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We are of opinion, therefore, that the learned trial Judge was perfectly right in rejecting the plaintiff's claim in respect of the property of the Manjhli Rani and the Chhoti Rani. It is the defendant who is entitled to that property under the Hindu law. He has preference over the plaintiff as stated above.

The result is that the appeal is partly allowed. It is declared that the plaintiff is entitled to the property of Raj Gobardhan Singh detailed in the list exhibit 26. The rest of the claim is dismissed. The parties will receive and pay costs in both the courts in proportion to their success and failure.

Appeal partly allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice A. G. P. Pullan.

DWARKA (APPELLANT) v. KING-EMPEROR (COMPLAINANT-RESPONDENT)*.

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Medical evidence, weight to be attached to—Evidence of witnesses—Witnesses altering their statements in Sessions Court to make them fit in with other evidence, weight to be attached to their evidence.

Where the medical evidence is merely an opinion of an expert on a question which may admit of two explanations it is not always of first importance. Where, however, it is not a case of reliable evidence of uncontradicted eye-witnesses on the one side and medical theories on the other but all that the doctor has done is to lay before the court certain definite facts from which the Judge can draw conclusions about the nature of injuries and the cause of death as well as the doctor medical evidence is of great importance.

Where witnesses alter their statements in the court of sessions in order to make them fit in with the medical or other evidence which has been brought forward in the Magistrate's court their statements must receive very careful scrutiny.

*Criminal Appeal No. 58 of 1929, against the order of Pandit Raghubar Dayal Shukla, 1st Additional Sessions Judge of Lucknow at Bara Banki, dated the 12th of January, 1929.

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Mr. *St. G. Jackson*, for the appellant.

The Government Pleader (*Mr. H. K. Ghosh*), for the Crown.

RAZA and PULLAN, JJ. :—The seven appellants were convicted by the Additional Sessions Judge of Lucknow at Bara Banki of the offence of murder under section 302 of the Indian Penal Code and were sentenced to transportation for life. They have also been convicted and sentenced on a charge of riot. The person who was killed was a young Bania named Baboo, aged 17 years. His death was reported by his uncle Ram Dhani who had, as he says, brought the youth up from childhood, after 7 a.m. on the 18th of July. The story told in the first report is that shortly before sunrise Baboo went to ease himself according to his daily practice. Shortly afterwards Jeo Ram Lonia raised an alarm saying "Run up, Baboo is shouting that he is being killed." Thereupon Ram Dhani, his brother Ram Sarup, his nephew Gur Dayal a relation named Bihari and a Kalwar named Raghubar ran up to the grove which lies close to the village tank and there, according to Ram Dhani's report they saw the seven accused persons striking Baboo. In the report it is not said how they were striking Baboo but it is clearly stated that on seeing the witnesses they all made off leaving Baboo lying on the ground. The only injury mentioned in the report is a wound on the neck which was thought to have been inflicted by a knife or a spear. The police investigation obtained the necessary evidence to bear out the first report and it was also ascertained that the accused persons had some previous enmity with Ram Dhani and it was supposed that on account of this enmity and in order to annoy Ram Dhani they had combined to kill Baboo.

The body was sent for post mortem examination and as the result of that examination some remarkable facts

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came to light. In the first place the doctor gave as the probable time since death 30 or 36 hours. He made his examination at 11-15 on the 19th of July. Consequently the time of death must have been between 11-15 on the night of the 17th and 5-15 on the morning of the 18th. When the period after death is so short the medical evidence can be relied upon to be accurate within a few hours. The doctor found that the cause of death was suffocation due to injury to the wind-pipe and pressure over the chest. He did not find that the wound on the neck had caused death, but that some pressure on the chest was the actual cause. This pressure must have been very heavy, for the third, fourth and fifth ribs on the right side and the third, fourth, fifth and sixth ribs on the left side were separated from their cartilages. The larynx was found full of food-stuff, rice and vegetables, and the stomach contained six chhataks of undigested food, rice and *dal*. The doctor made the necessary deduction that death ensued a very short time after the deceased ate his last meal. We do not say that there have not been strange cases where the digestive process has been unduly delayed, and that these cases are not more common in India than in western countries; but as a general rule we must assume, failing evidence to the contrary, that the murdered person was a normal person, and we consider that the deduction made by the doctor was justified by the facts which he observed. We then turn to the injury report. The only injury which the body received was the knife wound on the neck. We cannot class as injuries the large number of small abrasions which were also found. It is possible that an abrasion can be caused by a blow, but when we find that there were two dozen abrasions in front of the right wrist and forearm, seven abrasions in front of the left wrist and seven more in an area of $1\frac{1}{2}'' \times 1''$ in front of

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the left elbow, two dozen abrasions on the outer side of the left thigh, fifteen abrasions in front of the left thigh, five abrasions on the outer side of the left leg, other unnumbered abrasions just below the left knee, six abrasions on the left knee and six abrasions just below the right knee (these being the only marks on the body apart from the knife wound on the neck) we conclude without any hesitation that all these injuries were caused by the deceased being dragged along the ground. It would appear that he was dragged by some one holding his feet and possibly by somebody else holding his body from the ground. We do not consider that there is any other manner in which these abrasions can have been caused. Thus we conclude from the medical evidence, quite apart from any of the depositions made by the witnesses, that Baboo met his death owing to the pressure of a heavy weight on his chest. He was then possibly stabbed in the neck, as this injury was effected during his life, and he was then dragged to the place where he was found, namely a heap of rubbish near a village tank. It is obvious that this does not coincide in any way with the story told by Ram Dhani and his witnesses all of whom produced identical statements. The man was not kicked and he was not hit. We need not enlarge on the absurdities of the prosecution story which intends us to believe that seven persons armed with lathis lay in wait for a youth just outside a village at the time when he and all the members of the village were certain to go out to relieve nature, close to the village tank, and then laying aside their lathis sat upon him or in some other way caused his death by pressure, and then kicked and struck him in the presence of the witnesses in such a manner that they left no marks. The story is so incredible in itself that even apart from the medical evidence we think it strange that the learned Sessions Judge believed it.

Again much stress was laid by Ram Dhani and his friends on the motive. These persons, one of whom is a Kalwar, two are Jolahas and four Behnas are said to have banded together to kill Baboo because of their enmity against his uncle. No doubt Ram Dhani had given evidence against one of these men in a *badmashi* case ten years before, and he had some trouble with four others shortly before the murder but we cannot find that there was any direct enmity on the part of either Ehsan or his son Bashir, though they were related to the other two Behnas. But even supposing the enmity to be proved we are unable to see why these men selected Baboo for their attack. No doubt Ram Dhani may have liked Baboo, but since the birth of his own son a year ago he had a much nearer interest in the latter; and any one wishing to hurt him would surely have killed the child and not the nephew. Possibly seeing this difficulty Ram Dhani pretended that he took the advice of Baboo aged 17 in all his affairs, and in particular in the purchase of a decree against one of the accused Dwarka Kalwar.

There is also much in the statements of the prosecution witnesses in the sessions court which might have given the learned Judge pause in believing their statements. It will be seen that in the first report nothing was said about the dragging of the body. This story came into existence when the police found the marks of dragging in the grove and the separate stains of blood. When he appeared in the sessions court Ram Dhani was evidently cognizant of the medical evidence, and for the first time there he stated that he saw the accused pressing Baboo down and invented an entirely new story to account for the presence of undigested food in his stomach. In this story he was borne out by his brother Ram Sarup, who, after definitely stating in the court below that he had dinner on the night before the murder

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at 10 o'clock and that probably his brother had his between 8 and 10, suddenly remembered that they had all been to a *Katha* or religious reading on that night and got home very late. Ram Sarup says that he had his dinner as late as 2 a.m. but Ram Dhani would not go so far. According to his statement Baboo must have had his dinner at about 1 o'clock. Where witnesses alter their statements in the court of session in order to make them fit in with the medical or other evidence which has been brought forward in the Magistrate's court, their statements must receive very careful scrutiny; and here we have a case where the witnesses have boldly altered their statements to suit the medical evidence, have told a story, which is on the face of it improbable, and have given an account of an assault which they say they saw which is entirely different to the true manner in which the deceased met his death.

All assessors found all the accused not guilty, but the learned Judge has thought fit by adopting some special pleading to disagree with them. He makes much of the fact that the defence witnesses were not produced before him, though he examined two of them under section 540 of the Code of Criminal Procedure. We have read the statements of these witnesses. One of them was a village *chaukidar* who was obviously afraid to go against the police, and the other was Kesho the father-in-law of Baboo. This man does not go as far perhaps as the accused might have wished in his statement, but he brings to light two curious facts. One is that he himself went to the village on the day of the murder and stayed there the whole night, but he denies that he ever learnt during that time that the accused had committed the crime. He also says that his daughter was forcibly detained in the village for two months by her father-in-law, and he could only recover her by making an application to the Magistrate. Different

explanations may perhaps be given as to why the girl was detained in this manner, but the obvious one is that she was not prepared to agree in the story told as to her husband's death, and moreover there was a danger that she would not keep silent. It is significant that her father-in-law Ram Sarup in his evidence says that he thought it proper to detain her till the end of the case. We consider that the evidence of Kesho is a strong indication that there was something not straightforward in the preparation of this case, in fact that the accused persons have been named to save some one else. They are persons who are disliked by Ram Dhani and therefore by his brother and nephew, and the other three eye-witnesses have all some reason for being hostile to one or other of them. Raghubar is the partner with Ram Dhani in purchasing the decree against Dwarka, and both the others have suspected one or other of the Muhammadan accused of theft. In fact these accused persons are men of bad character who are unpopular in the village and they have been chosen as scape-goats in this affair.

We feel that we must pass some comments on the manner in which the learned Sessions Judge has dealt with the medical evidence. He considers that medical evidence is of less value than the evidence of eye-witnesses. Apart from the criticisms which we have already passed on the alleged eye-witnesses in this case we would find difficulty in agreeing with the learned Sessions Judge in this view of his as to medical evidence as a general proposition. Where the medical evidence is merely an opinion of an expert on a question which may admit of two explanations it is not always of first importance. But here all that the doctor has done is to lay before the court certain definite facts. There is no question that the doctor's report as to the nature of the injuries is correct. He must be right as to the cause

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of death and he has stated what he saw as to the contents of the stomach and the food regurgitated into the larynx. It requires no expert to draw conclusions from those facts. The Judge himself was able to draw those conclusions as well as the doctor. Therefore this is not a case where the Judge has had on the one side the reliable evidence of uncontradicted eye-witnesses, and on the other medical theories. It appears to us that he has had on the one side facts and on the other mere words. We do not know why Baboo may have been killed; we do not know where he was killed and we do not know what reason the witnesses for the prosecution may have had before attempting to saddle the accused with the crime, but we are certain that the guilt of the accused has not been proved. Even it would appear that the Judge himself had some little doubt in this matter, otherwise it is difficult to see how he could have failed to pass a sentence of death on the seven persons who waylaid a youth of 17 and deliberately murdered him in order to spite his uncle. We allow these appeals, set aside the convictions and sentences and direct that the appellants be acquitted and forthwith released.

Raza and Pullan. JJ.

Appeal allowed.