

APPELLATE CRIMINAL.

Before Young C. J. and Sale J.

KARAM SINGH (CONVICT) Appellant

versus

THE CROWN—Respondent.

1934

June 11.

Criminal Appeal No. 628 of 1934.

*Criminal Procedure Code, Act V of 1898, Section 164 :
Oral confession — to a Magistrate — not recorded under the
Section and subsequently retracted—Admissibility and value
of — Necessity of corroboration in material particulars.*

The convict-appellant made an oral confession to an Honorary Magistrate, who was associated with the investigating officer of the Police. The Magistrate did not record the admissions but made a memorandum of their substance as orally stated by the accused and made use of the written memorandum to refresh his memory, as permitted by Section 159 of the Evidence Act, while giving evidence before the Sessions Court.

Held, that while the oral confession in question is admissible having regard to the Full Bench decision in *Abdulla v. The Crown* (1), the amount of weight to be attached to such an oral confession (which, as in this case, has been subsequently retracted) must be determined by the facts of each particular case and will depend on the extent to which the oral confession is corroborated in material particulars by independent evidence.

Ordinarily, the same weight cannot be attached to such an oral confession as to one formally recorded with all necessary precautions under Section 164, Criminal Procedure Code.

Held also, that confessions intended to be admitted in evidence against persons accused of criminal offences should ordinarily be recorded with all the precautions and in the manner prescribed by Section 164 of the Code. If this salutary provision of the law is ignored in favour of an oral confession, the trial Court will be entitled to presume, unless

(1) (1933) I. L. R. 14 Lab. 290 (F. B.).

satisfied to the contrary, that the reason for adopting the oral method is that the accused has declined to commit himself to a written confession under Section 164. The result will be that in cases in which it is sought to rely on such an oral confession, which has been subsequently retracted, very little weight will be attached to the oral confession, unless there is independent evidence to corroborate the confession in such a way as to establish beyond doubt that the confession is a true statement which really connects the accused with the crime.

1934

KARAM SINGH
v.
THE CROWN.

Appeal from the order of R. B. Lala Chuni Lal, Sessions Judge, Ferozepore, dated the 8th March, 1934, convicting the appellant.

ZAHUR DIN NAQSHBANDI, for Appellant.

EDMUNDS, Assistant Legal Remembrancer, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—Karam Singh has been convicted under section 302, Indian Penal Code, for the murder of his paramour *Mussammat* Harnamo on or about the 27th of September, 1933, and has been sentenced to death. From this conviction he appeals and the death sentence is before us for confirmation.

Mussammat Harnamo was the wife of Ujagar Singh (P.W.13). In the beginning of September her husband had taken her to Tarn Taran to bathe in the Darbar Sahib tank. From there she disappeared; and on the 13th of September Ujagar Singh reported her disappearance to the Tarn Taran police. On the 27th of September Mr. Pratt (P.W.2), an Assistant P.W.I., reported to the police that a corpse was lying near the railway track between Faridkot and Kot Kapura stations. Investigation was undertaken by the police and the body was soon identified as that of

1934

KARAM SINGH
v.
THE CROWN.

Mussammat Harnamo, wife of Ujagar Singh. It is not necessary to consider the evidence of identification as this has not been questioned in appeal and there can be no doubt that the corpse was that of *Mussammat* Harnamo. It is proved by the medical evidence that death was due to shock and hæmorrhage resulting from eight incised injuries inflicted mostly on the neck and face. There is no doubt, therefore, that the woman was murdered. The nature of these injuries is consistent with the allegation of the prosecution that they were inflicted by the *kirpan* (Exhibit P.17). The main question for determination is whether the guilt of the appellant has been established as the perpetrator of this murder.

The first clue obtained by the police in this case was the receipt of a letter (Exhibit P.K.) purporting to have come from one Hari Singh, *Giani*, intimating that *Mussammat* Harnamo had been murdered by one Amar Singh at a spot $1\frac{1}{4}$ miles far from Faridkot railway station. This Amar Singh is P.W.14. He was suspected because he was alleged to have illicit connection with the deceased woman and was at first arrested by the police. He was, however, at a very early stage discharged and no suggestion has been made either in the cross-examination of witnesses or in argument before us that he has any connection with the crime.

The case against the appellant depends mainly on an oral confession (subsequently retracted) said to have been made by him while in police custody on the 27th of October, 1933, to *Bhai* Sri Ram Singh, Honorary Magistrate (P.W.27). During the investigation of the case this Magistrate was, by orders of the Additional District Magistrate, associated with the

investigating officer; and it is proved by the evidence of this Magistrate that the appellant pointed out various places alleged to be connected with the crime, and made admissions some of which led to the discovery of certain facts connected with the crime. The Magistrate did not record the admissions, but made a memorandum of their substance, as orally stated by the accused. This written memorandum was used by the Magistrate to refresh his memory, as permitted by section 159 of the Evidence Act, while giving evidence before the Sessions Court.

The admissibility of this confession has not been contested by counsel for the appellant. That such a confession is admissible against the accused has been decided by numerous authorities of this Court, the most important of which is the Full Bench decision *Abdulla v. The Crown* (1). In view of this authority we are bound to hold that the oral confession in question is admissible. Nevertheless we are of opinion that the amount of weight to be attached to such an oral confession (which, as in this case, has been subsequently retracted) must be determined by the facts of each particular case and will depend on the extent to which the oral confession is corroborated in material particulars by independent evidence. Clearly the same weight cannot ordinarily be attached to an oral confession as to one formally recorded with all necessary precautions under section 164, Criminal Procedure Code; and we take this opportunity of expressing our considered view that confessions intended to be admitted in evidence against persons accused of criminal offences should ordinarily be recorded with all the precautions and in the manner prescribed by section 164, Criminal Procedure Code. If this

1934

KARAM SINGH
v.
THE CROWN.

(1) (1933) I. L. R. 14 Lah. 290 (F. B.).

1934

KARAM SINGH
v.
THE CROWN

salutary provision of the law is ignored in favour of an oral confession, the trial Court will be entitled to presume, unless satisfied to the contrary, that the reason for adopting the oral method is that the accused has declined to commit himself to a written confession of the nature contemplated by section 164, Criminal Procedure Code. The result will be that in cases in which it is sought to rely on such an oral confession which has been subsequently retracted, very little weight will be given to the oral confession, unless there is independent evidence to corroborate the confession in such a way as to establish beyond doubt that the confession is a true statement which really connects the accused with the crime.

The oral confession in this case is proved by *Bhai Sri Ram Singh*, Honorary Magistrate (P.W.27). There is nothing in the cross-examination of the witness, nor was any argument addressed to us in appeal, to suggest that the Magistrate has not faithfully reproduced what the accused stated. Nor has any reason been suggested why the appellant should have falsely implicated himself before the Magistrate. The motive for the murder, as alleged to have been told to the Honorary Magistrate by the accused, was that the woman was his paramour, that she was tired of him and threatened to leave him and that he killed her in order to prevent exposure. There is no corroboration of this motive, but there is independent corroboration of other material facts alleged to have been stated by the accused to the Magistrate. The most important evidence of corroboration is as follows:—

The appellant told the Honorary Magistrate that he had himself written the letter (Exhibit P. K.) informing the authorities of the factum of the murder

at the place where the body was found; and there is the evidence of one Hari Singh (P.W.15) who identifies the handwriting of Exhibit P. K., as that of the appellant. It is true that in his statement before the police this witness also said that Amar Singh, who was originally arrested for the crime, had handwriting not unlike the handwriting of the latter; but in his evidence in Court he is definite that the handwriting is that of Karam Singh, appellant, and since Hari Singh has no motive to implicate Karam Singh falsely we have no reason to disbelieve him.

The next important item of corroboration is that the *kirpan* (Exhibit P.17), which is said to be the weapon with which the murder was committed, was recovered at the instance of the appellant himself. Amar Singh (P. W. 21) (not the Amar Singh originally arrested in this case) stated in evidence that the *kirpan* is his property and was lent to the appellant about three weeks before the murder, at the request of the appellant. The witness also says that the appellant took a *takwa* from him in addition and returned both these weapons to Amar Singh just after the murder. In connection with this *kirpan* it is stated by the Honorary Magistrate that the appellant showed a certain well where he said he had washed the blood-stained *kirpan* clean after the commission of the offence.

There is also evidence that the accused has been associating with the woman before her elopement and that the accused had been seen with the woman after the elopement. This evidence, as pointed out by the Magistrate, is *per se* not very convincing and would carry little weight in the absence of the confession. But it is a link in the chain of evidence against the

1934

KARAM SINGH
v.
THE CROWN.

1934

KARAM SINGH
v.
THE CROWN.

accused and since it is borne out by the confession, we see no reason to suppose that P.Ws.7 and 11, who depose to association, are speaking falsely in this connection.

Various articles of clothing were found on or near the body of the woman. Some of these articles, which were on the person of the deceased, such as P. 1 a *khes*, P.5 shoes, and P.7 a *dopatta*, are proved by the evidence of Bhola Singh, P.W.11, to have been borrowed by the appellant for the purpose of giving to a woman, and as stated by P.W.11, they were never returned. It is important to note in this connection that it was on the information given by the appellant himself that the police traced these articles as having been borrowed by the appellant from Bhola Singh, P.W.11. As in the case of the discovery of the *kirpan*, this is an important piece of corroboration of the accused's confession and directly connects the accused with the crime. Similarly with the shoes, Exhibit P.3-3, which were found near the corpse of *Mussammatt Harnamo*, the appellant stated that he purchased these shoes from Partapa, P.W.25, and he himself took the police and the Honorary Magistrate to Partapa's shop. The fact that these shoes were sold to the appellant is proved by the evidence of not only Partapa, P. W.25, but of Sundar, P.W.26, who actually made the sale. There is no reason for disbelieving these witnesses. It has also been independently proved, as stated in the accused's confession, that certain other articles of female clothing, a *kurta* (P.19) and two *kachhera* (P.6 and P.20) found on the corpse were made by the *darzi*, Harnam Singh, P.W.31, for the deceased at the instance of the appellant. There is also some independent corroboration of the story that the appellant travelled by

train from Faridkot to Tarn Taran just after the murder on the 27th of September, in the evidence of Ram Rattan, P. W. 32. It is true that he cannot identify the appellant as the passenger who travelled by that particular train, but he is definite that only one such ticket as was taken by appellant was collected from that particular train.

1934

KARAM SINGH

v.

THE CROWN.

There is also some track evidence and other identification evidence which, as pointed out by the learned Sessions Judge, is *per se* of uncertain value and we do not propose to deal with it.

There was no defence. The accused contended himself with a bare denial of the allegations made against him.

We agree with the learned Sessions Judge, supported by the unanimous opinion of the assessors, that the cumulative effect of this evidence establishes beyond doubt the guilt of the accused under section 302. The capital penalty is the only appropriate sentence for this cold-blooded, calculated murder. We, therefore, confirm the sentence of death and dismiss the appeal.

A. N. C.

Appeal dismissed.
