

said of the approver we can place no reliance upon the alleged recoveries; in any event there is a clear contradiction between the evidence of the maker of the ornaments and that of Sundar who ordered them. The question of corroboration of the approver does not arise in this case as there is nothing to corroborate. There is no reliable evidence of murder. We, therefore, accept the appeal; set aside the conviction of the two appellants, and order that they be set at liberty.

A copy of this judgment will be sent to the Home Secretary to Government, Punjab, for information and necessary action.

P. S.

Appeal accepted.

APPELLATE CRIMINAL.

Before Young C. J. and Monroe J.

MANGAL SINGH AND ANOTHER—Appellants

versus

THE CROWN—Respondent.

Criminal Appeal No. 262 of 1936.

Confession — by one accused implicating his co-accused but not himself in the crime — admissibility of — Circumstantial evidence — appraisal of — whether a question of law or fact.

The Sessions Judge admitted against accused *M.*, on a charge of murder, the evidence of his co-accused, *K.*'s oral confession which did not implicate *K.* in the murder at all as he put the blame entirely upon *M.*, and implicated himself only to the extent of the crime of concealing the evidence of the murder, *i.e.* burying the body.

Held, that the Sessions Judge was wrong in admitting the part of the confession relating to the murder as evidence against *M.*, as a confession of a co-accused is admissible against the other accused *only* if it equally implicates the confessor with his colleague in crime. Moreover, as far as the murder

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is concerned, the oral statement of *K.* did not amount to a confession at all and could, therefore, not be admitted against *M.* The confession was, therefore, admissible in evidence as against *M.* only so far as it related to the concealment of the body and the crime committed under section 201, Indian Penal Code.

Held however, that on the circumstantial evidence in the case including the fact that *M.* buried the body of the deceased shortly after his murder, the Court could come to the finding that *M.* committed the murder, this being a question of fact (and not of law) which could be left to a jury in a murder case by a Judge.

Rannun v. The Crown (1), and other authorities in India holding the contrary, dissented from.

Appeal from the order of R. B. Bhagat Jagan Nath, Sessions Judge, Montgomery, at Lahore, dated the 13th February, 1936, convicting the appellants.

J. G. SETHI, for Appellants.

DES RAJ SAWHNEY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—Mangal Singh and Kartar Singh were charged with the murder of Narain Singh. The learned Sessions Judge of Montgomery acquitted Kartar Singh of murder, but convicted him under section 201, Indian Penal Code, and gave him three years' rigorous imprisonment. Mangal Singh has been found guilty of murder and sentenced to death. Both the convicts appeal and in the case of Mangal Singh we have to consider the question of the confirmation of the sentence of death.

The deceased Narain Singh was the father of Kartar Singh, a boy 14 or 15 years of age. The mother

of Kartar Singh was also the mother of Mangal Singh by a previous marriage. The first wife of Narain Singh having died, Narain Singh had married a widow. The mother of Kartar Singh and Mangal Singh died, and Narain Singh commenced to live with his deceased brother's wife, *Mussammât* Basant Kaur. *Mussammât* Basant Kaur had three daughters and very naturally Narain Singh used to spend money upon *Mussammât* Basant Kaur and her family. It is suggested that Kartar Singh and Mangal Singh both objected to this which they considered a waste of their father's money. Mangal Singh also, it is said, wished that some of Narain Singh's land should be entered in his name. Narain Singh always put this question off to the annoyance of Mangal Singh. Some time before the murder of Narain Singh it is alleged that Mangal Singh attacked Narain Singh with a spade, but Narain Singh was rescued. For one reason or another the case for the Crown is that Mangal Singh disliked his step-father and because of his dislike he murdered him. Kartar Singh, it was suggested, also shared the disapproval of his father and assisted in the murder.

Mussammât Basant Kaur was anxious when Narain Singh disappeared. She made enquiries from Mangal Singh as to where his step-father was. Mangal Singh appears to have told two stories—both false. One was that Narain Singh had gone to fetch Matto, one of his younger sons, and, secondly, that Narain Singh was lying ill in a hospital at Amritsar and so could not come home. In the latter case it is alleged that Mangal Singh produced a post card purporting to come from his step-father, but no post card has been produced in this case and *Mussammât* Basant Kaur says that when she asked for the post card Mangal

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Singh said that he had lost it. *Mussammat* Basant Kaur accompanied by Kartar Singh went to the hospital at Amritsar and made enquiries for the deceased. She was there told that Narain Singh had never been to the hospital at all.

On *Mussammat* Basant Kaur's return she collected a *panchayat* and it was thought fit to send messengers out to various places where it was thought Narain Singh might have gone. One of the persons who went to look for the deceased was Mangal Singh. These messengers, with the exception of one man who was sent to Pairewal and Mangal Singh, all returned by the 13th October. Another *panchayat* was called and Kartar Singh was asked by the members of the *panchayat* about his father. It is then said that Kartar Singh confessed that Narain Singh had been murdered between the night of the 2nd and 3rd October, while sleeping in his house and that Mangal Singh had murdered him by hitting him on the head with a heavy wooden pestle and then strangled him, and that Kartar Singh himself had thereafter assisted Mangal Singh to take the body away and bury it in their field. This information was at once lodged at the police station by Jagat Singh, a lambardar, who took Kartar Singh with him when he made the first information report. The police were subsequently taken by Kartar Singh and shown the spot where, he said, the body had been buried. From that place the body was dug up. On the 15th October, Mangal Singh was arrested at another village. His *chaddar* was suspected to be blood-stained and it was taken off. This *chaddar* has been proved to have been stained with human blood. Kartar Singh also produced a heavy *danda* or pestle which also has been found to be stained with human blood.

There was also the evidence of Sahib Singh and Maghar Singh that while they were going round their land on the night of the murder they were attracted by some sounds in the field of Narain Singh. They thought that some cattle might be grazing on the land and they had better see about it. They saw in that field on that night Mangal Singh and Kartar Singh engaged in digging a pit with a cart standing by. Mangal Singh, it is said, told these two witnesses that they were digging out a stump of a tree.

We take the case of Mangal Singh first. The evidence against him is that he had reason to dislike his step-father, who would not do what he wished and whom he thought was wasting the family money. We are satisfied that the evidence with regard to this is true and that some time before the murder Mangal Singh actually had attacked his father with a spade.

The next piece of evidence which the learned Judge in the Court below has admitted against Mangal Singh is the evidence of Kartar Singh's confession. This was an oral confession. We are satisfied that the confession did not implicate Kartar Singh in the murder of his father. He puts the blame entirely upon Mangal Singh. As far as it implicates Kartar Singh it only does so to the extent of the crime of concealing the evidence of the murder, that is burying the body. The learned Judge, therefore, in our opinion, was wrong in admitting that part of the confession relating to the murder as evidence against Mangal Singh. A confession of a co-accused is admissible against another accused only if it equally implicates the confessor with his colleague in crime. In fact as far as the murder is concerned the oral statement of Kartar Singh does not amount to a confession at all and, therefore, it cannot be admitted against Mangal Singh. It

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can be admitted against Mangal Singh only so far as it relates to the concealment of the body and the crime committed under section 201, Indian Penal Code.

We are satisfied with the evidence of Sahib Singh and Maghar Singh. It is suggested that this evidence has been procured by the police. We do not see any signs of this, we think that if the police had wished to manufacture evidence in this case, they would probably have produced an eyewitness or two or made the statements of these two witnesses rather more definite upon the point on which they gave evidence. It is quite common for villagers to go round their lands at night for the purpose of seeing that there are no undesirable characters there who might steal the crop. It is equally quite believable that hearing some noise on the land of Narain Singh they would go and see what the trouble was. On the other hand, it has been argued by counsel that these two witnesses did not give this information to the police at the earliest possible moment. We do not think this is a fatal objection as no ordinary person would think that the two sons of Narain Singh had murdered their father, nor would they think for a moment that the operation that they saw on the night of the murder had anything to do with the murder. It is not clear how the police obtained this information, but it is highly probable that this information came from Kartar Singh, for their names were mentioned in the first information report. Neither of these two witnesses had any reason to give false evidence against the accused.

The next point against Mangal Singh is that he gave a completely false reason for the absence of Narain Singh. We believe *Mussammat* Basant Kaur's evidence as to what Mangal Singh said to her. It

would be extremely natural for *Mussammât* Basant Kaur to ask Mangal Singh the questions that were asked of him, and the evidence of this woman is strongly corroborated by the fact that she acted upon the information she said that she got. There can be no doubt from the evidence of herself and Waryam Singh, Dresser at the Amritsar Hospital, that she did in fact go with Kartar Singh to the hospital at Amritsar to enquire for the deceased. There is, therefore, no doubt in our minds that Mangal Singh gave a false reason for the absence of Narain Singh from the village on the very morning after his disappearance.

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We have given careful consideration to the blood-stains found on the garments of this accused. An examination of the evidence of the Civil Surgeon would at first sight not disclose any reason for supposing that the deceased Narain Singh bled. The evidence is that there were two black marks on the forehead and that the skull was smashed into several pieces. We have seen the implement with which this was done. It is an enormous cudgel and a blow from it would undoubtedly crush the skull. The doctor was not asked if such a blow would produce bleeding and we have no information on the record with regard to this point except that the cudgel itself has been found to be stained with human blood. We, therefore, must take it that the blow on the head did produce blood. It is to be noted also that the body was decomposing when examined by the Civil Surgeon. We think it highly probable that a blow of this description on the head, even supposing that it did not break the skin, would undoubtedly have produced blood, and as we have pointed out the cudgel has been undoubtedly stained

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with human blood. The loin-cloth of the deceased has been also shown to be stained with human blood. It may well be that in carrying the body Mangal Singh, if he took the head of the body, which being the elder of the two he would naturally do, might have his *chaddar* blood-stained. It is often astonishing to us that an accused should wear, as Mangal Singh apparently has worn, blood-stained clothing for so many days after a murder. In this case, however, the evidence is that it appears to have been washed. The obliteration of blood-stains by washing is not an easy matter.

Another fact which can be taken into consideration against Mangal Singh is that although the evidence is clear that Narain Singh had been brutally murdered and that Mangal Singh assisted in burying the body of a murdered man, he gave no explanation whatever of this damning fact. The mere absence of explanation, of course, cannot prove the crime of murder, but the fact that a criminal does not explain very suspicious circumstances against him is certainly circumstantial evidence which may be taken into consideration against him.

The evidence, therefore, against Mangal Singh shortly put is as follows :—

He buried the body of Narain Singh, who clearly had been murdered, shortly after he had been murdered. The body was buried in the field belonging to the family. The next morning on being questioned as to the whereabouts of Narain Singh, Mangal Singh lied. Quite apart from the evidence that he said that Narain Singh had gone to fetch Matto, he undoubtedly said that he had received a post card which stated that Narain Singh was ill in the Amritsar Hospital. He

left the village on the 11th October on the pretence of looking for Narain Singh. He knew perfectly well when he went that Narain Singh's body was lying where he had buried it. He did not return to the village and was arrested on the 15th outside the village at a railway station. His loin-cloth was stained with human blood. He failed to give any explanation of the very suspicious circumstances against him.

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On this evidence it has been strenuously and ably argued by counsel for the appellant that it is impossible to find a verdict of murder. He argues that the evidence, if believed, would establish an offence under section 201, Indian Penal Code, and he argues that it can only establish such an offence. We agree that all the authorities to which he has referred are in his favour on this point. The authorities in India appear to have treated this question as a point of law, that is, that evidence of this nature ought not properly to be left to a jury in a murder case by a Judge. With the greatest respect to the decisions to which we have been referred, one of which is a decision of this High Court reported as *Rannun v. The Crown* (1), we cannot hold that this question is a question of law at all. Evidence of this nature would certainly in England be left to a jury by a Judge. The question in each case is whether circumstantial evidence of this nature satisfies a jury of the guilt of the accused under section 302 of the Indian Penal Code. The facts of the case reported in *Rannun v. The Crown* (1) were for that Bench and their finding on those facts cannot bind any other Bench. The evidence that we have detailed above is clearly evidence which ought to be left to a jury and evidence upon which a jury might reasonably find a

(1) (1926) I. L. R. 7 Lah. 84.

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verdict of murder. This is in our opinion the real test.

After a very careful consideration of all the facts of this case we are satisfied that the only reasonable inference to be drawn from the facts of this case is that Mangal Singh is guilty of the murder of Narain Singh.

With regard to Kartar Singh, we take into consideration the fact that he is very much younger than Mangal Singh and that he had not the same reason for disliking his father. Under the circumstances outlined above he would be under the influence of the elder man and might easily be persuaded by him to take part in the burial of the body after the murder in fact had been committed. Under the circumstances we consider that the sentence of three years' rigorous imprisonment is too severe. We reduce his sentence to one year's rigorous imprisonment and suggest to the Government that if possible he might serve the sentence in a Borstal or other Institution.

We confirm the sentence of death passed on Mangal Singh and dismiss his appeal.

A. N. C.

Mangal Singh's appeal dismissed.
