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This wrapper had blood-stains. They were too small in quantity to enable a Serologist to determine their origin, but it is remarkable that wherever the blood-stains were found on the wrapper an attempt had been made to burn out those marks. Unfortunately, for the appellant, his attempt to burn out the blood-stains on the wrapper was not entirely successful. This was, in our opinion, an incriminating circumstance against this appellant. The circumstantial evidence taken as a whole leaves no room for a reasonable doubt in our minds about the guilt of this appellant.

In our opinion, the High Court rightly found the appellants guilty under s. 302/34 of the Indian Penal Code. It could not be said that the sentence of death for a murder of the kind proved in this case was unduly severe. The appeals are accordingly dismissed.

*Appeals dismissed.*

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## RATAN GOND

*v.*

## THE STATE OF BIHAR

(JAFER IMAM, S. K. DAS and J. L. KAPUR JJ.)

*Evidence—Statement of dead person not made in judicial proceeding or to person authorised nor relating to the cause of his death—Admissibility—Confession—Person in authority—Circumstantial Evidence—Use in corroboration of confession—Indian Evidence Act, (I of 1872), ss. 24, 32 and 33.*

The appellant was charged with the murder of a girl Baisakhi. On information given by Aghani, younger sister of the deceased, the headless body of the deceased was recovered. The appellant absconded but was found in another village and was brought back by the village volunteer force. On interrogation by the Mukhia, Sarpanch and a panch of the Gram Panchayat the appellant made an extra-judicial confession. A blood-stained cutting weapon was recovered from a room of the appellant. At his instance some strands of hair were recovered from a place at a short distance

from the place where the dead body had been recovered, which were stained with human blood and appeared to be scalp hair of a human female. The appellant was convicted and sentenced to death and the High Court upheld the conviction and sentence. The Courts took into consideration the statements made by Aghani to her mother and to other persons that the deceased was last seen in the company of the appellant. Aghani, however, died before her statement could be recorded in a judicial proceeding. It was contended by the appellant that the statements of Aghani were inadmissible, that the extra-judicial confession was not relevant and that the circumstantial evidence was not sufficient to establish the guilt of the appellant.

*Held*, that the statements of Aghani were not admissible either under s. 32 or s. 33 of the Evidence Act. Section 33 had no application as her statement was not made in any judicial proceeding or before any person authorised by law to record the same. The statements did not relate to the cause of her death or to any circumstances relating to her death but related to the death of her sister and did not fall under cl. 1 of s. 32 which was the only clause which could have any bearing on the question.

*Held*, further, that though having regard to the Bihar Panchayat Raj Act, the Mukhia, Sarpanch and panch of the Gram Panchayat to whom the extra-judicial confession was made were persons in authority within the meaning of s. 24 Evidence Act, no threat, promise or inducement for making the confession was proved. The facts that the appellant was brought back to the Village by the village volunteer force and that it took two or three hours before he made the confession do not indicate that the confession was not voluntary. There was nothing to show that the confession contained any untrue or inaccurate statement. The circumstantial evidence may not be sufficient by itself to prove the guilt of the appellant, but it afforded sufficient corroboration to the confession and the corroboration was of such a nature as to connect the appellant with the murder.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 76 of 1958.

Appeal by special leave from the judgment and order dated March 4, 1958, of the Patna High Court in Criminal Appeal No. 50 of 1958 and Death Reference No. 8 of 1958 arising out of the judgment and order dated January 18, 1958, of the Court of the 1st Additional Judicial Commissioner of Chotanagpur at Ranchi in Sessions Trial No. XC of 1957.

*B. R. L. Iyengar*, for the appellant.

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*R. H. Dhebar*, for the respondent.

1958. September 19. The Judgment of the Court was delivered by

S. K. DAS J.—This is an appeal by special leave. The appellant is Ratan Gond, aged about 28 years. Tried on a charge under s. 302, Indian Penal Code, he was convicted and sentenced to death by the learned Additional Judicial Commissioner of Ranchi in the State of Bihar. The learned Additional Judicial Commissioner submitted the record to the High Court of Patna for confirmation of the sentence, as he was required to do under the provisions of s. 374 of the Code of Criminal Procedure. Ratan Gond also preferred an appeal to the High Court. The appeal and the reference under s. 374, Criminal Procedure Code, were heard together by a Division Bench of the said High Court and it accepted the reference and dismissed the appeal thereby confirming the sentence of death passed upon the appellant. On May 19, 1958, the appellant prayed for and obtained special leave and then filed the present appeal in pursuance of the leave granted to him.

The facts lie within a narrow compass. The appellant was a resident of village Urte, Tola Banmunda, police station Kolebera in the district of Ranchi. One Mst. Jatri (P. W. 2), who was a widow, also lived in the same village and same Tola. She had two young daughters, one named Baisakhi and the other named Aghani. Baisakhi was about nine years old and Aghani about five years old. The subject of the present appeal is the murder of the girl Baisakhi. On a Tuesday, May 7, 1957, the two sisters, Baisakhi and Aghani, had gone out to pluck wild berries in a hilly jungle situated at a short distance from their village, the distance being estimated variously by various witnesses from 300 yards to a little more than a mile. We may give here some idea of the location of the village and the hilly area near it. According to the evidence of Rup Ram (P. W. 1), uncle of the two girls, Tola Banmunda consists of about 40 houses. At a short distance to the north, there is a hilly tract known

as Amtis Chua hill. Close to the hill, there are jungles on two sides and there is also a spring or well in between the two strips of jungles. On Tuesday, Mst. Jatri (P. W. 2) had herself gone to pluck berries known as Keond berries at another place. When she left the house in the morning, her two daughters were in the house. Mst. Jatri came back at about noon and found Aghani alone in the house. She enquired from Aghani about the elder sister Baisakhi and Aghani made certain statements to her mother as well as to other persons later that day and the next day. Aghani, however, died within a few months of the occurrence, before her statements could be recorded in a judicial proceeding. The courts below have referred to, and the High Court has relied on, the statements of Aghani. One of the points urged on behalf of the appellant is that the statements of Aghani were not admissible in evidence either under s. 32 or s. 33 of the Evidence Act (1 of 1872). As we are of the view that this contention is correct, we are omitting all reference to the statements of Aghani in stating the facts of the case. When Baisakhi did not return to the house even in the evening Mst. Jatri went in the direction of Amtis Chua hill, but could not find Baisakhi. Next morning, information was sent to Rup Ram (P. W. 1) about the fact that Baisakhi was missing, Rup Ram having gone to village Targa for making tiles on the preceding Monday. Rup Ram came back to Banmunda on Wednesday, May 8, 1957. In the meantime certain other villagers including Dalpat Sai (P. W. 4), mukhia of the village, and Sohar (P. W. 5), chaukidar of the village, had been informed that Baisakhi was missing. Aghani took Rup Ram and these villagers to the foot of Amtis Chua hill and showed them the spring or well. This village party found the headless body of Baisakhi at a short distance from the aforesaid spring. The body was identified by Mst. Jatri and others as the dead body of Baisakhi by reason of the white saree of yellow border which Baisakhi was wearing, five red "churis" round the right hand, two red "churis" round the

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left hand, one "bera" round the left hand, one brass ring on the left finger and certain beads of a "mala" which Baisakhi had put on. When the headless dead body was discovered and identified, Dalpat Sai left some of his companions to guard the dead body and went to the house of the appellant, but did not find him there. He then sent Rup Ram and the chaukidar to the police station which was at a distance of 43 miles. He also sent some volunteers of the Gram Panchayat to look for the appellant. On Thursday, May 9, 1957, at about 10 a.m., Rup Ram and the chaukidar appeared at the police station of Kolebera and Rup Ram gave an information, which was recorded by the Assistant Sub-Inspector of Police. This information referred to the statements of Aghani and to the other facts which had been discovered by that time. On the same Thursday, the appellant was found in the house of his sister's husband in another village called Karmapani. The appellant was caught hold of by the village volunteers and brought back to village Banmunda on Thursday. At about 1 or 2 p. m. on that day, he was questioned by Dalpat Sai (P.W.4) mukhia of the Gram Panchayat, Krishna Chandra Singh (P. W. 7), Sarpanch of the Gram Panchayat, and Praduman Singh (P. W. 13), one of the panches of the Panchayat, and it is stated that the appellant made an extra-judicial confession to these persons to the effect that he had killed the child Baisakhi for greed of money, as a contractor who was building a bridge on the Lurki river had offered Rs. 80 for a human head. The appellant was detained by the aforesaid village authorities till the Assistant Sub-Inspector of Police arrived at the village on Friday, May 10, 1957. The Assistant Sub-Inspector arrived at about 3 a.m. He was taken to the place where the headless dead body of Baisakhi lay. The Assistant Sub-Inspector made an inquest on the dead body and seized the articles found there including 29 beads of the "mala" which Baisakhi was wearing and which lay scattered near the place. The Assistant Sub-Inspector of Police arrested the appellant, who was already in custody of the mukhia. The house of the

appellant was then searched and a sharp cutting weapon called "balua" was found in the north facing room of the house, between a wall and the roof. This "balua" had certain blood-stains on it, but the stains having disintegrated, the origin of the blood could not be determined. It is stated that on being questioned where the head of the girl Baisakhi was, the appellant took the Assistant Sub-Inspector of Police and some of the villagers to a place at a short distance of 100 yards or so from where the dead body was. At that place were discovered some strands of blood-stained hair which were seized by the Assistant Sub-Inspector of Police. The strands of hair looked like the hair on the head of a female person and the Chemical Examiner later reported that the strands of hair were stained with human blood and "appeared to be scalp hair of human (female) origin morphologically". After further investigation by two different Sub-Inspectors of Police, the appellant was sent up for trial. There was an enquiry by a Magistrate of the first class, who, at the conclusion of the enquiry, committed the appellant for trial by the Court of Session.

The defence of the appellant was that he had been falsely implicated. He denied that he killed Baisakhi near the jungle at Amtis Chua hill. He further denied that he had made any extra-judicial confession to Dalpat Sai, Krishna Chandra Singh and Praduman Singh. He denied that any blood-stained weapon was found in his house by the Assistant Sub-Inspector of Police and he also denied that he was absent from his village or was found in the house of his sister's husband in village Karmapani.

The learned Additional Judicial Commissioner, as also the High Court, rightly stated that the case against the appellant rested on (a) circumstantial evidence and (b) the extra-judicial confession stated to have been made by the appellant. The courts below concurrently held that the extra-judicial confession was voluntary and it did not appear to them to have been caused by any inducement, threat or promise having reference to the charge made against

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the appellant so as to attract the provisions of s. 24 of the Evidence Act. They further held that the confession, though later denied by the appellant, was sufficiently corroborated by the circumstantial evidence and the confession and the circumstantial evidence read together led to only one reasonable inference, namely, that the appellant had killed the child Baisakhi in the hope of getting some money.

It is not disputed that in an appeal filed by special leave under Art. 136 of the Constitution it is not normally open to the appellant to raise questions of fact or to ask for interference by us with concurrent findings of fact, unless the findings are vitiated by errors of law or the conclusions reached by the courts below are so patently opposed to well-established principles as to amount to a miscarriage of justice. Mr. Iyengar for the appellant has urged before us three main points. Firstly, he has submitted that the extra-judicial confession said to have been made by the appellant is not admissible in evidence. Secondly, he has contended that even if admissible, there is no guarantee of its truth. Thirdly, he has submitted that even with regard to circumstantial evidence, the courts below have relied on inadmissible evidence, with particular reference to the statements of Aghani, to establish one of the circumstances, namely, that the appellant was last seen with Baisakhi before her murder. His argument is that the other circumstances established against the appellant, namely, the recovery of the blood-stained "balua", of the blood-stained hair and the absence of the appellant from the village on Wednesday, do not carry the case against the appellant far enough so as to complete the chain and make them inconsistent with any hypothesis other than the guilt of the appellant. He has submitted that in considering the circumstantial evidence in this case the courts below have departed from the well-established principle that the circumstances affirmatively proved against an accused person must be of such a character as to be consistent only with his guilt and inconsistent with any reasonable hypothesis of his innocence.

Before we examine the aforesaid submissions, it is necessary to state that the finding of the courts below that Baisakhi was murdered some time between May 7 and May 8, 1957, and that the headless dead body which was discovered on May 8, 1957, was correctly identified as the dead body of the girl Baisakhi has not been challenged before us. The post-mortem examination on the dead body was held on May 11, 1957, and the ante-mortem injuries which the doctor found were (1) complete severance of the head from the neck, (2) one incised wound on the left shoulder and (3) an incised wound on the left upper arm. The doctor's evidence makes it quite clear that the unfortunate girl was brutally done to death. The identification of the headless dead body also rests on a very sure foundation. We have already referred to the clothing, ring, beads, etc., from which the identity of the dead body was established. The murder of the girl Baisakhi having been clearly established, the courts below rightly applied their mind to a consideration of the principal question in the case, namely, if the appellant was responsible for that murder.

This brings us to a consideration of the submissions made on behalf of the appellant. We may say at the very outset that we agree with learned counsel for the appellant that the statements of Aghani, who unfortunately died within a few months of the occurrence before her statements could be recorded in a judicial proceeding, were not admissible in evidence either under s. 32 or s. 33 of the Evidence Act. Section 33 is clearly out of the way because Aghani made no statements in a judicial proceeding or before any person authorised by law to take her evidence. The only relevant clause of s. 32 which may be said to have any bearing is cl. (1) which relates to statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. In the case before us, the statements made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister. We are, therefore, of the opinion

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that the statements do not come within s. 32(1) of the Evidence Act and, indeed, Mr. Dhebar appearing on behalf of the State, has conceded that s. 32(1) does not apply to the statements of Aghani.

Excluding the statements of Aghani, what then is the evidence against the appellant? Firstly, we have the extra-judicial confession. Then, we have the following circumstances which the courts below have held to have been clearly established against the appellant, namely, (a) recovery of the blood-stained "balua" from a room of the appellant, (b) recovery of the blood-stained strands of hair from a place pointed out by the appellant and (c) disappearance of the appellant from the village immediately after the murder and his arrest in village Karmapani in circumstances mentioned by Maheshwar Sai (P. W. 6). Lastly, there is another adverse circumstance which arises out of the total denial by the appellant of the recovery of the blood-stained "balua" and of his arrest in village Karmapani. As to the extra-judicial confession, two questions arise: is it voluntary, and, if so, is it true? The appellant denied at a later stage that he had made a confession, but it is not necessary to consider in this case the abstract question as to whether, as against its maker, a conviction can be based on a confession which is found to be voluntary and true. It is enough to state that usually and as a matter of caution, courts require some material corroboration to such a confessional statement, corroboration which connects the accused person with the crime in question, and the real question which falls for decision in the present case is if the circumstances proved against the appellant afford sufficient corroboration to the confessional statement of the appellant, in case we hold that the confessional statement is voluntary and true.

Let us first see if the confession was voluntary. Section 24 of the Evidence Act states:

"A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person,

proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him ".

Mr. Iyengar has referred us to the evidence of the three witnesses, Dalpat Sai (P.W. 4), Krishna Chandra Singh (P. W. 7), and Praduman Singh (P. W. 13), Mukhia, Sarpanch and Panch respectively of the Gram Panchayat. We agree with Mr. Iyengar that having regard to the provisions of the Bihar Panchayat Raj Act (Bihar VIII of 1948) the aforesaid three persons can be said to be persons in authority within the meaning of s. 24. The question, however, is—are there any circumstances which tend to show that the making of the confession appears to have been caused by any inducement, threat or promise, having reference to the charge against the appellant and proceeding from any one of the aforesaid three persons and sufficient in the opinion of the court to give the appellant grounds which would appear to him to be reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The courts below have categorically answered this question in the negative. We have examined the evidence of the three witnesses mentioned above. That evidence shows that the appellant was brought to the house of Dalpat Sai (P. W. 4) at about 10 a. m. on Thursday (May 9, 1957). He was questioned for some time; Dalpat Sai (P.W. 4) said that he was questioned for about two hours. The evidence of Dalpat Sai makes it clear, however, that it was not a process of continuous questioning for two hours. Ratan was given some food and then, when he was questioned, he kept quiet for some time and then said that he had killed the girl because the contractor who was building the bridge on river Lurki had offered to pay a sum of Rs. 80 for a human head. Having examined the evidence of the three witnesses who prove the extra-judicial confession, we do not come to

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a conclusion different from the one arrived at by the courts below. Mr. Iyengar referred us to the observations made by Cave J. (as he then was) in *The Queen* v. *Thompson* (1). That was a case in which a prisoner was tried for embezzling the money of a company. It was proved at the trial that, being taxed with the crime by the Chairman of the company, the prisoner said that he had taken the money. The Chairman stated that at the time of the confession, no threat or promise was made, but he said to the prisoner's brother, " It will be the right thing for your brother to make a statement " and the court drew the inference that the prisoner, when he made the confession, knew that the Chairman had spoken these words to his brother. In these circumstances, the learned Judge said: " I prefer to put my judgment on the ground that it is the duty of the prosecution to prove, in case of doubt, that the prisoner's statement was free and voluntary, and that they did not discharge themselves of this obligation ". He further added that there were always reasons to suspect those confessions which were supposed to be the offspring of penitence and remorse, and which nevertheless were repudiated by the prisoner at the trial. It is true that in the case under our consideration the appellant denied to have made the confession which he had made earlier; but we find no such circumstances as were present in *Thompson's case* (1), such as the statement of the Chairman of the company to the brother of the prisoner. It is true that the appellant was brought back from village Karmapani by members of the village volunteer force. He was taken to the village authorities to whom he made a confession. The evidence does not even remotely suggest that any threat, promise or inducement was made. The only circumstance relied on by Mr. Iyengar is that it took about two to three hours from the time when the appellant was brought to the house of the mukhia up to the time when he made his confessional statement. Mr. Iyengar has relied on *In re Kataru Chinna Papiah* (2), where a Superintendent of Police questioned the accused person for four hours at night

(1) (1893) 2 Q. B. 12, 18. (2) A.I.R. 1940 Mad. 136.

and again for two hours in the morning. It was pointed out that this was a flagrant violation of the relevant rule in the instructions issued to police officers. All that we need say is that there was no such questioning in the present case. Another decision to which Mr. Iyengar has invited our attention is *Hashmat Khan* v. *The Crown* (1). We do not think that that decision is of any assistance to Mr. Iyengar. It was held therein that a mere possibility of there having been some inducement is not sufficient to attract s. 24 of the Evidence Act; but only when it appears to the court that the confession has been made as a result of some inducement held out by a person in authority that it becomes irrelevant. That was a case in which the accused person, when questioned, was told that it would be better for him if he told the truth; it was held that this amounted to an inducement within the meaning of s. 24 of the Indian Evidence Act.

As to the truth of the confession, nothing has been brought to our notice which would show that the confessional statement contained any untrue or inaccurate statement. It is true that the prosecution has given no evidence to show that the contractor who was building the bridge over river Lurki, or for that matter, any contractor, had offered a sum of Rs. 80 for a human head. In the very nature of things, it is not expected that any contractor, even if he had made such an offer, will admit having done so, and we do not think that the prosecution can be asked to give evidence in support of any such offer. We recognise that in ordinary and normal circumstances nobody asks for a human head for building a bridge; nor is it usual normally for a person to accept such an offer, even if it is made. We must not forget, however, that we are dealing in this case with aboriginal people who are still steeped in superstition. It is worthy of note that Maheshwar Sai (P. W. 6) said that when the appellant was taken in custody in village Karmapani, he did not even enquire why he was arrested; on the contrary, he offered Rs. 20 and a he-goat to the witness and

(1) (1934) I.L.R. 15 Lah. 856.

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implored the latter to save him. Such a statement was again of an incriminatory nature, and if the evidence of Maheshwar Sai is correct, the statement was absolutely voluntary and was not the result of any questioning at all. For these reasons, we do not think that the reference to an offer of Rs. 80 for a human head in the confessional statement of the appellant necessarily destroys its veracity.

There can be no doubt that the recovery of the blood-stained "balua" (even though the origin of the blood could not be determined owing to disintegration) and of the blood-stained strands of female hair at the place pointed out by the appellant, are circumstances clearly proved against the appellant. These circumstances may not be sufficient by themselves to prove that the appellant was the murderer, but there is no doubt that they lend assurance to the confessional statement of the appellant, assurance of a kind which connects the appellant with the crime in question. This is a case in which the confession and the circumstances have to be read together. There is the additional circumstance that soon after the murder the appellant disappeared from his village and when arrested in another village, his conduct was such as to show that he was suffering from a guilty mind. On the top of all this, there is the total denial by the appellant that any blood-stained "balua" was recovered from his house or that he disappeared from the village after the murder. It is unfortunate that the learned Additional Judicial Commissioner did not ask the appellant to explain the recovery of the blood-stained strands of female hair. That was an important circumstance against the appellant and when the learned Additional Judicial Commissioner examined the appellant under the provisions of s. 342 of the Code of Criminal Procedure he should have asked the appellant to explain this circumstance. We take this opportunity of inviting the attention of the learned Additional Judicial Commissioner to this very serious omission. Another omission on the part of the learned Additional Judicial Commissioner is his failure to comply with the provisions of s. 287 of the Code of

Criminal Procedure. The examination of the accused recorded by or before the Committing Magistrate does not appear to have been tendered by the prosecutor in the present case; at least we do not find any such statement in the printed paper-book. We are satisfied, however, that no prejudice has been caused. The Assistant Sub-Inspector of Police who gave evidence of the recovery of blood-stained hair from a place pointed out by the appellant was not even cross-examined on the point. The defence of the appellant was a total denial and even if the recovery of the blood-stained strands of female hair was put to the appellant, he would undoubtedly have denied such recovery as having been made at his pointing out the place.

To sum up: we see no reasons to differ from the conclusion arrived at by the courts below that the confessional statement made by the appellant was voluntary and admissible; there are no reasons for thinking that it was not true. The circumstances clearly proved against the appellant, even excluding the circumstance which rested on the statements of Aghani, afford sufficient corroboration to the confession of the appellant, though denied at a later stage, and the corroboration is of such a nature as to connect the appellant with the murder of the child Baisakhi. The only reasonable inference which can be drawn from the confession read with the circumstantial evidence is that the appellant killed the child Baisakhi between May 7 and 8, 1957, in the hope of getting some money. Whether that hope was realised or not is more than we can tell. The head was never recovered, but there can be no doubt that the dead body was correctly identified to be the dead body of the child Baisakhi.

As to the sentence, in view of the circumstances in which the child Baisakhi was killed, we do not think that we shall be justified in interfering with it in the present case. For these reasons, we hold that the appeal is without merit and must be dismissed.

*Appeal dismissed.*