

1938
 NOOR AHMAD
 v.
 MAHMUD ALI.
 RAM LALL J.

was very heavy indeed, having regard to the subject matter of the suit. While we may entertain sympathy for the respondent in this matter, it appears to me that we have no power either to reduce or to remit the penalty imposed and the only remedy lies in a representation to the Chief Revenue Authority.

ADDISON J.—I concur.

A. K. C.

Appeal accepted.

APPELLATE CRIMINAL.

Before Young C. J. and Blacker J.

UJAGAR SINGH AND OTHERS—Appellants,

versus

THE CROWN—Respondent.

Criminal Appeal No. 567 of 1938.

Evidence of blood-stained nails — Medico-legal value thereof — Criminal Procedure Code (Act V of 1898), S. 510 — Written report of the Chemical Examiner — Admission as evidence without subjecting him to cross-examination — danger of.

Held, that the evidence of blood-stained nails is not only of no value but may be extremely dangerous to innocent persons. It has frequently been given in the past as evidence corroborating an approver or as circumstantial evidence connecting an accused person with homicide. It may have led to the miscarriage of justice.

The danger of the provisions of s. 510 of the Code of Criminal Procedure, which allows the mere written report of the Chemical Examiner to be accepted as evidence in criminal cases without subjecting him to cross-examination, pointed out.

Happu v. The King Emperor (1), referred to.

Appeal from the order of Lala Munshi Ram, Sessions Judge, Gurdaspur, dated 27th May, 1938, convicting the appellants.

J. G. SETHI, for Appellants,

D. C. RALLI, for the Advocate-General, for Res-
pondent.

1938

UJAGAR SINGH
v.
THE CROWN.

The Judgment of the Court was delivered by—

YOUNG C. J.—Ujagar Singh, Tara Singh, Tehl Singh and Bur Singh were charged under section 302 read with section 149, Indian Penal Code, with the murder of Risaldar-Major Ranjodh Singh. The learned Sessions Judge of Gurdaspur found Ujagar Singh, Tehl Singh and Bur Singh guilty under section 302 read with section 34, Indian Penal Code, and sentenced them to transportation for life. He acquitted Tara Singh. The three convicts appeal and the Advocate-General on behalf of the Punjab Government has filed a petition for revision praying that the sentences of transportation for life should be enhanced to those of death.

Risaldar-Major Ranjodh Singh was an influential person in the village of Rangar Nangal. As a retired Indian Army Officer and as a friend of the local authorities, he wielded great influence. According to the evidence of Karam Singh, who has been made an approver in this case, the deceased used his position in a high-handed manner. He annoyed Karam Singh by building windows in his house so that they looked on to Karam Singh's courtyard, thus interfering with the privacy of Karam Singh's women. The Risaldar-Major also had assisted the police as an informer in Excise affairs. This, according to Karam Singh, irritated the other accused. A raid had taken place on the houses of the four accused at the instance of the Risaldar-Major. An attack had then been made upon the Risaldar-Major by the four accused, but the protection of the police saved him at that time

1938

UJAGAR SINGH

v.

THE CROWN.

from injury. The result of all this was, according to the approver, that he and the four other accused conspired together to murder the Risaldar-Major. On the 17th January, 1938, the conspirators had information from Bur Singh that their chance had come. They found Ranjodh Singh alone near the Peerewala well and attacked him. It is important to note that Ujagar Singh, Tara Singh and the approver were alleged to be armed with *takwas*; Bur Singh with a spear and Tehl Singh with a *kirpan*. According to the approver's evidence in the Sessions Court, the Risaldar-Major was hit with the *takwas* on the head and, on being felled to the ground, the five conspirators continued to strike him with their various weapons, that when a "gurgling sound" came from the Risaldar-Major, Ujagar Singh caught hold of his hair, the approver and Bur Singh seized his arms and legs, and Tehl Singh with the assistance of Tara Singh cut his throat with the *kirpan*. After the murder the approver says he visited two relatives Lachhman Singh and Dalip Singh to get rid of his clothes which he thought might be blood-stained, and he tried to burn his *khes* (or wrap) for the same reason. Lachhman Singh and Dalip Singh gave evidence for the Crown to the same effect.

For some time the Police failed to discover a clue to the murder. On the 27th January the approver's house was searched and two articles of clothing and a *takwa*, which have been proved to be stained with human blood, were found in his house. On the 4th February the approver made a statement to the police, on the 9th February he made a confession before a Magistrate, another statement was made by him in connection with his pardon on the 19th February, and, ultimately, he gave his evidence in the Sessions Court. After the statement to the police by the approver on

the 4th February, his nails and those of the four accused were pared. The nail parings were sent to the Chemical Examiner on the 14th February and eventually the Imperial Serologist returned the nails with a report that all of them with the exception of those of Tara Singh were stained with human blood. In addition, on the 13th February, it was alleged, Bur Singh and possibly Tehl Singh—the evidence on this is not clear—took the police with a search party to a field near the village and pointed out a spot from which a spear-head and a *kirpan* with its scabbard were dug out of the ground. The spear-head and the scabbard were subsequently found to be stained with human blood. The learned Judge on consideration of the evidence acquitted Tara Singh on the ground that no human blood was found on his nail parings. The blood-stained nail parings was the evidence on which the learned Judge mainly relied to justify the conviction of the appellants for murder.

The evidence, therefore, relied upon by the Court below against the accused consists of the evidence of the approver, corroborated in the case of Ujagar Singh by his blood-stained nail parings, and in the cases of Tehl Singh and Bur Singh by their blood-stained nail parings and the recovery of the spear-head and the *kirpan*.

As regards the approver, there are four points which make us suspect his evidence. Firstly it was obvious after he made his statement to the police on the 4th February that according to law corroboration of his evidence would be required. It occurred to someone that such corroboration might be found on or under the nails of the accused and therefore the nail parings were taken. It will be remembered that the

1938

UJAGAR SINGH

v.

THE CROWN.

1938

UJAGAR SINGH
v.
THE CROWN.

attack upon the Risaldar-Major, according to the approver, was made with long-handled weapons, i.e., three *takwas* and one spear, only Tehl Singh being armed with a *kirpan*. How under these circumstances the blood of Ranjodh Singh could get under the nails of the approver and two at least of the accused is difficult to imagine. This point also appears to have been appreciated by the investigating officer, for on the 19th February for the first time—although the approver had made no less than two statements before this date in which he states that Ujagar Singh and Tehl Singh alone had touched the body—the approver in his statement of that date mentions that Tara Singh assisted Tehl Singh and Ujagar Singh in cutting the throat of the deceased. This, however, was not enough. This did not involve Bur Singh or the approver as regards the nail parings and so when the approver gives evidence in the Sessions Court he says that on the “gurgling sound”—which appears to have been the death rattle—proceeding from Ranjodh Singh, “Ujagar Singh caught hold of his hair and we seized his legs and arms as he was struggling. Then Tehl Singh drew his *kirpan* across his neck * * and Tara Singh helped Tehl Singh in using the *kirpan*.” This of course would account for blood-stained nails on all the accused. As the approver in his statements to the police on the 4th February and the 9th February had only mentioned Ujagar Singh and Tehl Singh as having touched the dying man, we are satisfied that the addition of Tara Singh in the statement of the approver on the 19th February, and the further addition of Bur Singh and himself in his evidence in the Sessions Court as having touched the dying Risaldar-Major are improvements which were included in the

approver's evidence in order to account for the blood-stained nails, and so to provide the missing corroboration connecting all the accused with the murder.

Secondly according to the medical evidence no less than 13 terrible incised *takwa* wounds were inflicted on the head of the murdered man. These were inflicted before the "gurgling sound" was heard. The head was cut to pieces. It would clearly not be necessary for anyone to hold the deceased down for the *coup de grace* to be administered after he had received these ghastly injuries. This provides further evidence of the manufacture of this important part of the approver's evidence.

Thirdly, another point damaging to the investigation and to the approver's evidence is his statement that Bur Singh carried and used a spear, and the evidence of the recovery of the spear-head at the instance of Bur Singh on the 13th February. An examination of the medical evidence and the injuries caused to Ranjodh Singh makes it appear beyond any doubt that a spear was never used in this murder. All the 28 injuries are incised. There is not one punctured wound. An attempt was made by the Assistant Surgeon in his evidence to account for a spear being used by saying that some of these incised wounds might be caused by a spear if it was "used as a stick," that is, as a striking instead of a thrusting weapon. Col. D'Arcy, I.M.S., the Civil Surgeon of Gurdaspur, who was called for the defence, was of the opinion that the spear was not used and indeed examination of the description of the injuries would make it clear even to a layman that the spear was in fact not used. As the undoubted intention of the persons who committed this murder was to kill Ranjodh Singh, if a spear had

1938

UJAGAR SINGH
v.
THE CROWN.

1938

UJAGAR SINGH

v.
THE CROWN.

been employed it would have been used in the ordinary way and punctured wounds would have been found on the body. The alleged recovery therefore of a spear-head stained with human blood raises suspicion and makes the recovery of no value as evidence. And fourthly it is at least curious that although the approver knew the danger of blood-stains and endeavoured to get rid of his clothes, yet he left them and a blood-stained *takwa* in his house to be recovered by the police. In this case therefore we cannot rely upon the evidence of the approver and in addition all the marks of a thoroughly unreliable investigation are present.

We must, however, deal with the evidence of the blood-stained nails. From what we have said above, this is suspect. And in addition we are of opinion that if the blood of the murdered man had got under the nails of the accused and the approver, it would be unlikely that it would remain under the circumstances for 27 days without disintegration until examination by the Chemical Examiner and the Imperial Serologist. One of us also had read an article on the subject of nail paring which threw grave doubt upon the value of blood-stained nail parings as evidence. We therefore thought it necessary to call the Chemical Examiner Colonel D. R. Thomas, I.M.S., to give evidence in the High Court. Colonel Thomas's evidence is so important that we give it in full :—

“Q. (*By Court*).—In this case a question arises as regards the value of nail parings, and we would like your opinion on the facts. Eighteen days after the murder the nails of five persons were pared. They were examined by your office nine days after they were pared, that is, 27 days in all after the murder. The five men concerned were Sikhs who might normally be

expected to wash their hands at least three times a day, and the approver, whose nails were also pared and examined by your office, had a bath in the sacred tank at Amritsar the day after the murder. We would like to know, first of all, whether in your opinion, under these circumstances, if these nails had been stained by the blood of the murdered man, would your office and that of the Imperial Serologist be able after 27 days to detect human blood on them?

A.—Most unlikely.

Q. (*By Court*).—Generally what is your opinion on the value of nail parings and blood-stains found on the nails from the medico-legal standpoint?

A.—Absolutely no medico-legal value whatsoever.

Q. (*By Court*).—Will you explain that?

A.—In cutting nail parings there is a great possibility of drawing blood whether the paring is performed by a sharp instrument or a blunt instrument. Secondly, if you draw blood that blood will contaminate the instrument which is used and therefore you will convey the blood from one finger nail to another. Thirdly, it is very important that the knife or razor or scissors which are used should be absolutely clean and free from blood. Fourthly, human nails are used for scratching purposes, and therefore if you scratch a pimple you will naturally draw blood and this will remain on the nail. I am absolutely certain that there is no medico-legal value attached to blood found under or on the nail parings.

Q. (*By Court*).—The nail itself is living tissue and has therefore blood in it?

A.—Yes, at the point or end of the nail it is dead tissue but the border line between the living tissue and

1938

UJAGAR SINGH
v.
THE CROWN.

1938

UJAGAR SINGH
v.
THE CROWN.

the dead tissue is very indefinite and therefore in cutting the dead tissue it is possible to cut the living tissue. There is also living skin under the nail which may, especially in the case of a villager who does not tend his nails, extend to the end or point of the nail and therefore in cutting a nail you may cut the skin as well and it will bleed.

Q. (By Court).—Therefore it appears to follow that if any of us here had our nails pared to-day, there is a grave possibility that they would be stained with human blood?

A.—That is quite correct, and that of course applies to any human being. It will apply more strongly to persons who do not look after their nails.

Q. (By Court).—Therefore if a person innocent of murder had his nails pared, the nail parings might show human blood normally?

A.—Quite so, there is absolutely no medico-legal value whatsoever.

Q. (By Court).—Then the evidence which is frequently produced in the Courts of this Province of blood-stains on nail parings is of no value?

A.—That is true.

From Colonel Thomas's evidence it is clear beyond any possibility of doubt that the evidence of blood-stained nails is not only of no value but may be extremely dangerous to innocent persons. It has frequently been given in the past as evidence corroborating an approver or as circumstantial evidence connecting an accused person with homicide. It may have led to the miscarriage of justice.

In *Happu v. the King-Emperor* (1), one of us pointed out the danger of the provisions of section 510

(1) (1934) 32 All. L. J. 173.

of the Criminal Procedure Code, which allows the mere written report of the Chemical Examiner to be accepted as evidence in criminal cases without subjecting him to cross-examination. This case affords another instance of that danger. If the Chemical Examiner had to give evidence in Court and had been subjected to cross-examination on the subject of nail parings, it is certain that an exposure of this dangerous practice would have occurred much earlier and persons accused of murder—and perhaps innocent—might not have been convicted on this useless and deceptive evidence. It is only due to the accident that one of us came across an article on this subject that an end will now be put to nail paring evidence in this Province.

1938
UJAGAR SINGH
v.
THE CROWN.

The prosecution in this case has wholly failed to bring home to any of these accused the crime of murder. We set aside the convictions and sentences passed upon all of them.

The question of enhancement of sentence therefore does not arise.

A. N. K.

Appeal accepted.
