RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Shiv Singh

Criminal Appeal No. 171 of 1958
(J.S. Ranawat And D.M. Bhandari, JJ.)

03.12.1960

JUDGMENT

Bhandari, J.

1. This is an appeal on behalf of the State against the judgment of the Additional Sessions Judge, Jodhpur, by which he acquitted Shiv Singh respondent of a charge under Section 302, I.P.C.

2. The prosecution case is that the respondent Shinsingh murdered his own son Mohan in the early hours of the morning on the 24th of February 1967. The motive for the murder is said to be that the deceased did not comply with the wishes of his father in making a compromise with his maternal grand-mother Mst. Shivi and in spite of the strong objection on his behalf, he entered into a compromise with her on the 20th of February, 1957. The litigation was about some improvable property and under the terms of the compromise, it was partly held to be of Mohan and partly of Mst. Shivi. The accused tried to persuade Mohan to go back on the compromise. To this the deceased did not agree. The accused thereupon, threatened to skill him and made up his mind to do so and with that end in view, he purchased a sword for Rs.3/- from a kabari Dildar Khan on the 23rd of February 1957. He took that sword to Badri Lal for sharpening and got it sharpened on payment of annas eight. The accused and his son Mohan with his wife resided in a house at Ratanada in Jodhpur City. This house belonged to Mst. Shivi who also resided in it. Mohan used to sell milk and for that purpose he kept a number of she-buffaloes in a nohra a little distance from the house in which he resided. Mohan went from his house to the nohra early in the morning to milch the cattle with one balti (bucket) and a lantern. It is alleged that the accused finding it to be a suitable opportunity for killing his son went to the nohra and inflicted

a number of injuries to him with the sword. With one blow he wholly severed off the head from the trunk and with another blow he severed off the right hand at wrist joint and inflicted a number of other incised wounds which are entered in the post mortem examination report (Ex.P/11).

3. The prosecution case is that this murder was witnessed by Mst. Kamala, wife of the deceased who is alleged to have gone to the nohra to supply him a pot for the purpose of measuring the milk which her husband had forgotten to take with him when he went to the nohra. After murdering his own son, the accused went away to the room in the house. He brooded for sometime over the whole affair and then ultimately made up his mind to report the matter to the police with this purpose he locked his own room and went to the Police Station, Jodhpur City with the blood stained sword. On his way to the Police Station, he purchased some wine from a liquor shop and drank part of it. It was very early in the morning that the accused readied the Jodhpur Police Station. Mr. J.K. Balani, the Assistant Superintendent of Police had his residential quarters in the Police Station building and he was awakened by Dalpat Singh Constable on the accused asking him to do so. He saw the accused standing with a naked sword which had marks of fresh blood on it. The accused is said to have told him that he had killed his son and had come to surrender. The Assistant Superintendent of Police then got the first information report recorded by Nathi Raj Head Constable. This is a detailed document in which the motive of the murder, the story of the purchase of the sword for the purpose of murdering and getting it sharpened and then the story of the actual commission of the offence are narrated. The accused was at that time wearing a dhoti, a green woollen coat, a shirt and canvas shoes on his feet. The dhoti and the coat and the shoes had blood stains on them. In the presence of moatbirs all these things were taken possession of by the Police. The lower portion of the sword was blood stained to the extent of 1'-4½" from the bottom side so that portion was wrapped with a piece of cloth and a seizure memo was prepared relating to the sword, which is Ex.P/3 on the record. The canvas shoes (Ex.1), the quarter bottle (Ex.2) the coat (Ex.19) and the dhoti were also seized from him and the recovery memo. (Ex.P/4) was prepared relating to this seizure. From the possession of the accused a diary wa3 recovered which contained a receipt of the purchase of the sword. This receipt is Ex.3. Then the Assistant Superintendent of Police went to the nohra in Ratanada. Inside that nohra he found the dead body of Mohan. The head was lying outside the garage, while the body was inside it. A bucket (balti) containing some milk was also lying there. The dead body was sent for post mortem examination to the Mahatma Gandhi Hospital, Jodhpur

and the post mortem examination was performed on the 24th of February, 1957. Besides the injury on the neck, there were nine other incised wounds on various parts of the body and the death was due to hemorrhage and severing of the neck.

4. The accused was arrested and challenged before the First Class Magistrate, Jodhpur. His statement before the committing magistrate was that he did not murder his son and that he did not inform the Police. He said that he was unconscious due to fever. He further said that either Kamla or one Sheo Narayan were responsible for killing his son. The learned City Magistrate committed the accused to the Court of the Sessions Judge, Jodhpur, and the trial took place before the Additional Sessions Judge, Jodhpur.

5-7. (After narrating the prosecution evidence His Lordship proceeded:) The learned Additional Sessions Judge did not believe that Mst. Kamla was an eye-witness. According to the learned Sessions Judge, Mst. Kamla had exaggerated facts and had not given a true statement and had tried to play the role of an eye-witness. The learned Additional Sessions Judge was also of the opinion that the statements of Dildar Khan, Bashir Uddin, Badrilal and Lalchand could not be relied on the ground that no identification parade before a Magistrate was held to enable these witnesses to identify the accused and their identification at the trial was of little avail, and that the sword was also not similarly got identified by Dildar Khan, Bashiruddin and Badrilal before a magistrate after getting it mixed up with other similar swords. He also did not rely on Lalchand as he was not able to say that the quarter bottle (Ex.2) was the only bottle which be had given to the accused. He commented adversely against these witnesses on the ground that they did not maintain any register or account of the sale of these articles and it was difficult for them to name the persons to whom they sell their wares. He also was of the view that Bashiruddin's statement did not inspire confidence mainly on the ground that while he had written other words in Urdu in the receipt (Ex.3), he failed to write the word *'talwar'* and made a symbol of it to denote that word. He also took the view that the sword, the green coat and the brown shoes were not properly wrapped and sealed in the presence of moatbirs and thus the report of the Chemical Analyser and the Serologist on that account was of little avail against the accused. Regarding the recovery of the lantern from the room of the accused, it is said that there was nothing unusual in it. He also remarked that according to the prosecution evidence there were blood stained marks on the lantern but no reason has been assigned as to why the same were not sent to the Chemical Examiner. He came

to the finding that the lantern recovered from the room of the accused did not belong to Mohan and it was not proved that the accused took any lantern from his house to the bara or brought any lantern from the bara to his house after the commission of the crime.

He entertained a grave doubt about the proper sealing of the packet of the coat and the canvas shoes and also about the sword being properly wrapped. He especially relied on the fact that in the recovery memo. (Ex.P/4) there was a dhoti recovered from the accused along with the coat and the pair of the shoes but that dhoti was not included in the packet sent to the Chemical Examiner as there was no mention of it in the report of the Chemical Examiner. From this he drew the inference that either the clothes were not sealed in the presence of moatbirs or the seal was tampered with and the dhoti was taken out. Then the learned Judge commented adversely on the non-production of Raju who is said to be residing near the garage in the nohra. The learned Judge also referred to one Shiv Narayan against whom Mohan Lal had filed a complaint for stabbing him with a knife. He was also a person who was one of the claimants of the property of Mst. Shivi and thus he had a motive to kill Mohan who claimed the property of Mst. Shivi. From all these circumstances, the learned Judge remarked that there were some persons who had reason to murder Mohan and had opportunity to do so. Learned Judge then proceeded to remark that the eye-witness having been discarded there was no satisfactory evidence which connected the accused with the murder of the deceased beyond any manner of reasonable doubt. In this connection, he placed reliance on some of the following authorities of their Lordships of the Supreme Court:

Tulsiram Kanu v. The State, [1] *Sunderlal v. State of Madhya Pradesh,* [2] *Kutuhal Yadev v. State of Bihar*, [3] and *Hanumant Govind v. State of Madhya Pradesh,* [4]

8. Taking this view, the learned Additional Sessions Judge acquitted the accused by his judgment dated the 25th of February, 1958.

9. The State has filed an appeal challenging this order of acquittal. This appeal came up for hearing before a Division Bench consisting of Bapna and Bhandari, JJ. on the 7th of November, 1959. The Bench expressed its agreement with the view taken by the Additional Sessions Judge with respect to the evidence of Mst. Kamla as an eyewitness. The Bench was of the opinion that as the case turned on the recovery of the sword, the coat, the shoes and the value to be attached to the Chemical Examiner's report, it was necessary that the vagueness in the evidence of the prosecution on these

prints be claimed. As an illustration of vagueness, it was pointed out that while the list of the recovery mentioned that dhoti was also one of the articles which was sealed, but it found no mention in the Chemical Examiner's report and it was not clear on the evidence on record as to what happened to the dhoti. Then again, the Chemical Examiner's report mentioned that the iron blade of the sword was positive for blood but it was not clear whether the portion wrapped over was only positive for blood or the whole of the blade of the sword was positive for blood. The Head Constable (Jagdish Chandra) who took the articles to the Chemical Examiner was also not produced. It was thought necessary that Mr. J.K. Balani, Nathraj, Head Constable Jagdish Chandra and Dr. P.D. Dalvi be examined on all these points so that the vagueness on the various points may be clarified and it was ordered accordingly. Then the case came before us for hearing. By our order dated the 7th of December, 1959, we directed the Additional Sessions Judge, Jodhpur to record the statements of these witnesses. This was done. He further directed the Additional Sessions Judge by our order dated the 22nd of August, 1960 to record the statement of the accused to enable him to explain the additional evidence that has come on the record and to record any defense evidence that may be tendered by the accused. The statement of the accused was recorded in compliance with that order and the accused produced further defense evidence. In his further statement, the accused has stated that he had no knowledge about the recovery of the various articles as he was unconscious at that time due to fever. He further stated that Nath Raj wanted to purchase his house for Rs.3,500/- but the house was valued at Rs.30,000/- and as he refused to do so he had given false evidence on that account. He has given details of his litigation with Mst. Shivi and that Girdhari Singh, Shiv Narain, Mst. Kamla, Pukhraj and Chiman Singh wanted to devour his property and because of this the prosecution witnesses have given evidence against him.

10. Arguments were heard afresh by us. The learned Assistant Government Advocate pointed out that by the evidence which has come on the record, it was proved that the dhoti which was seized from the accused at the time when he made the first information report, was used as a wrapper and it was because of this that the Chemical Examiner failed to examine it and thus there was no room for entertaining any suspicion that the green coat and the canvas shoes were not properly wrapped or sealed or that the seals' were broken thereafter Mr. Dalvi also clarified the point that his report about the sword being blood stained related to that portion which was wrapped. He also stated that the packet received by him had the same seal impressions

as appeared at the foot of the letter (Ex.P/16) which was sent by the Assistant Superintendent of Police, Jodhpur City for chemical examination of the article. He also stated that the wrapper of the articles was not examined and so there was no reference to it in the report. He of course was not definite whether the wrapper was a dhoti or anything else. Nath Raj proved the First Information Report and also the recovery memo. (Ex.P/4). He also proved that the various packets were properly wrapped and sealed. The learned Assistant Government Advocate has urged that the various technical objections raised by the learned Additional Sessions Judge with respect to the wrapping and sealing were clarified by the evidence of these witnesses and that there remained no doubt that the sword (Ex.18) was recovered from the accused at the time when he made the First Information Report and that lower portion of this sword was stained with blood and that that portion was properly wrapped and thereafter it was sent to the Chemical Examiner and that the Chemical Examiner found it positive for blood and the Serologist's report also shows that it was positive for human blood. He has further urged that similarly it was proved beyond any manner of doubt that the coat and the canvas shoes which the accused was wearing at the time of making the First Information Report were stained with human blood. He also urged that the diary which contained the receipt (Ex.3) was seized by the Police from the possession of the accused at the time of his arrest. This receipt corroborated the statement of Dildar Khan whose evidence has been very wrongly rejected by the trial Court. He also relied on the statement of Badrilal regarding the sharpening of the sword. The learned Assistant Government Advocate also urged that the trial court was wrong in entirely rejecting the First Information Report. He relied on the ruling of this Court in *Ram Singh v. The State,*[5] which lays down that parts of the First Information Report made by the accused which can be properly separated from the confessional part can be and should be admitted in evidence.

11. Learned counsel for the accused urged that this Court should not sitting in appeal take a view different from the trial court in appreciating the evidence of Dildar Khan Bashiruddin and Badrilal. He further urged that the recovery of the blood stained coat and the canvas shoes from the accused were doubtful especially in view of the evidence of Kishan Lal. He strongly countenanced the argument of the learned Assistant Government Advocate that part of the First Information Report was admissible in evidence against the accused to prove his admissions. His argument is that the admission of an accused must be taken as a whole and cannot be relied on in part for his conviction. He further urged that in this case the First Information Report

cannot be split up as the whole of it is one continuous statement giving the motive, preparation and the manner of the commission of the offence and the whole of it was his confession, and came within the purview of Section 25 of the Evidence Act so as to become inadmissible in evidence, Lastly, he argued that if the evidence of the eye-witness is discarded, the other circumstances against the accused do not lead necessarily to the conclusion that it was the accused who committed the murder of his son. In this connection, he also relied on the observations of the learned Additional Sessions Judge that there were other persons with a stronger motive to kill Mohan and those persons had also opportunity to kill him. He also tried to show that the accused had no motive to kill a person who was so dear and near to him.

12. We have carefully considered the arguments of the learned counsel and have also given due regard to the views of the trial court in the matter of appreciation of the evidence on record. We are conscious of the fact that in an appeal against an order of acquittal though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge' *Balbir Singh v. State of Punjab,* [6]

13. This Court has already signified its agreement with the views taken by the trial court with regard to the evidence of Mst. Kamla in so far as she poses to be an eye-witness. We have also gone through her statement and we are also of the opinion that the statement of Mst. Kamla is not worthy of reliance on this point. She has invented a pretext for going to the nohra at that hour by stating that she had gone there to supply her husband with a pitcher to measure the milk. Without raising hue and cry on seeing her husband being so mercilessly struck with sword, she returned to her house and then became unconscious. This again is not a story which can carry conviction. She has been contradicted with her Police statement (Ex.D-1) on the point as to what she saw at the nohra. We need not further elaborate on this point. Suffice it to say that we are in entire agreement with the learned Additional Sessions Judge on this point.

There is no reason however to reject her statement that the accused was annoyed with has son on account of his entering into a compromise with Mst. Shivi.

14. We have to examine the other evidence on record to see whether it has been rightly rejected by the learned Additional Sessions Judge. The first is the circumstance of the purchase of the sword from Dildar Khan (P.W.3). He has a shop of kabar-khana in Sardar Market near Clock Tower. Bashiruddin has no shop but sits on a floor to sell his articles at a little distance from the shop of Dildar Khan. Dildar Khan has definitely stated that the accused purchased the sword (Ex.18) from him at about 2 P.M. some 11 months age before his statement was recorded. His statement was recorded on the 16th of November, 1958. He did not maintain any account of the articles purchased and sold and this is nothing strange for a man who carried on the business of selling and purchasing kabar-khana articles. He could not give the name of the person from whom he had purchased that sword or the price thereof. This again is not very surprising when we consider the kind of the trade carried on by the person. Nothing has been elicited in cross-examination which may show that the witness was in any way prejudiced against the accused. The statement of this witness is corroborated by the entry in Ex.3 which according to this witness was executed at his instance by Bashiruddin as the accused had asked him to give a receipt. Bashiruddin supported this witness and proved the entry (Ex.3). He candidly stated that he did not know how to write the word 'talwar' and so he put the symbol of 'talwar' at the top of the receipt. He had put 23 as the date without mentioning the month or the year. This again shows that the witness was not very literate. The witness has affixed the date of the execution of Ex.3 with more precision by stating in cross-examination that he was called by the Police the day next to the writing of the receipt (Ex.3). Thus, 23 mentioned in the receipt can only refer to the 23rd of February, 1957. The criticism of the learned Judge that the witness instead of writing the word 'talwar' as made a symbol of sword is entirely devoid of hany force. If a false receipt was to be produced by the prosecution when there was no necessity that such a receipt should be produced in which even the word 'talwar' is not written in script and is expressed by a symbol. There is no reason for this witness to state against the accused. The same is true about Badri Lal. He also stated that it was the accused who got the sword sharpened by him. The sword was given to him at 2.30 P.M. and was returned at 8 P.M. The criticism of the learned Judge against this witness is that he was not in a position to name the other barbers whose razors he had sharpened on that dav. The witness has not given the name of the accused also and he was not cross-examined whether he could identify the

other barbers by face. Moreover, the witness has definitely stated that he was called by the Police the next day when he identified the accused and the sword. There is nothing very surprising if all these three witnesses could identify the accused at the trial in the court even after 11 months as the murder was committed in Jodhpur City where the witnesses resided and it had come to their knowledge within a day and they had identified the accused before the Police and it was but natural for the witnesses to carry in their mind whatever they could in connection with that matter. So far as the identity of the sword is concerned, these witnesses could be much more sure. Dildar Khan must have handled it many times and could very well identity it and Badri Lal had sharpened it and he has stated that he had given an angular sharpening to the sword which is generally done by other sharpeners also but he could point out the one done by him. The learned Additional Sessions Judge took their evidence given at the trial as of no consequence in view of the fact that the identification of the accused as well as of the sword was not done before a magistrate soon after the incident. We do not think that the learned Additional Sessions Judge has correctly looked into this matter. These witnesses had clearly stated that they had gone to the Police Station the very next day and identified the accused as well as the sword. The evidence of an identifier himself at the trial that he identified the accused or incriminating articles before the Police is admissible in evidence by way of corroboration of his identification at the trial. See *Ramkishan Mithan Lal Sharma v. State of Bombay,* [7] These witnesses had seen the accused and the sword the next day when everything was fresh in their mind. We regret to express our inability to agree with the learned Additional Sessions Judge in rejecting evidence of these two witnesses because no identification proceedings were held before a magistrate. These witnesses had no reason to falsely implicate the accused. They are entirely independent witnesses and could have no other purpose but to advance the cause of justice in making their statements on oath. In this connection, it cannot be lost sight of that the diary containing Ex.3 was recovered from the accused at the time of his arrest and this is proved by the evidence of Mr. J.K. Balani, Nath Raj and Shanker Lal. Even Kishen Lal has also stated that the diary was recovered from the accused. This circumstance strongly corroborates the statement of Dildar Khan and Bashiruddin and further corroborates the statement of Badrilal as according to Dildar Khan the sword purchased was an old and rusty iron sword : while Ex.18 was found to be a sharpened one.

15. The learned Additional Sessions Judge has altogether gone astray in rejecting the

testimony of these three witnesses. The main ground given in his judgment is that no identification parade was held before the magistrate for identifying the accused and that no identification test was made before a magistrate for identifying the sword. Identification proceedings are held before the magistrate to enable the court to judge the value of the evidence of the witnesses identifying the accused or the article. There are so many factors that enter in judging the value of the evidence of a witness and identification proceedings may throw a light on the credit to be given to the evidence of the witness. In some cases it may be deemed essential that the evidence of a witness at the trial is of no worth as there had been no identification test before the magistrate. Such may be the cases when the witness had a very little opportunity to identify the accused or the article. Those are cases in which the time and the manner of the commission of offence, the state of light at that time and other circumstances in the case are such that a court of law may deem them to be of such consequence that the testimony of the witness at the trial may be of little avail without previous identification proceedings. Such cases are usually cases when the offence is committed in a hurried manner and at a time where there is not sufficient light. A court of law may also consider looking to the standard of intelligence of the witnesses that their evidence cannot be much relied on without the re-assuring factor of their identifying the accused at the test identification parade. After all, identification proceedings are meant for lending assurance to the court regarding the credibility of the evidence of a witness at the trial but it cannot be laid down as a rule of law that without identification proceedings, the evidence of a witness at the trial is not worthy of consideration. This will be going too far and is not warranted by any rule of law. What we have said about the identification parade for identifying an accused may be applied with a greater force for the identification of an article. A witness may be so familiar with the article that a court of law may place confidence in his evidence at the trial, though no test identification had been held before the magistrate. All this depends on the facts and circumstances of each case. In this case the blood stained sword was recovered from the possession of the accused. Now three persons have identified it at the trial. Dildar Khan was the person who had sold it to the accused and he must have been familiar with it. There is no cross-examination from which it could be deduced that the identification of the sword at the trial by this witness was liable to be mistaken; Badrilal had also handled it and he too identified it. Bashiruddin also identified it.The evidence of these three witnesses could not be rejected on the ground that no identification test was held. Similarly, about the identification of the accused. These three persons stated in the court of law that they had identified the accused at

the Police Station the very next day, and they also identified him at the trial. Now when these witnesses had identified the accused at the Police Station, it was no use holding any identification parade before the magistrate. As already mentioned, the witnesses have stated that they had identified the accused at the Police Station and that portion of their statement is admissible. Of course the statement of the investigating officer that the witnesses had identified the accused is inadmissible under Section 162 Criminal Procedure Code In this case, the investigation proceeded on the lines that after the accused was taken into custody, the prosecution witnesses were called at the Police Station to see whether the information given by the accused was correct or not. It cannot be said that the investigation on these lines was not proper. Cases do occur when the witnesses accompany the Police to identify the accused. In such cases, the further holding of the identification parade is useless.

16. We must not be understood to say that a court of law may ignore the necessity of holding such proceedings before a magistrate in all Cases. As already observed, such proceedings are deemed essential in many cases and the courts of law have in a number of cases laid down the manner in which such proceedings should be held. It all depends on the nature of the case and no hard and fast rule can be laid down. However, in the present case, we do not find any reason whatsoever for rejecting the testimony of the three witnesses Dildar Khan, Bashiruddin and Badrilal.

17. Now coming to the recovery of the coat (Ex.20) and the canvas shoes (Ex.1), this is proved by the evidence of Mr. J.K. Balani, Nath Raj and the moatbir Shankar Lal. One criticism of the learned Additional Sessions Judge is that the other moatbir Kishen Lal has stated that he signed on these two articles on the next day at Udai Mandir Police Station, but even this man had stated that they were in fact recovered on the 24th of February 1957. So far as the recovery of these two articles from the accused is concerned there is no room for any doubt whatsoever. The other argument is that they were not properly wrapped and sealed when they were sent to the Chemical Examiner or the seal was tampered with later on. The learned Additional Sessions Judge has placed too much reliance on the statement of Kishen Lal. The statement of Kishen Lal is contrary to the recovery memo, (Ex.P/3) which he had signed. The recovery memo, clearly states that the blood stained portion of the sword was Wrapped and sealed. It is also contrary to Ex.P-4 which relates to the recovery of the canvas shoes and the coat. Ex.P/4 shows that the packet containing them was sealed. It is too much to place reliance on such a witness in preference to the evidence

of Mr. Balani and Shankerlal. Another witness Nath Raj has been examined by the order of this Court to prove the proper wrapping and sealing of these articles. The argument was that the dhoti was not found in the packet when it was opened by the Chemical Examiner. It has been explained by the evidence that has come now on record that this dhoti was used as a wrapper and the Chemical Examiner did not think it necessary to mention even a wrapper in hid report. The learned Additional Sessions Judge has not tried to take a balanced view of the evidence on the point of the recovery of these articles from the accused and also on their being sent to the Chemical Examiner after taking proper precautions in the matter of wrapping and sealing for report. We have very good reasons to differ from the view taken by him. The recovery of the lantern from the room alleged, even if taken to be proved, is not of much consequence as it was not sent to the Chemical Examiner, though it is alleged by the prosecution that it had blood stains on it.

18. Now remains the question whether any part of the first information report is admissible in evidence. Learned Assistant Government Advocate has urged that in view of the Division Bench ruling of this Court in ILR (1952) 2 Raj 93 the first information report, except the portion wherein the accused has referred to his murdering his son should be read in evidence. Learned counsel on behalf of the accused urged that the force of this authority is much shaken by the pronouncement of their Lordships of the Supreme Court in *Nisar Ali v. State of Uttar Pradesh,* [8] and *Palvinder Kaur v. State of Punjab,* [9] In ILR (1952) 2 Raj 93 the first information report was made by the accused soon after he had murdered his wife. It was held by this Court that the entire first information report was not inadmissible in evidence merely because it had been made by an accused person and parts of it which could he properly separated from the confessional part, could be and should be admitted in evidence as first information. Reliance was placed on the case of the Calcutta High Court in *Emperor v. Lalit Mohan Singh,* [10] Support for this proposition was drawn from the privy Council cases *Dal Singh v. Emperor,* [11] and *Pakala Narayana Swami v. Emperor,* [12] and *Harji v. Emperor*[13]. The case of the Bombay High Court in *Harman Kisha v. Emperor, AIR 1935 Bombay 26* was also taken notice of.

19. We may first of all emphasise that the first information report is nothing but the statement of the maker of the report at a Police Station before a Police officer recorded in the manner provided by the provisions of the Criminal Procedure Code. That statement must be admissible in evidence under the provisions of the Evidence Act of

it can serve any purpose at the trial. Obviously the one way to make it admissible is that the maker of the first information report comes in the witness box and narrates the events of which he has personal knowledge and then further makes a statement that he had made the same narration earlier at the Police Station which was recorded by way of first information report. The last portion of the statement of the witness is admissible under Section 156, Evidence Act, as corroborating the testimony of the witness. A witness may also be contradicted under Section 145 by his previous statement in the first information report. The first information report may be admissible under Section 8 of the Evidence Act as evidence of his conduct. It may also be admissible under Section 21 of the Evidence Act as his admission. When the accused himself makes the first information report, S.25 of the Evidence Act lays down that if it is in the nature of a confession, being made to a Police officer, it is inadmissible, and it cannot be proved as against him. If it is not a confession but contains admissions made by the accused, the first information report is admissible in evidence under Section 21 of the Evidence Act. This proposition has been laid down by their Lordships of the Privy Council in AIR 1939 PC 47. It was laid down that:

> 'An admission of a gravely incriminating fact is not of itself a confession.'

and that-

> 'no statement that contains self-exculpatory matter can amount to a confession if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed.'

If the statement of the accused as contained in the first information report is in the nature of a confession, it is inadmissible in evidence under Section 25 of the Evidence Act. The observations of their Lordships of the Supreme Court in AIR 1957 SC 366 that:

> "A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial".

must be read with the facts of that case. One of the co-accused had made the first information report in that case. The contents of the report also are not given in the judgment of their Lordships and it cannot be taken that their Lordships were laying down any law on the admissibility of the first information report as an admission of

the accused under Section 21 of the Evidence Act if it was not hit by S.25 of the Evidence Act. There are several decisions of their Lordships in which the observations in Pakala Narayana Swami's case, AIR 1939 PC 47 are approved. Reference in this connection may be made to the *State of Uttar Pradesh v. Deman Upadhyaya,* [14] This question was considered in Ram Singh's case, ILR (1952) 2 Raj 93 by this Court and it was held that a part of the first information report is admissible as an admission under Section 21 of the Evidence Act even when the other portion of it is a confession and inadmissible under Section 25 of that Act if that part can be properly separated from the confessional part. The objection raised on behalf of the accused is that an admission of an accused must be taken as a whole and if any part of it is inadmissible in evidence, the whole of it must be held to be inadmissible. Reliance is placed in this connection on the following observations of Mahajan J. in AIR 1952 SC 354 on page 357-

> "The Court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well-accepted rule regarding the use of confession and admission that this must either be accepted as a whole or rejected as a whole and that the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible".

This rule has been laid down by their Lordships of the Supreme Court for the guidance of the court in the matter of appreciation of evidence on record. This rule has nothing to do with the admissibility of a statement made by the accused under the provisions of the Evidence Act. In a jury trial the matter of admissibility of evidence is for the Judge to decide, while it is for the jury to place any reliance on the evidence on record. If the first information report is a document containing not only the confession of the accused for committing the crime with which he is charged, but also relates to several other matters which are relevant to the trial, there is nothing in the provisions of the Evidence Act making the latter inadmissible. Care must of course be taken that such statements are properly separable from the confessional part. We shall presently deal with the question as to what should be deemed to be included in a 'confession,' but granting that it is possible to separate the confessional part from the other part which is also relevant, it cannot be said that the other part is inadmissible. Section 27 of the Indian Evidence Act itself envisages the admissibility of part of the statement of the accused which may be inadmissible under the preceeding Sections 24, 25 and 26. In Ram Singh's case, ILR (1952) 2 Raj 93 the case of the Calcutta High Court in AIR

1921 Calcutta 111 has been approved. There is yet another case of the Calcutta High Court reported in Legal Remembrancer, Bengal v, Lalit Mohan Singh Roy, AIR 1922 Calcutta 1342 in which this principle has been approved. In that case, it has been again laid down that,

> 'the first information report in so far as it spoke of the events prior to the night of the occurrence ..... were admissible in evidence'.

It was further observed in that case, that 'when some portions of a statement are admitted, the persons affected thereby may demand that the statement may be admitted and considered in its entirety'. The Nagpur High Court in *Bharosa Ram Dayal v. Ernperor* [15] relied on this authority dissenting from the view taken in AIR 1935 Bombay 26 and held that the proposition that the whole first information report should have been excluded from the admission was not correct.

20. It may be mentioned, however, that in an earlier case of *James Dowdall v. Emperor,* [16] a Division Bench of the Nagpur High Court had pointed out that-

> "A statement which is inadmissible, being a confession, cannot be dissected so as to make its parts admissible to support the prosecution".

Reliance is placed on that authority for taking this view on *Mohammada v. Emperor,* [17] *Mst. Pathani v. Emperor* [18] and *Ramprashad Makundram v. The Crown,* [19] The Andhra Pradesh High Court in *Bejjanki Rajam v. State of Andhra Pradesh,* [20] Sanjecva Row Naidu J. has observed, as follows:

> "But if either a statement does not amount to a confession or if portions thereof do not amount to a confession, there is no objection to receiving them in evidence. Again, if there are portions of the statement which are sought to be used for and in favor of an accused person, such use of the portions of the statement is not excluded by Section 25 of the Indian Evidence Act".

In *Ramlal Singh v. The State,* [21] Khan J. has observed that the effect of the observations of their Lordships of the Supreme Court in AIR 1957 SC 366 was to exclude the entire report of the accused from being considered in any manner. We are of opinion that this cannot be taken to be the effect of the judgment of their Lordships

of the Supreme Court.

21. If there is a confession of the accused pure and simple in the first information report made by him, the entire first information report is inadmissible in evidence. If in addition to the confession it contains certain other matters, which are relevant to the inquiry in the crime, they may be taken into evidence as admissions of the accused but care must be taken to see that such statements are not a part of the narrative of confession. A confessional statement does not mean only that portion of the statement in which the commission of the actual offence is referred to. If the accused has given a version admitting that he had committed an offence and at the same time further given the details of the preparation which he had made for the commission of the offence and the manner in which he had committed the offence it cannot be said that the portion that relates to the preparation of the offence or other activities of the accused in the matter of the commission of the offence can be read in evidence and only that portion which related to the actual commission of the offence is inadmissible The entire narrative in such a case is inadmissible.
In a case in which an accused has stated about his preparation for the offence and disowned that he had committed the offence, his statement is exculpatory and is admissible in evidence though it contains certain self-harming statements. This has been laid down by their Lordships of the Privy Council in AIR 1939 PC 47 but if there is a confession, then the statement of confession is inadmissible including that portion that relates to the preparation for the commission of the offence. If the confessional statement made by the accused he has also disclosed the motive for his committing the offence, the question is whether that part of the statement is also admissible or not? We are of opinion that to admit it would not be in consonance with the rule that the whole of what the prisoner said directly bearing on his confession should be taken together and should be excluded. The existence of a motive to commit an offence is itself taken to be an incriminating circumstance in determining the guilt of the accused and when there is a confession of the commission of the offence, all incriminating circumstances intimately connected with the commission of the offence and forming part of the confession must be excluded. If after excluding such circumstances, there remains some other admissions which are relevant to the case, they may be admitted as admissions of the accused under Section 21 of the Evidence Act.

22. Let us proceed to examine in this light, the first information report made in this case. In this the accused stated that he and his son had filed a suit against his mother-

in-law Mst. Shivi relating to a house in Ratanada which had been decided sometime back in his favor and that the case was fixed for hearing on the 28th of February in the court of the Civil Judge. On that day, his mother-in-law won over his son and when he came to know of it, he asked his son not to make any compromise with his maternal grandmother as they were likely to win the case, but his son did not agree to this and said that he would live with her and that the accused should vacate the house. On this he told him that he had been ruined financially as well as in his honor. He made his son to understand the position but Mohan did not agree and he felt aggrieved on that account. On this he made up his mind to take the life of Mohan. Then the accused proceeded to narrate the story of the purchase of the sword from a kabari and getting it sharpened from a sikligar. He purchased some wine part of which he drank in the night preceding the incident and part he drank in the early hours of the morning. Then he saw his son going to the nohra as usual and he thought that it was a good opportunity to kill him as Mohan must be alone at that time. He made up his mind to kill and went to the nohra with the sword. Then he narrated the manner in which he had killed him. He then proceeded to state that he returned to his room with the lantern of Mohan. He then thought his mind that as he had killed Mohan, he would be arrested so it was better for him to go to the police Station. He also stated that on his way to the Police Station, he took some wine from a liquor shop out of which he took some wine. In the end he stated that he was producing a sword with which he had killed his son. In this statement, the accused has given the motive, preparation and the manner of the commission of the offence. He has further stated that after the commission of the offence he had gone to his house and had come to the Police Station to make the report. The motive for tile commission of the offence is stated to be his disagreement with his son in making a compromise with his mother-in-law. The first part of the first information report in which he has given the details of his disagreement may be introductory in its nature but nonetheless, so much of it as give the motive for the murder is inadmissible. Those portions of the confession which related to the preparation and the commission of the offence are clearly inadmissible.

The last part deals with the movements of the accused after the commission of the offence. This is no part of the confession as it relates to what the accused did after he had committed the offence. In this the accused has said that he had gone to his house with the lantern of Mohan and remained sitting for sometime and thereafter he went to the Police Station and on the way he purchased some wine from a liquor shop. This part is not hit by section 25 of the Evidence Act. It is also relevant to show that the accused had gone from the place of the incident to his house in the early hours of the

morning and then had gone to the Police Station. This part of the statement as also the other parts of his statement in the FIR are denied by the accused at the trial. This part of the statement is partly corroborated by the evidence of Lalchand, who has stated that the accused had purchased wine from him on that morning and he had a naked sword with him. The recovery of a quarter bottle of wine at the time of his arrest also corroborates it. Thus, there is no reason to hold that this portion of the admission of the accused was wrongly made by him. The other portions of the first information report are inadmissible in evidence and cannot be taken into consideration. The learned Additional Sessions Judge has taken the FIR, into consideration but has rejected it on the ground that it was not corroborated. He is clearly wrong as he failed to notice the provisions of section 25 of the Evidence Act.

23. Learned counsel for the accused did not place any reliance on the defense evidence except to the extent that there were other persons namely, Mst. Kamla and Shiv Narain who could have committed the offence. This is an argument in the air and is without foundation.

24. The circumstances which we hold proved against the accused are:

(1) That the accused was annoyed with his son Mohan on account of his making a compromise with the maternal grandmother Mst. Shivi in the litigation about the house in Ratanada and even threatened to kill him on the night previous to the night of the incident;
(2) That the accused had purchased an old and rusty sword from Dildarkhan on the 23rd of February, 1957;
(3) That that sword was given to Badrilal for sharpening who returned the sword after sharpening it to the accused at about 8 p.m. on the night of the incident;
(4) That the accused went to the Police Station at about 5.45 p.m. to make a report with a sword in his hand;
(5) That the sword was blood stained and on chemical examination it was found positive for human blood and that the sword has been proved to be the one which he (the accused) had purchased on the 23rd of February, 1957 from Dildar-khan and got it sharpened from Badrilal;
(6) That the coat which the accused was wearing and the canvas shoes which he had on his feet were found to be stained with human blood;
(7) That he took the Police to the place where the dead body of Mohan was

lying;
(8) That on medical examination it was found that the injuries on Mohan were inflicted by a sharpedged weapon like a sword which was recovered from the possession of the accused;
(9) That Mohan was alive till early hours of the morning and was last seen by his wife Mst. Kamla going to the nohra.

All these circumstances proved beyond any manner of doubt that it was the accused and he only who had killed his son Mohan. No doubt the direct evidence of Mst. Kamla on this point has not been believed but the other circumstantial evidence that has been brought on the record lead to the only conclusion that it was no other person but the accused who had killed Mohan.

25. There is yet another circumstantial evidence against the accused which is contained in the FIR and to which we have referred hereinbefore that the accused had gone from the nohra to his house and then to the Police Station with a naked sword in the early hours of the morning. However, even if it is disregarded, we are firmly of opinion that the guilt of the accused is established beyond any manner of doubt.

26. Learned counsel further argued that the circumstances established in the case are not sufficient to warrant the conviction of the accused. In this connection he cited several authorities in which the accused was found with the weapon of the offence. In our case, it has been proved that that sword was of the accused and he had purchased it only on the day preceding the night of murder. It would not serve any useful purpose if we consider the authorities cited by the learned counsel as the circumstances proved in those cases are not such overwhelming as in the case before us. In this connection, we may refer to AIR 1960 SC 1125.

27. Learned counsel has argued that this was an appeal from an acquittal and there must be substantial and compelling reasons for upsetting the finding of acquittal. While discussing the evidence on record, we have pointed out that in appreciating the evidence, the learned Judge has rejected the prosecution evidence on flimsy grounds. The finding of the learned Additional Sessions Judge is perverse and there are substantial and compelling reasons for us to interfere. We hold the accused guilty under Section 302 I.P.C. and reverse the finding of acquittal of the learned Additional Sessions Judge.

28. Coming to the sentence, this is a case which no doubt calls for imposing the extreme penalty of death but the proceedings in this Court show that the accused is a whimsical man. He has been changing counsel from time to time and making frivolous applications. We are of opinion that the ends of justice will be met by imposing on him a sentence of imprisonment for life.

29. As a result of the aforesaid discussion, we set aside the order of acquittal of the learned Additional Sessions Judge, Jodhpur, dated the 28th of February, 1958, and convict the accused under section 302, I.P.C. We sentence him to undergo imprisonment for life.

Appeal allowed.

Cases Referred.

1. AIR 1954 SC 1
2. AIR 1954 SC 28
3. AIR 1954 SC 720
4. AIR 1952 SC 343
5. ILR (1952) 2 Raj 93
6. AIR 1957 SC 216
7. 1955-1 SCR 903: (AIR 1955 SC 104)
8. AIR 1957 SC 366
9. AIR 1952 SC 354
10. AIR 1921 Cal111
11. AIR 1917 PC 25
12. AIR 1939 PC 47
13. AIR 1918 Lah 69
14. AIR 1960 SC 1125
15. AIR 1941 Nag 86
16. AIR 1936 Nag 103
17. AIR 1948 Lah19
18.35 Pun LR 559: (AIR 1934 Lah 673)
19. AIR 1949 Nag 277
20. AIR 1959 And Pra 333

21. AIR 1958 Mad Pra 380