

## PEPSU HIGH COURT

Kartar Singh

Vs

State (Pepsu)

Criminal Appeal No. 188 of 1951

(Kesho Ram Passey and Chopra, JJ.)

21.01.1952

### JUDGMENT

#### **Kesho Ram Passey, J.**

1. By his order dated 21-8-51 the learned Sessions Judge, Bhatinda has convicted Kartar Singh S/o Mastan Singh of village Sardulgarh under Section 302, Indian Penal Code for the murder of his uncle Bagga Singh and sentenced him to transportation for life. Kartar Singh has appealed. The facts are simple and may be stated briefly : Bagga Singh deceased his brother Kapur Singh and accused's father Mastan Singh were the joint owners of a field (Khasra No. 1212 Min) known as Danewala in equal shares. On 29.5.1951, Bagga Singh, who was issueless, mortgaged by an unregistered document his share which came to 15 bighas Kham to Pritam Singh and Mukhtiar Singh sons of Kehar Singh for Rs. 1,000/-. The mortgagor also made a report about the mortgage to the Patwari concerned on the same day and he affixed his thumb impression on the report. As the mortgage was to be in the usufructuary form Bagga Singh took Pritam Singh to the Danewala field at about 10/11 A.M. on 2.6.1951 with a view to demarcate the portion that he was to take possession of. When the boundaries of the mortgaged land were being indicated with a spade by Bagga Singh, the accused who happened to be grazing his camel nearby and had a Gandasa in his hand resented the mortgage and told Bagga Singh that he should not squander the land apparently because his reversionary interests were being affected. Bagga Singh replied that he was starving and had no other alternative. Upon this Kartar Singh accused inflicted four Gandasa blows on the neck of Bagga Singh and above it cutting his spinal cord completely and also the bones of the upper and lower jaws. Bagga Singh died instantaneously and the accused then dragged the dead body to a stack of fodder close to the place of assassination and deposited it underneath the fodder.

At 3 P.M. he made a report of the incident himself at the police station in his own village. Investigation having been taken up immediately the corpse of Bagga Singh was on information supplied by the accused recovered from the place of its concealment. The weapon which had been used by the appellant in putting Bagga Singh to death was produced by him from his house. The pair of shoes (Ex. P-3) and a turban (Ex. P-4) belonging to the deceased were also recovered from his residence. Some bloodstained earth that was picked up from the place of incident and the Gandasa (Ex. P-1) were sent to the Chemical Examiner and the Imperial Serologist whose

reports have confirmed that human blood was present on the two articles. The execution of the mortgage deed has been proved by its scribe Ghisu Ram P. W. 9 and its attesting witness Waryam Singh P.W. 10. Amar Singh Patwari has proved that a report of which Ex. PN is a copy was made to him by Bagga Singh and that the original bears the thumb impression of the mortgagor. Recoveries of the Gandasa, the dead body, the pair of shoes (Ex. P-3) and the turban (Ex. P-4) have been proved by Waryam P. W. 10, Puran Singh Lambardar P. W. 11 and M. Gopal Singh A. S. I. P. W. 13. The post mortem examination of the dead body was performed by Dr. Bhagwant Singh, Medical Officer-in-charge Mansa Dispensary, who appearing as a witness testified to the presence of 4 sharp edged weapon injuries above the neck. Out of those injuries the one on the left side of the neck which had completely cut the spinal column and the other on the left side of the face cutting the lower jaw bone were individually sufficient in the ordinary course of nature to cause death. Pritam Singh P. W. 12, who is the only eye witness in the case, has fully supported the prosecution. The accused only pleaded not guilty but called no evidence in defense.

2. As stated above, it was the accused himself who gave information to the police of the commission of the crime by him and the report that he lodged can be split up into three parts; the first being introductory which describes the motive and opportunity for the crime and proves the presence of Pritam Singh eye-witness. The second part is apparently confessional and the 3rd furnishes information pursuant whereto the recovery of the dead body and the weapon of offence was effected. The learned Sessions Judge has, in view of the provisions of Section 25, Indian Evidence Act excluded the confessional portion of the F. I. R., from consideration; but the learned Assistant Advocate-General urged that the statement by Kartar Singh which constitutes the F. I. R., was made by him when he had not been accused of having committed any offence and it did not, therefore, fall within the purview of Section 25, Indian Evidence Act and should have been used as evidence against the accused. Mr. Tiwari, on the other hand, while conceding that there is ample authority for the view that in the case of a report made to the police by the accused, that portion of the report which is introductory or gives information about facts that are subsequently discovered in pursuance of that information is admissible in evidence, has, relying on Section 25 of the Indian Evidence Act, strenuously urged that the portion of the report in which the accused has admitted the commission of the crime by himself cannot be allowed to be proved. Section 25 of the Indian Evidence Act states that no confession made to a police officer shall be proved as against a person accused of any offence. The section, in my view, leaves no doubt that in order to determine its applicability the position of the person at the time the report made by him is sought to be proved and not at the time he made the report is to be considered. If at the time the statement made by him to the police constituting the F.I.R., is sought to be proved, he stands charged with any crime, that portion of the F.I.R., which contains his confession of the crime perpetrated by him cannot be proved as against him. It is true that at the time he goes to the police and volunteers information regarding the commission of the crime by him there are no proceedings going on against him nor is any specific charge being enquired into, but it must all the same be admitted that when he states that he has committed an offence he exposes himself to be charged with that offence and his statement gives rise to the initiation of criminal proceedings against him. There is ample authority for the view that so much of the F. I. R., which amounts to a confession by the accused is not admissible in evidence against him. See '*Santokhi Beldar v. Emperor*<sup>1</sup>', '*Harjee v. Emperor*<sup>2</sup>', '*Nur Mohd. v. Emperor*<sup>3</sup>', and '*Rex v. Shaik Taleb*<sup>4</sup>', The other proposition is also equally clear that it is only the confessional part of the report that must be excluded from proof of the guilt of the accused and not the entire report. Those portions that

relate to motive and opportunity and information leading to discovery of facts would be relevant. '*Mohammada v. Emperor*<sup>5</sup>', '*Sikandar v. Emperor*<sup>6</sup>' '*Bharosa Ram v. Emperor*<sup>7</sup>', are authorities in point. I would consequently hold that the confessional part of the report must be excluded from consideration; but those portions which do not relate to the commission of the crime itself, as for instance which are introductory or narrate the motive and the opportunity for the offence, the presence of certain witnesses or give information about facts which are admissible under Section 27, Indian Evidence Act would be relevant evidence in the case. The motive for the crime in the present case is amply established by the mortgage deed (Ex. PL), and the report made by the deceased to the Patwari Ex. PN, which have been duly proved and also by the statement of the accused in the F.I.R. and the evidence of Pritam Singh P.W. The dead body of Bagga Singh as mentioned above, was discovered at the instance of the accused within a few hours of the occurrence and the weapon of offence with bloodstains on it was produced by the accused within a short time after he proceeded to the police station and there lodged the P. L R. The medical evidence also supports the eye-witness Pritam Singh. While discussing the evidence of Pritam Singh it was argued by Mr. Tiwari that he had in all likelihood not seen the occurrence, as he did not inform the police about the crime until after the accused had himself lodged the F. I. R., and there is a discrepancy in his statement and that of the investigating officer regarding the place where he met the investigating officer. Pritam Singh has stated that he had gone to the police station to make a disclosure of what he had witnessed; whereas M. Gopal Singh, investigating officer, has stated that he had met him at the house of Kartara accused when he had gone there to effect recovery of the weapon of offence. This is hardly a discrepancy that can destroy the evidentiary value of the witness's statement. He had not been summoned by the investigating officer and he had gone to him himself as he felt impelled to apprise the police of the murder. He was examined by M. Gopal Singh, P.W. 13 at 6-50 P.M., and he has given reasons for taking some time to inform the police. On seeing the fate Bagga Singh had met and on being himself threatened by the accused he took to his heels and stopped at a well about a mile away. He composed himself by taking water and then returned to Sardulgarh after a while. There was nothing unnatural in his conduct and he has been believed by the learned Sessions Judge. His evidence, which is clear and cogent, has impressed us also as credible. The appellant attacked Bagga Singh who was old and defenceless, and killed him on the spot without any justification. Bagga Singh had mortgaged his share of the land and not that of the accused or Kapur Singh. The fact that the reversionary interests of the accused were liable to be affected and that Bagga Singh had not given the desired reply in response, could afford no cause for his brutal assassination. No less than four blows were dealt and all of them were above the neck. Apparently, thus, the intention of the accused was to kill Bagga Singh. We, consequently, dismiss his appeal and maintain the order of his conviction and sentence.

**Chopra, J.**

3. I agree.

Appeal dismissed.

Cases Referred.

326 Cri LJ 817 (Lah)  
42 Ind Cas 951 (Cal)  
5 AIR 1948 Lah 19  
635 Pun Re Cr 1918  
7 AIR 1941 Nag 86