

## APPELLATE CRIMINAL.

*Before Broadway and Agha Haidar JJ.*

ARJAN SINGH AND ANOTHER—Appellants

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 337 of 1929.

*Criminal Procedure Code, Act V of 1898, section 164—  
Confession to Magistrate—retracted before completion of the  
necessary certificate—whether admissible.*

A confession made by an accused person was recorded by the Magistrate, but was retracted prior to the completion of the certificate required under section 164 (3) of the Criminal Procedure Code, the accused then stating that the confession had been made at the instance of the police.

*Held*, that the confession was not admissible in evidence.

*Appeal from the order of E. R. Anderson, Esquire, Sessions Judge, Jullundur, dated the 11th March, 1929, convicting the appellants.*

KESAR SINGH, for Appellants.

SUNDAR DAS, for Government Advocate, for Respondent.

BROADWAY J.

BROADWAY J.—Arjan Singh and *Mussammat* Jiwani have been sentenced to death for the murder of one Nagar Singh, husband of the latter. They have appealed, and the case is also before the Court under section 374 of the Criminal Procedure Code.

It appears that, on the night of the 12th January, 1929, *lohri* night, Nagar Singh was in his house with his wife, *Mussammat* Jiwani. About midnight Wazir Singh, Nagar Singh's brother, who was sleeping in his own house in the same courtyard, was aroused by hearing the cries of *Mussammat* Jiwani. He went towards her house and found the door chained from outside. He entered and was about to make a light

when *Mussammat* Jiwani asked him to cover her up first as she was naked. Being unable to find a match in the darkness, Wazir Singh returned to his own house, and from there brought a lighted *diwa*, having first covered Jiwani up with a *lihaf*. On his return with the light, he found his brother lying on the ground dead, weltering in blood. *Mussammat* Jiwani was on her cot in a state of nudity. Her wrists were tied across her chest with a string, and a *safa* was tied to the sides of the bed, thus restraining her movements. She was not gagged, and her feet were not tied. On being questioned, she stated that some 8 or 10 men, of whom she named Harnam Singh, Bishan Singh and others, had come there that night, knocked up Nagar Singh and had then set on to him and killed him; held her down, trussed her up, robbed her of certain ornaments, *i.e.*, a *phul* and *balas* and certain garments. After their departure she had raised the alarm. Other people arrived on the scene, and the same story was told to them. Accordingly, Wazir Singh proceeded to the police station some eight miles away and made a report there at 11 A.M. on the 13th January, 1929. The police went to the spot, sent for the persons named and held an investigation. The story told by *Mussammat* Jiwani appeared to the investigating officer as very improbable. On the 16th January *Mussammat* Jiwani made a certain statement to the police which led them to send for Arjan Singh, who is a collateral of the deceased, and lives close by. On the 17th January Arjan Singh made a statement, and produced a *gandasa*, a *phul* and *balas* and some women's clothes which were blood-stained. The Imperial Serologist's report is that all these articles are stained with human blood. It is said that *Mussammat* Jiwani, in the presence of respectable wit-

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nesses, recognised the ornaments found, as well as the clothes, as being hers.

On the 22nd January Mr. Bishambar Dial Singh, Magistrate, 1st class, happened to arrive at *Mauza Shah Kot* on tour, and the police took advantage of his presence there to place the two appellants before him in order that their statements might be recorded. Accordingly, the said Magistrate recorded the statement of Arjan Singh after carefully and fully complying with the provisions of section 164 of the Criminal Procedure Code. He was then returned to custody. In this statement Arjan Singh confessed his having murdered the deceased, and admitted that the motive was to get rid of him, inasmuch as *Mussammât Jiwani* had contracted an intimacy with the deponent. The Magistrate then proceeded to record the statement of *Mussammât Jiwani*. He complied with the necessary formalities and recorded her statement, read it out to her and had her thumb-mark affixed on it on her admitting its correctness. He was then proceeding to append the certificate which was necessary under section 164, Criminal Procedure Code. While this certificate was being written, *Mussammât Jiwani* stated to the Magistrate that she had made the statement at the instance of the police, who had promised that she and Arjan Singh would be set free if she made that statement. The Magistrate, very properly, held his hand, and questioned her, asking her again and again whether she had spoken the truth; and, on her persisting in her retraction and her allegations as to the statement having been made at the instance of the police, he, instead of signing the certificate, recorded her further statement. In this statement *Mussammât Jiwani* clearly stated that the previous statement had been made by her at the instance of the police. The

Magistrate then sent for Arjan Singh and recorded his statement, asking him if the statement made by him was true. The record shows that the appellant Arjan Singh, after thinking for a time, made the same assertion as had been made by *Mussammât* Jiwani to the effect that the statement was not true, and had been made at the instance of the police.

The evidence on the record shows that Arjan Singh himself produced a blood-stained *gandasa*, a *phul* and *balas* and certain blood-stained garments belonging to a woman. It is in evidence that *Mussammât* Jiwani identified the jewellery and the clothes as her property. In these circumstances, so far as the case of Arjan Singh is concerned, his confession, although retracted at the very first possible moment, is corroborated by the production of articles for which he can now give no explanation, more especially the *gandasa*. He has contented himself by denying that he produced these articles. In these circumstances, although there was a very early and prompt retraction of the confession, the corroboration afforded by the production of the *gandasa* and the other articles is, to my mind, sufficient to warrant the conclusion arrived at by the learned Sessions Judge that Arjan Singh was responsible for the death of Nagar Singh.

The case of *Mussammât* Jiwani is on a somewhat different footing. She must be regarded as having made no confession, inasmuch as, although her statement had actually been recorded, and its correctness had actually been admitted by her, the requirements of section 164 had not fully been complied with by the Magistrate when she resiled from her statement. In these circumstances, I consider that this confessional statement of *Mussammât* Jiwani cannot be admitted in evidence. This being the case, there is no real evi-

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dence left on the record to warrant a definite conclusion that she joined Arjan Singh in killing her husband, or was privy to the murder prior to its commission. I do not lose sight of the fact that Arjan Singh's confession may be taken into consideration against this appellant. The circumstances of the case are, however, such that in the absence of any corroboration connecting *Mussammat* Jiwani with the commission of the crime, I cannot regard Arjan Singh's confession as sufficient to bring *Mussammat* Jiwani's guilt home to her. That she assisted Arjan Singh by giving him her ornaments and her blood-stained clothes is, I think, beyond question. Her lying story as to how her husband was murdered is a most suspicious circumstance. At the same time, it seems to me that her lying story and the assistance given to her paramour are consistent and compatible with her having had no knowledge that the murder was to be committed that night, and with having been in no conspiracy to murder her husband. It is possible, even probable, that Arjan Singh came to the house that night, found Nagar Singh in a drunken sleep, slew him and then called on *Mussammat* Jiwani to assist him in covering his tracks, which *Mussammat* Jiwani, probably very gladly, agreed to do. In these circumstances, this appellant is, I think, entitled to the benefit of the doubt. I would therefore dismiss the appeal of Arjan Singh, and confirm the sentence of death passed on him, but would accept the appeal of *Mussammat* Jiwani, set aside her conviction and sentence and direct her release.

AGHA HAIDAR J.

AGHA HAIDAR J.—I agree.

N. F. E.

*Arjan Singh's appeal dismissed.**Mst. Jiwani's appeal accepted.*