A great deal of time appears to have been taken up in the courts in India by speculative theories built on medical books without any facts "established by the evidence in the case" to use Lord WATSON'S condemnation in the case of *Sajid Ali* v. *Ibad Ali* (1).

Before the Board, Counsel very wisely abstained from the course which was reprehended in the judgment just cited. Their Lordships refer to it in order to help the Indian courts to economize time in the trial of similar cases.

On the whole, their Lordships are of opinion that the judgment of the Subordinate Judge, affirmed by the Second Judicial Commissioner, is right, and they will accordingly humbly advise His Majesty that the appeal should be dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

NIRBHAY NATH *v.* EMPEROR.*

1926 *July*, 26.*

Confession, whether to be admitted or rejected as a whole— Where part of a confession found incorrect only that part may be rejected.

Held, that where it is found that certain statements in the confession of an accused are false the entire confession should not be rejected for that reason. After the entire statement of a prisoner has been given in evidence any part of it may be contradicted by the prosecution, if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another.

* Criminal Appeal No. 255 of 1926, against the order of Fateh Bahadur Varma, Officiating Sessions Judge of Hardoi, dated the 10th of June, 1926.

(1) L.R., 22 I.A., 171.

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Held further, that all the parts of a confession are not entitled to equal credit. If sufficient grounds exist the part that charges the prisoner may be believed, while that which is in his favour may be rejected. [40 Calc., p. 873. followed. 15 A.L.J., p. 15, explained.]

Mr. *E. R. Kidwai*, for the appellant.

The Government Advocate (Mr. *G. H. Thomas*), for the Crown.

STUART, C. J., and RAZA, J. :—Nirbhay Nath alias Ram Bharose, a *faqir*, whose age appears to be about 24, has been convicted by the learned Sessions Judge of Hardoi of having murdered his *guru* a *faqir*, called Jwalanand, on the 28th of March, 1926. He has been sentenced to death subject to confirmation by this Court. He appeals. The reference in confirmation is also before us. The circumstances are these. Jwalanand was an Aghora *faqir* who resided in a hut at Kulhabar on the bank of the Gomti river with the appellant. On the 28th of March, 1926, the appellant came to Pihani where the police-station is—a distance of some 8 miles from Kulhabar—and first went to the house of Raghunath Prasad Brahman, to whom he stated that Jwalanand had been murdered that day by 10 or 12 persons including Bhola Pasi and Dhira Singh in the presence of the appellant. He asked Raghunath Prasad to accompany him to the police-station and at the police-station he made a report in which he charged Drigpal Singh, Bhola Singh and other persons with having murdered Jwalanand. Sub-Inspector Nurul Hasan, the officer in charge of the Pihani police-station, in whose presence the report was made, was not satisfied with the appellant's demeanour and, on examining him, discovered that his clothes were blood-stained. He took the appellant into custody believing that a murder had been committed, and that the appellant was himself

guilty. The appellant made a certain statement to the police officer. The investigation then proceeded. The dead body of Jwalanand was found close to the hut in which he had resided. The medical evidence shows that death was due to two incised wounds which had apparently been caused by a heavy weapon with a cutting edge. Both wounds were on the head. One was 4½ inches deep by 1 inch wide and the other was 4 inches deep by 1 inch wide. Both had cut into the brain. After his apprehension the appellant indicated to the police a place on the bank of the river Gomti. A search was made in the water beneath the bank at the place, and in the river was found an axe-head with handle. The injuries upon the deceased were such as could have been caused by the edge of the axe-head in question. Subsequently on the 29th of March, 1926, the appellant made a statement before Mr. AMBAI PRASAD, Magistrate of the First Class. This statement was recorded with very great care, and every precaution was taken to protect the interests of the appellant while making it. The learned Magistrate's method of recording the confession is deserving of great credit. In his confession the appellant made a statement that he had killed the deceased. He stated, however, that the deceased had previously behaved in a most improper manner towards him, and would have it believed that the deceased had attacked him with an axe and that he had killed the deceased in self-defence. The learned Sessions Judge has convicted the appellant upon his admissions but has rejected the portions of the statement, which are to the effect that the deceased had attempted to commit an unnatural offence upon the appellant, and that there had been a fight at the time of the deceased's death. We have not the slightest hesitation in finding that the appellant made

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that statement, and in view of the fact that the appellant showed the police the spot where the axe was discovered we have no doubt as to the fact that he killed the deceased. But it remains to be considered whether, in the first place, we are entitled to take the statement otherwise than as a whole and if we are entitled to take the statement otherwise than as a whole whether we should take the same view as was taken by the learned Sessions Judge. Upon the first point we consider that the law has been correctly stated in a decision of the Bench of the High Court of Calcutta in *Pulin Tanti* v. *Emperor* (1) where at page 878 the learned Judges composing the Bench stated :—

> " The learned Counsel for the appellant has pointed out several statements in the confession that must be false, and, therefrom, he argues that the entire confession, including the admission of guilt, must also be false. We may point out that only such statement as embody the justification for the murder have been shown to be false, and it stands to reason that an accused person may well attempt to justify his act by setting out false reasons if the motive for his confession is not repentance of his sin. We are asked to hold that, parts of the confession having been found to be false, the entire confession should be rejected. This is too broad a proposition to which we cannot accede. After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases

(1) (1923) I.L.R., 40 Calc., p. 873.

where one part of the evidence contradicts another. Even without such contradiction it is not supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist the part that charges the prisoner may be believed, while that which is in his favour may be rejected—see *Rex* v. *Higgins* (1), *Rex* v. *Steptoe* (2) and *Rex* v. *Clews* (3)."

There is a decision of the High Court of Allahabad *Jagdeo* v. *Emperor* (4) (to which one of us was a party) which at first sight may be considered to lay down a contrary rule, but, in our opinion, it does not lay down a contrary rule. Therein a Bench of the Allahabad High Court stated that where the circumstances of a case compel the tribunal to reject all the other evidence and act only upon a confession, the confession must be used *literatim et verbatim*, and due effect must be given to every statement contained therein, whether in favour of the accused or against him. But this decision was only to the effect that where a man, as in the case in question, confessed to having committed grievous hurt but did not confess to having committed murder, and there was no other evidence against him, the confession could not be taken to prove against him more than what it itself contained. Here the case is very different because there is other evidence. In the first place the appellant suggested that the deceased had previously made indecent overtures to him. It is not stated that these indecent overtures had done more than lead to the quarrel. He did not suggest that he was defending himself against an attack upon him. He stated that that matter was over, when he was attacked with an axe by the deceased. According to his story he took up

(1) (1829) 3 C. and P., 603.
(2) (1830) 4 C. and P., 221.
(3) (1830) 4 C. and P., 397.
(4) (1917) 15 A.L.J., 15.

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another axe and defended himself. The evidence shows that there was only one axe used and not two, and this circumstance shows, that that portion of the story relating to self-defence is false. In these circumstances we have no hesitation in finding that the appellant murdered the deceased by striking two very savage blows with an axe which penetrated the brain of the deceased. We do not find that there is any reason to suppose that the allegation that the deceased made improper proposals to the appellant which the appellant resented is true. According to the appellant's own showing the deceased had made improper proposals to him some weeks before his death. He says that he then left the deceased but eventually came back to him. The fact that he returned would show that his allegations on this point are not true. We see no mitigating circumstances in the matter and accept the statement, coupled with the discovery of the axe head, as proving sufficiently that the appellant committed the murder. We reject his appeal, confirm his conviction and sentence and direct that the sentence be carried into effect according to law.

Appeal rejected.