

ORDER.

By majority we decide that this application be dismissed with costs. Counsel's fee Rs.150.

P. S.

Application dismissed.

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PARKASH
CHAND
v.
THE CROWN.

APPELLATE CRIMINAL.

Before Young C. J. and Monroe J.

GIAN CHAND—Appellant,

versus

THE CROWN—Respondent.

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Jan. 13.

Criminal Appeal No. 1211 of 1936.

Confession — made at the request of the Magistrate — whether admissible in evidence.

The accused when asked by a First Class Magistrate made a short statement “on the 17th of this month a theft took place. A murder took place on the 20th.” The learned Magistrate then addressed a question to him as follows:— “Make a detailed statement?” Upon which the accused made a detailed confession of murder.

Held, that the use of the words “make a detailed statement” was not equivalent to inducing or threatening the accused, so as to render the statement resulting from it any the less voluntary or inadmissible in evidence.

Appeal from the order of Mr. P. R. B. May, Sessions Judge, Shahpur, at Sargodha, dated 15th October, 1936, convicting the appellant.

RAM LAL ANAND II, for Appellant,

D. R. SAWHNEY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—Gian Chand has been sentenced to death by the learned Sessions Judge of Shahpur Division at Sargodha, for the murder of Sant Ram, a boy between 15 and 16.

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Diwan Chand, a banker and money-lender of village Bhabra, had in his house an almirah and a safe. In the safe, he had some jewellery. This jewellery had been transferred to the safe some twenty days before the murder of Sant Ram. On the 19th of June, 1936, Diwan Chand discovered that the jewellery in the safe, amounting to some Rs.2,000 in value and a note of Rs.100, had been stolen. Diwan Chand suspected his nephew Sant Ram who has been murdered. Suspicion fell on Sant Ram, as previously small sums had been found to be stolen from the same safe. Diwan Chand and Har Bhagwan, father of Sant Ram, closely questioned Sant Ram and as a result obtained a confession from him that he had stolen the jewellery and the money at the instigation of Gian Chand and that he had handed the jewellery to Gian Chand. Sant Ram agreed to go and see Gian Chand and get the jewellery back. On the morning of the 20th of June Sant Ram left his father's house and after that day was never seen again alive. The relatives of Sant Ram made enquiries on the 20th as Sant Ram had not returned and it was discovered by them that three persons had seen Sant Ram walking with Gian Chand on the 20th. Gian Chand was approached and it is in evidence that he said that Sant Ram had gone to a village called Waryam. Har Bhagwan, Sant Ram's father, went to Waryam with no result. On the 22nd of June a report was made to the police. Suspicion very naturally under the circumstances fell upon Gian Chand who on the night of the 22nd was subjected to questions by persons who had joined the investigation with the result that on the morning of the 23rd he took a witness Beli Ram to some reeds near the well of his father and from there produced the missing jewellery wrapped up in a cloth.

He also pointed out a turban and shoes which are alleged to belong to Sant Ram. The jewellery was then taken and handed over to the Police. Gian Chand also showed the police where the body was lying. On the 25th Gian Chand was taken to a Magistrate 1st Class who recorded a confession in which Gian Chand admitted that he had murdered Sant Ram.

This is the whole evidence against the accused. Mr. Ram Lal Anand, who appears for the appellant, argues that the circumstances of the recovery of the jewellery are suspicious. We see nothing suspicious. We have examined the evidence of Beli Ram and we see no reason to doubt his evidence that Gian Chand did in fact take Beli Ram to the reeds where the jewellery was discovered. The only argument advanced on this point is that Gian Chand, if he was ever in possession of the jewellery, would not have placed it in these reeds. We have not seen the reeds but we imagine they must have made a useful hiding place.

Counsel then urges that the statement of Sant Ram to his relatives as to the theft of the jewellery and the complicity of Gian Chand is inadmissible, as his evidence is hearsay. Reference, however, to section 32 of the Indian Evidence Act and in particular to sub-sections (1) and (3) would appear to make it clear that this statement is clearly admissible. It certainly is a statement which would have exposed Sant Ram, who could not be called, to a criminal prosecution, and in our view it is also a statement as to the circumstances of the transaction which resulted in the death of Sant Ram. The evidence of the three witnesses who saw Gian Chand and Sant Ram together on the 20th has also been attacked. They have been described as '*waj takkar*' witnesses. It is quite clear, that

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Harnam Das at any rate would normally be expected to be at the brick-kiln where he said he was, and from which he saw Gian Chand and Sant Ram. Equally Kartar Singh was at his well and he gives evidence that at that well he had land of which he was the lessee. He, therefore, too would have every reason to be in that particular spot. These two witnesses, therefore, at any rate cannot be described as '*waj takkar*' and on examination of their evidence no attempt has been made to show that they have any reason whatever falsely to implicate Gian Chand or to give evidence against him. We are therefore satisfied that Kartar Singh and Harnam Das did see these two together on the day when Sant Ram was undoubtedly murdered. Further, evidence has been called which purports to show that Gian Chand was later on seen alive, but we pay no attention to this evidence as the witnesses cannot be sure that the day when they saw Gian Chand was the same day when he had been seen with Sant Ram.

The confession of Gian Chand to the First Class Magistrate has not been relied upon by the learned Judge. The reason given by the learned Judge is that Gian Chand, when asked, made a short statement "On the 17th of this month a theft took place. A murder took place on the 20th." The learned Magistrate then addressed a question to Gian Chand as follows:—"Make a detailed statement?" Thereupon Gian Chand gave a detailed statement about the murder of Sant Ram. The learned Judge says that the use of the words "Make a detailed statement" was equivalent to inducing or threatening Gian Chand and that therefore this statement was inadmissible. In our opinion, it is impossible to attach any such meaning to this question. That the Magistrate under the

circumstances asked the accused to make a detailed statement does not make the statement resulting from that question any the less voluntary. The accused could easily have said, "No, I will not." It is a misuse of words to suggest that such a question could be construed as a threat. We, therefore, hold that the confession of Gian Chand is admissible in evidence.

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The evidence against Gian Chand, therefore, is that he had a strong motive to murder Sant Ram. We are satisfied that Sant Ram and Gian Chand conspired together to steal this jewellery; that Sant Ram handed the jewellery to Gian Chand, and that Sant Ram went on the morning of the 20th to attempt to get the jewellery back. It is clear that Gian Chand then realised, that if he wished to keep the jewellery or to escape a criminal prosecution, he would have to get rid of Sant Ram. No stronger motive could exist. It is on the ground of motive therefore that the discovery of the jewellery by Gian Chand is important. We are satisfied that Gian Chand did produce jewellery from the reeds of his father's well. We are satisfied too that Gian Chand pointed out the place where the body was lying; but we place no reliance on this, as it is almost certain that the police had discovered the body before Gian Chand took the police to the spot. Finally, the confession of Gian Chand places the matter beyond dispute. Even, however, without the confession there is enough evidence to satisfy us that Gian Chand is guilty of the offence with which he is charged.

On the question of sentence counsel presses us to reduce the sentence from death to that of transportation for life on the ground that his client is aged 18. While it appears to be quite clear that Gian Chand is

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not more than eighteen, we do not think that this by itself in this case is sufficient ground for us to reduce his sentence. This will be a matter for the Local Government when the case comes before them. We dismiss the appeal and confirm the sentence of death.

P. S.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

SANT SINGH (JUDGMENT-DEBTOR) Appellant

versus

SAIN DAS (DECREE-HOLDER) Respondent.

Letters Patent Appeal No. 103 of 1936.

Civil Procedure Code, Act V of 1908, s. 60 (1) (n) and O. XL, r. 1 — Equitable execution of a decree — by appointment of a Receiver — of a house of the judgment-debtor — though not liable to attachment, as being in the nature of future maintenance — Principles governing such appointment.

In execution of a decree, the decree-holder applied for the attachment and sale of a house belonging to the judgment-debtor. The judgment-debtor objected that the house could not be attached as he had no disposing power over it, and that the attached house being in the nature of future maintenance, was immune from attachment and sale. These objections were found to be correct.

Held that, although by virtue of s. 60 (1) (n) of the Code, the right of residence in the house reserved for the judgment-debtor could not be attached and sold in execution, this was a fit case for *equitable* execution by the appointment of a Receiver to act under the orders and supervision of the Court, realise the income of the property and after defraying the expenses and his own remuneration to devote the proceeds in satisfaction of the decretal amount.