

(1952) 06 SHI CK 0001**High Court of Himachal Pradesh****Case No:** Criminal Appeal No"s. 10 of 1951 and 2 of 1952 and Murder Ref. No. 2 of 1951

Ranjit Singh and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 16, 1952

Acts Referred:

- Constitution of India, 1950 - Article 134, 20(2)
- Criminal Procedure Code, 1898 (CrPC) - Section 154, 162, 164(3), 172, 173
- Evidence Act, 1872 - Section 11, 118, 133, 154, 25
- Penal Code, 1860 (IPC) - Section 114

Citation: AIR 1952 HP 81

Hon'ble Judges: Chowdhry, J.C.

Bench: Single Bench

Advocate: J.N. Bannerji, Thakar Das and R.L. Kohli, No. 2 and Y.P. Gandhi, Nos. 1 and 2, for the Appellant; Bakhshi Sita Ram, Government Advocate, for the Respondent

Judgement

Chowdhry, J.C.

- Ranjit Singh, aged 26, and Smt. Kalawati, aged 30, were committed to Sessions to take their trial for the murder of the latter's husband Kunwar Bikram Singh. The committal of Ranjit Singh was u/s 302 and that of Kalawati for the abetment of the offence under the said section read with Section 114, Penal Code.
- The learned Sessions Judge of Mahasu tried them for the said offences, and while he found Ranjit Singh guilty u/s 302, Penal Code and sentenced him to death, he acquitted Kalawati of the offence charged but found her guilty u/s 201, Penal Code, and sentenced her to rigorous imprisonment for five years.
- Ranjit Singh and Kalawati have appealed against their convictions, the State Government has appealed against the acquittal of Kalawati of the charge u/s 302, read with Section 114, Penal Code, and the Sessions Judge has submitted the

proceedings for confirmation of the sentence of death passed on Ranjit Singh.

3a. The deceased was a zamindar with his headquarters at Manimajra in Ambala district and summer resort at Bishanpura, a place close to Kuthar within police station Solan. He was a cousin of the Rana of Kuthar and was married in 1938 to Kalawati, a daughter by a khwas of the late Raja of Nalagarh. They had four children of whom three are alive. Ranjit Singh, a resident of Basdora in the district of Hoshiarpur, is also related to the deceased as a distant cousin.

4. The prosecution case is that Bikram Singh was a man of bad temper given to wine and women. He ill treated Kalawati and the relations between them had for a number of years been strained. Ranjit Singh began to visit them about two or three years before the incident, and there grew up an illicit intimacy between him and Kalawati. The matters came to a head about ten days before the occurrence at Bishanpura when on a mere trifle Bikram Singh publicly slapped Kalawati. Ranjit Singh happened then to be at Bishanpura. Unable to bear the ill treatment any longer, Kalawati and Ranjit Singh entered into a conspiracy to murder Bikram Singh. They would thus not only be rid of Kalawati's tormentor but left free to follow unhampered the primrose path of their liaison. The plot hatched was that Ranjit Singh would leave Bishanpura but return one night a few days later and kill Bikram Singh, and after the act had been done, and Ranjit Singh escaped Kalawati would raise an alarm that dacoits had stolen her ornaments and murdered her husband. Kalawati handed over her ornaments to Banjot Singh, but they were to be returned to her afterwards. Banjot Singh left Bishanpura on 8-7-1951; but returned a week later in pursuance of the conspiracy and killed Bikram Singh with a sword at about three on the night between 13th and 16th July 1951.

5. The prosecution version of the occurrence is as follows. The deceased's children other than the youngest, and his younger brother Kunwar Balbir Singh (P. W. 1), had gone to Manimajra on 7-7-1951, and the latter's wife Man Piari (P. W. 37), who is Kalawati's own sister, was away on the night of the occurrence at the Rana of Kuthar's. The deceased was asleep on a charpai on the open roof of his house and closely was the charpai of Kalawati. The only other persons asleep on the roofs were three maid-servants, Shibbi (P. W. 3) aged 30, Jamawanti (P. W. 4) aged 12 and Sheela (P. W. 11) aged 10. Ranjit Singh ascended the roof by means of a ladder, which had recently been used for the construction of a kitchen in the upper storey, and committed the murder with a sword. Shibbi was awakened by a sound like "thach thach". She saw Ranjit Singh run past her charpai with something glittering in his hand and go down the ladder. She shouted to the men servants who were sleeping outside the house after having locked the main gate from outside, and went to the roof where Bikram Singh's bed was. He was lying on the ground face downwards. Kalawati's bed was empty. She went into the adjoining room and found Kalawati standing there and told her that Kunwar Sahab was lying on the ground and that she had seen Ranjit Singh running away. Kalawati scolded her and bade her

be quiet and told her that it was not Ranjit Singh but dacoits who had taken her down to the ground floor and robbed her of her ornaments. Being a servant and afraid to offend Kalawati, Shibbi kept her counsel and, when the servants and others arrived, only told them that she had seen a man running away, but did not name him. Kalawati repeated to them the same story which she had told Shibbi. They all requested Kalawati to see what had happened to her husband, but she asked them instead to attend to him and give him water. They then went to where Bikram Singh was and found him dead.

6. The prosecution version of what happened subsequently, right up to the submission of charge-sheets, may also be briefly stated. The first outsider to reach Bikram Singh's house after the murder on the night in question was Laiq Ram (P. W. 23), a shopkeeper of Kuthar. He was participating in a Kirtan, which lasted till about 3 A. M., and, as he was preparing to go to bed, he heard a noise coming from Bikram Singh's house. He was also one of those assembled soon after the occurrence to whom Kalawati related the story of dacoity. Laiq Ram despatched two men Mathu and Rana (not produced), to report the matter to the police. There is a police out-post at Bishanpura, and head-constable Narsing Das (P. W. 24) was at the time in charge of it. These two men did not themselves go to the outpost but transferred the message to another resident of Kuthar, Sahibu (P. W. 7), who was also proceeding to Bikram Singh's house on hearing a noise. They told Sahibu that there had been a dacoity and Bikram Singh had been murdered. Sahibu shouted the message towards the police out-post and proceeded to Bikram Singh's house. The head-constable recorded it in the general diary and reached the scene of occurrence, and the first thing he did there was to record the statement of Kalawati. A number of persons were present there, including the servants, but he did not record the statement of, or make inquiries from, anybody else. The message recorded in the general diary is EX. PAX and EX. PAY is the statement of Kalawati, and it is in controversy as to whether the one or the other constituted the first information report. The head-constable took into his possession the pillow of the deceased's bed, which was blood-stained, and some hair which were sticking to the pillow. He prepared an injury report, EX. PAK, and drew up an inquest report, EX. PAZ, at 4 A. M. A scabbard, EX. P46, was found lying near a water-channel at a distance of about three furlongs from Bikram Singh's house by Bishnu (P. W. 19), a resident and zamindar of Bishanpura, and, on being pointed out by him, was taken possession of by the head-constable on 16-7-1951.

7. A telephonic message was sent from the residence of the Rana of Kuthar to the police station at Solan. A copy of the said statement of Kalawati, EX. PAY, was also received at the police station and incorporated there into a first information report Ex. P. B. A.

S. I. Prithi Ram (P. W. 38), officer in charge of the police station, reached the spot at about 1 P. M. on 16-7-1951, along with Doctor Joti Prasad (P. W. 36), medical officer

in charge of the hospital at Solan. The same day the former recovered bloodstained earth from the place of occurrence and recorded statements of a number of persons, including Kalawati, and the doctor held a postmortem on the dead body of Bikram Singh and prepared the report EX. PAL at 2 p. M. He found the following injuries on the person of the deceased, and in his opinion death was due to haemorrhage and shock as a result of multiple grievous hurts inflicted by a sharp weapon : [His Lordship enumerated the injuries set out in the medical report and proceeded.]

Kalawati produced an ear-ring before S. I. Prithi Ram on 17-7-1951, implying that the other had been removed by the dacoita. A shirt and a kuchha, both blood-stained, were recovered by A. S. I. Jai Singh from under a stone near a water channel on 18-7-1951. A turban was detected by Shib Ram (P. W. 17), a zamindar of Kuthar, lying in his field on 20-7-1951 and handed over to the S. I. the same day. The house of Ranjit Singh at Basdera was searched on 22-7-1951 and some letters were taken possession of, and a note book was at the same time handed over to the S. I. by Ranjit Singh. The latter went to Kuthar at the bidding of the S. I. on 23-7-1951. The following day he was interrogated and arrested by the police at Kuthar. Later, the same day Thakur Jagat Singh, Deputy Superintendent of Police (P. W. 6), under whose supervision the investigation was going on recovered a sword on being pointed out by Ranjit Singh from under some bushes at a distance of about 100 paces from the house of Bikram Singh.

On 26-7-1951 Bikram Singh's house at Manimajra was searched in the presence of Kalawati and a photo of Ranjit Singh and some clothes were recovered, and she was brought the same night to Solan with her children and Baldeo Singh (P. W. 2) a distant cousin of Bikram Singh and manager of the Jagir gifted to her and her sister Man Piari by their father, the late Baja of Nalagarh. She was allowed to pass the night in a rented house, and when she came to the police station the following day, i. e. on 27-7-1951, she was arrested and produced in the evening before Shri V.B. Antani (P. w. 31), a first class Magistrate at Solan, for a remand to police custody. At that time Kalawati expressed a desire to make a statement before the Magistrate.

The Magistrate did not accede to her request but passed an order remanding her to custody in the judicial lock up and directing that she be produced in his Court the following day. The following day, i. e., 28-7-1951, she was produced before him in Court from the judicial lock up, and her confession was at her request recorded by the Magistrate, and thereafter she was sent back to the judicial lock up.

On 28-7-1951 S. I. Prithi Ram left Solan with Ranjit Singh for Basdera and reached there the following day, and on being pointed out by Ranjit Singh, recovered after digging up the floor of a room in his house, the ornaments which Kalawati had given him. Ranjit Singh was then brought back to Solan and his confession was recorded on 3-8-1951 by the said Magistrate. Three charge-sheets were submitted by the police against Ranjit Singh and Kalawati, dated 7-8-1951, 20-8-1951 and

15-9-1951. The Magistrate commenced the trial on receipt of the first challan on 14-8-1951, and, while the trial was going on, identification proceedings were held before Shri Antani on 20-8-1951 and

8. Both the accused retracted their confessions in the Court of the committing Magistrate and denied the allegations of illicit intimacy, conspiracy and murder. Ranjit Singh pleaded that on the night in question he was at his house in Basdera. He denied that any of the recovered articles were his. He also denied that the discoveries of the sword and ornaments were made at his pointing out. Both the accused stated that the deceased's brother Kunwar Balbir Singh (P. W. 1) was inimical to them, and Kalawati made a similar allegation against Baldeo Singh (P. W. 2) also. Other statements made by them will be referred to at appropriate places.

9. The learned Sessions Judge discarded the confessions and recoveries. He also discarded the evidence of Gurbachan Singh (P. W. 8) and Jatia (P. W. 9) from which the prosecution sought to establish that Ranjit Singh was seen at Dharampur on the afternoon of 15-7-1951 on his way to Bishanpura and on the morning of 16-7-1951 returning from there. He accepted the prosecution evidence with regard to motive, i. e. strained relations between the deceased and Kalawati and illicit intimacy between the latter and Ranjit Singh, but he was of the opinion that this motive was so weak that it was not substantial corroboration of the confessions. The only prosecution evidence relied upon by the learned Sessions Judge was the statement of the eye-witness Mt. Shibbi (P. W. 3). On the strength of her testimony, he convicted and sentenced the two accused as aforesaid.

10. The entire ground was covered in very elaborate arguments before me, including arguments on certain constitutional and other questions which had not been touched in the Court below. And I propose to deal with these latter questions first, as, indeed, I must needs do, since they are in the nature of preliminary objections which, if accepted, would have the effect of eliminating a lot of prosecution evidence, and material evidence at that, and of cutting at the very root of the Government appeal.

11. Objections based on the provisions of the Constitution of India were raised by Dr. Bannerji, learned counsel for Kalawati. The first objection taken by him was that Section 417, Criminal P. C., under which the State Government has appealed against the acquittal of Kalawati of the offence of abetment of murder, is ultra vires the provisions of Article 20 (2) of the Constitution, which lays down that no person shall be prosecuted and punished for the same offence more than once. It was in controversy whether the word "and" in the phrase "prosecuted and punished" has been used disjunctively or conjunctively. It was argued on behalf of Kalawati that the word had been used disjunctively in the sense of "or", and therefore, it is sufficient for the application of Article 20 (2) that the accused have only been prosecuted, but not also punished, so far. On the other hand, the learned Government Advocate contended that the word had been used in its ordinary conjunctive sense, so that

the said provision is not applicable since though prosecuted the accused have not yet been punished. Were it necessary to do so, I would decide the point in favour of the disjunctive interpretation for otherwise the provision would be inapplicable in cases o~~or~~ acquittals, as it should be, and is under the corresponding provision of Section 403 (1) of the Code. It is however not necessary to go into the question, for, in whatever sense the phrase "prosecuted and punished" may have been used, it stands for a process in law one stage of which is the passing of a judgment. One result of the judgment may be acquittal, as it has been in the case of Kalawati so far as the charge u/s 302/114, Penal Code, is concerned. And it is of this acquittal of Kalawati in the coarse of her "prosecution" if not "prosecution and punishment", that her learned counsel wants to take the advantage.

Now, it may be that under the corresponding Fifth Amendment to the Constitution of the U. S. A. the Government has no right of appeal against an acquittal, but, so far as this country is concerned, not only has ~~sack~~ a right been specifically conferred by Section 417 of the Code, but it has been recognised by Article 134 of the Constitution itself in that it provides for an appeal to the Supreme Court from & judgment of the High Court reversing on appeal an order of acquittal. Nor is there any conflict, as argued by Dr. Bannerji, between Articles 134 and 20 (2) of the Constitution, necessitating preference being given to the latter over the former, since an accused cannot be said to have been convicted or acquitted as a result of a judgment passed in the course of "prosecution and punishment" if that judgment is still open to appeal to a Court of higher jurisdiction. It has therefore been held under the corresponding provisions of Section 403 of the Code that an appeal is not a second trial but only a continuation of the trial in the Sessions Court. Queen Empress v. Jabanulla 23 Cal. 975 and Kambam Bali Reddy v. Emperor AIR 1914 Mad. 258. It follows therefore that the institution of a Government appeal against acquittal u/s 417 o~~or~~ the Code is not tantamount to the prosecution and punishment of an accused for the same offence more than once. Ejecting the objection of the learned counsel for Kalawati, therefore, I hold that Section 417, Criminal P. C., is not ultra vires Article 20 (2) of the Constitution.

12. The next argument propounded by Dr. Bannerji was that Section 842 (3) of the Code is ultra vires the provisions of Article 20 (3) of the Constitution, which provides that no person accused of any offence shall be compelled to be a witness against himself. It was therefore urged by him that the statements of the accused recorded under the said provision of the Code in the two Courts below should be discarded.

There are two words appearing in the Article itself which refute the contention put forward by the learned counsel : "compelled" and "witness". Questions are put to the accused by the Court under the said provision of the Code "for the purpose of enabling the accused to explain any circumstance appearing in evidence against him." It is manifest that it is entirely a matter of option with the accused whether he does, or does not, explain the circumstances appearing against him. There is,

therefore, no compulsion. Again, under Sections 5 and 6, Oaths Act, an oath or affirmation is made to a witness, but under the former section and Sub-section (4) of Section 342 of the Code no oath shall be administered to the accused. An accused in a criminal trial is therefore not a witness. Furthermore, the explanation offered by the accused u/s 342 may only "be taken into consideration" in the inquiry or trial in which he is an accused, and put in evidence, not in that inquiry or trial, but in any other inquiry or trial.

"Evidence" is defined in Section 3, Evidence Act, as meaning and including all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. From this also it follows that the accused is not a witness in the inquiry or trial in which he stands arraigned, as such. Unless therefore the Court misuses its powers, as was done under the common law by Judges like Lord Jeffreys and Page in England (vide Fielding's parody of Page's satirical questionings of prisoner in Tom Jones), there is nothing in Section 342 of the Code which the provisions of Article 20 (3) of the Constitution seek to guard against. Indeed, since under the law of this country, as it stands, an accused is not even a competent, to say nothing of a compellable, witness, as, for instance, he is in England under the provisions of the Criminal Evidence Act, 1898, or the Evidence Act, 1877, the provisions of Article 20 (3) border on redundancy. I hold that as there is no chance of an accused being "compelled" to be a witness u/s 342 of the Code, this provision is not ultra vires Article 20 (3) of the Constitution.

13. The next argument relates to the three chalans, or charge-sheets, submitted by the police in this case, to which reference has already been made. The learned counsel for Kalawati and Ranjit Singh, contended that the first chalan dated 7-8-1951 was the complete chalan, on which the Magistrate took cognizance of the case and started inquiry on 14-8-1951, that the subsequent two chalans were illegal and that the oral and documentary evidence, except that of a formal nature, taken on foot of these two latter chalans were inadmissible in evidence and ought to be discarded. Reliance was placed on a ruling of their Lordships of the Supreme Court reported as Tara Singh v. The State AIR 1951 S. C. and on Hanuman v. Raj, AIR 1951 Raj. 131

14. In the Supreme Court ruling three chalans were put in the first one described as an incomplete, the second as a complete and the third as a supplementary chalan. Three eye-witnesses were examined by the Magistrate on the same day that the first chalan was submitted. It was argued before their Lordships that as the first chalan was incomplete the Magistrate had no power to take cognizance of the case and therefore the depositions of the eye-witnesses could not be received in evidence. The argument was based on the ground that u/s 190 of the Code cognizance can only be taken on a complete chalan u/s 173 (1). Their Lordships observed, however, that they need not express any opinion on the point because, in their opinion, the first chalan, though described as incomplete, was in fact a complete report within the meaning of Section 190 (1) (b), read with Section 173 (1) of the Code. Their

Lordships arrived at this conclusion because the police had in fact already completed their investigation except for the evidence of a formal nature, like the report of the Imperial Serologist and the drawing of a sketch map of the occurrence, which could not be said to be witnesses who were "acquainted with the circumstances of the case" within Section 173 (1) (a) of the Code.

It will be observed that the point urged by the learned counsel in the present case, namely, that evidence recorded on foot of an incomplete chalan is inadmissible, was left undecided by their Lordships. It will be further observed that, treating the first chalan as a complete chalan, their Lordships further observed with respect to the evidence not set forth in the first chalan, "It is always permissible for the Magistrate to take additional evidence not set out in the chalan". The ruling, therefore, does not only not support the argument of the learned counsel, but, on the contrary, it renders admissible the evidence set forth in the two subsequent chalans in the present case after the submission of the first one, conceded as a complete chalan, on the ground that it is always permissible for the Magistrate to take additional evidence not set out in the chalan.

15. The facts of the Rajasthan case were these. The police after submitting a chalan against A, and the case being later withdrawn against him, put in another chalan against B in another Court based on the same report. It was held, relying on Emperor v. Ali AIR 1932 Lah. 611, that after the police had once put in a complete chalan resumption of further investigation and submission of a new chalan by it was unlawful, and that therefore the proceedings taken by the Magistrate on the second chalan were invalid. In the Lahore case, relied upon in this ruling, after a charge had been framed by a first class Magistrate against an accused, certain affidavits were filed before the District Magistrate, who forwarded the affidavits to the Superintendent of Police, and the latter directed further investigation. In the revision against the action taken by the District Magistrate it was pleaded on his behalf before the High Court that he was entitled to order further investigation in order to decide whether the Public Prosecutor should, or should not, be instructed to withdraw the prosecution. Among other things, it was held by Jai Lal J. that after investigation has been completed and a report submitted u/s 173 of the Code, the police has no power to resume investigation, especially with a view to find evidence in favour of the accused.

It will be noticed that the power of the police to resume investigation after submission of a report u/s 173 was the only point adjudicated upon in this case. No fresh report, or chalan, was submitted by the police as a result of the further investigation, and there did not therefore arise for consideration, as it did in the Rajasthan case, the further question of the validity or otherwise of the proceedings taken by the Magistrate on the subsequent report. Another, and in my opinion an important, point of distinction between the two cases was that while in the Lahore case the investigation related to the same accused against whom proceedings were

already pending, the investigation, report and cognizance on the report in the Rajasthan case related to quite a different accused after the case against the first accused had been withdrawn. The Lahore case could be no authority therefore for judging the legality or illegality of the second investigation and report in the Rajasthan case. And so far as the further conclusion arrived at in the Rajasthan case is concerned, namely, that the chalan being unauthorised the proceedings taken by the Magistrate were invalid, it was not supported by any authority and, with all respect, I am unable to subscribe to that view.

A similar question came up for decision in Cri. Rev. No. 5 of 1952, the State v. Nilam Das, decided by me on 9-6-1952. The Magistrate took cognizance of a case on a report based on an investigation which the police had no authority to make. The investigation was unauthorised because the offence was non-cognizable and the police investigated the case without an order of the Magistrate, as required by Section 155 (2) of the Code. It was held by me that in view of the wider scope of the present amended provisions of Clause (b) of Sub-section (1) of Section 190 of the Code, a Magistrate's jurisdiction to take cognizance of a case was not affected, or the proceedings before him vitiated, by reason of the police report being based on a defective investigation. It was further held by me that even if the Magistrate be not empowered by law to take cognizance of the offence u/s 190 (1) (b), the defect was curable u/s 529 of the Code if the Magistrate acted in good faith.

In the present case, the investigation was only completed when the last chalan was submitted, for, as already stated, identification proceedings were held while trial was in progress on foot of the first two chalans. The completed chalan was therefore the last and not the first one, as urged on behalf of Kalawati and Ranjit Singh. There is no doubt that it was improper for the police to have submitted chalans piecemeal, and for the Magistrate to have started proceedings without waiting for the complete chalan. At the same time, he was legally entitled to take cognizance of the case on the first report as, though not technically a police report u/s 173, it was a report in writing of the facts constituting the offence made by a police within the purview of Section 190 (1) (b) of the Code. Furthermore, even if it be supposed for argument's sake that owing to the said defect in the chalans the Magistrate was not empowered by law to take cognizance of the offence u/s 190 (1) (b), the proceedings before him were not vitiated in view of the provisions of Section 529 of the Code since there is nothing to show that the error was committed otherwise than in good faith. Moreover, no objection to the jurisdiction of the Magistrate was taken on behalf of the accused during the inquiry and before the order of commitment, and there is no suggestion made even here that the accused had been injured in any way. That being so, the Sessions Judge will be deemed to have accepted the commitment within the provisions of Section 532 of the Code, and the aforesaid objection as to the Magistrate having had no jurisdiction to admit oral or documentary evidence in one or the other of the chalans cannot be entertained in this Court. The defect, if any, was also curable u/s 537 of the Code since, apart from raising the said technical

objection, it is not suggested that any failure of justice had in fact been occasioned. I therefore hold that no oral or documentary evidence is in this case liable to be discarded as inadmissible on the ground of irregularity or illegality of chalans.

16. Having disposed of the said preliminary objections raised on behalf of Ranjit Singh and Kalawati, the first question that I propose to take up is whether EX. PAX OR EX. PAY should be taken as the first information report. It may be stated here in passing that this question does not appear to have been raised before the Sessions Judge, who has laid both under contribution indiscriminately. In this Court, however, every inch of the ground has been contested, and it was strenuously urged on behalf of Ranjit Singh and Kalawati that EX. PAX was the first information report and that EX. PAY came under the ban of Section 162 of the Code as a statement made to a police-officer in the course of an investigation under chap. XIV of the Code. As information to the police must precede investigation this Chapter provides, in that logical sequence, for the former u/s 154 and for the latter under Sections 156 and 157.

Section 161 provides for the recording of statements of persons acquainted with the facts and circumstances of the case by the police-officer making the investigation. A statement so recorded must be distinguished from one constituting the information which starts the investigation, and it has been distinguished in Section 162 by being described as a statement made by any person to a police-officer in the course of an investigation. There is no bar to the admissibility of a statement which forms information to the police, provided that, if it happens to be the statement of a person subsequently accused, it does not amount to a confession; but Section 162 prohibits the use of a statement made to a police-officer in the course of an investigation save as provided in that section. Whether a particular statement falls under one category or the other cannot be determined by a set rule and must necessarily depend on the facts and circumstances of each case. The mere fact that a police-officer proceeds in person to the spot on hearing of an occurrence does not necessarily mark the commencement of the investigation. Likewise, the mere fact that a statement is made to a police-officer after he has embarked on his investigation does not necessarily render it a statement made in the course of an investigation. But while the Jacob's ladder of mere abstractions has to be avoided in order to ascend to certainty, there do stand on certain broad criteria which can well serve as one's guide. If no investigation has in fact started, no statement made to a police-officer can come under the mischief of Section 162. If the investigation has started, a statement will, or will not, be a statement made to a police-officer in the course of an investigation, according as it is, or is not, made "as a step in, or in conscious prosecution of, the investigation itself." [Emperor Vs. Aftab Mohd. Khan and Others,](#)

17. As to the question of when does an investigation start, the answer depends, as the definition of the term "investigation" in Section 4 (1) (l) of the Code signifies, on

whether the police-officer has taken a proceeding under the Code for the collection of evidence. I have already referred in another connection to a part of the definition of the term evidence as given in Section 3, Evidence Act. It says that evidence means and includes all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry, called oral evidence, and all documents produced for the inspection of the Court, called documentary evidence. Now, it may, or may not, be that the evidence referred to in the said definition of investigation is not conterminous with the definition of that term in the Evidence Act, but there can be no doubt that in either case it must be evidence "in relation to matters of fact under inquiry". Unless the matters of fact under inquiry are known, or ascertained, there is nothing in regard to which evidence, might be either permitted or required to be made by a Court or collected by a police-officer in the process of investigation. And that, to my mind, furnishes the clue to an answer to the question posed at the beginning of this paragraph.

Investigation starts, and can only start, when, being in possession of "matters of fact under inquiry", the police-officer proceeds to collect evidence in respect of those facts. As to whether that stage has, or has not, been reached in any particular case will depend on the facts and circumstances of that case. The aforesaid 1940 Allahabad case is an illustration in point of a case where the statement in question, though made after the commencement of investigation, was held to be an information not coming under the mischief of Section 162 of the Code because the person who gave the information did not know that an investigation had started and therefore the information was imparted quite independently of, and in no relation to, any pending investigation. *Bhondu v. Rex, A. I. R. 1949 ALL. 364*, is an illustration in point of a case where the information, consisting of a list of stolen property, was held to be an information not falling under the mischief of Section 162 because, although part of the information had already been sent to the police, it was found to be incomplete and the information in question was imparted before the investigation was started.

18. Applying the above criteria to the facts of the present case, it has been seen that Exhibit PAX represented a message shouted towards the police out-post by Sahibu (P. W. 7), who had received it from two men Mathu and Baua, who again had received it from Laiq Ram (p. 23), who in his turn based it on information imparted to him by Kalawati. The first information (informant?) therefore was really Kalawati and the said intermediaries only the mouth-pieces between her and the police. Exhibits PAX and PAY were therefore both traceable to her, the former having been made to the police through the said intermediaries and the latter directly when head-constable Narsingh Das reached the spot.

Exhibit PAX suffers from defects natural to a document received at fourth-hand: it is jejune and incomplete. It runs thus: "At 4-10 o" clock at night intimation was received through the call of Sahibu Chamar, resident of Teketta, that a dacoity had

been committed at Bishanpura, Kunwar Bikram Singh had been murdered, and the police should soon reach the spot." It is totally lacking in detail and does not say where in Bishanpura the dacoity had taken place. Exhibit PAY, on the other hand, is a detailed document. It starts with a sort of preface about the informer, Kalawati, and the members of her family, and then goes on to describe the occurrence in extenso. The details of the occurrence, according to EX. PAY, were these. Kunwar Balbir Singh was away. Kunwar Bikram Singh returned from the Rana of Kuthar's at about 9 P. M. He and Kalawati and the maid servant went up to the roof to sleep. Due to the keertan Kalawati could not go to sleep till 2 A. M. She was then roused by a Sikh, who made her deliver up the keys, and was then taken down to the ground floor by him and another, a Pahari. There is a description of both of them. While being taken down she saw somebody whether her husband or somebody else she could not say, clutching the former's charpai with both hands. On the ground floor she found 5 or 6 dacoits. She was taken to a room and there the dacoits removed jewellery and clothes from trunks. Noise of a struggle was coming from the roof. The document contains a list of the jewellery. The dacoita then decamped. When about a quarter of an hour later people arrived she went upstairs and found that her husband had received serious injuries and was lying dead near her charpai.

19. Of the two documents, Exhibits PAX and PAY, it was only on receipt of the latter, therefore, that head-constable Narsing Das could be said to become possessed of the matters of fact on which to start an investigation. And his own conduct at the time shows that he treated it as such. He did not care to have EX. PAY signed by Sahibu, as he did EX. PAY by Kalawati, as required by Section 154 of the Code. Further, as required by that section, he did not enter the substance of EX. PAX in the prescribed book. It was on foot of EX. PAY that the first information report EX. PAB was recorded according to the said provision at police-station Solan. When Kalawati gave the statement EX. PAY, a number of persons were present, but the head-constable did not record any other statement. Had he been at that time recording statements of persons acquainted with the facts and circumstances of the case as a police-officer making an investigation, as laid down in Section 161 of the Code, he would also have recorded statements of the others present there. The statements of these persons were recorded the following day by S. I. Prithi Ram (P. W. 38) after he reached the spot from Solan at about 1 P. M. It is obvious therefore that the head-constable treated the full and complete (though not necessarily true) information imparted to him by Kalawati in EX. PAY as an information u/s 154 and not as a statement u/s 161 of the Code. It was after taking down EX. PAY that the head-constable started the investigation by taking into possession the pillow of the deceased's bed and the hair which were sticking to it, and by preparing an injury report and drawing up an inquest report. From all the above facts and circumstances, I am clearly of the opinion that police investigation was started after EX. PAY had been recorded and not before, and that therefore the statement embodied in this document did not come within the mischief of Section 162 of the

Code. I also hold that as there is nothing self-inculpatory in EX. PAY, the document is not otherwise inadmissible as a confession made to a police officer.

20. Coming now to the facts of the case, the question of motive may first be taken up, the question, that is, of strained relations between Kalawati and her deceased husband Bikram Singh and illicit intimacy between her and Ranjit Singh. As adverted to above, the learned Sessions Judge has accepted the prosecution evidence with regard to it, but he was of the opinion that it was so weak that it was not substantial corroboration of the confessions. I am, however, of a totally contrary opinion. Strained relations between husband and wife, depending no doubt on the intensity of the tension, would by itself afford sufficient motive for the crime, but when that is added to liaison with a third person the motive would be doubly strong. It was, however, strenuously contended before me on behalf of Kalawati and Ranjit Singh that neither relations between the husband and wife were strained nor was there any illicit intimacy between the wife and Ranjit Singh. I shall deal with the question of the relations between Kalawati and her husband first.

21. It has been proved by the statements of the deceased's brother Balbir Singh (P. W. 1) and Pt. Karta Krishna (P. W. 80), the then Chief Minister of Baghat State, which exercised some sort of suzerainty over the deceased's estate, that in the year 1946 at the instance of Kalawati the arms licence of her husband was cancelled and the arms confiscated, and she also moved the authorities concerned that the estate be taken over by the Court of Wards. There is a letter of the deceased himself, dated 29-7-1946, addressed to his brother, the said Balbir Singh, which is confirmatory of the incident which led Kalawati to move for, the confiscation of her husband's arms. This letter was for the first time filed by Balbir Singh in the Sessions Court, and it was argued on behalf of Ranjit Singh and Kalawati that it was not a genuine document. But no question was on that score put in cross-examination to Baldeo Singh, who proved the letter. I have therefore no doubt about its genuineness.

The letter is also admissible u/s 32 (1), Evidence Act, for the circumstances mentioned therein have a proximate relation to the transaction of strained relations between the husband and wife which later resulted in the death of the former, it being immaterial that the statements in the letter were made before the cause of death had arisen, or before the deceased had any reason to anticipate being killed : AIR 1939 47 (Privy Council) The letter, marked EX. P. W. 1/A, runs as follows:

"Mani Majra Dated 29-7-1946.

My brother,

Hope you are all well. I reached here 5 or 6 days ago. Your Bhabhi (brother's wife) has gone to Nalagarh. Quarrel occurred on a trivial matter, but she accused me to this extent that I was ready to kill her children with a pistol. You can yourself think, who is such a fool as to be ready to kill his children. If I could have used such words, I might have addressed them to your Bhabhi. What wrong has been done by the

children 1 Even a report was lodged in Solan Thana and statements of both were recorded. And then, Rani Sahiba took her to Nalagarh. I will go to Solan after 3-7-1946. Your Bhabi is staying at Nalagarh. While going to Nalagarh, she put another lock over the previous one. All this work is of Harmir Singh. Such things will rather aggravate matters. I have broken open the lock. Any how, you will also know the affairs. All will become evident. Now, I shall fully teach her a lesson. She has treated all this a joke. You should have come over here once. You remain sleeping there. Where has now gone that responsibility ? Best is well. I am staying here with aunt in Shiv Niwas No. 2. After Sharad"s, I intend coming in Nauratras. More Jai. Alter 5th August, send letters to Bolan care of L. Shab Dayal. Best again.

Sd/- Bikram Singh (in Urdu)."'

22. Reference was made to the fact that the writer spoke of going to Solan in future on 3-7-1946 although the letter purports to be dated 29-7-1946. That is however obviously a slip of the pen for 3-8-1946, as the mention of 5-8-1946 at the close of the letter shows. The incident of the lodging of a report with the police and of the husband and wife being interrogated, which has been referred to in the letter, was further proved by the said Pt. Karta Krishna and by constable Nand Ram (P. W. 27). Now, the lodging of a report with the police by a wife against her husband, especially where they belong to a respectable family, on the ground that the latter threatened to kill the children and the consequent confiscation of arms of the husband, betray a state of most strained conjugal relationship. And when one takes into consideration the fact that only about ten days before the occurrence Kalawati was publicly slapped by the deceased, it would appear that there was never any love last between the two after the sad and serious incidents of 1946. It is noteworthy that in both the Courts below Kalawati admitted that due to her husband's illicit intimacy with a woman she made a complaint and her husband's gun licence was cancelled in 1946. In the Court of the committing Magistrate she also admitted that her husband had threatened to kill her. I shall presently show that Kalawati made her confession voluntarily. In this confession also there are serious and even sadistic allegations of continued cruelty against the husband. I have therefore no doubt about the strained relations between the two.

23. As regards illicit intimacy between Kalawati and Ranjit Singh, the prosecution cannot be blamed for producing no direct evidence about it, for direct evidence of adultery it is hard, if not impossible, to secure. But those who were near to them, e.g., the deceased's brother Balbir Singh (P. W. 1), his late father's concubine Doropdi (P. W. 5), Kalawati's own sister and wife of Balbir Singh, Man Piari (P. W. 37) and the manager of the two sisters' Jagir and a distant cousin of the deceased, Baldeo Singh (P. W. 2) have all testified to their suspicions as to the existence of such intimacy having been roused by watching the behavior of the two. Not only that, but some of these went so far as to convey their suspicions to Bikram Singh by way of a warning, as deposed to by the witnesses and admitted by Kalawati in the Sessions

Court. Furthermore, both Kalawati and Ranjit Singh have admitted the intimacy in their respective confessions, both of which confessions were truly and voluntarily made, as I shall show presently. I therefore hold that there was a strong motive for the crime since the relations between Kalawati and her husband Bikram Singh were extremely strained and an illicit intimacy had grown up between her and Ranjit Singh.

24. The two confessions may now be taken up. But here what may be called the genesis of the case had better be examined. Facts already mentioned will bear repetition in this context. The police were in the early stages of their investigation put on a totally wrong track by the false story of dacoity so adroitly started by Kalawati immediately after the occurrence and introduced by her into the first information reports EXS. PAX and P A Y. This was of course done in furtherance of the conspiracy to which I shall advert presently. She followed it up by producing one ear-ring to S. I. Prithi Ram on 17-7-1951, implying thereby that the other one had been removed by the dacoits. Then followed recoveries of certain clothes in the neighbourhood of the place of occurrence on 18-7-1951 and 20-7-1951, later identified as those of Ranjit Singh. This led to a suspicion against Ranjit Singh, and his house at Basdera was searched on 22-7-1951, though nothing incriminating was recovered. He was thence taken to Kuthar and interrogated and arrested on 24-7-1951, and the same day the sword was discovered at his pointing out. Ranjit Singh was then brought to Solan on 25-7-1951.

The following day S. I. Prithi Ram reached Manimajra and in the afternoon on Kalawati's arrival from abroad searched her house there, though nothing incriminating was found since the photo of Ranjit Singh might well have been placed there by Bikram Singh. The same night, i.e., on the night of 26-7-1951, Kalawati was brought to Solan. She was interrogated and arrested on 27-7-1951, and on 28-7-1951 her confession was recorded.

This is a case, therefore, where, subject to their being shown to be true and voluntary, the confessions are worthy of credence as, with the exception of the recovery of ornaments pursuant to Salawati's confession, the police worked upto them, and not worked down from them, in the words of Straight C. J. in Queen-Empress v. Babu Lal 6 ALL. 509 . Another important fact which is noteworthy is that although the trial of the two accused started on 14-8-1951 it was more than a month thereafter that applications were filed on behalf of the accused on 17-9-1951 retracting the confessions. This delay was sought to be explained by referring to the fact that the confessions were brought on record on 15-9-1951. That is, however, no explanation since the two accused knew full well of the existence of the damaging documents. It is also noteworthy that counsel for Kalawati began to appear from 23-8-1951 and counsel for Ranjit Singh from 3-9-1951. These delayed retractions appear therefore to belong to the class of retractions referred to in In Re: Vridhichand Sowcar and Others , which are attributable more to the sane advice of

counsel than to the volition of the accused.

25. Kalawati's confession was the first one to be recorded. It was contended that it was not admissible firstly because it was not recorded in accordance with the provisions of Section 164 of the Code, and secondly, because it was not voluntary or true. There are the following three things enjoined u/s 164 (3) of the Code on a Magistrate recording a confession, the first two required to be done before, and the last after, the recording of the same: (1) he must explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him, (2) he must not record the confession unless by questioning the person he satisfies himself as to its voluntary character, and (3) he must append a memorandum at the foot of the recorded confession that he has both explained and satisfied himself as aforesaid, and that he has recorded it in conformity with the provisions of Section 364 of the Code. The recorded confession of Kalawati, EX. P A A, shows, and Shri Antani (P. W. 31), the Magistrate who recorded the confessions has testified, that the first and third requirements were complied with. The recorded confession does not, however, show on the face of it, though Shri Antani has sworn that the second requirement was also complied with by him.

It was argued by learned counsel for Kalawati that compliance with the provision not being apparent from the record of the confession, oral evidence of the Magistrate was not admissible to prove the compliance. The learned counsel, in fact, went so far as to contend that it was undesirable to call the Magistrate, basing the contention on the observations of their Lordships of the Supreme Court contained in the penultimate paragraph in the second column of p. 163 of the ruling reported as *Kashmira Singh v. State of Madhya Pradesh A. I. R. 1952 Sec 159*. The observation was based on the remarks contained at p. 258 of AIR 1936 253 (Privy Council). Now that was a case where the

"Magistrate neither acted nor purported to act u/s 164 or Section 364, and nothing was tendered in evidence as recorded or purporting to be recorded under either of those sections",

and, therefore, it was remarked by their Lordships that it was undesirable to call such Magistrate as witness for they would thereby, "be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever."

26. These rulings have, however, no application to the facts of the present case inasmuch as the Magistrate did act and did purport to act under Sections 164 and 364 of the Code, and EX. PAA that was tendered in evidence was recorded and purported to be recorded under those sections. The Magistrate did so act because he has specifically stated that on the night of 27-7-1951 he read Section 164 of the Code and the High Court Rules and Orders immediately before recording the

statement. It is noteworthy that Shri Antani was new to the work for he was invested with the powers of a Magistrate second class in July 1930 and those of a Magistrate first class only in March 1951, or about four months before recording the confessions. He was, therefore, extra cautious in performing his duties as a Magistrate recording a confession. In fact, his caution at times bordered on the perilous, for he even dissuaded Kalawati from making a confession. Compliance with the provisions of Section 864 and with two of the aforesaid provisions of Section 164 (3) further shows that the Magistrate did purport to act under those sections. The question of whether in such circumstances Section 533 of the Code is applicable or not did not arise in these rulings.

On the other hand, this section quite clearly lays down that where a confession recorded or purporting to be recorded under Sections 164 and 364 is tendered in evidence, but the Court finds that any of the provisions of either of the sections have not been complied, it shall take evidence that the accused person duly made the statement recorded, and, notwithstanding anything contained in Section 91, Evidence Act, such statement shall be admitted if the error has not injured the accused as to his defence on the merits. That being so, the statement of Shri Antani was admissible in order to prove that he had complied with the provision requiring him to satisfy himself as to the voluntary character of the confession by questioning Kalawati, although the recorded confession does not show the compliance on the face of it. Emperor Vs. Kommoju Brahman, The learned counsel for Kalawati cited two rulings of the Orissa High Court : Gurubaru Praja v. The King A. I. R. 1949 Oris 67 and Bala Majhi Vs. The State of Orissa, But there is nothing against the above view in the former, while the latter specifically supports that view.

27-30. [His Lordship after first examining the evidence of the Magistrate who recorded the confession and holding that the Magistrate had reasons to believe after putting questions to the accused that she was making the confession voluntarily examined the evidence of witnesses and held that the confession in fact was voluntary and then proceeded to state.]

31. Before proceeding further, I must advert to the wrong use of the police diaries made by the learned Sessions Judge. He has accepted the correctness of the prosecution version as regards Kalawati having been allowed to pass the night of 26-7-1951 with Daropdi (P. W. 5), but not on the evidence or for reasons mentioned above. He has done so on the basis of entries in police diaries. The learned Sessions Judge has, in fact, arrived at his conclusions in regard to several other matters also on the basis of entries in police diaries. He has referred to the contents of the statements of Ranjit Singh and Kalawati recorded by the police on 24-7-1951 and 27-7-1951 respectively. He has also referred to the police diary to find out whether Kalawati's person was searched after her arrest by one Daropdi. If the learned Sessions Judge had referred to the provisions of Section 172, Criminal P. C., he would not have fallen into this error. He would have at once seen that entries in case

diaries are not to be used as evidence but to aid the criminal Court holding the inquiry and trial: *Dal Singh v. King-Emperor A. I. R. 1917 P. C. 25*. As laid down in *Queen-Empress v. Mannu*, 19 ALL. 390 :

"Should the Court consider that any date, fact or statement referred to in the special diary is or may be material, it cannot legally accept the special diary as evidence, in any sense, of such date, fact or statement, and must in law, before allowing any date, fact or statement referred to in the special diary to influence its mind, have such date, fact or statement established by legal evidence."

32. Was this confession of Kalawati true ? It is necessary to give here a summary of the confession. It starts with her own parentage and marriage and strained relations with her husband due to the latter's addiction to wine and women, Daropdi (P. W. 5) being one of such women. It then speaks of the increasingly closer association of Ranjit Singh with her deceased husband and herself, Ranjit Singh often saving her from the beatings of her husband, of how there grew up illicit intimacy and later on love between them, starting with an affair at Hardwar, of how Ranjit Singh often felt like killing Bikram Singh for the maltreatment meted out by him to Kalawati, and of Bikram Singh having become suspicious of the relations between the two. It then relates several movements between Bishanpura and Manimajra, the last one tallying with the prosecution version of Ranjit Singh's stay at the former place from 22-6-1951 to 8-7-1951. It was during this period that, according to the prosecution, Kalawati was slapped on 6-7-1951 by Bikram Singh and a conspiracy to kill the latter was hatched between Kalawati and Ranjit Singh between the slapping incident and Ranjit Singh's departure on 8-7-1951.

There is mention of both in the confession, the venue of conspiracy being the kitchen and a baori. The conspiracy was that Ranjit Singh will either? himself kill Bikram Singh or have him killed by a hireling. The confession also details the ornaments handed over to Ranjit Singh by Kalawati in furtherance of the conspiracy before the former left Bishanpura on 8-7-1951. It gives details of how the conspirators decided the crime was to be committed, it having been agreed that, leaving a safe margin for Ranjit Singh to escape, Kalawati was to raise a hue and cry about dacoity. It then goes on to describe the incidents of the night in question--Bikram Singh's return from Kuthar by about 9-30 P.m., their not being able to sleep until 2 A.m. due to the keertan, her being awoken- ed at about 3 or 4 by somebody touching her on the head and by the cry of " thief, thief" raised by the maid-servant, her finding her husband lying on the ground near his bed breathing his last, her being stunned by the sight and not being able to utter a word, thereafter her going into a room and, on the arrival of Laiq Ram and servants, to the ground floor. It then speaks of her having told Laiq Ram a false story of dacoity by 5 or 6 men, as had been agreed upon between her and Ranjit Singh. It then goes on to say that she did not know who murdered her husband, that she had recognised one of the clothes shown to her as Ranjit Singh's but not the others. Finally, it ends

with saying that she had no fear of punishment but was making the confession to remove the load of sinfulness from her soul, and that one of the main reasons for her hatred of her husband was his beastly sexual relations with her (the sadistic details of which she gave).

33. Every detail of this confession has been corroborated by independent evidence. I have already referred to the evidence regarding Kalawati's relations with her husband on the one hand and with Ranjit Singh on the other, and regarding the slapping incident. The last stay of Ranjit Singh at Bishanpura from 22-6-1951 to 8-7-1951 has been proved by the statements of Balbir Singh (P. W. 1), Shibhi (P. W. 3), Om Prakash (P. W. 10) and Sarwan Singh (P. W. 15) motor-driver of the deceased. Their statements are corroborated by entries in the diary of the deceased EX. P. W. 38/3, proved by Balbir Singh and admitted by Kalawati, and admissible u/s 32 (1), Evidence Act for reasons recorded by me above in connection with the deceased's letter EX. P. W. 1/A. The diary mentions the arrival of Ranjit Singh on 22-6-1951 and his departure on 8-7-1951. It also speaks of Ranjit Singh having shot a wild fowl on 30-6-1951. Asked if he had to say anything about the entry, Ranjit Singh admitted before the Sessions Judge that he had shot a wild fowl but could not give the date.

34. Much reliance was placed by the learned counsel for Ranjit Singh and Kalawati on a statement elicited in cross-examination from Amarnath (P. W. 21) in connection with the aforesaid prosecution evidence about Ranjit Singh's stay at Bishan-Pura from 22-6-1951 to 8-7-1951. Amarnath is one of the two prosecution witnesses relating to the recovery of ornaments from the house of Ranjit Singh in Basedera on 29-7-1951. The statement elicited from this witness in cross-examination was that on 9th and 10th July Ranjit Singh was in his village that the witness could not say definitely if he was in his village after 9th July, but that before 9th July he was in his village for 20 or 22 days. It was therefore argued on behalf of Ranjit Singh and Kalawati that on the showing of this prosecution witness himself Ranjit Singh could not have been in Bishanpura between 22-6-1951 and 8-7-1951, and therefore the entire story of the hatching of conspiracy during that interval was wrong.

It is a little surprising that while the witness was so sure about Ranjit Singh's movements before 9th July he was quite indefinite about it after that date. The learned Government Advocate strenuously argued that the witness, a resident of the same village as Ranjit Singh, had been won over to make the said statement. He asked for leave to cross-examine the witness, but the learned Sessions Judge refused it. When a party calls a witness to prove a particular point (the recovery of ornaments in this case), and the opposite party directs the cross-examination to matters wholly unconnected with the examination-in-chief and elicits facts in support of its case (the movements of Ranjit Singh in this case), which the opposite party is entitled to do due to the facts elicited being relevant, it would be an improper exercise of discretion u/s 154, Evidence Act, for the Court to refuse the party calling the witness to cross-examine him on the facts so elicited, Amrita Lal

Hazra v. Emperor 42 cal. 957, at pp. 1022 to 1025 and where discretion is so improperly exercised the facts elicited in cross-examination have no evidentiary value: Kalagurla Suryanarayana v. Yarlagadda Naidu 6 cal. W. N. 513 . The said statement elicited from Amarnath in cross-examination must therefore be discarded.

35. An important fact appearing in Kalawati's confession is the delivery of ornaments by her to Ranjit Singh prior to the latter's departure from Bishanpura on 8-7-1951. That was done to lend colour of authenticity to the story of dacoity which, it was agreed between the conspirators, was to be bruited about by Kalawati after Ranjit Singh had had time to make good his escape. The details of these ornaments are given in the confession. And, except for only four pieces (Jhoomar sui, sada sui, ear-rings at No. 10 in the recovery memo and Sari pin), all the 32 pieces of ornaments detailed in the confession tally with those recovered on 29th July 1951 from Ranjit Singh's house and mentioned in the recovery memo., EX. PD. It is further noteworthy that, with the exception of the said four pieces and three more (Saggi, nath tilai and singar patti), they also tally with the list given by Kalawati in the first information report EX. PAY immediately after the occurrence. I shall presently show that the prosecution evidence with regard to the recovery of the ornaments from the house of Ranjit Singh on 29-7-1951 is wholly above board and trustworthy. This is the most important corroboration of Kalawati's confession and imparts to it the greatest authenticity.

36. Then, again, the statement in the confession that, as agreed between the conspirators, Kalawati was to give out a false story of dacoity has been proved by the statements of Shibhi (P. W. 3) and Laiq Ram (P. W. 23) and by Kalawati's report EX. PAY. The incidents of the night, namely, the commission of the murder of Bikram Singh, has been proved by the statement of Mt. Shibbi (P. W. 3), as I shall show presently, and as rightly held by the learned Sessions Judge. The holding of the keertan which kept Kalawati and her husband awake, and possibly put off the commission of the crime, until the small hours of the morning, has been proved by Laiq Ram (P. W. 23). It is noteworthy that in her statement in the Sessions Court Kalawati admitted arrival of Laiq Ram soon after the occurrence.

37. The only difference between the confession and the prosecution evidence (the statement of Shibbi) is concerning Ranjit Singh having committed the murder. While Shibbi has definitely stated that she saw Ranjit Singh run past her charpai with something glittering in his hand and go down the ladder, Kalawati's statement in her confession is that she did not know who killed her husband. I am unable to hold that Kalawati was not necessarily speaking a falsehood on the supposition that she did not actually see the murder being committed. That is a supposition which it is not possible to make. She was in the very next bed, and therefore it is incredible that all those blows should have been inflicted on her husband and she should have been awakened only after the culprit had gone. It is noteworthy that after Mt. Shibbi

saw Ranjit Singh run past her charpai she went and found Bikram Singh lying on the ground and Kalawati's charpai vacant, and that she found Kalawati standing in an adjoining room. It is therefore not possible to believe that she did not witness the crime. It is, however, well settled that where part of the confession is found to be false and part to be true, the Court may accept the latter and reject the former: Balmakund Vs. Emperor, and Emperor v. Jute Uraon, A. I. R. 1940 pat. 541. I shall presently show that Shibbi's statement is worthy of reliance and that therefore the part of Kalawati's confession wherein she screens Ranjit Singh stands proved as false. That the rest is true has already been seen. The latter may therefore be accepted and the former rejected.

38. Before coming to Ranjit Singh's confession I would deal with two important pieces of evidence in this case, Shibbi's statement and the recovery of ornaments from the house of Ranjit Singh. Shibbi's statement has been believed by the learned Sessions Judge who recorded her statement and had the opportunity of watching the witness. There are also otherwise no grounds for not believing her. Kalawati has admitted her presence on the roof on the night in question in the first information report EX. PAY (which report, it may be stated here, was put to her in the Sessions Court u/s 342 of the Code and admitted by her. There is therefore good reason to believe Shibbi when she says that she saw what she professes to have seen. The following grounds were urged on behalf of Ranjit Singh and Kalawati for disbelieving the witness: (1) that she may have erred in taking the fleeing man to be Ranjit Singh, (2) that she was interested in foisting the crime on Ranjit Singh, and (3) that she was no better than an accomplice. As regards the first ground, there is no doubt that a witness who professes to have identified the culprit should not only be a credible but an infallible witness. It has come in evidence that the moon had set, but the witness knew Ranjit Singh and the latter ran past her charpai. I am not prepared, therefore, to hold that the witness was possibly in error in taking the fleeing person to be Ranjit Singh.

38a. The second ground was based on the argument that the real culprit was Shibbi's husband Nathu and that in order to save him she was trying to implicate Ranjit Singh. [His Lordship examined the evidence and rejected the ground as being not a valid one for discrediting the evidence and proceeded further.]

39. Lastly, it was argued that Shibbi was no better than an accomplice since admittedly it was only in the Court of the committing Magistrate that she first named Ranjit Singh. A number of rulings were cited, but they were all cases of witnesses who saw offence being committed but kept quiet, and there was no explanation forthcoming for the silence. For instance, the case of Nawab v. Crown A. I. R. 1923 Lah. 391. But in the present case Shibbi has offered a satisfactory explanation. Being a servant she dared not disobey Kalawati's injunction not to name Ranjit Singh, but when all the facts were known she named him in the Court of the committing Magistrate. I hold that Shibbi's evidence is taintless and the

learned Sessions Judge was quite right in relying upon it.

40. The learned Sessions Judge has discredited the prosecution evidence regarding recovery of ornaments from Ranjit Singh's house at Basdera, on 29-7-1951. He has done so because he was of the opinion that there was delay in the recovery. He also appears to have given credence to the statement of Ranjit Singh in the Sessions Court that while he was being taken by the police in a jeep on the 28th or 29th of July, the box EX. P 37, in which the ornaments in question were recovered from Ranjit Singh's house, was handed over to S. I. Prithi Ram by Baldeo Singh, whom he described as a relation of the police officer. In other words, the learned Judge was of the view that the ornaments had been planted by the police. [His Lordship then examined the evidence and stated.] I hold that the recovery of ornaments from Ranjit Singh's house was perfectly genuine, that these ornaments belonged to Kalawati, and that they were ornaments which she had handed over to Ranjit Singh in furtherance of the said conspiracy.

41. Coming now to Ranjit Singh's confession, there is no doubt that there was delay in producing him for his confession, for he was interrogated and arrested on 24-7-1951 but produced before Shri Antani for his confession on 3-8-1951. There is also no doubt that he was produced from police custody. But in his case also the Magistrate had his handcuffs removed, the police were made to leave and he was given half an hour to think over after he had been warned. After that period of time the Magistrate again asked him if he wanted to make the statement of his own free will and accord, and he replied in the affirmative. The Magistrate says that before proceeding to record his statement he was satisfied that he was making it voluntarily. The giving of the said time to Ranjit Singh was noted by the Magistrate on the application EX. PAB which the police made before him for the recording of the confession. After recording the confession the Magistrate sent him to the judicial lock-up. In this case also all the requirements of Section 164 (3) were complied with, only questions and answers as to how the Magistrate satisfied himself did not appear on the record. The Magistrate however proved that he did in fact put such questions and satisfied himself. For reasons recorded in the case of Kalawati's confession, I hold that the formal defect was cured by Section 533 of the Code.

42. The confession of Ranjit Singh is in essential particulars the same as that of Kalawati. Barring certain minor differences of detail, there were three main points on which the two confessions differ from each other. One is that each attributes to the other the starting of the conspiracy. This is however immaterial since both admit having entered into the conspiracy to murder Bikram Singh. The other is that while Kalawati mentions only one date, 15th as the one fixed for the commission of the crime, Ranjit Singh says that the murder was to be committed on one of the three dates 14th, 15th and 16th. That again is immaterial since 15th appears in the confessions of both of them, and as the offence was actually committed on the night

of the 15th, Kalawati appears to have mentioned only that date. The third difference relates to the details of the murder. Kalawati professed ignorance as to how the murder was committed and by whom. Ranjit Singh, on the other hand, gives details of how he committed the offence and even mentions the part played by Kalawati in that connection. He says that, as pre-arranged, she threw torch light three or four times from the steps above as a signal that the coast was clear, that he went up the roof of the house, that Kalawati then lifted the mosquito net of Bikram Singh's bed and went away towards the door, and that thereafter he gave the first stroke of the sword on Bikram Singh's head. Bikram Singh came out of the bed crying but he gave three or 4 more strokes, and on hearing a noise ran away from there. This difference has again no effect on the case. So far as Kalawati is concerned, it only confirms the view that this portion of her confession was wrong. And it has already been seen that the fact of this part of her confession being wrong did not affect the admissibility of the rest of her confession which has been found to be true. So far as Ranjit Singh is concerned, this portion of his confession stands circumstantially corroborated by the testimony of Mt. Shibbi (P. W. 3) as she saw him, running away with the sword. It is noteworthy that the fact of his having given the first stroke of the sword on the head of Bikram Singh stands corroborated from the fact that the head-constable Narsingh Das found hair sticking to the pillow of the deceased. True, the total number of strokes mentioned by Ranjit Singh comes to only five, whilst the number of injuries mentioned in the post-mortem report was eleven, but it is too much to suppose that in the excited state in which Ranjit Singh must have been while committing the crime he should have counted the strokes which he inflicted upon his victim. The aforesaid differences between the two confessions, standing explained as they are, do not therefore affect the credibility or the admissibility of the two confessions which are essentially identical. Ranjit Singh further admits having buried at his house the ornaments which had been handed over to him by Kalawati. It was sought by the learned counsel for Ranjit Singh to show that on a proper construction of Ranjit Singh's confession the date of the commission of the offence would fall short of 15-7-1951 by many days. Ranjit Singh speaks in his confession of having returned home on the 10th after the conspiracy. The next sentence runs as follows: "From there I started back: at 7 A. M. and took sword with me from my house." From this the learned counsel concludes that Ranjit Singh left his house for Bishanpura on the nth. I am however unable to accept this interpretation. It is not mentioned in the above cited sentence as to when Ranjit Singh started from Basdera for Bishanpura. In the sentences that follow, no mention has again been made of any date. It cannot therefore be said that this portion of Ranjit Singh's confession is against the evidence on the record. I hold that due to the two confessions being essentially identical and, as already shown due to the corroboration of both by independent evidence, the confession of Ranjit Singh is as voluntary and true as that of Kalawati.

43. There is no doubt that there is no direct evidence with regard to the actual conspiracy, but that was from its very secretive nature not possible. It stands established by the two confessions and abundantly corroborated by the events leading up to the conspiracy and the crime committed in pursuance of it. It also stands corroborated by the recovery from the house of Ranjit Singh of the ornaments which had been handed over by Kalawati to him in furtherance of the conspiracy. In this connection Kalawati's culpability as an abettor may be considered. She had abetted the commission of the offence by entering into a conspiracy with Ranjit Singh for the murder of Bikram Singh several days before the commission of the crime. As to her presence when the offence was committed, Ranjit Singh has stated that she enabled him to commit the act by throwing torch light and then lifting the mosquito net of Bikram Singh's bed. I am unable, however, to find these acts attributed to her as proved by the confession of a co-accused. Shibbi's evidence in this connection is however conclusive. She found Kalawati standing in an adjoining room immediately after the occurrence, and when told that Bikram Singh was lying on the ground and Ranjit Singh had been seen running away, Kalawati scolded Shibbi and bade her be quiet. Add to this the fact that Kalawati spread immediately after the occurrence the false story of a dacoity. All this leaves no doubt in my mind that Kalawati was near enough at the time of the commission of the crime to give assistance, and that she did give assistance by spreading the said false story. That being so, I hold that she was present when the offence was committed within the intendment of Section 114, Penal Code.

44. There were a few objections raised on behalf of Ranjit Singh and Kalawati which may be disposed of at this stage. One was that it had not been proved that the body on which the doctor performed the post-mortem was the body of Bikram Singh. This contention ignores the statement of the doctor, who has clearly stated that the body was identified by Kalawati. Another objection was that the said Nathu, Shibbi's husband, and other servants had not been produced by the prosecution. The prosecution can however be criticised only for non-production of witnesses material to the case. This cannot be predicated of the said persons who, it has been proved, were not present at the time or place of occurrence but were sleeping outside the house and reached the place of occurrence subsequently. Ranjit Singh's note-book EX. P. W. 38/1 was referred to as establishing his alibi. It was also insinuated that it had been tampered with by the prosecution. It will be remembered that this note-book was handed over to the police by Ranjit Singh himself on 22-7-1951. In the recovery memo. EX. P. W.38/2 relating to the note-book, S. I. Prithi Ram has given a full description of the recovered notebook, including the number of pages and the pages that were written over. No attempt whatsoever was made by the defence to prove the alleged tampering with or the fact of any of the entries therein being such as to establish Ranjit Singh's presence at Basdera on the night in question. Ranjit Singh himself did not plead it in his statement. I therefore hold that the note-book is of no benefit to Ranjit Singh. On the contrary, it appears to me that

in handing over the note-book to the police on 22-7-1951 Ranjit Singh was trying to provide evidence which would tend to give to the facts an appearance favourable to himself, vide illustration (e) to Section 8, Evidence Act.

44a. To sum up, the voluntary and true confessions, the statement of the eye-witness Shibbi who was admittedly present at the time of the occurrence, the recovery of Kalawati's ornaments from the house of Ranjit Singh and, finally, the motive for the crime, bring the guilt home to both the culprits, Ranjit Singh and Kalawati. As against Ranjit Singh, there is also the evidence regarding recovery of sword on being pointed out by him from under some bushes at a short distance from the house of the deceased. This evidence consists of the statements of the police officer S. I. Prithi Ram and D.S.P. Jagat Singh, and of the recovery witnesses Shib Ram (P. W. 17), Laiq Ram (P. W. 23) and Budhi Ram Zaildar (P. W. 26), all of whom signed the recovery memo. Ex. P. Q. Budhi Ram lives 8 miles away, but Laiq Ram and Shib Ram are residents of Kuthar, and otherwise too I have no reason to doubt their testimony. The Chemical Examiner found blood on the sword, though the Serologist found the blood marks disintegrated and so could not determine their origin, which is explicable on the ground of lapse of time. Ranjit Singh has therefore been rightly convicted by the learned Sessions Judge for an offence punishable u/s 302, Penal Code. . The offence which I find Kalawati to have committed, in view of the above evidence, is one u/s 302, read with Section 114, Penal Code. The learned Sessions Judge was clearly wrong in finding her guilty u/s 201, Penal Code.

45. A word about the sentences. I agree with the learned Sessions Judge that there were no extenuating circumstances in the case of Ranjit Singh. The extreme penalty imposed upon him must therefore stand. As regards Kalawati, there is no doubt that u/s 114, Penal Code, she will be deemed to have committed the same offence as Ranjit Singh, but as her's was not the hand that actually committed the crime, and as she is a mother of three children, one of whom is still in its infancy, I am of the opinion that the lesser of the two sentences provided by the law would meet the ends of justice in her case.

46. Ranjit Singh's appeal is dismissed, his conviction u/s 302, Penal Code, and the sentence of death imposed upon him by the Sessions Judge are confirmed, and it is hereby ordered that he shall be hanged by the neck till he is dead, and this order shall be carried out according to law. Kalawati's appeal is allowed and her conviction and sentence u/s 201, Penal Code are set aside, but at the same time the Government appeal against her acquittal of the charge u/s 302, read with Section 114, Penal Code, is allowed and, finding her guilty, I convict her of the said offence, i.e., of the offence punishable u/s 302, read with Section 114, Penal Code, and sentence her to transportation for life. Ranjit Singh is already in jail. The bail bonds of Kalawati, who is at large on bail, are cancelled and she will surrender and serve out the sentence imposed upon her.