

## APPELLATE CRIMINAL.

*Before Young C. J. and Monroe J.*

ABDUL SATTAR (CONVICT) Appellant

*versus*

THE CROWN—Respondent.

**Criminal Appeal No. 803 of 1935.**

*Criminal Procedure Code, Act V of 1898, section 164 :  
Confession — Practice of returning accused to Police custody  
while his statement is recorded and after — effect of — on the  
reliability of the confession — Prosecution producing a false  
witness for procuring a conviction — effect of — on the  
credibility of the rest of the evidence.*

In this case the accused was in Police custody from the day of his arrest and although his statement under section 164, Criminal Procedure Code, took some six or seven days to complete, he was returned to Police custody after every instalment was made, and after the confession was complete, he was returned to Police custody and stayed there for a considerable time.

*Held*, that the procedure was highly improper and may damage the whole case in which such a confession is used.

*Held further*, that where the prosecution produces a false witness for the purpose of procuring a conviction, the credibility of the rest of the evidence is also affected and it becomes extremely unsafe to act upon any of the evidence such a case.

*Appeal from the order of K. S. Mirza Abdul Rab, Sessions Judge, Delhi, dated 2nd July, 1935, convicting the appellant.*

ABDUL AZIZ, for Appellant.

DIWAN RAM LAL, Government Advocate, for Respondent.

The judgment of the Court was delivered by—  
YOUNG C. J.—In this case Abdul Sattar, his brother Abdul Gaffur and Raushan Din were charged

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with the murder of one Ram Partap. Abdul Sattar was convicted and sentenced to death: the other two were acquitted.

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Some years ago in Delhi there was a notorious character, a *Brahman*, named Ram Partap. He dealt in opium and cocaine and had been convicted of dacoity. He had friends, also interested in crime, among others being an Advocate of Delhi named Gulal Chand. It is alleged that the accused in collaboration with Gulal Chand, the Advocate, and others, murdered Ram Partap in pursuance of a conspiracy to obtain from Ram Partap a promissory note of Rs.25,000 and after the death of Ram Partap to collect the money. On the 8th of March, 1931, Ram Partap left his house. After that day he has not been seen alive by anyone, neither has his corpse been discovered. Investigation was started on the complaint of *Mussammât Bibbo*, the wife of Ram Partap. The investigation proceeded and Abdul Sattar, the appellant, was actually arrested in 1931 in connection with the murder. He was detained for some days, but eventually the proceedings were ended by the discharge of Abdul Sattar. It is said by the approver in this case that the reason given by the appellant for the abortive proceedings in 1931 was the payment of Rs.2,000 by the appellant to the Police. Other people were also suspected and charged in 1931, and they, too, in their turn were discharged.

After the death—or disappearance—of Ram Partap, Gulal Chand, Advocate, proceeded upon the promissory note. He obtained an *ex-parte* decree in Bombay against Ram Partap for Rs.28,000 odd. Gulal Chand commenced proceedings in Delhi to execute his decree. This not unnaturally excited the

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widow, *Mussamat Bibbo* to action, and she filed a declaratory suit alleging that Gulal Chand had murdered her husband and that the decree had been obtained in pursuance of the conspiracy. On the evening of the 29th of July, 1934, just after the filing of the declaratory suit, Gulal Chand was discovered murdered in his car in the suburbs of Delhi. Investigation was again commenced with the result that the Police obtained a clue to Abdul Qayyum, who is the approver in this case, a statement was taken from him and subsequently he made a confession recorded under section 164, Criminal Procedure Code, the result of which was the arrest of the present accused for the murder of Ram Partap in 1931.

In this case we are dealing solely with the murder of Ram Partap. The question of the murder of Gulal Chand will be considered in the next case before us. The statement of the approver only applies to the actual murder and what happened after the disposal of the body. The rest of the story has come from the witnesses.

It is alleged that Ram Partap left his house on the morning of the 8th of March, 1931, to go to the office of the Advocate, Gulal Chand. There Abdul Sattar was present. Abdul Sattar, as pre-arranged, took Ram Partap and Gulal Chand to his workshop. Other members of the conspiracy were there present. When Ram Partap sat down on a sofa in his house with Gulal Chand, he was seized by the various persons, there collected, and strangled. The question then arose as to the disposal of the body. According to the approver, Abdul Sattar procured a hired taxi, driven by one Ganga Singh, who has been called as a witness in this case, placed in the back of the car a box:

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containing the body of the deceased, hung a curtain round the car and then went to collect his wife (or mistress) *Mussammat* Hussaini who lived near the Jama Masjid. The party then proceeded in this *pardah* car to a village Akbarpur where Hussaini was left with the wife of a man called Firoz, and Firoz was taken on in the car by Abdul Sattar. It is alleged that Abdul Sattar told Firoz that the box contained some contraband opium which had gone bad and that he wished the assistance of Firoz in order to get rid of it. They drove first to a canal in the neighbourhood of Bulandshahr. It was too early as it was light and the car was driven back again to Akbarpur. Later on they returned to the canal. The box was taken out, placed upon the running board of the car and the car was driven to a suitable place near the canal. Firoz and Abdul Sattar took the box to the canal and emptied the contents into the water. Firoz was extremely surprised when the box was opened to see therein not contraband opium, but the face of his old friend Ram Partap. The contents of the box were promptly emptied and the car returned. *Mussammat* Hussaini was collected in the village and the car was driven back to Delhi. There is some further evidence, not material to this case, that thereafter Abdul Sattar proposed a dacoity at Ram Partap's house, but that project was abandoned.

In the first place we have to consider whether the story of Abdul Qayyum, the approver, is in itself worthy of credence. In this connection the learned Government Advocate, who appears for the Crown, concedes that this approver is worse than most others. He had been a warder in a jail and, according to his own statement, had, in jail, engaged in many illegal practices. He was a friend of opium and cocaine

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smugglers in Delhi and was quite prepared, for a reasonable sum of money, to enter into this conspiracy to murder Ram Partap. We have it also on record that the approver was in Police custody from the day of his arrest, 19th October, 1934; that although his statement under section 164, Criminal Procedure Code, took some six or seven days to complete, he was returned to Police custody after every instalment was made, and that after the confession was complete, he was returned to Police custody and stayed there for a considerable time. We have continually pointed out, and it appears necessary for us to continue to do so, that this procedure is highly improper and may damage the whole case in which such a confession is used. It may be that this being a Delhi case, the remarks of this Court have not been noticed by the Delhi authorities. As far as this approver is concerned, therefore, not only have we the fact that he is a very bad type of man, but that the Police control to which he has been subjected is sufficient to cast suspicion upon his statement.

The first point that we notice about the evidence is that all the witnesses are persons of very bad character. There is Hussaini, who for many years was a prostitute, lived with Abdul Sattar for a certain time, and then apparently went back to the bazar. There was Firoz, a most important witness, who is a *badmash* on register No.10. There is Ganga Singh, the driver of the car, another important witness, who was the employee of one Dhanna Lal who has been in prison on various charges. There is Rahim Ali, a casual witness, who is a relation and friend of Firoz. The evidence of witnesses of this character in view of what hereinafter appears could not be expected to command a great deal of confidence.

Another fact which, in view of the character of these witnesses, cannot fail to impress us is that we are satisfied that the evidence of Qasim Ali has been deliberately procured by the prosecution. In many cases we are told that the prosecution has produced false evidence in a doubtful case in order to secure conviction. It is often impossible—although there may be suspicion of such a practice—to be able to say definitely that this has occurred. In this case we do not doubt that Qasim Ali is a false witness and that he was produced to say that four years ago he was present in a field adjacent to the canal in which the dead body is alleged to have been thrown; that he saw a motor car on the bridge—in itself a common object—that he went there to find out whether a Canal Officer had arrived; that he recognised Firoz and that near Firoz there was another person who was dressed in shorts and a *topi*, that is, in European costume. Qasim Ali said he remembered that four years ago he asked Firoz who this individual was and he was told that it was Abdul Sattar of Delhi. We cannot believe that this incident could have impressed itself upon the mind of Qasim Ali or—if it were true that Abdul Sattar's name was mentioned—that he remembered the name four years later. What is worse, however, is that this witness was produced by the prosecution as a person who had, four years later, identified Abdul Sattar in a parade in Delhi jail where Abdul Sattar was mixed with twenty other prisoners: Abdul Sattar four years ago was clean shaven; Abdul Sattar in the identification parade had a beard. Abdul Sattar four years ago was wearing a *topi* and shorts, Abdul Sattar in the jail parade was wearing Indian clothes. We consider that it is beyond the bounds of possibility under these circumstances for any person

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to identify a man whom he had seen four years ago for a very short time. It is obvious that this witness had identified Abdul Sattar with the assistance of someone in the jail. We are informed that this practice is termed "padding." It is in fact a most serious offence which may result in innocent persons being hanged. Persons indulging in it are engaged in a conspiracy which may result in murder by judicial process. The learned Government Advocate admits that this evidence of identification is "too tall." We say it is false and manufactured. When we are satisfied that the prosecution has produced a false witness for the purposes of procuring a conviction, this fact must affect our minds as to the rest of the evidence, and when the other witnesses are, as we have pointed out, easily amenable to Police influence, the effect will be greater. We consider on this ground alone—though the evidence otherwise is weak—that it would be extremely unsafe for this Court to act upon any of the evidence in this case.

We, therefore, have no hesitation in coming to the conclusion that the prosecution has failed to prove the guilt of Abdul Sattar. We must, therefore, accept this appeal. We set aside the conviction and the sentence of death imposed upon him. We direct that a copy of this judgment be sent to the Chief Secretary, Punjab Government, and to the Chief Commissioner, Delhi.

P. S.

*Appeal accepted.*