "During those days, Kashi Prasad Ji was staying in the Police Station, Raisinghnagar which is adjacent to the Judicial lockup, and used to see and threaten me. "Thereafter, the confessional statement (Ex. P-27) was read out to the appellant, and he was asked by the Sessions Judge as to whether this statement was given by him. To this, the appellant replied : "I did not give this statement voluntarily. I have given this statement under compulsion due to the fear, threat and beating given by Shri Kashi Prasad."

33. In cross-examination, no question was put to Shri Kashi Prasad Srivastava to show that the Judicial lock-up Raisinghnagar is adjacent to the Police Station, nor was he asked whether at the material time, he was staying in the Police Station Raisinghnagar. Shri Srivastava was, however, asked as to whether he had compelled and beaten the accused to make the confessional statement. This was sharply denied by him.

34. Questions were however put to Shri S. K. Bansal, Judicial Magistrate (PW 6) about the relative situations of the buildings of the Judicial lockup and Police Station at Raisinghnagar. Shri Bansal stated that the Judicial lock-up is at a distance of 150 to 200 feet from the Court at Raisinghnagar. He was then questioned : "Is Police Station Raisinghnagar adjacent to the Judicial lock-up ?" The witness replied : "The police Station is constructed near it but the building is a separate one. I do not know whether there is any common wall in between or not. I cannot say whether a man can peep through from the common wall, which is four feet high ... between the Police Station and the Judicial lock-up. I do not know as to whether the doors of the Police Station and Judicial lock-up are in one side. I cannot say whether the distance in between them is about 30 feet." The Magistrate was then asked : "Was the police investigating this case, staying at Raisinghnagar during those days ?" The witness answered : "I cannot say, as I had never been to Police Station Raisinghnagar."

35. The evidence of the Magistrate, referred above, shows no more than the fact that the judicial

lock-up at Raisingh Nagar is located in a separate building, near the Police Station. But from the mere fact that the Judicial lock-up is located in the proximity of the Police Station, it does not follow that both are under the control of the Police. The Judicial lock-up - as appears from the statement of the Magistrate, Shri Bansal - is a Sub-Jail governed by the Jail Manual. The watch and ward staff of the Judicial lock-up are under the control of the Jail Superintendent or the Magistrate who may be the ex-officio Superintendent of the Sub-Jail (including the Judicial lock-up). The precise position as to whether Shri Bansal or any other Magistrate was in charge of the Judicial lock-up, is not clear from Shri Bansal's statement, because he was not specifically and fully questioned in regard to this aspect of the matter. Even so, this much is clear that the Judicial lock-up was not under the control of Shri Srivastava. Even Police Station, Raisingh Nagar, could not be under the administrative control of Srivastava as he was not the District Superintendent of Police but belonged to the C.I.D., and his head quarter was at Jaipur. In these circumstances, it cannot be believed that from June 12 to 14, 1974, Shri Srivastava was staying in Police Station Raisingh Nagar. An officer of his status, belonging to another branch of the Police Department, normally, is not expected to use a Police Station for his board and lodging while on tour. Moreover, as already mentioned, not a single question was put to Srivastava or Bhanwar Singh to show that they halted in the Police Station. Raisingh Nagar is a Sub-Divisional town. There must be a Rest House or an Inspection Bungalow for stay of the Government Officers on official tour. Had these officers been questioned on this point, they would have disclosed their halting place which could be checked with reference to their T. A. Bills or the record maintained at the Rest House. No question was put to these officers as to whether they had at all visited the Police Station. If Srivastava had really visited the Police Station during this period, his visit must have been reflected in the Daily Diary of the Police Station. The Daily of the Police Station was never summoned. It will therefore, be not unreasonable to infer that the entries in the Daily Diary of the Police Station do not show that Srivastava visited this Police Station during the period from June 12 to 14, 1974.

36. We therefore, do not find any substance in Point No. (2).

37. It may be noted that despite specific question put by the Magistrate to the accused during his preliminary examination on June 14, 1974, he (accused) did not complain about any threat, inducement, pressure or beating given to him by Shri Srivastava or anybody else. The courts below were therefore, right in rejecting the belated plea to that effect, set up by the appellant.

38. This takes us to Point No. (3). The argument is that the Magistrate should have given at least 24 hours to the appellant after his preliminary examination, to think over the matter, in Jail, free from fear of the Police.

39. It is true that the interval between the preliminary examination of the appellant and the recording of his confessional statement was about 15 minutes. But there is no statutory provision in Section 164 CrPC or else-where, or even an executive direction issued by the High Court, that there should be an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession. The condition precedent for recording a confession by the Magistrate in the course of Police investigation is provided in Section 164(2) CrPC which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily.

40. In the instant case, the Magistrate fully complied with the condition. He (Shri Bansal) has testified that before recording the confession he had fully satisfied himself that the accused wanted to make the confession voluntarily.

41. The large number of clear and pointed questions put by him to the appellant for this purpose and the answers given by the latter, have been extracted in full earlier. Their perusal shows that the Magistrate had cogent reasons to believe that the confession was being voluntarily made.

42. Although the interval between the preliminary questioning of the appellant and his confession was about 15 minutes, the appellant had not less than 38 hours at his disposal, whilst he was in judicial custody free from fear or influence of the Police, to think and decide whether or not to make a confession. As noticed already, the appellant was brought from Ganganagar to Raisingh Nagar on June 12, 1974 because on that day no Magistrate competent to record the confession of the appellant was available at Ganganagar. The appellant was admitted to the Judicial lock-up Raisingh Nagar under the orders of the Magistrate about or after 4 p.m. on that date. Thereafter, the appellant continuously remained in the Judicial lock-up or judicial custody till his confession was recorded on June 12, 1974 from 8.45 a.m. onwards. The Magistrate, Shri Bansal was aware that the appellant was continuously in judicial custody since the evening of June 12, for about 38 or 40 hours preceding the confession.

43. In *Sarwan Singh v. State of Punjab* (supra) this had emphasised that before recording a confession, the Magistrate should see that the mind of the accused person was completely free from any possible inference of the police. In that context, it was observed that "the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all". In this connection, it was suggested : "... speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession." The Court was careful enough to preface this suggestion with the remark that "it would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case". (emphasis added).

44. It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from Police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged admission to the Judicial lock-up on June 12 for getting his confession recorded under Section 164 CrPC, and such admission was made under the orders of the Magistrate who ultimately recorded his confession on June 14. The accused was about two days in judicial custody beyond the reach of the Police. On June 13, 1974, a written request was made to the Magistrate by the Police, for recording the confession of the accused. Even then, the Magistrate postponed the recording of the confession till the following day, obviously because he wanted to give the appellant one day more in judicial custody to ponder over the matter free from Police influence. On June 14, notwithstanding the fact that the accused Shankaria was in judicial custody from the evening of June 12 after the preliminary questioning, the Magistrate allowed 15 minutes more to him for reflection. Thus considered, Shankaria had, as matter of fact, about 38 or 40 hours in judicial custody, immediately preceding the confession and this was rightly considered sufficient to secure freedom from fear or influence of the Police to him (Shankaria).

45. The facts in *Sarwan Singh v. State of Punjab* were entirely different. Therein, the accused who had visible marks of injuries was straightaway brought by the Police from its prolonged custody,

and produced before the Magistrate who immediately thereupon recorded his confessional statement, while the Police Sub-Inspector remained outside in the verandah of the Magistrate's office. The Magistrate did not ask the accused how he came to be injured. It was in these circumstances that this Court held that failure of the Magistrate to give adequate time to the accused to consider the matter, stamped it as involuntary.

46. The facts of the case in hand are, substantially in line with those of *Abdul Razak v. State of Maharashtra* ((1969) 2 SCC 234 : 1970 Cri LJ 373). There, the accused was kept after his arrest in police custody for a fortnight. Then, after being kept in jail custody for three days, he was produced before the Executive Magistrate for recording confession. The Magistrate after a warning sent back the accused to jail and then recorded his confession on the following day. Repelling the contention that the accused remained in prolonged police custody and his confession was not voluntary, this Court held that the accused had spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days.

47. For the above reasons, we negative the third point canvassed by Mr. Gambhir.

48. As regard point No. (4), the Magistrate has stated that after recording the confession, he had handed over the custody of the accused to the Challani Guard (i.e. the guard who bring under-trails from the Judicial lock-up to the Court). The Challani Guard was not under the control of the investigating agency. During the preliminary questioning of the appellant, the Magistrate had assured him that in no case - whether he made a confession or not - he would be sent back to Police custody. Accordingly the Magistrate, according to his testimony, did not send the accused back to police custody. Instead, he gave the custody of the appellant to the Challani Guard, which means jail or judicial custody.

49. A suggestion was put to Shri K. P. Srivastava in cross-examination, that after the confession had been recorded, the accused was taken to Hanumangrah and the witness had accompanied him. The witness stoutly refuted this suggestion that the custody of the accused was, after the confession, given to him or the investigation Police. He however, affirmed that the accused was sent to the Judicial lock-up Hanumangrah. There was no good reason to disbelieve the evidence of the Magistrate (PW 6) and the Superintendent of Police (PW 22) to the effect, that after recording the confession, the custody of the accused was not handed to the investigating police.

50. Mr. Gambhir's contention, therefore, is not factually correct. There was no infringement of sub-section (3) of Section 164 CrPC. Thus, all the four points pressed into argument by Mr. Gambhir, fail.

51. Another circumstance which reinforces the conclusion about the confession being voluntary is that it was not retracted at the earliest opportunity. The confession was recorded on June 14, 1974. The trial of the accused commenced on January 10, 1975 when charges were framed and read over and explained to the appellant by the Sessions Judge. At the trial, he was defendant by Shri Ganpat Ram, who, as already observed, was an experienced lawyer. The trial dragged on for several months, because witnesses were examined piece-meal on different dates. The prosecution evidence was closed on June 14, 1975 and the accused was then examined under Section 313 CrPC. It was during such examination, the appellant for the first time retracted the confession and took up the plea that he had made it under duress of the police.

52. After bestowing our best consideration to all the questions bearing on the point, we are of

opinion that in the circumstances of the case, the High Court was right in coming to the conclusion that this confession (Ex. P-27) had been voluntarily made by Shankaria, accused.

53. The next question is : Whether the confession (Ex. P-27) is true. In this connection, it may be recalled that the appellant did not say that he was tutored by the Police to make this confession. He did not say that the story adumbrated in the confession (Ex P-27) was put into his mouth by somebody else. He did not deny the factum of making this confession. His plea in substance, was that he had made it but under compulsion and threat. He, however, added that "the statement (Ex. P-27) is false".

54. A perusal of the confessional statement (Ex. P-27) would show that prima facie there is nothing improbable or unbelievable in it. It appears to be a spontaneous account, studded with such vivid details about the manner of the commission of the crimes in question, which only the perpetrator of the crimes could know.

55. Now let us compare the statement (Ex. 27) with the rest of the evidence.

56. In Ex. 27, the accused has inter alia stated facts which may be rearranged as under :

(1) About midnight he took off his clothes, chappals and tried to climb the wall by the side of the railway line, but could not succeed. Therefore, he climbed the wall through the side.

(2) One Kassi was lying there in a corner. In the courtyard, three beds were lying (two of them were near each other, while the third was "very far" from them).

(3) "I picked up the Kassi" and hit with its reverse side one of those person, on the head. Thereafter, I hit another person. I hit the third person "after running to him", "as he was sleeping very far".

(4) "I then drank water, entered the kitchen but could not find anything in spite of search. Then I entered another room, opened the Kunda (Khuta), there a short (shirt) was lying from which I took out a key. I broke open the lock and got Rs. 700 and got nothing else during the search".

(5) "Then I broke open the lock of another house with the help of Subble. There, I was able to get Rs. 400."

(6) "I then remained there for much time ... brought water from the nearby johar in a bucket, and bathed myself".

(7) "Thereafter, I went to Bhatinda. In the evening (i.e. on 9-7-73) at 10 p.m. I proceeded by train to Bikaner. I stayed for two days at Bikaner. After two days, I went to Delhi and stayed there for two days. From Delhi, I proceeded for Haridwar and stayed there in a rented room at Rs. 12 per day."

57. Facts (1) to (6) in the confession (Ex. 27), find corroboration, firstly, from the reliable circumstantial evidence brought on the record by the prosecution. Ex. P-8A is a memorandum which was prepared by A.S.I., Bhagwan Singh soon after inspection of the scenes of crime, in the morning of September 9, 1972, in the presence of witnesses. In this memorandum, he noted the

physical facts observed by him at the scenes, which, according to his lights, were relevant. This explanatory memorandum is an annexure to the rough site plan (Ex. P-8) which was then prepared by him. The veracity of this site plan (Ex. P-8) and the memorandum (Ex. P-8A) was never impeached. No question was put to Bhagwan Singh in cross-examination to challenge the genuineness of these documents. Nor was any suggestion put to him that these documents were prepared subsequently or that the facts noted therein were wrong.

58. In the memorandum (Ex. P-8A), Bhagwan Singh has inter alia noted :

The bare-foot prints of the culprit are present at the outer side near the wall towards the Western (side) of the Gurdwara at No. 7. This wall is 7 feet high and is kachhi. There are recent scratch marks of the climbing or scaling the wall from outer side. They very bare-foot prints are present there on the outer side near the wall. It is through this way that the culprit entered inside and reached the cots of ... the sleeping persons.

The circumstantial facts noted in the above extract lend assurance to the portion No. (1) of the confession.

59. Assistant Sub-Inspector Bhagwan Singh has further noted in the memorandum (Ex. P-8A) and the site plan (Ex. P-8) the presence of three cots of the victims in the courtyard of the Gurdwara. The dead body of Kartar Singh with head injury was lying on one cot at point No. 2 shown in the site plan. Wazir Singh lay injured on a cot at a distance of 6 feet from that of Kartar Singh, while Mada Singh was lying injured on a cot 8 feet further away. The blood-stained Kassi (Art. 1) was lying near the cot of Wazir Singh. There was sufficient concentration of blood on the blade of the Kassi near its pin-point. There was blood underneath all the three cots.

60. These facts observed by A.S.I. Bhagwan Singh and recorded in Ex. P-8 and Ex. P-8A, inferentially lend assurance to what was stated by the appellant in the portions (2) and (3) (above extracted from his confession Ex. 27).

61. In Ex. P-8 and Ex. P-8A, Bhagwan Singh noted the presence of bare foot-points in the bathroom and the kitchen (shown at point Nos. 23 and 24, respectively, in the site plan). He further observed the marked resemblance of these foot-prints with the foot-prints supposed to be of the culprit, found near the cot on which the Sant (divine) lay dead in the vicinity of the courtyard. He has shown these points by arrow marks in the site plan. Bhagwan Singh has further noted in the said document that "at the site, the locks including the detached bolts, are lying near the detached frames of the three residential rooms". He has also noted how clothes, small coins, iron trunks and other household articles were lying scattered in the rooms.

62. These circumstantial facts found at the spot tell a tale which is consistent with the one told by the appellant in the portions (4), (5) and (6) of his confessional statement.

63. The portion marked (7) of the confession receives direct support from the evidence rendered by Sita Ram (PW 13), and the record (Ex. P-36) of the hotel at Haridwar which bears the signatures of the appellant Ratan Lal and of the witness, Sita Ram. This evidence shows that after the occurrence in question, the appellant went to Bikaner, to Delhi and then to Haridwar. He stayed in a hotel at Haridwar paying Rs. 12 per day on September 13 and 14, 1973.

64. Mr. Gambhir contends that the medical evidence contradicts the confession inasmuch as it is

stated therein that the appellant caused only one injury to each of the victims with the reverse side (i.e. the pin-point) of the Kassi (Art. 1).

65. The contention is devoid of merit. As already noticed, Dr. Bahadur Singh clearly stated that the incised injuries found on the victims could be caused with the sharp edge of the Kassi (Art. 1), while their other injuries could be caused with the reverse side of the same Kassi. It may however, be conceded that from the medical evidence the possibility of the assailant having given more than one blow to the victims cannot be ruled out. But in his confessional statement, the appellant is not categorical with regard to the number of blows inflicted by him on the victims. All that he says is, that he hit each of the three victims, one after the other, in quick succession, on the head. The medical evidence shows that the blows on the heads of the victims had been given with great force. The autopsy of Kartar Singh and Mada Singh revealed that their skull-bones had been broken into fragments. The first blow received by each of the three sleeping victims, two of whom were blind persons, must have stunned them into coma.

66. Be that as it may, the failure of the appellant to say in his confessional statement the precise number of blows given to the victims, does not amount to a material discrepancy between the confession and the medical evidence. The fact remains that the medical evidence corroborates the confessional statement inasmuch as it is mentioned therein that the injuries to the victims were caused with the Kassi.

67. The report of the Chemical Examiner and the Serologist shows that human blood was found on the Kassi (Art. 1). That report further confirms the confessional statement with regard to the use of this weapon in assaulting the victims.

68. The courts below have further relied upon the circumstance that a finger-print on the dabbi (Article 2) from which Rs. 400 in cash, kept by Karnail Singh (PW 15) had been stolen by the Culprit, was identified as that of the appellant. The prosecution case was that among other articles, this dabbi (tin box) was lying in a room in the year of the Gurdwara. A.S.I. Bagwan Singh while inspecting the scene of occurrence on September 9, 1973, saw some finger impressions on it. He, therefore, took it into possession and sealed it into a packet, vide seizure memo (Ex. P-14) in the presence of witnesses. Thereafter, he deposited it, with seals intact in the Malkhana of the Police Station, Sadul Sahar, and nobody tampered with it so long as the witness remained posted in the Police Station. The sealed parcel containing the Dabbi was sent to the Finger Print Expert under cover of a letter, dated June 29, 1974, from Shri Kashi Prasad Srivastava (PW 22). This witness (PW 22) testified that the seals on the parcel containing the dabbi were intact when it was sent to the Finger Print Expert.

69. Mr. Gambhir submits that the parcel containing this Dabbi was not sent to the Finger Print Expert for photographing and preserving the finger-prints said to have been found on it, till June 29, 1974, i.e. 24 days after his specimen finger impressions were taken by the Police. It is pointed out that no explanation has been given by the prosecution as to why this Dabbi was not sent to the Finger-Print Bureau, Jaipur, soon after its seizure, for taking enlarged photographs of the alleged finger-prints on it. It is argued that in view of this unexplained delay in sending the dabbi to the Finger-Print Expert, there is reason to suspect that the finger-print of the appellant on the Dabbi might have been obtained by force or trickery by the police after his arrest. In this connection, it is emphasized that the prosecution has not led any satisfactory or independent evidence that the seals on the parcel containing this Dabbi remained intact and had not been tampered with till it was sent on June 29, 1976 to the Finger-Print Expert and was opened by him.

69A. A similar contention was raised before the High Court. The learned Judges repelled it with these observations :

There is no doubt that the prosecution has failed to lead evidence that the finger-prints on the 'dabbi' Art. 2 were not tampered with from September 9, 1973 to June 29, 1974 when they were sent to the Finger-Print Expert, As stated above, there is ample evidence on the record that when the 'dabbi' Art. 2 was recovered, it was sealed. PW 22 Kashi Prasad had stated that the seals of Art. 2 were intact when they sent it to the Finger-Print Expert. PW 18 Shri Tankha has also stated that the seals on Art. 2 were intact when they were received by him. The most important thing, which is to be kept in mind, is that the finger-prints of one individual do not tally with the finger-prints of any other individual. The science of finger-prints is itself a complete science for the purposes of identification. In what manner the finger-prints of the accused Shankaria on Art. 2 'dabbi' could be tampered with, has not been argued or suggested. The finger-prints on Art. 2 have, on examination, been found to tally with the specimen finger-prints of the accused. Tampering of finger-prints on Art. 2 would mean that some other finger-prints were super-imposed or substituted. But no other finger-prints could be substituted or super-imposed which would resemble and tally with the finger-prints of the accused Shankaria. Accused Shankaria in his statement under Section 342 (343 ?) CrPC recorded on June 14, 1974 and June 23, 1974 has not categorically stated that his finger-prints were obtained on an article like the iron 'dabbi' Art. 2. In the absence of such a plea by the accused Shankaria, the non-production of some evidence on the part of the prosecution that the finger-prints were kept intact during all this period, loses all its importance In view of these circumstances, we have no hesitation in holding that the finger-prints on the iron 'dabbi' Art. 2 could not be tampered with. As a matter of facts, as stated above, the finger-prints could neither be substituted nor super-imposed, and therefore, the apprehension of the defence that the finger-prints could be tampered with, in the absence of such evidence, is wholly unfounded.

70. While we agree with the conclusion of the High Court that there was no good reason to suspect that the finger-print of the appellant found on the dabbi, Art. 2, was a fabrication, we will like to clarify and elaborate a little the reasoning by which this conclusion is arrived at. The first aspect of the matter which needs clarification is that this is to a case where the prosecution date of its seizing to the date they were sent to the finger-print expert, were intact and had not been tampered with. Firstly, there was the evidence of A.S.I. Bhagwan Singh (PW 16) that when in the morning of September 9, 1973, he inspected the scene of occurrence, in the presence of witnesses, he found the dabbi, Art. 2, in the room of the Gurdwara. Some small coins were lying scattered near it. He saw finger marks on this dabbi. He therefore, seized it and sealed it into a parcel in the presence of the witnesses and prepared the memorandum, Ex. P-14. Bhagwan Singh clearly stated that he had deposited the parcel, with seals intact, in the Malkhana and nobody tampered with them so long as it remained in his charge. Secondly, there was the evidence of Shri Srivastava that on June 29, 1974 when the sealed parcel containing the Dabbi was sent to the Finger-Print Bureau, Jaipur, the seals on it were intact.

71. The only deficiency in the evidence on this point is that Bhagwan Singh was not asked about the date upto which he remained incharge of the Malkhana or posted in Police Station Sadul Sahar. In cross-examination, he expressed ignorance as to when the foot-moulds or the 'dabbi' were sent to the Finger-Print Expert. Probably, he was transferred from this Police Station sometime before that

date. At the date of his deposition (10-3-75), he was posted in Police Station Hindu Mal Kot. In cross-examination, it was suggested to PW 16, that the recovery memos of foot-print of foot-print moulds and 'dabbi' were prepared after the accused was arrested. The witness sharply denied this suggestion.

72. The failure of the prosecution to bring out these details in evidence in the circumstances of the case, is no ground to suspect, that the finger impressions on the dabbi had been tampered with or fabricated. It will bear repetition that the genuineness of the explanatory note (Ex. P-8A) attached to the Site Plan, was not questioned by the defence. The presence of the dabbi (Art. 2), being some finger-marks, and its seizure and sealing find mention in this document.

73. However, the authenticity of the memo (Ex. P-14) - in which the presence of finger-impressions on two sides of this dabbi is mentioned - was questioned, half-heartedly. This memo purports to bear the attestations of three witnesses, namely : Mithu Singh (PW 9), Shyam Singh (PW 3) and Jagger Singh (PW 8).

74. The High Court appears to have accepted their evidence with regard to the seizure of this 'dabbi', without discussion. We will there briefly refer to the same.

75. All these three witnesses speak with regard to the seizure of the Dabbi (Art. 2) by A.S.I. Bhagwan Singh from the scene of occurrence on September 9, 1973, although there are natural variations in regard to details in their evidence.

76. Shyam Singh, PW 3, stated : "one 'dabbi' was also taken into possession by the police from there and sealed. Its recovery memo, Ex. P-14, bears my signature. The dabbi, Art. 2, present in the Court, is the same." The witness gave the time of taking this dabbi into possession, as 8 a.m. Mithu Singh, PW 9, corroborated Shyam Singh, PW 3. He also identified his signature on the memo (Ex. P-14).

77. Both these witnesses sharply refuted the suggestion put to them by the defence counsel that the seize memo, Ex. P-14 was prepared wrongly after the arrest of the accused.

78. Even Jaggat Singh PW 8, who was allowed to be cross-examined by the Public Prosecutor testified that the iron 'dabbi' Art. 2 had been lifted from the spot and sealed by the Police in his presence. He however, stated that "the seizure memo Ex. P-14, does not bear my signature". This may be due to a lapse of memory. It does not appear from the record, that the memo Ex. P-14 was shown to him when this question was asked.

79. Nothing was brought out in the cross-examination of these witnesses, particularly PW 3 and PW 9, to show that they were not speaking the truth. Their evidence taken in conjunction with that of A.S.I. Bhagwan Singh, had established beyond all manner of doubt that when this dabbi was found at the scene of crime on September 9, 1973, it had finger-prints on both sides which could be of the culprit who had opened it and taken away Rs. 400 from it. That was why, A.S.I. Bhagwan Singh sealed it there and then to preserve those finger-prints.

80. During his examination at the trial, the appellant did not say in positive specific terms, that after his arrest, he was made to handle the dabbi (Art. 2); what the appellant then stated on this point was as follows :

81. "The police had taken many moulds in the police station after my arrest so also many palm

impressions on various things were made. I do not know whether the dabbi was included amongst them or not". When the evidence of the Finger impression on the dabbi, Art. 2, tallied with the middle finger-print of the left hand of the accused - was put to Shankaria, the latter answered : "The witness tells false." This reply would be consistent only with the position that his finger-prints on the dabbi were not taken after his arrest.

82. The failure of the appellant to say in categorical terms that after his arrest he was made to handle this dabbi, Art. 2, cuts at the root of his vague and omnibus plea that all evidence, including that of the foot-moulds, finger-prints, etc. had been fabricated by the Police. In the first place, as rightly observed by the High Court, fabrication of the finger-prints in the circumstances of the case was difficult, without superimposition. Secondly, it is impossible to believe that an investigator of the status of a Superintendent of Police, would go to the length of causing substitution of the finger-prints of the accused in place of the original finger-prints of another person on the dabbi.

83. Mr. Gambhir next contends that in view of Section 5 of the Identification of Prisoners Act, it was incumbent on the police to obtain the specimens thumb-impressions of the appellant before a Magistrate, and since this was not done, the opinion rendered by the Finger Print, Mr. Tankha, by using those illegally obtained specimen finger-impressions, must be ruled out of evidence.

84. The contention appears to be misconceived because in the State of Rajasthan, the Police were competent under Section 4 of the Identification of Prisoners Act, to take the specimen finger-prints of the accused, and this they did, in the instant case, before the Superintendent of Police, Shri K. P. Srivastava. It was not necessary for them to obtain an order from the Magistrate for obtaining such specimen finger-prints.

85. In view of all that has been said above, the presence of the finger-print of the appellant on the dabbi, Art. 2, from which cash was stolen at the time of occurrence, is tell-tale circumstance pointing towards the guilt of the appellant.

86. At this place, we may mention that according to the prosecution, the appellant, in order to evade detention and arrest by the Police, had taken up residence at Bhatinda and was holding himself out as Ratan Lal son of Jetha Mall, although his real name was Shankaria son of Raji Ram and he was a native of village Karanpur, District Ganga Nagar. Subhash, PW 23, was examined by the prosecution to establish this fact. PW 23 became a friend of the appellant when the witness and the appellant both were serving jail sentences in Ganga Nagar Jail. PW 23 had helped the Police in arresting the appellant from Bhatinda. At the trial also, PW 23 identified the appellant as the same person. The evidence of PW 23 has been believed by the courts below and Mr. Gambhir has not assailed it before us on any tangible ground.

87. Now, remains the evidence of the foot-moulds. These moulds were prepared from the foot-prints of the suspected culprit, found in or near about the Gurdwara on September 9, 1973. On June 16, 1974, specimen bare-foot prints of the appellant were taken before the Additional District Magistrate and specimen foot-moulds were prepared therefrom. The two sets of foot-moulds were sent to the Expert, Mr. Tankha, at Jaipur on June 29, 1974. Mr. Tankha testified at the trial that the foot-mould 5 (of one of the bare-foot prints found at the scene of crime) tallied with the specimen left foot-mould of the appellant.

88. Although the science of identification of foot-prints and foot-moulds is not a developed science, and track evidence, by itself, may not be deemed sufficient to carry conviction in a criminal trial,

yet it is a relevant circumstance which taken into account along with the other evidence, may reinforce the conclusion as to the identity of the culprit. In the instant case, the other evidence per se was sufficient to fix the identity of the appellant with the crime. The evidence of similarity of the foot-moulds taken in conjunction with the circumstance, that at the scene of occurrence there were bare-foot prints which appear to be of one person, does lend further assurance to what the appellant has stated in his confessional statement with regard to his going about bare-footed inside and outside the Gurdwara at or about the time of committing the crimes in question.

89. To sum up, it was cogently established that the confession (Ex. P-27) was voluntarily made and it is true. Further, it receives assurance in several material particulars from reliable independent evidence, mainly of a circumstantial character. The confession, Ex. 27, coupled with the other evidence on the record, had unerringly and indubitably brought home the charge to the appellant.

90. The crimes were committed in a most brutal and dastardly fashion. The victims were taken unawares when they were asleep. Two of them were blind persons. His Neronian conduct even after the occurrence in languishing in the stricken premises, looking for something to eat in the kitchen, drinking water, smoking Bidis, bringing water and bathing himself, mindless of the spectre of the slain and the groans and gasps of the dying, betrays an extreme depravity of character. The grisly and gruesome nature of the murders, the hapless and helpless state of the victims, the fiendish modus operandi of the appellant to first kill and then steal - all, steel the heart of law to call for its extreme penalty.

91. For all the foregoing reasons, we dismiss this appeal, affirm the judgment of the High Court and maintain the conviction of the appellant and the sentence of death awarded to him for the murders of Kartar Singh and Mada Singh.

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