

1934

MANNI
LAL
v.
LAL
BAHADUR

Nanavutty,
J.

certain plots which had come into his possession by purchase. In that case the plaintiff took his stand on certain partition proceedings which were concluded in the year 1915 as does the plaintiff in the present suit in respect of the partition of village Jaintipur which came into effect on the 1st of July, 1928. It was held in the ruling cited above that the case was hardly one in which a decree should have been passed under section 127 of the Oudh Rent Act.

It seems to me that the present case is similar in all essentials with the case decided in *Prag Prasad v. Sri Nath* (1) by Mr. Justice Pullan, and I am clearly of opinion that the plaintiff Babu Lal Bahadur cannot treat the defendant Babu Manni Lal as a trespasser and sue for his ejectment and for arrears of rent from him.

For the reasons given above, I allow this appeal, set aside the judgments and decrees of the lower courts and dismiss the plaintiff's suit with costs in all courts.

Appeal allowed.

APPELLATE CRIMINAL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
Rachhpal Singh*

1934
February, 26

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

Indian Penal Code (Act XLV of 1860), section 302—Corpse recovered from the house of the accused during his absence in jail—Accused, whether can be called upon to explain the recovery of the corpse—Criminal Procedure Code (Act V of 1898), sections 161 and 540—Magistrate, whether justified in examining witnesses examined during investigation by police.

Where in the case of a prosecution for murder under section 302 of the Indian Penal Code, the only fact that is proved is that the dead body of the deceased was recovered from the house of the accused, buried in one of the rooms inside his

*Criminal Appeal No. 500 of 1933, against the order of S. Ali Hamid, Sessions Judge of Hardoi, dated the 8th of November, 1933.

(1) (1930) 8 O.W.N., 23.

1934

 BHAGAUTI
 v.
 KING-
 EMPEROR

house, but the accused was in jail at the time of the recovery, the accused cannot be called upon to explain how the corpse of the deceased came to be buried in his house. Had the accused been present in his house at the time of the recovery of the corpse from his house he could certainly have been called upon to explain the fact.

A committing magistrate is perfectly justified in acting strictly in accordance with law when he examines under section 540 of the Code of Criminal Procedure the witnesses whom the investigating police officer had examined in the course of his police investigation, and it is not correct to say in such a case that the committing magistrate was merely fishing for witnesses.

Dr. J. N. Misra, for the appellant.

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

NANAVUTY and RACHHPAL SINGH, JJ.:—These are two connected appeals filed by Bhagauti Brahman and Suraj Bali Arakh against the judgment of the learned Sessions Judge of Hardoi convicting them both of an offence under section 302 of the Indian Penal Code and sentencing Bhagauti to death subject to confirmation by this Court and Suraj Bali to transportation for life. The reference in confirmation of the death sentence is also before us.

The events which led to the discovery of the murder of Badey chaukidar and the prosecution of Bhagauti Brahman and Suraj Bali Arakh on a charge under section 302 of the Indian Penal Code are briefly as follows:—

On the 28th of January, 1933, at about 9 p.m. Dulla, son of Badey chaukidar of Bhargahna made a report (exhibit 4) at police station Sandila in the district of Hardoi to the effect that his father had disappeared from his home and no trace of him could be found since the afternoon of the 27th of January, 1933. In this report Dulla, son of Badey chaukidar had reported that he had learnt from the wives of Alai Gaddi and Chunnan Mali that his father had been seen at noon the previous day (the 27th of January, 1933) in the bazar at Sandila, that the wife of Husaini Gaddi had told him that at

1934

BHAGAUTI
v.
KING-
EMPEROR

*Nanavully
and
Rachpal
Singh, JJ.*

midnight of the previous day someone had opened and shut Badey's kothri, that the hawker who sat near the shop of Gendu Halwai at Sandila had seen Badey chaukidar the previous day at noon near the old school going with a person towards the east. Dulla suspected that Husaini Gaddi of Bhargahna who bore enmity with his father might possibly be responsible for the disappearance of his father. Upon this report a charge of murder under section 302 of the Indian Penal Code against person or persons unknown was registered at police station Sandila. Sub-Inspector Babu Bhagat Ram (P. W. 15), second officer of police station Sandila, was deputed to investigate the case of the disappearance of Badey chaukidar. He could not ascertain the place of occurrence or recover the dead body of Badey chaukidar. He searched the house of Bhagauti accused in Bhargahna on the 29th of January, 1933, in order to find out the implement of the murder, but did not discover it. He did not dig any place in the house of Bhagauti to find out the dead body of Badey because it did not occur to him that the dead body might be buried in any part of his house. He examined Musammat Chhotki (D. W. 6), Musammat Jasia (D. W. 4), Musammat Kailaso (D. W. 5), Musammat Lachhminia, Debi Dayal, sweetmeat seller (D. W. 3), Bhagwan Din (D. W. 2), Hashim Ali (D. W. 1) and Jumman, on the 28th and 29th of January, 1933; and the statements of these witnesses examined by the investigating police officer and also examined in the Court of Session as defence witnesses go to show that Badey chaukidar was last seen alive till mid-day of the 27th of January, 1933. The crime remained untraced, and no further action appears to have been taken by the police to enquire into the disappearance or the alleged murder of Badey chaukidar.

On the 30th of April, 1933, Bhagauti Brahman was prosecuted under section 110 of the Code of Criminal Procedure and on the 18th of May, 1933, an order was passed binding him over to be of good behaviour for a

period of one year by furnishing bonds and sureties. As the bonds and sureties required from him were not forthcoming Bhagauti was sent to undergo rigorous imprisonment for a period of one year or for such period not exceeding one year as the bonds and sureties were not forthcoming.

1934
BHAGAUTI
v.
KING-
EMPEROR

*Nanavaty
and
Ruchpal
Singh, J.J.*

In the absence of Bhagauti from his house while he was serving the sentence of imprisonment, Baidnah, a distant nephew of Bhagauti, is said to have made improper overtures to Musammat Ram Kali the wife of Bhagauti. Thereupon Musammat Ram Kali left her husband's house in Bhargahna and went to live in the house of a Teli named Bhup in the town of Sandila about two or three miles away from her husband's home. On the 19th of June, 1933, Baidnath, the nephew of Bhagauti, made a report (exhibit 7) at police station Sandila that his uncle's wife Musammat Ramkali had been enticed away by Bhup Teli, and he registered a crime under section 498 of the Indian Penal Code in respect of the enticing away of Musammat Ramkali by Bhup Teli and he cited as his witnesses Husaini Gaddi and Chunni Mali of village Bhargahna. It is significant to note that when Musammat Ram Kali of her own accord left her husband's home in village Bhargahna and went to live with Bhup Teli in the town of Sandila, she did not tell Bhup anything concerning the murder of the chaukidar by her husband Bhagauti and by the latter's nephew Baidnath and others. She did not even tell Bhup Teli as to the reason for her leaving her husband's home, nor anything about the alleged threat which Baidnath had given her that if she did not yield to his wishes he would treat her in the same manner as Badey chaukidar had been treated by him. All that she told Bhup Teli was that she wanted to preserve her chastity and so ran away from her husband's home, while on the other hand her husband's nephew charged her with illicit intimacy with Bhup Teli and made a report against Bhup Teli charging him under section 498 of

1934

BHAGAUTI
v.
KING-
EMPEROR

Nanavutty
and
Rachhpa
Singh, J.J.

the Indian Penal Code. Four days later on the 23rd of June, 1933, Musammat Ram Kali herself made a report (exhibit 3) at police station Sandila charging her husband's nephew Baidnath Brahman resident of Gondwa in police station Malihabad in the district of Lucknow with having threatened her five or six days ago with a *banka*. No case under section 506 of the Indian Penal Code appears to have been registered and no action appears to have been taken upon this report by the police against Baidnath Brahman, but the statement made by Musammat Ram Kali, to the effect that Baidnath told her that she would be dealt with in the same manner as Badey chaukidar had been if she did not yield to the solicitations made by her husband's nephew, struck the Sub-Inspector-in-charge of police station Sandila that Musammat Ramkali was privy to the murder of Badey chaukidar and knew something about that murder and he thereupon produced Musammat Ram Kali before the Superintendent of Police of Hardoi District and before the Superintendent of Police Musammat Ram Kali's statement was recorded by the station officer of police station Sandila in the police diary, to the effect that on the morning of the last day of Ramzan a few hours after sunrise (that is to say on the morning of the 27th of January, 1933, at about 7 or 8 a.m.) Badey chaukidar came to the house of Bhagauti Brahman and told the latter that the *thanadar* wanted him. Bhagauti asked Badey chaukidar to sit down and warm himself near the fire and that he would start shortly with him. Suraj Bali Arakh and Baidnath Brahman were also present at the time warming themselves in front of the fire. When Badey chaukidar sat down in front of the fire Baidnath got up secretly and closed the outer doors of Bhagauti's house. Whilst Suraj Bali was keeping the attention of Badey chaukidar occupied by begging him to help him in getting back his wife, Bhagauti went quietly inside the house and brought a *banka* and suddenly struck Badey chaukidar from

behind on his neck. Badey fell down and died, and then all three persons Bhagauti, Suraj Bali and Baidnathi took the corpse of Badey chaukidar and dug a pit at the base of the wall of the *kothri* and buried the dead body and pressed down the earth over it. In her statement before the Superintendent of Police and the station officer of police station Sandila Musammat Ram Kali made no mention of Barati Gaddi, a boy of 11, having witnessed the commission of the murder, although this boy is said to have been in the service of Bhagauti for a year before the commission of the murder. Sub-Inspector Nurul Hasan Khan (P. W. 18) has deposed that he learnt the name of Barati for the first time from a statement made by Suraj Bali accused himself, who was implicated by Ram Kali in her statement of the 23rd of June, 1933, and then on the 24th of June, 1933, when Musammat Ram Kali was examined a second time by the station officer she is said to have confirmed the statement of Suraj Bali that Barati was in fact present and had witnessed the commission of the murder. After her statement before the Superintendent of Police Musammat Ram Kali handed over the *banka*, with which she said that her husband Bhagauti had committed the murder, to the police near the octroi post in Sandila on the 23rd of June, 1933. She brought this *banka* (exhibit 1) from the house of Bhup Teli and she took the police to the house of her husband in Bhargahna and pointed out the spot where her husband and others had buried the corpse of Badey chaukidar. The house of Bhagauti accused was locked from outside. The key of the lock was produced by one Gajodhar Joshi and he has deposed that Baidnath the nephew of Bhagauti gave the key of the padlock of the door to Lalta Tewari on the morning that the police came to search the house of Bhagauti for the corpse of Badey chaukidar. At the time of the recovery of the corpse of Badey chaukidar by the police from the house of Bhagauti Brahman. Barati Gaddi was present along with Musammat Ram

1934

 BHAGAUTI
 v.
 KING-
 EMPEROR

*Nanavutty
 and
 Rachhpal
 Singh, JJ.*

1934

BHAGAUTI
P.
KING-
EMPEROR*Nanavally
and
Rachpal
Singh, J.J.*

Kali, who actually pointed out the place where the body was buried. Nevertheless, it did not occur to Musammamat Ram Kali that she should inform the Superintendent of Police and the station officer of police station Sandila that Barati Gaddi was an eye-witness of the actual commission of the murder of Badey chaukidar by her husband Bhagauti, Suraj Bali and Baidnath. In her statement made on the 24th of June, 1933, before Mr. Nurul Hasan Khan Musammamat Ram Kali gives further details of the way in which Badey chaukidar was done to death and for the first time she alleges that Suraj Bali turned over the body of Badey chaukidar after Bhagauti had dealt the first blow from behind and urged Bhagauti to give Badey chaukidar a second blow and so finish him altogether otherwise Badey might survive the first blow. A further statement of Musammamat Ram Kali was recorded by the station officer on the 25th of June, 1933, and in this third statement of hers Musammamat Ram Kali corroborated the story told by the boy Barati and also stated that Suraj Bali had scraped the blood from the framework of the door of the room in which Badey had been secretly buried. After the recovery of the body of Badey chaukidar from the house of Bhagauti accused an inquest report (exhibit 2) was prepared and the corpse was sent to Sadar for post mortem examination, along with report (exhibit 18) showing the circumstances under which the body had been recovered and the cause of death as far as it could be ascertained at the time of the recovery of the corpse; a report on the appearance and situation of the body was also entered in this report (exhibit 18) made by the station officer of police station Sandila to the Medical Officer at Hardoi, who was called upon to perform the post mortem examination. In this report the station officer of police station Sandila had opined that the probable date of the murder of Badey chaukidar was the 27th of January, 1933, and that the body was recovered on the 23rd of June, 1933, about 5 months later. He also invited the attention of the

medical officer to the wound on the neck which cut deep across the spinal column severing all the blood vessels and the nerves and muscles of the right side of the body. After completing his investigation Sub-Inspector Nurul Hasan Khan in-charge of police station Sandila prosecuted Bhagauti, Suraj Bali and Baidnath on charges under sections 302 and 302/114 of the Indian Penal Code. The learned Sessions Judge acquitted Baidnath and convicted Bhagauti Brahman and Suraj Bali of an offence under section 302 of the Indian Penal Code and sentenced Bhagauti to death and Suraj Bali to transportation for life.

The story of the prosecution rests primarily upon the evidence of Ram Kali the wife of Bhagauti and of the boy Barati Gaddi aged 11. The evidence of Musammat Ram Kali must be viewed with the greatest caution. If her story be accepted at its face value then she is no doubt an accomplice of the occurrence. No satisfactory and convincing explanation is forthcoming as to why she remained silent for five long months and then suddenly gave information which put the noose round the neck of her own husband. That she is reputed to be a woman of loose character is clear from the report (exhibit 7) made by the accused Baidnath as also from her own conduct in leaving her husband's home and going to live with a man of low caste like Bhup Teli, while her husband was in jail. Apart from the conduct of Musammat Ram Kali which to us appears incomprehensible, the story told by her is in direct conflict with the first information report made by Dulla, the son of the murdered chaukidar Badey, on the 28th of January, 1933. If that report be accepted as correct, and we see no reason to mistrust the good faith of Dulla or the correctness of the information received by him at that time, Badey chaukidar was seen alive by several persons up to noon of the 27th of January, 1933, and the witnesses named in this first information report have been examined by the accused in their defence, and their

1934

 BHAGAUTI
 v.
 KING-
 EMPEROR

*Nanavutty
 and
 Raghopal
 Singh, JJ.*

1934

BHAGAUTI
v.
KING-
EMPEROR

*Nanavutty
and
Rachhpal
Singh, JJ.*

evidence gains support from the facts recorded in this first information report. If the first information report be accepted as correct, it virtually annuls the entire case for the prosecution, as founded upon the testimony of Musammat Ram Kali, for Musammat Ram Kali definitely states that Badey chaukidar was murdered at about two *gharis* after sunrise on the 27th of January, 1933, shortly after his arrival at the house of Bhagauti Brahman to take him away to police station Sandila, where he was required in connection with a theft case. The learned Sessions Judge has disbelieved the evidence of the defence witnesses, whose testimony is corroborated by the first information report (exhibit 4). In our opinion the learned trial Judge has not envisaged the facts of this case in their true perspective and has in his enthusiasm and belief in the story told by Musammat Ram Kali brushed aside all factors which went to discredit the story told by the wife of the accused. The conduct of Musammat Ram Kali in the circumstances of this case is so unnatural, and the story told by her is so highly improbable, that we hesitate to believe in the truth of her account of the murder, especially when the falsehood of the story is made manifest from the very first information report made by the son of the murdered man. There is no allegation in the account given by Musammat Ram Kali that Bhagauti entered into any conspiracy with his nephew Baidnath and Suraj Bali Arakh to commit the murder of Badey chaukidar on the morning of the 27th of January, 1933. The arrival of Badey chaukidar at the house of Bhagauti accused was purely a matter of accident and Bhagauti and his accomplices could have no knowledge on the morning of the 27th of January, 1933, that Badey chaukidar would come to the house of Bhagauti to fetch Bhagauti to police station Sandila. We, therefore, find it hard to understand how the actors in this sordid drama took upon themselves the role assigned to them by Musammat Ram Kali apart from any evidence of previous conspiracy

on their part to commit the murder of Badey chaukidar. The learned Sessions Judge has disbelieved the evidence of Musammat Ram Kali and of Barati so far as Baidnath accused is concerned, and yet upon that same evidence he has not hesitated to sentence Baidnath's uncle to death and Suraj Bali to transportation for life. The piecemeal manner in which the details of the murder as deposed to by Musammat Ram Kali have been secured by the police, also goes to show that Musammat Ram Kali is not telling a natural and truthful story, but is merely giving an account of the occurrence as suggested to her by some body or she is merely drawing upon her own imagination in giving her account of the occurrence. Then again, if the account of murder as deposed to by Musammat Ram Kali is true then the *chadar*, the woollen *banian*, *dhoti*, shoes and cap of the murdered chaukidar must have been covered with blood. Neither the *chadar*, nor the cap, nor the pair of shoes, nor the *banian* or the woollen jacket, nor the *dhoti* worn by the murdered chaukidar Badey has been sent either to the Chemical Examiner or to the Medical Officer or to the Imperial Serologist for an expression of opinion as to whether there were any blood stains to be found on these clothes which the murdered man is proved to have worn at the time of the commission of the murder. That these clothes were found on the murdered man is proved by the evidence of the prosecution witnesses, who were present at the time of the discovery of the corpse in the house of Bhagauti Brahman. The investigating police officer took the trouble of sending the earth and the scrapings from the wooden framework to the Chemical Examiner for report as to whether they were stained with blood, yet he somehow or other failed to send the *khaki* coloured woollen jersey worn by the deceased and the pair of shoes and *dhoti* found with the corpse to the Chemical Examiner for a report as to whether they were stained with blood. The evidence of Musammat Ram Kali is that the head of Badey chaukidar was

1934

 BHAGAUTI
 v.
 KING-
 EMPEROR

*Nanavutty
 and
 Rakhpal
 Singh, J.J.*

1934

BHAGAUTI
v.
KING-
EMPEROR

Nawarutti
and
Rachhpal
Singh, JJ.

practically severed from the trunk with a couple of strokes of the *banka*. If that be the case, there could be no manner of doubt that the woollen jersey and the *dhoti*, if not the cap and the shoes of the deceased, must have been simply soaked in blood and yet there is no evidence to show that these articles worn by the deceased at the time of the murder were covered with blood. We examined these articles in Court and so far as we could see with the naked eye there were apparently no blood stains on these articles. As we have said above, the evidence of Musammat Ram Kali must be viewed with the greatest caution, because she is practically an accomplice with her husband in the commission of this murder. She is as much an accomplice as Baidnath and Bhagauti and her evidence cannot in the circumstances of this case be accepted without corroboration in material particulars. The fact that the clothes which were found on the person of the deceased and which he is proved to have worn at the time of the commission of the murder do not furnish any material corroboration of the story told by Musammat Ram Kali, is a piece of circumstantial evidence which throws grave doubts as to the truth of Musammat Ram Kali's story.

As for the evidence of Barati we have no hesitation in rejecting it as absolutely worthless. He is an immature child of 11 years of age and can be made to say anything against anybody. The very mode in which Barati was discovered by the police namely upon information alleged to have been supplied directly by the accused Suraj Bali himself condemns him as a witness who has been merely procured for the purpose of corroborating the tainted testimony of Musammat Ram Kali. It has been said that Barati was in the service of the accused Bhagauti for a year or so, and yet so profound is his ignorance that he cannot say how many cattle Bhagauti had which he was asked to look after and to graze. It is a significant commentary on the way in which this child of 11 years has been made the sport of

opposing factions that his alleged insane mother Musammat Bitui has been examined as a witness for the defence. She is D. W. 7. She deposed that she did not know the whereabouts of her child Barati and that when she told Bhup Teli that she wanted to see her son Barati. Bhup threatened her that he would beat her with shoes and that although she had been searching for her son for the last six months, she had not yet been able to set eyes on him. Further comment is superfluous. After giving our most careful consideration to the evidence of the two eye-witnesses Musammat Ram Kali and Barati we have unhesitatingly come to the conclusion that their evidence is not satisfactory and certainly not sufficient in our opinion to base a conviction of the two appellants on the capital charge of murder.

The only fact that emerges out of the mass of evidence adduced by the prosecution against the accused is that the body of Badey chaukidar was recovered from the house of Bhagauti buried in the floor of a room inside the house. Had Bhagauti been present in his house at the time of the recovery of the corpse from his house he would certainly have been called upon to explain how the corpse came to be buried in his house, but, as we have said above, Bhagauti Brahman was prosecuted under section 110 of the Code of Criminal Procedure on the 30th of April, 1933, and was sentenced on the 18th of May, 1933, to one year's rigorous imprisonment on his failure to furnish the bonds and securities, demanded from him. On the 23rd of June, 1933, when the corpse of Badey chaukidar was recovered from Bhagauti's house Bhagauti was in jail. In these circumstances he certainly cannot be called upon to explain how the corpse came to be buried in his house. If anybody knows anything about the manner in which the corpse came to be buried in the house of Bhagauti, it is Bhagauti's wife Musammat Ram Kali who was directly responsible for the discovery of the corpse in her house. It is significant to note in this connection that the key

1934

 BHAGAUTI
 v.
 KING-
 EMPEROE

*Nanavatty
 and
 Rochopal
 Singh, J.J.*

1934

BHAGAUTI
".
KING-
EMPEROR

*Nanavutty
and
Bachhapal
Singh, J.J.*

of Bhagauti's house was not produced by Musammat Ram Kali, who as mistress of her husband's house should have had the key in her possession. It was not produced by Baidnath who is said to have lived in the house after Bhagauti had been arrested and sent to jail, but it is carefully produced by a third person Gajodhar Joshi (P. W. 11), who states that he got the key from another person Lalta Tewari that very morning. It is thus clear that nobody takes the responsibility of being in possession of the house at the time when the body of Badey chaukidar was recovered by the police at the instance of Musammat Ram Kali from the house of her husband. This fact in our opinion is not without significance. Be that as it may, there is really no evidence worth the name to connect the accused Bhagauti and Suraj Bali with the commission of the murder of Badey chaukidar.

The learned Council for the appellants at the commencement of his able address on behalf of the accused strenuously attacked the evidence of the Assistant Surgeon of Sandila and the post-mortem report made by that officer in respect of the body of Badey chaukidar. It is clear from the evidence of Dr. Mathur, Assistant Surgeon of Sandila (exhibit 14) that the probable time since the death of Badey chaukidar, recorded by him in the post mortem report, was gathered from the information supplied to him by the police in their report (exhibit 17 of the Committing Magistrate's record). It is also clear that his opinion as to the cause of death can only be based upon the single injury found on the neck of the deceased. That injury was an incised wound $4\frac{1}{2}$ " long $2\frac{1}{2}$ " \times $3\frac{1}{2}$ " from the right side of the neck across the sound box to the left, and cutting deep across the spinal column to the muscles at the back of the neck. If the medical report be accepted as correct then there was apparently only one blow inflicted on the deceased and not two blows as deposed to by Musammat Ram Kali and Barati. It is again to be noted that Dr. Mathur in cross-examination has stated that at least two if not

three blows must have been struck to cause the injury found on the body of Badey chaukidar. This fact, however, that the incised wound $4\frac{1}{2}'' \times 2\frac{1}{2}'' \times 3\frac{1}{2}''$ was caused by two blows if not three blows has not been noted in the post mortem report prepared by Dr. Mathur on the 24th of June, 1933, and it is hard to understand how on the 18th of July, 1933, when he was examined by the Committing Magistrate he was in a position to depose that two if not three blows were inflicted on the deceased. The Assistant Surgeon has also deposed that the cause of death was due to haemorrhage from injury to blood vessels of the neck of the deceased chaukidar. The learned Counsel for the appellant has challenged the correctness of this statement but there are no materials on the record from which we can come to the conclusion that the opinion expressed by the Assistant Surgeon on this point is not correct, and we do not think it necessary to pursue this matter, because the direct evidence of eye-witnesses Musammat Ram Kali and Barati is in our opinion unreliable and not sufficient to justify the conviction of the appellants on a charge of murder.

In this connection it may also be noted that of the five pieces of wood sent to the Chemical Examiner for report only one piece of wood contained a minute blood stain which was used up in testing in the laboratory of the Chemical Examiner, and that no blood could be detected on the earth mixed with dung pieces of straw and cloth sent to the Chemical Examiner for report (see exhibits 16 and 17 at page 25 of the printed paper book). It is hard to understand how on a spot where a man's head had been practically severed from the trunk of his body only one minute blood stain came to be detected on only one of the pieces of wood sent to the Chemical Examiner, and even in respect of that minute blood it could not be ascertained with any degree of certainty that it was human blood and not the blood of some animal.

1934

 BHAGAUTI
 v.
 KING-
 EMPEROR.

*Nanavutti
 and
 Rochhpal
 Singh, JJ.*

1934

BHAGAUTI
v.
KING-
EMPEROR

*Namavutty
and
Rachhpal
Singh, JJ.*

After giving the facts of this case our most careful consideration we unhesitatingly come to the conclusion that the charge of murder has not been brought home to either accused upon the evidence on the record and we must, therefore, allow this appeal, set aside the convictions and sentences passed upon the appellants Bhagauti and Suraj Bali, acquit them of the offence charged and order their immediate release.

Before we part with this case we would like to add that the strictures passed by the learned Sessions Judge in his judgment under appeal upon the conduct of the Committing Magistrate and on that of the pleader for the accused in the trial Court are wholly undeserved and uncalled for. In our opinion the learned Committing Magistrate was perfectly justified in acting strictly in accordance with law when he examined under section 540 of the Code of Criminal Procedure the witnesses whom the investigating police officer had examined in the course of his police investigation, and it is not correct to say that the Committing Magistrate was merely "fishing for witnesses in the present case". Some of these witnesses are mentioned in the first information report made by Dulla, the son of Badey chaukidar. Sub-Inspector Nurul Hasan Khan has himself deposed that he examined all these witnesses in the course of his investigation. As regards the strictures passed against the conduct of the learned pleader who appeared on behalf of the accused in the trial court, all that we need say is that they are not only irrelevant but wholly uncalled for, and we would deprecate the making of such remarks by the learned Sessions Judge.

Appeal allowed.