
(1930) 06 PAT CK 0003

Patna High Court

Case No: None

Sonaram Mahton and
Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: June 13, 1930

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 374
- Penal Code, 1860 (IPC) - Section 201, 302

Citation: AIR 1931 Patna 145

Hon'ble Judges: Scroope, J; Fazl Ali, J

Bench: Full Bench

Judgement

Scroope, J.

The two appellants Sonaram Mahton and Laktoo Mahton are brothers. Sonaram has been convicted u/s 302, I.P.C., by the Sessions Judge of Manbhum in disagreement with the four assessors and has been sentenced to death for the murder of one Gobind Mahton on 27th November last; Laktoo Mahton has been convicted u/s 201, I.P.C., by the Sessions Judge in disagreement with the four assessors for an offence arising out of the same murder. The case of Sonaram also comes before us as a reference u/s 374, Criminal P.C.

2. The murdered man Gobind Mahton was landlord of the accused and they lived in village Singra about half a mile from Bandhdih Ghat in the Bagmara police-station. There had been disputes between Gobind and the brothers at the recent settlement operations and there was a civil suit pending between them which was instituted early in 1929 in the Munsif's Court at Dhanbad; Laktoo and Sonaram were the plaintiffs and they sued for a declaration that they were not under-raiyats of Gobind in respect of certain lands. The suit was fixed for hearing at Dhanbad on 27th November: Gobind applied for an adjournment on that day and that was the last date he was seen alive. There is no doubt about these

facts, nor is there any doubt that as he did not return home that night his son Mukund came next day to Dhanbad to search for him; he went to their pleader. Babu Sidheswar Mukharji and the latter told him that he had not seen Gobind after he had received from him a petition for time in the case on the previous day. Ram Narain Rai who is Sidheswar"s clerk corroborates him stating that on 27th November at about 3 or 3-30 p.m. he told Gobind that the case had been adjourned and that he had not seen him after that. Mukund spent that night at Dhanbad and next day Babulal Mahton cousin of Gobind, also came there from Singra to make enquiries, on that day they again enquired from the pleader amongst others but with no further success.

3. To get from Dhanbad to Singra, which is a distance of some 13 or 14 miles, the most convenient way is to take the bus from Dhanbad as far as Kirkend but it does not run any farther in the Singra direction and leaves a distance of about 8 miles still to be traversed. A bus leaves Dhanbad about 4 p.m. and the prosecution suggestion is that Gobind left by that bus. Thursday and Friday passed without any traces of Gobind and on Saturday, the 30th November, Mukund went to Bagmara police-station and informed the Sub-Inspector that his father was missing and the information was noted in the station diary.

4. Here I may refer to the suggestion advanced by the learned advocate who defended the accused; he argued that the delay in going to the thana was suspicious and he went the length of suggesting that this unfortunate young man Mukund might have murdered his father: that is an utterly baseless point because undoubtedly the young man was making enquiries on Thursday and Friday (we have evidence of a respectable lawyer to that effect) and there is nothing remarkable in his not going" off at once to the police. It is quite clear that he was genuinely searching for his father for these two days. The Sub-Inspector set out for Singra on Saturday afternoon. By that time Mukund had found on the pathway between Bandhdih and Singra some beads from a tulsi mala, some rags and drops of blood he was led to search for suspicious traces by information received from one Paran Mahton (P.W. 7) that he had seen his father walking with another man on the path from Bandhdih to Singra late on Wednesday evening. In consequence of this find Mukund telegraphed to the police at 4-10 p.m. on Saturday to the following effect, murdered Gobind Mahton"s cloth wreath place located (sic).

5. The Sub-Inspector apparently got no further with the enquiry on Saturday evening but on Sunday morning he organized a search in all directions radiating from the place where the suspicious traces had already been found and another piece of tulsi mala was found about half a mile off to the east from these finds which is also identified by Mukund as his father"s. Then the Sub-Inspector drew up a first information report u/s 302 which contains the facts I have already narrated in some greater detail; but the important point that emerges from it is that Mukund then stated he suspected Sonaram and Laktoo of having done away with his father because of enmity over a civil suit. The Sub-Inspector then arrested Sonaram who made a long statement to him as a result of which a very important find was made viz., the dead body of Gobind. In consequence of Sonaram"s

statement the Sub-Inspector on Sunday evening about 7 p.m. had a search made for it in the abandoned incline No. 7 of Murulidih colliery which is about 11/2 miles southeast of Singra and three miles south-east of Bandhdih Ghat. The search party entered the disused incline by an improvised ladder and eventually in one of the galleries of the mine they found a headless corpse buried under some stones which was identified by Mukund as the body of his father Gobind. Next morning a fresh search was made and 20 or 25 feet west of where the body had been found the head was found as well as a red shawl which was in a hole in the roof. Mukund also identified the head and the shawl as his father's. "A coat and cloth were also found here on Wednesday; both were identified as the property of the murdered man.

6. The learned Sessions Judge admitted in evidence those portions of Sonaram's statement to the police which related to the discovery of the body and the clothes, the sum and substance of which was that he, Laktoo and one Darku hid the corpse in the mine, into which they had descended by means of a wire rope hanging from a palas tree at the entrance to the incline. The learned advocate for the appellants contended that the Sessions Judge had wrongly admitted in evidence this statement of Sonaram to the police, that he had put the corpse in the disused mine; the discovery unquestionably attracts the operation of Section 27, Evidence Act, but the learned advocate's contention in effect is that we should admit only what amounts to the following statement: "The dead body of Gobind will be found in the incline." This whole matter of Section 27 has been exhaustively discussed in a very recent Full Bench decision of the Lahore High Court, Sukhan v. Emperor AIR 1929 Lah. 344. The question referred to the Full Bench there was the following:

A is being tried u/s 302, I.P.C., for having committed the murder of B, who is proved to have suddenly disappeared from his house and whose dead body was recovered from a well two days later. At the time of his disappearance B was wearing certain ornaments but these ornaments were not found on his body at the time of its recovery from the well. During the investigation A is alleged to have made a statement to the police in these terms: "I had removed the karas had pushed the body into the well, and had pledged the karas with Allah Din," and in consequence of the information so received the karas were recovered from Allah Din, which were identified as those worn by B at the time of his disappearance. Is the whole or any part of the aforesaid statement admissible against A u/s 27, Evidence Act and, if the latter, how much?

7. The majority of the learned Judges held that the statement that the accused had pledged the ornaments with Allah Din which were subsequently recovered was admissible in evidence u/s 27, but that the rest of the incriminating statement could not be received in evidence. Ford, J. dissented however and held that the whole of the statement, namely that the accused had removed the ornaments and pushed the body into the well, was receivable in evidence. Applying the decision of the majority to this case, the statement that Sonaram himself had put the body into the incline is receivable in evidence. Personally I think the real difficulty in Section 27 relates to the word

"information." The "information" that may be proved is the information received by the police officer and in this connexion, if I may so, agree with the observation of Shadi Lal, C.J., in that case when he states that the protection given to an accused person by Sections 24, 25 and 26, Evidence Act, should not be dependent upon the ingenuity of the police officer or the folly of the prisoner in composing the sentence which conveys the information. The learned Chief Justice goes on to say: "Suppose a prisoner on being asked about the weapon of offence says I buried a hatchet in my field; I killed A with it." Now it is indisputable that the recovery of a hatchet from the field renders only the first part of the statement admissible, and that the second part can not be given in evidence. But if the police officer converts the two sentences into one and represents the accused as saying: "The hatchet, with which I killed A, I buried in my field," then, according to those judgments, the whole of the above statement would be admissible.

8. On the other hand, we cannot garble the statement made to the police so as to render it absolutely innocuous to the prisoner and remove it entirely from the nature of a confessional statement. This is what the learned advocate for the prisoner wants to do here; to use the illustration of Shadi Lal, C.J., he would only allow in evidence the following version of the above statement: "You will find a hatchet in my field." Reading the statement to the police as a whole and considering the circumstances of the find, it is quite clear to me that what the prisoner said in effect to the police was: "I put the body in the incline" and not "You will find the body in the incline." A case that goes further than this decision of the Full Bench of the Lahore High Court is the decision of a Division Bench of this Court, namely [Lalji Dusadh Vs. Emperor](#), In addition to the cases supporting his view which are dealt with in the judgment of the Lahore High Court, the learned advocate relies also on the recent decision of the Calcutta High Court, [Supdt. and Remembrancer of Legal Affairs Vs. Bhajoo Majhi](#), ; the facts of that case are not very clearly set forth, but apparently the question there was whether admissions said to have been made by an accused that he had killed the deceased and thrown the body into the river, as a result of which blood-stains were discovered on the river bank and certain articles of clothing were found in the river, were admissible. It was held that the statements so far as they were incriminatory and related to the killing of the deceased and throwing the body into the river were not admissible. It would be in accordance with the Lahore High Court view to hold that the admission that the accused killed the deceased was not receivable in evidence; but the refusal to admit in evidence the statement that he had thrown the body in the river seems to take a stricter view of the section, though in the Calcutta case the body was apparently not found. To sum up the position as regards the present case the contest really amounts to this: the Crown in effect wants to prove the following statement: "I put the corpse into the mine;" the learned advocate for the prisoners contends that the statement to be proved is "You will find the body in the mine." The question then is what was the information the prisoner gave to the police. As I said, in my opinion, it was undoubtedly couched in the terms of the former statement which is therefore admissible in evidence. To accept the argument of the learned advocate as well as the view expressed in [Supdt. and Remembrancer of Legal](#)

[Affairs Vs. Bhajoo Majhi](#), seems to me to entirely ignore the plain wording of the section "whether it amounts to a confession or not." Whilst I entirely agree with the view expressed by West, J., in the case of Rex v. Jora Hasji 11 Bom.H.C.R. 242 that we must not under cover of this provision allow the discovery of ordinary articles like lathis, knives, stick and clothes to be introduced so as to admit what are practically confessions to the police and that the discovery ought to be of a fact which is directly connected with the crime apart from the statement itself it is to be noted that here the body of the murdered man was discovered and accordingly I would hold that the statement to the police by the accused that he had put the body in the mine is receivable in evidence. It is really a confession, but the discovery of the body is a guarantee of its truth and brings Section 27 into operation.

9. It was contended also that Sonaram was not under arrest at the time when he made the statement and that accordingly it was not receivable in evidence: vide the statements by Babu Lal Mahton and Rabi Mahton in cross-examination on this point from which the inference would be that Sonaram's arrest was subsequent to the discovery; but the Sub-Inspector stated in his examination-in-chief that on Sunday afternoon after the first information was drawn up he arrested Sonaram and that statement was never challenged in cross-examination. That is what the junior Sub-Inspector (P.W. 35) says too, and it passed also unchallenged. Apparently the witness Rabi Mahton, when he speaks in cross-examination of Sonaram's arrest after the recovery of the bhakua and cloth on Monday the 2nd, is referring to the date when Sonaram was actually confined and sent to the Magistrate; for the witness said later Sonaram was "tied up" on that day and I find that Sonaram was actually sent in custody to Dhanbad Court on that very Monday. Witness Babu Lal is mistaken in saying Sonaram was Sent up on Tuesday; he puts the arrest of Sonaram at four or five days later than the 27th, but it is in accord with the police evidence that Sonaram was arrested four days later. I have examined this contention carefully and I see no force in it.

10. It was also contended that the discovery of Gobind's corpse may have been made by the villagers themselves from the smell quite independently of the information conveyed to the police by Sonaram; the discovery was made on Sunday; Gobind disappeared on the previous Wednesday evening: it was the end of November; the body was found, according to the maps prepared by the colliery Babus, stowed not actually in the incline itself but in the gallery of the mine, some 30 or 40 feet below the surface, and it is most unlikely that at that time of the year the smell would so soon have come to the surface much less, pervaded the surrounding and open country; this disused incline is in the jungle and has no habitation near it; so Babu Sukha Dutta, the mining overseer of the colliery, tells us. The only suggestion that I can see that was ever made by the defence towards proving that the body was discovered by the smell and not by Sonaram's information is one deducible from the statement of the colliery Babu in his cross-examination (Ram Ratan Sarkar): "I do not hear of any bad smell." The mine where the body was found is about two miles to the east from where the blood-marks were

found: on this track was also found the portion of the tulsī beads as well as the rags found on Saturday afternoon. The finding of the body in the colliery is well proved by reliable witnesses apart from the police. I referred already to Sukha Sindhu Dutta, the mining overseer in the Murulidih colliery. Then there are Ram Ratan Sarkar and Umapada Choadhury and elaborate maps were prepared with their help showing the exact location of the body which had been concealed, not merely in the incline leading to the mine but in the actual mine, in one of the old disused galleries. That is a point to be emphasized as it defeats the defence suggestion that the villagers located the body by the smell. There is also evidence which I see no reason to question that the accused Sonaram and Laktoo had been working in this colliery some six months previously: vide the evidence of Dasarath Moda (P.W. 13). It was contended that the colliery books ought to have been produced to show that these two were labourers in the colliery. But here we are left in the region of surmise as the colliery officers were not questioned as to whether they kept books to show what coolies actually worked there. The probability is that they do not; but Dasarath is a line maistry in the colliery who worked there for 19 or 20 years and I accept him as a witness of truth. The evidence of the colliery officers and the plans show that the old workings in incline No. 7 are directly connected with pits which are now being worked.

11. Blood was detected on a cloth found in Sonaram's bari late on Sunday night or early on Monday morning, but the Chemical Examiner was unable to trace its origin. He however identified as human blood marks on a bamboo pole which was found in Sonaram's bari on a later search, namely on Tuesday the 3rd December. The medical evidence shows that the deceased had a number of lacerated wounds in the region of the head and that the head had been found completely severed from the body at the fifth cervical vertebra and that the bhakua shown to him by the Sub-Inspector and which the latter says he found on Saturday night in Sonaram's bari could have been the weapon with which the head was severed. Lastly, there is the fact that when the Assistant Surgeon, K.P. Mitter, examined the accused Sonaram in jail on 4th December he found two partially healed scratches on the inner side of his left arm which in his opinion were possibly caused by friction with some hard substance and this fits in with the prosecution theory that Sonaram climbed into the mine by means of a wire rope which hung from a palas tree above the incline; admittedly there was an old wire rope in this position. All this in my opinion constitute a chain of circumstantial evidence that is clear, complete and convincing against the accused Sonaram and is not subject to the infirmity of oral evidence which can always be impeached on the ground of enmity. I see no reason either to disbelieve Paran Mahton who states that he saw Gobind with another man late on Wednesday evening on the out-skirt of the village Bandhdih. No inference against the accused Sonaram can be drawn in the way of identifying this other man with him but it is important as showing when Gobind was last seen alive, namely, in the vicinity of Bandhdih late on Wednesday evening. But it is reliable because the statement was made before the police came on the scene at all: vide the son's (Mukund) evidence. It was contended by the learned advocate for the appellants that at best the circumstantial evidence proves an offence only u/s 201 and this is what the assessors found. There is

no doubt that Sonaram was at Dhanbad with the murdered man on Wednesday; they both lived in the same village some 14 miles from Dhanbad and this theory requires us to believe that somebody else murdered Gobind that evening and that Sonaram was obliging enough to dispose of the dead body for him; it is incredible he could have disposed of the dead body had he not been a party to the murder. This is not a case where a long period elapsed between the murder and the disposal of the corpse; it is quite clear that the body was disposed of on the night of the murder. Sonaram has given contradictory statements as to how he got the marks on his arm; he told the doctor that he got the injury while he was protecting himself from the lathi blows on the evening of 27th: but in Court he stated that he got it while taking tobacco from a tin. There is no getting away from the fact that human blood was found on a bamboo recovered from his house, that his own dhoty was found blood-stained in his khamar and then there is also the discovery of the bhakua or axe. In my opinion his direct complicity in the murder of the deceased is proved beyond the shadow of a doubt and there is no other sentence than the extreme penalty of death that can be imposed on him (Sonaram) for the murder of Gobind. I would therefore affirm the sentence of death passed on him by the learned Sessions Judge.

12. As regards the case of Laktoo, the brother of Sonaram, the learned Sessions Judge considers that his case is far weaker but he finds him guilty u/s 201, I.P.C., because of his scratches on his arm which have not been accounted for and he thinks that it is proved that he hid the shoes of the murdered man. Now as regards the scratches, the medical evidence is to the effect that their age was uncertain; so no definite conclusion can be drawn from them.

13. As regards the finding of the shoes I feel suspicious. The prosecution case is that the Sub-Inspector discovered them on Wednesday the 3rd, that is a week after the murder on information obtained from Sonaram, they were found buried in a stream by Narku Mia and Sakhu Mia; Laktoo was not present at the discovery. What I regard as suspicious is that when Laktoo indicated the whereabouts of the shoes, he was not taken to find them. That was the obvious thing to do instead of having the river searched by different persons. Probabilities point more to the shoes having been hidden by chance and had it not been that the mind of the Court was influenced by the statement of Sonaram to the effect that Laktoo had helped him in disposing of the dead body, which is not evidence against Laktoo, I do not think there would have been a conviction on the evidence.

14. In my opinion the legal evidence is not sufficient to justify the conviction of Laktoo and I would, therefore, acquit him.

Fazl Ali, J.

15. I concur in the order proposed.