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Exhibit A-8 purports to be a deposit by a person whose name cannot be deciphered correctly. It may be either read as Suraj Gir, or Surajkant or Suraj Gir Sahai. That being the case, no evidentiary value, for the purpose of this case, can be attached to this document. Moreover, the value of these documents (exhibits A-4, A-5, A-6, A-7 and A-8) has been completely destroyed by the entry in the "*wajib-ul-arz*" of village Sukhrampur (exhibit 26, page 2, Part III of the paper-book), as well as by the rubkar of the last settlement of village Sukhrampur (exhibit 28, page 9, Part III of the paper-book), which both show that, as a matter of fact, no under-proprietary rights were conferred on any one in village Sukhrampur, in which is included the hamlet of Bistrampur.

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JJ.*

For the reasons given above, we hold that the defendants-appellants have failed to prove that they are under-proprietors of village Bistrampur. We accordingly uphold the finding of the lower Court on issue No. 1.

In view of our finding on issue No. 1, it is unnecessary to give any finding on issue No. 2. The result is that this appeal fails and is accordingly dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
Ziaul Hasan*

BRIJPAL SINGH (ACCUSED-APPELLANT) v. KING-EMPEROR
(COMPLAINANT-RESPONDENT)*

1936
August 31

Evidence Act (I of 1872), section 114(b)—Evidence of accessories after commission of crime, whether sufficient to prove guilt—Corroboration, if necessary—Court to act on legal testimony and not upon mere suspicion.

The evidence of accessories after the commission of the crime cannot be accepted as proving the guilt of the accused.

*Criminal Appeal No. 235 of 1936, against the order of Mr. Raghubar Dayal, i.c.s., Sessions Judge of Unao, dated the 30th of June, 1936.

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without corroboration in material particulars by independent witnesses. *Ramaswami Gounden v. Emperor* (1), and *Mahadeo v. The King* (2), referred to.

It is well settled law that suspicion, though a ground for scrutiny, may not be the basis of a judicial pronouncement. The Court's decision must rest, not upon suspicion, but upon legal grounds established by legal testimony. *Minu Kumari Bibi v. Bijoy Singh Dudhuria* (3), referred to.

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

The Government Advocate (Mr. H. S. Gupta), for the Crown.

NANAVUTTY and ZIAUL HASAN, JJ.:—This is an appeal against a judgment of the learned Sessions Judge of Unao convicting the appellant Brijpal Singh aged 25, of an offence under section 302 of the Indian Penal Code, and sentencing him to death. The reference in confirmation of the sentence of death is also before us.

The story of the prosecution is briefly as follows:

Ajodhia Singh father of the appellant as well as of the deceased Raja Singh went to Misrikh with his wife and youngest son and others on Thursday, the 5th of March, 1936, in order to celebrate the Holi. He left at his residence in village Kains his eldest son, Brijpal Singh, and his second son, Raja Singh, and two servants Jagnu Teli and Bahadur Chamar. He is a well-to-do zamindar and had a license for keeping a gun. He left the gun locked in a box at his house. He returned from Misrikh on Monday, the 9th of March, 1936, and he did not find Raja Singh in his house. He inquired from his son Brijpal Singh as well as from his servants Jagnu and Bahadur as to where Raja Singh had gone. They replied that Raja Singh had gone to celebrate the Holi somewhere and had not returned. Search was made for the missing boy, and a report of his disappearance was made at police station Bangarmau after 3 p.m. on the 10th of March, 1936, in which it was stated that Raja Singh aged 17 had left his house on the night between

(1) (1904) I.L.R., 27 Mad., 271. (2) (1936) A.L.J.R., 869.

(3) (1917) L.R., 44 I.A., 72.

the 7th and 8th of March, 1936. at 4 a.m. to celebrate the Foli, and had not returned home, and a reward of Rs.5 was offered. One Nasir-ud-din tailor of village Kains came to the house of Ajudhia Singh in the same village, and informed him on Friday, the 13th of March, 1936, that he had found a corpse at a furlong to the east of Shadipur bridge as he was returning to Kains from Kanth Gulzarpur. Bhoge chaukidar came to the spot from where the corpse was recovered, and he went to police station Bangarmau and made the first information report (exhibit 2), in which suspicion was cast upon Brijpal Singh the appellant as the murderer of his younger brother Raja Singh. A case under section 302 of the Indian Penal Code was registered at police station Bangarmau and a police investigation followed, which resulted in the prosecution of Brijpal Singh on the charge of murdering his younger brother Raja Singh. The learned Sessions Judge, accepting the evidence of Jagnu Teli and Bahadur Chamar, has convicted Brijpal Singh of an offence under section 302 of the Indian Penal Code, and sentenced him to death subject to confirmation of the sentence by this Court.

The case against the appellant rests solely upon the testimony of these two witnesses, P. W. 18 Jagnu Teli and P. W. 19 Bahadur Chamar. The story told by Jagnu is as follows:

On the night intervening between the 7th and 8th of March, 1936, he was sleeping in a room with three doors known as *tedari* facing towards the east. The deceased Raja Singh was sleeping in a *tedari* facing north, while Brijpal Singh slept in the *tedari* facing east and near the southernmost door. On hearing the sound of a gun being fired, Jagnu Teli woke up. It was raining and a strong wind was blowing. At the same time Raja Singh shouted from his cot to Jagnu to give him some water to drink. Jagnu got up from his cot and saw Brijpal Singh standing near the cot of

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Raja Singh with a gun in his hand. As he was proceeding to take the water out of the jug which lay some 10 paces from him, he heard the sound of a gun being fired a second time. He saw that Brijpal Singh had fired the gun a second time. He proceeded towards Raja Singh with the glass of water in his hand, but he could not give it to him. Brijpal Singh told Jagnu not to shout, and that he had killed Raja Singh and further told him to tell nobody about it. Then Brijpal Singh, with the gun in his hand, went out and brought in Bahadur Chamar, and Brijpal told Bahadur that he had killed Raja Singh and that he should help him in removing the corpse. Bahadur Chamar at first refused to obey the order of Brijpal. Thereupon the latter threatened to kill him if he did not remove the corpse. Then Bahadur and Brijpal took away the cot with the corpse upon it. Jagnu also went with them. They took the cot with the corpse on it to the room facing west. Brijpal then ordered Jagnu to bring a spade. Jagnu brought it. Brijpal and Bahadur then dug a pit in the ground, and then they placed the corpse wrapped up in the bedding inside the pit and covered it up with earth. Straw was also placed over the spot where the corpse had been buried. Next morning Brijpal gave out that his brother Raja Singh had gone to see the Holi the previous night and had not returned. Then Bachanu Pasi came to the house of Ajodhia on the evening of Thursday, the 12th of March, 1936, and Sheoraj Singh also came the same day. These men along with Bahadur and Brijpal were sleeping in the *chaupal* that night, while Jagnu Teli slept in the cattle-shed. Brijpal Singh told Jagnu in the evening to keep the door open as the corpse would be removed that night from the pit where it had been buried. About five *gharis* after nightfall, Brijpal Singh awakened Jagnu and asked him for help in removing the corpse. Bachanu, Sheoraj Singh and Bahadur were also present at the time the corpse was disinterred. The corpse was

then tied with the bedding and placed upon a cart, and Brijpal Singh, Bachanu and Sheoraj Singh went with the cart. Jagnu returned to his own bed. Bahadur also went away. After that Brijpal did not return to his house with the cart. When the corpse was recovered next day from the canal, Jagnu told Ajudhia Singh, when questioned by the latter, that Brijpal had murdered Raja Singh, but that, through fear of him, he did not reveal the fact.

The evidence of Bahadur Chamar (P. W. 19) is to the effect that on the night of the Holi between the 7th and 8th of March, 1936, he was sleeping in the cattle-shed of his master Ajudhia. Brijpal Singh awakened him. He had a gun in his hand and he got a lantern lit, and placed it near the cattle-shed, and then he took Bahadur inside the *zenana* house and told him that he had killed Raja Singh and ordered him to remove the corpse or he would shoot him also. Thereupon Brijpal and Bahadur carried the cot with the corpse upon it, while Jagnu walked in front, and he took the corpse to the cattle-shed, and Brijpal asked for a spade from Jagnu, and then Brijpal and Bahadur dug a whole in the ground, and the corpse, along with various other articles, was placed inside that pit, and was covered over with *bhusa*. On the following Thursday, the corpse was removed from the place, where it had been buried, by Bachanu, Sheoraj and Brijpal. It was put on a mat and placed on the cart and then Brijpal, Sheoraj and Bachanu went away. Next morning when the corpse was recovered from the canal, Bahadur told Ajudhia, upon being questioned by the latter, that Brijpal had killed his brother Raja Singh but that, through fear of him, he, Bahadur Chamar, had not said anything.

The evidence of Bachanu Pasi (P W. 20) has been rejected by the learned Sessions Judge for good and adequate reasons. But as the learned Government Advocate wishes to rely upon it, we think it proper to give here the substance of his evidence. This witness

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Bachanu Pasi, who is under police surveillance, is a servant of Putti Singh. He was sent by Putti Singh to the house of Ajudhia to inquire about the disappearance of Raja Singh. At five *gharis* after nightfall, Brijpal Singh awakened Sheoraj and told him that he had killed his brother and buried him in the cattle-shed. Sheoraj then asked Brijpal to call Bahadur and Bachanu. Thereupon the corpse was disinterred from the ground and taken on a cart and thrown into the canal at a place to the east of Shadipur village. The spade, with which the ground was dug up, was also thrown there. This is all the direct evidence in this case, which implicates the appellant Brijpal Singh. We will first discuss the evidence of P. W. 18 Jagnu Teli and P. W. 19 Bahadur Chamar. The learned counsel for the appellant has strenuously argued that the evidence of these two witnesses ought not to be believed without strong and independent corroboration, as they are on their own showing accomplices or accessories after the occurrence, and as such they are unworthy of belief unless corroborated in material particulars by the evidence of independent and reliable witnesses. On the other hand the learned Government Advocate has invited our attention to a case reported in *Ramaswami Gounden v. Emperor* (1). In this case it was held that the witness was not an accomplice in the crime for which the accused was charged inasmuch as he had not been concerned in the perpetration of the murder itself and that even if the witness had assisted in removing the body to the pit, he could have been charged with concealment of the body under section 201 of the Indian Penal Code, but that was an offence perfectly independent of the murder, and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder or liable to be implicated with him jointly, and it was therefore held that the witness was not an accomplice and the rule of practice as to corroboration had

(1) (1904) I.L.R., 27 Mad., 271.

no application to this case. On the other hand Mr. Justice BODDAM held that even if the witness be not deemed to be an accomplice, the fact that he was cognizant of the crime for 15 days without disclosing it and that he had a cause of quarrel with the accused at the time when he did disclose it, were circumstances which would make it very unsafe to act upon his evidence unless it was corroborated in some material particular connecting the accused with the crime. With all due respect to the learned Judges, who decided this case, it seems to us that the view taken by the dissentient Judge Mr. Justice BODDAM is the sounder view. In a recent ruling of their Lordships of the Privy Council reported in *Mahadeo v. The King* (1), it was held that the evidence of an accomplice or accessory must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, and that the evidence of one accomplice was not available as corroboration of another. The Board, which decided this case, consisted of the Lord Chancellor (Viscount HAILSHAM), Lord RUSSELL of Killowen, Sir LANCELOT SANDESON, Sir GEORGE LOWNDES and Sir SIDNEY ROWLATT. Sir SIDNEY ROWLATT in delivering the judgment of their Lordships of the Judicial Committee stated as follows:

"It is well settled that the evidence of an accessory which Sukraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it and further that evidence of one accomplice is not available as corroboration of another [*The King v. Baskerville* (2)]. This rule as to corroboration, as was pointed out in the case just cited, *long a rule of practice, is now virtually a rule of law*, and in a case like the present it is a rule of the greatest possible importance."

(1) (1936) A.L.J.R., 869.

(2) (1916) 2 K.B., 655

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It is clear that both Jagnu as well as Bahadur Chamar are accessories after the commission of the crime and their evidence cannot be accepted as proving the guilt of the appellant without corroboration in material particulars by independent witnesses. There is no such independent corroboration forthcoming. The learned Government Advocate has strenuously argued that strong suspicions attach to the appellant and that if the evidence of Jagnu Teli and Bahadur Chamar be not accepted, then the murder will go unpunished and the appellant will escape the just punishment for his crime. It is well settled law that suspicion though a ground for scrutiny may not be the basis of a judicial pronouncement, and in *Mina Kumari Bibi v. Bijay Singh Dudhuria* (1). Sir LAWRENCE JENKINS in delivering the judgment of their Lordships of the Judicial Committee made the following pregnant remark :

“The Court’s decision must rest, not upon suspicion, but upon legal grounds established by legal testimony.”

If that is the rule of law even in the decision of a civil case it is much more so in the case of a criminal trial of murder in which a human life hangs in the balance.

We have carefully scrutinised the evidence of the witnesses Jagnu and Bahadur, and we are not satisfied that they are speaking the absolute truth. In any case corroboration in material particulars bearing upon the facts of the crime and tending to implicate the accused must be forthcoming before we can place reliance upon the evidence of these tainted witnesses and confirm the conviction of the appellant and the sentence of death passed upon him.

We need not discuss the evidence of Bachanu (P. W. 20). It has been carefully scrutinised by the learned Sessions Judge and we entirely agree with the learned Sessions Judge in his reasons for rejecting the evidence of this witness as utterly unreliable. We may note that Sheoraj, who is also said to have helped the

(1) (1917) L.R., 44 I.A., 72(77).

appellant in removing the corpse of the latter's brother from the pit where it was buried to the canal in which it was thrown, has not been examined.

We may further add that the prosecution has alleged no motive for the commission of the crime. The learned Government Advocate has argued that the question of motive is immaterial. In our opinion the question of motive loses its significance where the crime of murder has been proved beyond reasonable doubt by satisfactory and reliable evidence of eye-witnesses who saw the commission of the crime. In the present case, however, the facts are very different. The appellant is charged with the murder of his younger brother aged 17. It is alleged that he had quarrels with his brother, but it is well known that even the most loving of brothers and sisters do occasionally quarrel among themselves, but that would be no reason for one brother committing the murder of another. The fact that it is a motiveless crime makes the evidence of the alleged eye-witnesses Jagnu and Bahadur all the more incredible.

For the reasons given above, we allow this appeal of Brijpal Singh, set aside the conviction and sentence passed upon him, acquit him of the offence charged and order his immediate release.

Appeal allowed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

THE DISTRICT BOARD OF BAHRAICH, (DEFENDANT-
APPELLANT) *v.* NAZEER HUSAIN (PLAINTIFF-RESPONDENT)*

1936
September 3

*United Provinces District Boards Act (X of 1922), sections 45,
82 and 90(4)—Dismissal of an employee of District Board—*

*Second Civil Appeal No. 302 of 1934, against the decree of Pandit Shyam Manohar Nath Shargha, District Judge of Gonda, dated the 31st of August, 1934, modifying the decree of Pandit Bishu Nath Hukku, Subordinate Judge of Bahraich, dated the 30th of October, 1933.

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