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DAGDU & OTHERS ETC.

v.

STATE OF MAHARASHTRA

April 19, 1977

[Y. V. CHANDRACHUD, P. K. GOSWAMI AND P. N. SHINGHAL, JJ.]

B *Evidence Act* 1972—*Sections* 114 *illustration* (*b*) *and* 133—*Accomplice evidence, whether a competent witness—Whether conviction can be based on uncorroborated evidence of an accomplice—Appreciation—Rule of corroboration—Presumption by courts.*

Criminal Procedure Code 1989—*Sections* 163, 164, 367(5) *and* 554—*Confessional statements—Criminal Manual* 1960 *of Bombay High Court—Para* 18 *—Failure to comply with Sec.* 164(3) *and High Court circulars if renders confessions inadmissible in evidence—Evidence Act, Section* 29.

C *Criminal Procedure Code* 1973— *Sections* 235, 354—*Hearing accused on the question of sentence—If mandatory—If appellate court can give hearing on failure by the trial court.*

Accused No. 1 though in her thirties had entered a period of premature menopause. She was anxious to get a child which could only happen if her menstrual cycle was restored. She used to consult quacks and Mantriks in order to help get a child. Accused No. 1's mother was accredited with sixth sense in the matter of discovery of treasure trove. She had oracled that a treasure D trove lay buried in accused No. 1's house underneath the Pimpal tree. The Pimpal tree is believed to be the haunt of Munjaba, who is supposed to be the spirit of an unmarried Brahmin boy. Accused Nos. 1 and 2 consulted quacks who prescribed that virgins should be offered as sacrifice to Munjaba and to propitiate the deity, blood from their private parts be sprinkled on the food offered by way of 'Naivedya'. Five small girls about 10 years of age, a year old infant and 4 women in their mid-thirties were found murdered between 14-11-1972 and 4-1-1974 in a village called Manawat. The murders of these 10 E females showed significant similarities in pattern and conception. The time and place chosen for crime, preference for females as victims, the nature of injuries caused to them, the strange possibility that the private parts of some of the victims were cut in order to extract blood, the total absence of motive for killing these very girls and women, the clever attempt to dodge the police and then to put them on a false scent and the extreme brutality surroundings the crimes gone to the case an eerie appearance.

Eighteen persons were put up for trial before the Session Judge for the 10 F murders. Two out of these persons were tendered pardon and were examined in the case as approvers. Accused No. 6 died during the trial. The Sessions Judge acquitted accused 4, 5, 7, 8 and 13 to 16. Accused No. 1 and 2 were convicted under s. 302 read with s. 120-B and section 34 of the Penal Code. Accused No. 1, 2 and 3 were sentenced to death while accused No. 9 to 12 were sentenced to life imprisonment. The matter went to the High Court in the form of various proceedings. The High Court acquitted accused No. 1 and 2 holding that the offence of conspiracy which formed the gravamen of the charge against them was not proved. Since the charge of conspiracy failed and G since it was a common ground that accused No. 1 and 2 had not taken any direct part in the commission of the murders, the High Court held that they were entitled to acquittal on all the charges. The High Court dismissed the appeal filed by accused No. 3 holding that he was responsible for the first 4 murders and confirmed his conviction under s. 302 read with s. 34 as also the sentence of death imposed upon him. The High Court dismissed the State's appeal against acquittal of accused No. 4 and 5 but allowed the State's appeal and enhanced the sentence of accused No. 9 to 12 to death.

H Criminal Appeal No. 437 of 1976 was filed by accused Nos. 9 to 12. Criminal Appeal No. 438 of 1976 was filed by accused No. 3 and Criminal Appeal No. 441 of 1976 was filed by the State of Maharashtra against acquittal of accused Nos. 1 and 2. The Court acquitted accused No. 12 by giving him the benefit of doubt and while dismissing the three appeals.

HELD : (1) There is no antithesis between s. 133 and illustration (b) to section 114 of the Evidence Act because the illustration only says that the Court may presume a certain state of affairs under s. 114 of the Evidence Act. The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Under s. 133 of the Evidence Act, an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. [643 B-C] A B

(2) Though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony yet the court is entitled to presume and may be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime. [643 C-D] C

(3) It is hazardous as a matter of prudence to proceed on the evidence of a self-confessed criminal. The risk involved in convicting an accused on the testimony of an accomplice unless it is corroborated in material particulars is so real and potent that what during the early development of law was felt to be a matter of prudence has been elevated by judicial experience into a requirement or rule of law. What has hardened into a rule of law is not that the conviction is illegal if it proceeds upon the uncorroborated testimony of an accomplice but that the rule of corroboration must be present to the mind of the Judge and that corroboration may be dispensed with only if the peculiar circumstances of the case make it safe to dispense with it. [643 E-F] D

King v. *Baskerville* [1916] 2 K.B. 653; *Rameshwar* v. *State of Rajasthan* [1952] S.C.R. 377, *Bhuboni Saku* v. *The King* 76 I.A. 147; *The State of Bihar* v. *Basawan Singh* [1959] SCR 195 and *Ravinder Singh* v. *State of Haryana* [1975] 3 S.C.R. 453, relied on.

(4) It is true that an approver has real incentive to speak out his mind after tender of pardon but where it is impossible to reconcile his earlier statements with his later assertions his evidence has to be left out of consideration. It is one thing to say that an approver's statement cannot be discarded for the mere reason that he did not disclose the entire story in his police statement and quite another to accept an approver in spite of contradictions which cast a veil of doubt over his involvement of others. [646 B-C] E

Madan Mohan Lal v. *State of Punjab* [1970] 2 S.C.C. 733 relied on.

Tahsildar's case [1959] Supp. 2 S.C.R. 875, distinguished. F

(5) The failure to comply with section 164(3) Cr. P.C. with the High Court circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. [651 E]

(6) Under section 29 of the Evidence Act, if a confession is otherwise relevant, it does not become irrelevant merely because, *inter alia*, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under ss. 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence. [651 E-G] G H

(7) A strict and faithful compliance with s. 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee

A that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements.

In the instant case no reliance can be placed on any of the contesstons. Apart from the cofessions of the two approvers, all others were retracted, which further cripples their evidentiary value. [657 H]

B (8) The imperative language of sub-section (2) leaves no room for doubt that after recording the finding of guilt and the order of conviction, the Court is under an obligation to hear the accused on the question of sentence unless it releases him on probation of good conduct or after admonition under s. 360. The social compulsions, the pressure of poverty, the retributive instinct to seek an extra-legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living the parentage, the heredity—all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of s. 235 (2) must, C therefore, be obeyed in its letter and spirit. [657 F-H]

(9) The failure on the part of the Court, which convicts an accused, to hear him on the question of sentence does not necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. [658 A-B]

Santa Singh v. *State of Punjab* [1976] 4 S.C.C. 190, explained.

D (10) The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court E or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter order to give to the accused sufficient time to produce the necessary data and to make his contention on the question of sentence. For a proper and effective implementation of the provision contained in s. 235(2) it is not always necessary to remand the matter to the Court which has recorded the conviction. Remand is an exception, not the rule, and ought, therefore, be avoided as far as possible in the interests of expeditious, though fair disposal of cases. [658 B-D, F]

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Santa Singh v. *State of Punjab* [1976] 4 S.C.C. 190, distinguished.

GOSWAMI, J. (Concurring) :—

Whenever an appeal court finds that the mandate of section 235(2) Cr. P.C. for a hearing on sentence has not been complied with it becomes the duty of the Court to offer to the accused an adequate opportunity to produce before it whatever material he chooses in whatever reasonable way possible. Courts should G as far as possible avoid remands when the accused can secure a full benefit of s. 235 (2) Cr. P.C. in the appeal court. [661 C-D]

CRIMINAL APPELLATE JURISDICTION : Crl. A. Nos. 437 & 438 of 1976.

(Appeals by Special Leave from the Judgment and Order dated the H 8/9/10-3-1976 of the Bombay High Court in Crl. Appeals Nos. 17 and 18 of 1976 and confirmation Case No. 3 of 1976) and

Crl. A. No. 441 of 1976.

(Appeal by Special Leave from the Judgment and Order dated the 8/9/10-3-1976 of the Bombay High Court in Criminal Appeal No. 18 of 1976). A

P. Narayan, B. G. *Kolse Patil, B. S. Bhonde* and *V. N. Ganpule,* for the appellants in Crl. A. Nos. 437-438 and for respondent in Crl. A. 441/76.

V. S. Desai, P. P. Hudlekar and *M. N. Shroff for respondents* in Crl. Appeal Nos. 437-438 and for the appellant in Crl. A. No. 441/76. B

The Judgment of Y. V. Chandrachud and P. N. Shinghal, JJ. was delivered by Chandrachud, J. P. K. Goswami, J. gave a separate opinion.

CHANDRACHUD, J. Five small girls about ten years of age, a year old infant and four women in their mid-thirties were found murdered between November 14, 1972 and January 4, 1974 in a village called Manwat in Maharashtra. The murders of these ten females show significant similarities in pattern and conception. The time and place chosen for the crimes, the preference for females as victims, the nature of injuries caused to them, the strange possibility that the private parts of some of the victims were cut in order to extract blood, the total absence of motive for killing these very girls and women, the clever attempt to dodge the police and then to put them on a false scent and the extreme brutality surrounding the crimes give to the case an eerie appearance. Such harrowing happenings make the task of discovering truth difficult and it is just as well to begin with Justice Vivian Bose's reminder that the shocking nature of the crime ought not to induce an instinctive reaction against a dispassionate scrutiny of facts and law. C D E

We have three appeals before us, all by special leave granted by this Court. Criminal Appeal No. 437 of 1976 is filed by accused Nos. 9 to 12, Criminal Appeal No. 438 of 1976 by accused No. 3 while Criminal Appeal No. 441 of 1976 is filed by the State of Maharashtra against the acquittal of accused Nos. 1 and 2. F

Eighteen persons were put up for trial before the learned Sessions Judge, Parbhani for the ten murders. Two out of these, Ganpat Bhagoji Salve and Shankar Gyanoba Kate were tendered pardon by the learned Judge and were examined in the case as approvers. Accused Nos. 6 died during the trial leaving 15 persons for consideration of the question whether they had conspired to commit the murders and whether the murders were committed in pursuance of that conspiracy. The learned Sessions Judge acquitted accused Nos. 4, 5, 7, 8 and 13 to 16. Accused Nos. 1 and 2 were convicted under sec. 302 read with sec. 120-B and sec. 109 of the Penal Code. Accused Nos. 3 and 9 to 12 were convicted under sec. 302 read with sec. 120-B and sec. 34 of the Penal Code. Accused Nos. 1, 2 and 3 were sentenced to death while accused Nos. 9 to 12 were sentenced to life imprisonment. G

The matter went to the Bombay High Court in various forms. The seven accused who were convicted by the Trial Court filed an appeal challenging the order of conviction and sentence. The Sessions Court H

made a reference to the High Court for confirmation of the death sentence imposed on accused Nos. 1, 2 and 3. The State Government filed an appeal against the acquittal of accused Nos. 4 and 5. It also filed an appeal under s. 377 of the Criminal Procedure Code, 1973 asking that the sentence of life imprisonment imposed on accused Nos. 9 to 12 be enhanced to death. The State not having challenged the order of acquittal passed by the Sessions Court in regard to accused Nos. 7, 8 and 13 to 16, that order has become final and was not in any form assailed before us as erroneous.

The High Court acquitted accused Nos. 1 and 2 holding that the offence of conspiracy which formed the gravamen of the charge against them was not proved. The charge of conspiracy having failed and it being common ground that accused Nos. 1 and 2 had not taken any direct part in the commission of the murders, the High Court held that they were entitled to acquittal on all the charges. The High Court dismissed the appeal filed by accused No. 3 holding that he was responsible for the first four murders and confirmed his conviction under s. 302 read with s. 34 as also the sentence of death imposed upon him. The conviction and sentence of accused No. 3 under s. 302 read with s. 120-B was set aside by the High Court in view of its finding that the prosecution had failed to establish the charge of conspiracy. The High Court dismissed the State's appeal against the acquittal of accused Nos. 4 and 5 but it allowed the appeal filed by the State for enhancement of the sentence of life imprisonment imposed on accused Nos. 9 to 12. The High Court enhanced their sentence to death under s. 302 read with s. 34 but consistently with its finding on the charge of conspiracy it set aside their conviction and sentence under s. 302 read with s. 120-B. There were delay on the part of the State Government in filing the appeal for enhancement of the sentence of accused Nos. 9 to 12 but the High Court condoned that delay.

We are thus called upon to consider the correctness of: (1) the order of the High Court acquitting accused Nos. 1 and 2; (2) the order of conviction of accused No. 3 under s. 302 read with s. 34 and the sentence of death imposed upon him by the Sessions Court and the High Court; and (3) the order of conviction of accused Nos. 9 to 12 under s. 302 read with s. 34. Thus, we are concerned in these appeals with accused Nos. 1 to 3 and 9 to 12 only.

The hamlet of Manwat has a population of 15 thousand and is situated in Taluka Pathri, District Parbhani, Maharashtra. Accused No. 1, Rukhmini, was about 32 years of age at the relevant time and despite the pledge to secularism, it has to be mentioned that she is Pardhi by caste. She was in the keeping of accused No. 2, Uttamrao Barahate, a non-pardhi, who is a man of means and was at one time the President of the Manwat Municipality. He purchased a house for accused No. 1 in which the two lived together and it is this house or *wada* which became the focal point of the conspiracy. Accused No. 2 purchased the house really in order to ensure the exclusiveness of his mistress but it happened to blaze an altogether new trial.

In the house was a Pimpal tree which is believed to be the emblem of God Vishnu, the Preserver. The Pimpal is also believed to be the haunt of Munjaba, who is supposed to be the spirit of an unmarried Brahmin boy. The Parbhani District Gazetteer says at page 115 that "some childless persons who trace their misfortune to the influence of some evil spirit cause the Brahminic thread ceremony performed for a pimpal tree and a masonry platform built round its trunk."

The Manwant village-folk commonly believe that treasure troves are lying buried in the town ever since the sixteenth century when its inhabitants fled away after the troops of Murtazahad invaded the town, which was then under the Nizamshahi of Ahmednagar. Quite some quacks in the periphery of Manwat make their living by diagnosing where the treasure trove lies and what means to adopt for discovering it.

Accused No. 1, though in her thiries, had entered a period of premature menopause. She was anxious to get a child which could only happen if her menstrual cycle was restored. She used to consult quacks and *mantriks* who, she believed, could help her get a child. Accused No. 2's mother was credited with a sixth sense in the matter of discovering treasure troves. She had oracled that a treasure trove lay buried in accused No. 1's house underneath the Pimpal tree. The stage was thus set for the visits of mountebanks to the house of accused No. 1 for the display of their supernatural attainments.

The case of the prosecution is that accused Nos. 1 and 2 consulted quacks who prescribed that virgins should be offered as sacrifice to Munjaba and blood from their private parts be sprinkled on the food offered by way of *Naivedya* to the God. One of such quacks was Ganpat Salve, the approver, who was examined as P.W. 1. Accepting Ganpat's advice, accused Nos. 1, 2, 3, 4 and 6 conspired to commit the murders of virgin girls. Ganpat himself joined the conspiracy and so did Shankar Gyanoba Kate who was a servant of accused No. 2. Shankar, also an approver, was examined in the case as P.W. 2. Accused Nos. 5 and 7 to 16 are alleged to have joined the conspiracy at a later point of time. In pursuance of the conspiracy, ten murders were committed between November 14, 1972 and January 4, 1974.

The first four murders are alleged to have been committed by the approver Shankar and accused No. 3, Sopan, who was also in the employment of accused No. 2. Gayabai, a girl of 11 was murdered on November 14, 1972; Shakila, a girl of 10, was murdered on December 9, 1972; Sugandhabai, a woman of 35 was murdered on February 21, 1973 and Nasima a girl of 10 was murdered on April 13, 1973.

It is said that the blood from the private parts of these victims was offered to Munjaba and yet there was no clue as to where the treasure trove lay. Gayabai, Shakila and Sugandhabai had evidently died in vain and therefore Nasima, the fourth victim, was beheaded so that the severed head could be offered to propitiate the deity. Even Nasima's head failed to move Munjaba's heart. The treasure trove remained undisclosed.

A The next two murders are alleged to have been committed by accused Nos. 5 and 6. Kalavati, a woman of 30, was murdered on June 29, 1973 and Halima, a girl of 11, on July 12, 1973. Accused No. 5 has been acquitted and the order of acquittal has become final. Accused No. 6 died during the pendency of the trial in the Sessions Court.

B The seventh murder is alleged to have been committed by accused Nos. 7 and 8 when Parvatibai, aged about 35, was murdered on October 8, 1973. These two accused were acquitted by the Sessions Court and the acquittal was not challenged by the State.

The three last murders are alleged to have been committed by accused Nos. 9 to 12, all at the same time. Haribai, aged 35, was C going along with her daughter Taravati aged 9 and was carrying in her arms an infant daughter, Kamal, aged a year and half. All of them were murdered on the afternoon of January 4, 1974.

Accused Nos. 1, 2, and 14 were arrested on June 18, 1973 in connection with the first four murders which had taken place between November 14, 1972 and April 13, 1973. It is alleged that, while in custody, accused No. 2 sent a message to accused No. 5 to D commit a few more murders so that no suspicion may fall on those who were arrested. That is why accused Nos. 5 and 6, accused No. 6 being a servant of accused No. 1, are said to have committed the murders of Kalavati and Halima in June and July, 1973. On July 30, 1973 accused Nos. 1, 2, 9 and 14 were released on bail on condition that they shall not enter the limits of Manwat. This condition was relaxed on October 4, 1973 for investigational purposes. Accused E Nos. 1 and 2 were in Manwat from October 4 to October 21, 1973 during which period they are alleged to have procured the services of accused Nos. 7 and 8 for the commission of Parvatibai's murder on October 8. On December 18, 1973, an application was moved for cancellation of the bail granted to accused Nos. 1 and 2. That application was allowed and they were re-arrested on January 4, 1974 when the murders of Haribai, Taramati and Kamal were committed. F Accused No. 3 was arrested on December 28, 1973, accused Nos. 9 to 11 on January 8, 1974 and accused No. 12 on January 11, 1974.

Accused Nos. 1 and 2 are the linch-pin of the case and therefore, it would be appropriate to deal with their cases first. Accused No. 1 is the mistress of accused No. 2 and whereas the former was anxious to get a child, they both were anxious to discover the treasure G trove lying buried in their house. The charge against them is that for the purpose of achieving these objects they consulted quacks who advised that the Munjaba should be propitiated by offering the blood of virgin girls. Accepting that advice, accused Nos. 1 and 2 are alleged to have entered into a conspiracy with the other accused to commit the various murders.

H The prosecution relied *inter alia* on the evidence of the two approvers, Ganpat, P.W. 1, and Shankar, P.W. 2, in order to prove the charge of conspiracy against accused Nos. 1 and 2 as also for proving that various murders were committed in pursuance of that

conspiracy. The learned Sessions Judge accepted the evidence of both the approvers as against accused Nos. 1 and 2 but the High Court rejected the evidence of Ganpat and accepted that of Shankar only.

Before considering that evidence, it would be necessary to state the legal position in regard to the evidence of accomplices and approvers. Section 133 of the Evidence Act lays down that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (b) to s. 114 says that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.

There is no antithesis between s. 133 and illustration (b) to s. 114 of the Evidence Act, because the illustration only says that the Court 'may' presume a certain state of affairs. It does not seek to raise a conclusive and irrebutable presumption. Reading the two together the position which emerges is that though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony, yet the Court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate, the paticular accused in the commission of the crime. It is hazardous, as a matter of prudence, to proceed upon the evidence of a self-confessed criminal, who, in so far as an approver is concerned, has to testify in terms of the pardon tendered to him. The risk involved in convicting an accused on the testimony of an accomplice, unless it is corroborated in material particulars, is so real and potent that what during the early development of law was felt to be a matter of prudence has been elevated by judicial experience into a requirement or rule of law. All the same, it is necessary to understand that what has hardened into a rule of law is not that the conviction is illegal if it proceeds upon the uncorroborated testimony of an accomplice but that the rule of corroboration must be present to the mind of the Judge and that corroboration may be dispensed with only if the peculiar circumstances of a case make it safe to dispense with it.

In *King v. Baskerville*(1) the accused was convicted for committing gross acts of indecency with two boys who were treated as accomplices since they were freely consenting parties. Dealing with their evidence Lord Reading, the Lord Chief Justice of England, observed that though there was no doubt that the uncorroborated evidence of an accomplice was admissible in law it was for a long time a rule of practice at common law for the Judge to warn the Jury of the danger of convicting a person on the uncorroborated testimony of an accomplice. Therefore, though the Judge was entitled to point out

(1) [1916] 2 K.B. 658.

A to the Jury that it was within their legal province to convict upon the unconfirmed evidence of an accomplice, the rule of practice had become virtually equivalent to a rule of law and therefore in the absence of a proper warning by the Judge the conviction could not be permitted to stand. If after being properly cautioned by the Judge the Jury nevertheless convicted the prisoner, the Court would not quash the conviction merely upon the ground that the accomplice's testimony was B uncorroborated.

In *Rameshwar* v. *State of Rajasthan*(1) this Court observed that the branch of law relating to accomplice evidence was the same in India as in England and that it was difficult to better the lucid exposition of it given in *Baskerville's* (supra) case by the Lord Chief Justice of England. The only clarification made by this Court was that C in cases tried by a Judge without the aid of a Jury it was necessary that the Judge should give some indication in his judgment that he had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considered it safe to convict without corroboration in the particular case.

D

In *Bhuboni Sahu* v. *The King*(2) the Privy Council after noticing s. 133 and illustration (b) to s. 114 of the Evidence Act observed that whilst it is not illegal to act on the uncorroborated evidence of an accomplice, it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material respects so as E to implicate the accused; and further that the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. The rule of prudence was based on the interpretation of the phrase "corroborated in material particulars" in illustration (b). Delivering the judgment of the Judicial Committee, Sir John Beaumont observed that the danger of acting on accomplice evidence is not merely that the accomplice is on his own admission a man of bad F character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution: the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence and the story may be true in all its details as to eight of G them but untrue as to the other two whose names may have been introduced because they are enemies of the approver. The only real safeguard therefore against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused.

This Court has in a series of cases expressed the same view as H regards accomplice evidence. (see *The State of Bihar* v. *Basawan*

(1) [1952] S.C.R. 377.
(2) 76 I.A. 147.

Singh(1); *Hari Charan Kurmi* v. *State of Bihar;*(2) *Haroon Haji Abdulla* v. *State of Maharashtra;*(3) and *Ravinder Singh* v. *State of Haryana*(4). In *Hari Charan*(2) Gajendragadkar, C.J., speaking for a five-Judge Bench observed that the testimony of an accomplice is evidence under s. 3 of the Evidence Act and has to be dealt with as such. The evidence is of a tainted character and as such is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.

We will assess the evidence of the two approvers Ganpat and Shankar in the light of these principles. Ganpat Bhagoji Salve, P.W. 1, fails to cross the initial hurdle of reliability and no amount of corroboration cure the infirmities which beset his evidence. He is not a quack but a charlatan who traded on the credulous optimism ot the sterile village women. He admits that he possessed no cure but made a pretence of it by carrying the confidence of lay, uninformed women. He was sent for to prescribe a cure to enable accused No. 1 to bear a child but accused Nos. 1 and 2, taking advantage of his expert presence, consulted him on where the treasure trove lay. Ganpat prescribed the facade of a procedure which was in the nature of a confidence trick. Practising it deftly on his credulous audience, he passed on the errand of God that Munjaba has to be appeased by offering the blood of virgin girls. That work was assigned by accused No. 2 to his servants, accused No. 3 and the other approver Shankar.

Accused No. 3 and Shankar committed the murders of Gayabai and Shakila and handed over the bowlful of blood from the private parts of the victims to accused Nos. 1 and 2 who performed the Puja of Munjaba. But the treasure trove did not come up. Then Sugandhabai was murdered and her menstural blood was offered to the God, again without a purpose. The fourth to die was Nasima whose head and small finger were offered as sacrifice. But even that heavy price yielded no clue to the treasure trove. Ganpat was paid a fee of Rs. 100 whereupon he made himself scarce and left for a place called Baramati from where he was traced by the police. That is what Ganpat's evidence comes to.

Ganpat is an utterly worthless witness whose evidence has been rightly discarded by the High Court. His entire story is incredible and abounds in contradictions of the gravest kind. Accused No. 2 is a man of some means and was for some time the President of the Manwat Municipality. It is hardly likely that a person in his position would readily gulp the fantastic process prescribed by Ganpat for discovering the treasure trove. Ganpat was interrogated by the police for nearly a month and a half after his arrest at Baramati and it was only at the end of that trying period that he trotted out some story

(1) [1959] SCR 195 (2) [1964] 6 SCR 623
(3) [1968] 2 SCR 641 (4) [1975] 3 SCR 453

to save his skin. It is common ground, and we see much more in that episode, that Ganpat struck his head against a wall while in police custody and sustained a head injury for which he was charge-sheeted for attempting to commit suicide. He admits in his evidence that he was driven to break his head as a result of the torture inflicted upon him by the police. Though he implicated both accused Nos. 1 and 2 in the search for treasure trove, he admitted later that accused No. 1 had never talked to him in that behalf. He made several significant statements for the first time in the Court and though we agree that an approver has real incentive to speak out his mind after tender of pardon, it is impossible to reconcile his earlier statements with his later assertions. It is one thing to say as was said in *Madan Mohan Lal* v. *State of Punjab*(1) that an approver's statement cannot be discarded for the mere reason that he did not disclose the entire story in his police statement and quite another to accept an approver in spite of contradictions which cast a veil of doubt over his involvement of others. Conceding the ratio of *Tahsildar's*(2) case, on which Mr. Desai for the State Government relies, the conclusion seems to us inescapable that Ganpat has mixed a ton of falsehood with an ounce of truth. His evidence has therefore to be left out of consideration.

The other approver Shankar Gyanoba Kate, P.W. 2, has greater credibility than Ganpat. Shankar was working with accused No. 2 as an agricultural servant along with accused No. 3. He speaks of Ganpat's visits, the performance of the 'shakun' and of being commanded by accused Nos. 1 and 2 to commit murders of virgin girls. He has unreservedly admitted having committed the murders of Gayabai, Shakila, Sugandhabai and Nasima with accused No. 3's assistance. He implicates accused Nos. 1 and 2 by deposing that after each of the murders was committed, he and accused No. 3 used to go to accused No. 1's house for delivering the blood and that the accused used to perform the Puja thereafter.

Not only has Shankar tarred himself with the same brush as accused Nos. 1, 2 and 3 but he has confessed to having played the leading role in the commission of the first four murders. Impressed by that circumstance, the Sessions Court and the High Court concluded that he is a reliable witness, but they took the view that the conviction of accused Nos. 1 and 2 cannot be permitted to rest on his uncorroborated testimony. We unhesitatingly share that view. Having played the role of the master killer in four ghastly murders, he is bound to know every little detail as to the manner of killing. The vivid description given by him of the luring, the gagging and the throwing away of the dead bodies may therefore be true. But it is easy enough for him to introduce nice falsities here and there by involving some others in the broadly true framework of his story. It is therefore necessary to see whether the evidence of Shankar in regard to the implication of accused Nos. 1 and 2 is corroborated by some independent evidence.

(1) [1970] 2 S.C.C. 733.
(2) [1959] Supp. 2 S.C.R. 875.

Before looking out for corroboration, we must point out that Shankar used to be interrogated by the police every night for about 9 or 10 days and it was at the end of that gruelling interrogation that his statement came to be recorded. Though Shankar claims that he had seen the 'shakun' being performed by Ganpat, he had not stated so before the police nor had he then described the elaborate ritual observed during the performance of that ceremony. He also did not say to the police that accused No. 1 had asked him to commit the murders. Neither to the police nor in his statement recorded under s. 164 of the Code of Criminal Procedure did he say that he had gone to accused No. 1's house on the morning following the first murder and that she had told him that since the treasure trove was not found another murder should be committed. The statement attributed by Shankar to accused No. 1 that menstrual blood was required for sacrifice is also conspicuous by its absence in his police statement. These significant omissions are in the nature of contradictions because not only do they pertain to a very vital aspect of the case against accused Nos. 1 and 2, but they are of such a nature that the story told by Shankar to the police and under s. 164 of the Code of Criminal Procedure cannot sensibly stand along with what he told the Court in regard to the part played by accused Nos. 1 and 2. It is true that Shanker was under a higher obligation while deposing in the Court because as a condition of the pardon tendered to him he had to disclose the whole truth to the Court. But while assessing the value of Shankar's evidence in so far as he implicates accused Nos. 1 and 2 we find it impossible to overlook the studied improvements which he made to involve them. Such gross departure from the earliest versions makes the story of conspiracy suspect and uninspiring. All the same, we may examine the argument advanced before us by the learned counsel for the State that Shankar's evidence against accused Nos. 1 and 2 is corroborated in material particulars and should therefore be accepted.

A B C D E

For affording corroboration to Shankar's evidence reliance is placed on the evidence of four witnesses—Laxman (P.W. 19), Sakharam (P.W. 29), Ramchandra (P.W. 30) and Kachru (P.W. 34).

F

We see nothing in the evidence of these witnesses which can lend corroboration to the approver's story that accused Nos. 1 and 2 conspired to commit the murders or that they asked Shankar and accused No. 3 to do so or that the blood of victims was handed over to either of them, or that any Puja was performed after the commission of murders. Laxman says nothing about the treasure trove, Sakharam merely carried the errand to Ganpat, Ramchandra was mauled by the police who pulled out his pig-tail and the quack called Kachru only prescribed a medicine for accused No. 1's menopause.

G

Nor indeed is the evidence of P.Ws. 20, 21 and 51 of any assistance in the matter of corroboration. They merely say that Ganpat was eking his livelihood by prescribing Mantras and medicines, which takes one nowhere near corroborative factors for implicating accused Nos. 1 and 2.

H

A The recovery of Ganpat's satchel containing charms and herbs, under the Panchnama Ex. 130A, also proves nothing beyond showing that Ganpat was equipped with a quack's repertoire.

One of the strongest arguments made by Mr. Desai on behalf of the State was that accused Nos. 1 and 2 stood to gain by the commission of the murders and that would afford corroboration to their participation in the conspiracy. Motive may conceivably furnish the necessary corroboration, but we are unable to see any independent evidence on the record regarding the treasure trove theory. Scrapings were taken from Munjaba's image and samples of earth were also taken from the place where Munjaba is alleged to have been propitiated with the blood of the victims. If Puja was really performed in the manner described by Shankar, it is strange that no blood stains should have been found anywhere near the Pimpal tree. There is also no evidence at all to show that any attempt was made by accused Nos. 1 and 2 to discover the treasure, as for example, by digging. These circumstances cast a serious doubt on the theory that accused Nos. 1 and 2 were trying to locate the treasure trove. The fact that accused No. 3 is a servant of accused No. 2 cannot by itself be sufficient to connect accused No. 2 with the crime charged.

The last circumstance on which prosecution relies to connect accused Nos. 1 and 2 with the crime is the confession, Ex. 108, made by accused No. 1 Rukhmani. That confession was recorded by a Sub-Divisional Magistrate, Devidas Sakharam Pawar, P. W. 23. Later, we will have a great deal to say about the various confessions recorded by this learned Magistrate but in so far as the confession of accused No. 1 is concerned it is enough to point out that it is entirely exculpatory and can, therefore, serve no useful purpose. Besides, the confession was retracted by accused No. 1.

Along with these considerations is the circumstance that the High Court has acquitted accused Nos. 1 and 2 after a fair examination of the material relied upon by the prosecution as against them. The various reasons given by us would so that there is no justification for interfering with the conclusion to which the High Court has come. The acquittal of accused Nos. 1 and 2 has, therefore, to be confirmed.

It would now be convenient to take up the case of accused No. 3, Sopan Rambhau Salve. The allegation against him is that he and the approver Shankar committed the murder of Gayabai on November 14, 1972, of Shakila on December 9, 1972, of Sugandhabai on February 21, 1973 and of Nasima on April 13, 1973. There is no eyewitness to any of these four murders but for establishing the charge against accused No. 3, the prosecution relies on the evidence of the two approvers Ganpat (P.W. 1) and Shankar (P.W.2), the discovery of article 17 by accused No. 3, the discovery of articles 18 and 19 by approver Shankar, the seizure of articles 20 and 21 from the house of accused No. 1 and lastly the retracted confession of accused No. 3 himself. We have already dealt with the evidence of the approvers while considering the case against accused Nos. 1 and 2 and we have given our reasons for discarding Ganpat's evidence outright. In regard to Shankar's evidence we have taken the view that though he is

a reliable witness, his evidence cannot be acted upon unless it is corroborated in material particulars. A

Shankar and accused No. 3 were in the employment of accused No. 2. After describing the 'Shakun' ceremony which was performed for ascertaining the desire of the deity, Shankar deposes that he and accused No. 3 were commissioned to commit the murders of virgin girls. Shankar, after some hesitation, agreed to do so on the promise that accused Nos. 1 and 2 will give to him and accused No. 3 a share in the treasure trove. B

Accused No. 3, according to Shankar, lured Gayabai, Shakila and Nasima to secluded spots, where upon Shankar gagged and throttled them. Accused No. 3 facilitated the murders by holding the legs of victims which also helped Shankar to collect blood from their private parts after causing cuts thereon. Accused No. 3 played a more significant role in the murder of Sugandabhai by axing her to death. C

Shankar's evidence is amply corroborated as regards the broad outlines of the story narrated by him. But that is not enough. We must see whether his evidence receives corroboration from an independent source and in material particulars, so as to fasten the guilt on accused No. 3. D

The first circumstance which is said to corroborate the evidence of the approver is the discovery of 27 pieces of shirt, which are collectively marked as article 17. The panchanama of discovery (Ex. 127) is dated January 2, 1974 and is proved by the Pancha Vithalrai Takankhar (P.W. 27). The report of the serologist which is at Ex. 312 shows that there were several blood stains on the shirt pieces ranging from 0.1 cm. to 0.5 cm. in diameter, all of 'A' group. Gayabai's blood also belonged to 'A' group. E

Mr. Bhonde who appears for accused No. 3 has subjected the evidence of discovery to a searching criticism which at first blush seems plausible but which does not bear close scrutiny. The argument that the panchanama of discovery does not attribute to accused No. 3 the authorship of concealment has the simple answer that the English translation of the Marathi panchanama is incorrect. The original document expressly states that accused No. 3 agreed to point out the place where *he had kept* the shirt pieces. The evidence of the Panch (P.W. 27) and of Dy. S. P. Waghmare (P. W. 96) is to the same effect. In the absence of any effective cross-examination of these witnesses, we see no substance in the contention that accused No. 3's father, who was standing near the hut, should have been examined as a witness. F G

It is urged that it is highly unlikely that accused No. 3 will preserve the tell-tale evidence of the crimes in the manner alleged by the prosecution. Why the accused chose to do this is difficult to know but we are not examining the evidence in the case as a Court of first instance. The evidence in regard to the discovery is accepted as unexceptionable by the Sessions Court as well as the High Court H

A and we are unable to characterise that view of the matter as preverse or against the weight of evidence. The recovery of art. 17 thus afford material corroboration to the part played by accused No. 3, at least in Gayabai's murder.

The discovery of the blade (art. 18) and the undervest (art. 19) at the instance of the approver affords no corroboration as against B accused No. 3. Nor indeed can the recovery of the bowl (art. 20) and the bottle (art. 21) from the house of accused No. 1 connect accused No. 3 with the crime. These are articles of common use and no blood was detected thereon.

What remains to be considered is the retracted confession of accused No. 3, which is Ex. 106. While on this question, we would C like to deal with all the confessional statements recorded in the case so that it will not be necessary to revert to the question time and again.

As many as eight confessions were recorded in the case, the confessing accused, apart from the two approvers, being accused Nos. 1, 3, 4, 5, 6, and 12. The approvers, Ganpat and Shankar, stuck D to their confessions while all others retracted theirs.

Section 24 of the Evidence Act makes a confessional statement irrelevant in a criminal proceeding if the making thereof appears to have been caused by any inducement, threat or promise, having reference to the charge against the accused, proceeding from a person in authority and sufficient to give the accused grounds which would E appear to him reasonable for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Section 163 of the Criminal Procedure Code bars a Police Officer or any person in authority from offering or causing to be offered any inducement, threat or promise as is referred to in s. 24 of the Indian Evidence Act. Section 164 of the Code prescribes the mode of recording confessional state- F ments. Acting under s. 554 of the Criminal Procedure Code, 1898, the High Court of Bombay had framed instructions for the guidance of Magistrates while recording confessional statements. Those instructions are contained in Chapter I, Paragraph 18, of the Criminal Manual 1960, of the Bombay High Court. The instructions require the Magistrate recording a confession to ascertain from the accused G whether the accused is making the confessional statement voluntarily and to find whether what the accused desires to state appears to be true. The instructions prescribe a form in which the confessional statement has to be recorded. Similar circulars or instructions have been issued by the various High Courts in India and their importance has been recognised by this Court in *Sarwan Singh* v. *State of Punjab*(1) in which it was said that the instructions issued by the High H Courts must be followed by the Magistrates while recording confessional statements.

(1) [1957] S.C.R. 953

All of the eight confessions were recorded in this case by a Sub-Divisional Magistrate, Devidas Sakharam Pawar (P. W. 23), whose evidence leaves no room for doubt that he was blissfully unaware of the stringent responsibilities cast by law on Magistrates who are called upon to record confessions. He made no effort to ascertain from any of the accused whether he or she was making the confession voluntarily. He did not ask any of the accused whether the police had offered or promised any incentive for making the confessional statement nor did he ascertain for how long the confessing accused was in police custody prior to his production for recording the confession nor indeed did he maintain any record to show where the accused were sent after they were given time for reflection. One of the glaring infirmities from which the confessional statements of the various accused suffer is that none of those statements contain a memorandum as required by s. 164 of the Code that the Magistrate believed that the "confession was voluntarily made". It is also clear that when the various accused were produced before the Magistrate after the time for reflection was over, he asked no further questions and recorded the confessions mechanically for the mere reason that the accused expressed their willingness to confess. The Magistrate was either overcome by the sensation which the case had aroused in Maharashtra or perhaps he blindly trusted the high police officers who were frantically looking out for a clue to these mysterious murders. They produced the accused for recording the confessions and the Magistrate thought that the mere production of the accused was guarantee enough of their willingness to confess.

Learned counsel appearing for the State is right that the failure to comply with s. 164(3), Criminal Procedure Code, or with the High Court Circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of that Act lays down that if a confession is otherwise relevant it does not become irrelevant merely because, *inter alia*, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under ss. 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence. That shows how important it is for the Magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with s. 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements.

A Considering the circumstances leading to the processional recording of the eight confessions and the abject disregard, by the Magistrate, of the provisions contained in s. 164 of the Code and of the instructions issued by the High Court, we are of the opinion that no reliance can be placed on any of the confessions. Apart from the confessions of the two approvers, all others were retracted, which further cripples their evidentiary value.

B

Since the evidence of the approver Shankar is corroborated in material particulars by the discovery of article 17, there is no valid reason for departing from the concurrent view of the High Court and the Sessions Court that the complicity of accused No. 3 in the four murders is proved beyond a reasonable doubt. As the charge of conspiracy fails, the High Court was right in convicting accused C No. 3 under s. 302 read with s. 34 of the Penal Code only.

That leaves the case of accused Nos. 9 to 12 for consideration, being the subject-matter of Criminal Appeal No. 437 of 1976 filed by them. The charge against these accused is that in furtherance of conspiracy and in pursuance of their common intention they, on January 4, 1974, committed the murders of Haribai, aged 35 years, D her daughter Taramati aged 9 years, and her infant child Kamal aged 1½ years. The Sessions Court convicted these accused under s. 302 read with ss. 120B and 34 of the Penal Code and sentenced them to life imprisonment. The charge of conspiracy having failed before the High Court and the main co-conspirators, accused Nos. 1 and 2, having been acquitted, the High Court convicted these accused under s. 302 read with s. 34 only. But, accepting the appeal filed by the E State, the High Court enhanced their sentence from life imprisonment to death.

The evidence against accused Nos. 9 to 12 consists of : (1) The eye-witness account of Umaji Limbaji Pitale (P.W. 31); (2) Discoveries effected in pursuance of statements made by the accused; (3) Injuries on accused No. 10; (4) The evidence in regard to the move- F ments of the accused at or about the time when the murders were committed and (5) the confession of accused No. 12.

Umaji was working as an agricultural servant with one Balabhau Lad on a daily wage of Rs. 3/-. On January 4, 1974 while he was on his way to one of the lands of his master, he first met accused No. 10 and then accused Nos. 9 and 11, and had some conversation G with accused No. 10. At about the same time, he saw Haribai carrying her infant child in her arms and a basket of food on her head. Her other daughter Taramati was walking behind her. Umaji climbed the *Mala,* which is a raised platform from which crops are generally watched, and soon thereafter he heard the shrieks of a child. Turning in the direction from which the shrieks came, he saw accused No. 10 holding Haribai from behind by her waist and accused No. 9 H giving an axe blow on her head. Almost simultaneously, Umaji saw accused No. 12 holding Taramati from behind and accused No. 11 giving an axe blow on her head. Feeling nervous and fearful, jumped down from the *Mala,* tethered his horse in his master's land, went by

a bus to the Manwat Road Railway Station, took a train to Ranjani and from there proceeded to the village of Iregaon where his maternal uncle Mathaji lived. After staying at Iregaon for about four days, Umaji went back to his master's house at Manwat when a police constable took him to the Police Station, where a Police Officer recorded his statement. A

Umaji's evidence having been concurrently accepted by the Sessions Court and the High Court, we do not propose to undertake a fresh reappraisal of that evidence except to the extent to which the view of the Courts below is contrary to the weight of the record or is otherwise such as is impossible in the context to sustain. On a careful consideration of Mr. Narayan's closely reasoned submissions, we have formed the conclusion, which does not materially differ from that of the two Courts, that Umaji's evidence cannot be accepted without adequate corroboration. B C

Our reasons for taking this view are briefly these : Fear and panic may account for the fact that the witness did not raise an alarm. But there is no reasonable explanation why, having had the presence of mind to tether back the horse, he did not see his master. Then again, he sojourned from the scene of offence to Iregaon but spoke to none. At Iregaon, which was far removed from the scene of Manwat murders, he holidayed with his uncle for four days but even on being questioned as to the purpose of his visit, he made no answer. After returning to Manwat he saw his master but told him nothing. His statement was recorded by the police after two days of close interrogation. D

In regard to accused No. 9, there are two circumstances which afford reliable corroboration to Umaji's evidence. On January 11, 1974 accused No. 9 made a statement leading to the discovery of an axe blade, article 160, from his house. The panchnama of recovery is Ex. 91-A which is proved by the Panch Sheikh Imam (P.W. 11). It shows that accused No. 9 took out an axe blade from below a piece of wood lying behind a cupboard in his house. The report of the Serologist, Ex. 267, shows that the axe blade was stained with human blood of 'A' group. The blood of the deceased Haribai belonged to the same group. Accused No. 9 admitted in his examination that he had produced the axe blade and that it was stained with blood but he sought to explain the blood stains by saying that his wife had sustained an injury while hewing wood with the axe. That is a flimsy explanation because were it true, it is difficult to understand why such great care was taken to conceal the axe blade. E F G

On January 21, 1974 a burnt shirt piece, article 170, was recovered in consequence of information given by accused No. 9. The Panchnama, Ex. 87-A, and the evidence of the Panch Munjaba (P.W. 25) show that the accused dug out the shirt piece from under a heap of earth lying inside his house. Article 170 was found by the Sessions Judge to fit squarely with the shirt sleeve, article 112, which was found at the place of occurrence near Haribai's dead body. The report of the Chemical Analyser at Ex.271 shows that articles 112 and 170 bore identical textile and physiochemical characteristics. H

A In our opinion, the courts below were justified in relying upon these corroborative circumstances to connect accused No. 9 with the murder of Haribai.

Turning to accused No. 10, an axe handle, article 169, was recovered at his instance on January 17, 1974. The Panchanama, Ex. 86-A, and the evidence of the Panch Mohd. Yusuf Bade Khan (P.W. 10) B show that the axe handle was recovered from below a thorny fence in the Pardhi Wada locality. The report of the serologist, Ex.267, shows that there was human blood on the axe but the group of the blood could not be determined. It is not possible to accept the submission of Mr. Narayan that the axe handle was recovered from a place which was easily accessible to the public because the handle was taken out after making quite some efforts to locate it. Accused No. 10 was the author of its C concealment.

On January 8, 1974 when accused No. 10 was arrested, a turban, bush-shirt and dhoti (articles 150 to 152) were seized from his person. The serologist's report, Ex.267, shows that human blood was detected on the bush-shirt and the dhoti. The blood-stain on the shirt was 0.5 cm in diameter and the blood detected on the bush-shirt and the dhoti be- D longed to 'A' group. Accused No. 10 admitted in his examination that the shirt and the dhoti were blood-stained but he offered an unconvincing explanation that a child of his had bled from the nose.

The evidence of Dr. Salunke (P.W. 48) who examined accused No. 10 on the date of his arrest shows that he had four injuries on his person, the certificate in regard to which is Ex. 174. Injuries Nos. 1 E and 2 were interrupted abrasions which in the opinion of Dr. Salunke could be caused by teeth-bite. That fits in with the part played by accused No. 10, who according to Umaji's evidence, had held Haribai from behind by her waist. Evidently, Haribai struggled to release herself in a frantic attempt to save her life she caused the injuries to accused No. 10.

F We agree with the view taken by both the Courts that the discovery of the blood-stained axe-handle, the seizure of clothes stained with 'A' group blood and the teeth-bite injuries afford adequate corroboration to Umaji's evidence regarding the part played by accused No. 10 in the murder of Haribai.

As regards accused No. 11, an axe-blade (article 167) was recover- G ed in consequence of information supplied by him. The Panchanama, Ex. 84-A, and the evidence of the Panch Mohd. Yusuf Bade Khan. (P.W. 10) show that accused No. 11 led the police party and the panchas to a water tap in the Pardhi Wada locality and dug out the axe blade which was lying buried under a stone. The report of the Serologist, Ex. 269, shows that human blood of 'A' group was detected on the axe blade. Taramati, according to Umaji's evidence, was assaulted with an H axe by accused No. 11. Her clothes, articles 142 and 143, were found to be stained with human blood of 'A' group. We see no infirmity in the Pancha's evidence and no substance in the counsel's contention that the discovery of the axe-blade was foisted on the accused.

The discovery of the axe blade stained with human blood of 'A' group sufficiently corroborates the evidence of Umaji as regards the part played by accused No. 11 in Taramati's murder. A

Before considering the case of accused No. 12, we would like to point out that there is satisfactory evidence to show the presence of accused Nos. 9 to 11 at or near the scene of offence some time before the incident. Dagdu (P.W. 5), Bhanudas (P.W. 14), Sitaram (P.W. 16), Narayan (P.W. 17), Baliram (P.W. 18) and Santram (P.W. 24) have deposed about the same either in regard to all of these accused or some of them. Their evidence has been examined with great care by the learned Sessions Judge and we agree with his assessment that except for Sant Ram, the other witnesses can be relied upon for affording corroboration to Umaji's evidence. B C

That leaves the case of accused No. 12 for consideration. It is alleged that he held Taramati from behind whereupon accused No. 11 gave axe-blows on her head. Taramati was just a girl of 9 and the allegation that accused No. 12 had to hold her from behind to enable accused No. 11 to assault her with an axe sounds inherently incredible. It is significant that some time before the occurrence, Umaji met accused Nos. 9, 10 and 11 near the scene of offence but not accused No. 12. The importance of this circumstance is twofold : Firstly, that accused No. 12 was not in the company of the other three at or about the time of the incident and secondly that Umaji's identification of the person who held Taramati, namely accused No. 12, becomes somewhat infirm. There was standing crop about five feet high between the *Mala* where Umaji was standing and the place where Taramati was held. Besides, the spot where Taramati was done to death was in a depression, which would further affect the witness's ability to identify the person who had held Taramati. After all, Umaji had but a fleeting glimpse of the incident and the chance of an error in identifying accused No. 12, who was not seen earlier in the company of accused Nos. 9 to 11, cannot fairly be excluded. D E

All the same, since Umaji has no particular reason to implicate accused No. 12 falsely and since the Courts below have concurrently accepted his evidence in regard to accused No. 12 also, we must examine carefully the strenuous submission made by Mr. Desai for the State that even as regards accused No. 12, Umaji's evidence is sufficiently corroborated. F

That corroboration consists of the discovery of an axe-handle, article 168, from the house of accused No. 12 on January 17, 1974. The Panchanama of recovery is Ex. 85-A which is proved by the Panch Mohd. Yusuf Bade Khan, P.W. 10. It is alleged that the axe-handle was produced by accused No. 12 from below the tin-sheet roof of his house in Pardhi Wada. The report of the serologist, Ex. 269, says that there was human blood of 'A' group on the axe-handle. G H

We find it impossible to place any reliance on the discovery of the axe-handle for the following reasons : Though accused No. 12 was

A arrested on January 11, 1974 his house was searched on January 7, 1974 in connection with the murders of Haribai and her daughters which had taken place on January 4, 1974. That search is borne out by the Panchanama, Ex. 221. On January 6, 1974 accused No. 12 figured in an identification parade which was arranged in order to ascertain if the Dog squad could afford assistance in fixing the identity of the culprits. The evidence of the Senior Dog Master, Ramchandra B (P.W. 52), shows that a female dog called Mala sniffed her suspicion at accused No. 12. With the clue provided by the Dog Squad on the 6th, the house of accused No. 12 was searched on the 7th. That house consists of one room only. The Panchanama shows that the axe-handle was not in any manner concealed under the tin-sheet. It was lying openly, visible to the naked eye, so that he who cared could easily see it. It is then strange that it was not found on the 7th C itself. There is also a serious discrepancy in the evidence of the two Panchas, Mohd. Yusuf, P.W. 10, and Sheikh Imam, P.W. 11, regarding the discovery. Whereas according to the former, accused No. 12 said that he had concealed the axe-handle below the tin-sheet of the roof, according to the latter the information which accused No. 12 gave was that he had kept the handle below a stone inside his house. Coupled with the circumstance which emerges from the evidence of D Panch Sheikh Imam that there is no door to the room from which the axe-handle was produced, the evidence in regard to the recovery of the axe-handle becomes manifestly suspect. These infirmities in the recovery of the axe-handle failed to evoke the attention of the High Court. The Sessions Court too missed their impact on the point at issue.

E The seizure of a blood-stained Dhoti from the person of accused No. 12 at the time of his arrest, even if the blood belonged to 'A' group, is not of a kind which, in the context of the various circumstances referred to above, can be accepted as safely of sufficiently corroborative of Umaji's evidence. This is particularly so because, at the very threshold, it is doubtful if Umaji could identify accused No. 12.

F

The evidence regarding the presence of accused No. 12 in the fields roundabout the scene of offence on the afternoon of the day of incident cannot connect him with the crime. And the retracted confession of the accused, like its counterparts, has to be excluded from consideration altogether because of the cavalier fashion in which the Sub-Divisional Magistrate recorded the various confessions.

G

Accused No. 12 is thus entitled to an acquittal for the reason that the prosecution has failed to prove its case against him beyond a reasonable doubt.

Learned counsel for accused Nos. 3, 9, 10 and 11 whose conviction under s. 302 read with s. 34 has been affirmed by us and who H stand sentenced to death, contend that the accused were not heard on the question of sentence and therefore the sentence is not according to law. It is urged that we should remand the appeal of accused Nos. 9, 10 and 11 to the High Court which sentenced them to death.

and accused No. 3's appeal to the Sessions Court which sentenced him to death, in order to enable these accused to make their contentions as to why they should not be sentenced to death even though they have been convicted under s. 302 of the Penal Code. In support of this argument reliance is placed on a decision of this Court in *Santa Singh* v. *State of Punjab*(1). A

In *Santa Singh*(1), the Sessions Judge, after pronouncing the judgment convicting the appellant for a double murder, did not give him opportunity to be heard on the question of sentence. He pronounced the appellant guilty of murder and, as a part of a single judgment, imposed the sentence of death. The High Court confirmed the conviction and the sentence of death. In appeal, it was held by this Court (Bhagwati and Fazal Ali, JJ) that the provisions of s. 235 of the Code of Criminal Procedure, 1973, which are clear and explicit, require that the Court must in the first instance deliver a judgment or acquitting the accused and if the accused be convicted, he must be given an opportunity to be heard in regard to the sentence. Holding that the provisions of s. 235 are mandatory in character, the Court set aside the sentence of death and remanded the case to the Sessions Court with the direction that it should pass an appropriate sentence after giving to the appellant an opportunity to be heard on the question of sentence. B C D

Section 235 of the Criminal Procedure Code, 1973 reads thus :

> "235(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. E
>
> (2). If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."

The imperative language of sub-section (2) leaves no room for doubt that after recording the finding of guilt and the order of conviction, the Court is under an obligation to hear the accused on the question of sentence unless it releases him on probation of good conduct or after admonition under s. 360. The right to be heard on the question of sentence has a beneficial purpose, for a variety of facts and considerations bearing on the sentence can, in the exercise of that right, be placed before the Court which the accused, prior to the enactment of the Code of 1973, had no opportunity to do. The social compulsions, the pressure of poverty, the retributive instinct to seek an extra-legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity—all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of s. 235(2) must, therefore, be obeyed in its letter and spirit. F G H

(1) [1976] 4 S.C.C. 190.

A But we are unable to read the judgment in *Santa Singh* (supra) as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused B makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on C affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court.

D

Bhagwati J. has observed in his judgment that care ought to be taken to ensure that the opportunity of a hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The material on which the accused proposes to rely may therefore, according to the learned Judge, be placed E before the Court by means of an affidavit. Fazal Ali, J., also observes that the courts must be vigilant to exercise proper control over their proceedings, that the accused must not be permitted to adopt dilatory tactics under the cover of the new right and that what s. 235(2) contemplates is a short and simple opportunity to place the necessary material before the Court. These observations show that for a proper and effective implementation of the provision contained in F s. 235(2), it is not always necessary to remand the matter to the court which has recorded the conviction. The fact that in *Santa Singh* (supra) this Court remanded the matter to the Sessions Court does not spell out ratio of the judgment to be that in every such case there has to be a remand. Remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious, though fair, disposal of cases.

G

After counsel for accused Nos. 3, 9, 10 and 11 raised an objection before us that the sentence of death was imposed upon the accused without hearing them as required by s. 235(2) of the code, H we granted to them liberty to produce before us such material as they desired and to make such contentions as they thought necessary on the question of sentence. Accordingly, counsel made their oral submissions before us on the question of sentence and they also filed the relevant material before us showing why we should not uphold the death sentence imposed on the accused.

That takes us to the question of sentence. For the offence under s. 302, it is no longer obligatory to impose the sentence of death. Prior to the amendment of s. 367(5) of the Code of Criminal Procedure, 1898 by Act 26 of 1955, the normal sentence for murder was death and the Court had to record its reasons for imposing the lesser sentence of life imprisonment. The obligation to record reasons for imposing the lesser penalty was deleted by Act 26 of 1955, so that Courts became free to award either the sentence of life imprisonment or the sentence of death, depending on the circumstances of each individual case. Section 354(3) of the Code of 1973 provides that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and in the case of sentence of death, the special reasons for awarding that sentence. The legislative history of the sentencing provisions and the explicit language of s. 354(3) show that capital punishment can be awarded for the offence of murder, only if there are special reasons for doing so. All murders are inhuman, some only more so than others.

Having considered the matter in all its aspects—penal, juristic and sociological—and having given our most anxious consideration to the problem, we are of the opinion that accused Nos. 3, 9, 10 and 11 deserve the extreme penalty of law and that there is no justification for interfering with the sentence of death imposed upon them.

Accused No. 3 put an end to four innocent lives, three small girls ten years of age and a woman in her thirties. Accused Nos. 9, 10 and 11 committed the murders of Haribai, her nine-year old daughter and her infant child. The victims had given no cause for the atrocities perpetrated on them. They were killed as a child kills flies. And the brutality accompanying the manner of killing defies an adequate description. The luring of small girls, the gagging, the cutting of their private parts, the ruthless defiling in order to prevent identification of the victims and the mysterious motive for the murders call for but one sentence. Nothing short of the death sentence can atone for such callous and calculated transgression of law. Morbid pity can have no place in the assessment of murders which, in many respects, will remain unparallelled in the annals of crime. Accordingly, we confirm the death sentence imposed on accused Nos. 3, 9, 10 and 11.

The overall result is as follows :

(1) We uphold the acquittal of accused Nos. 1 and 2 and dismiss Criminal Appeal No. 441 of 1976 filed by the State of Maharashtra. Both the two Accused who are in jail shall be released.

(2) We uphold the conviction of accused No. 3 under s. 302 read with s. 34 of the Penal Code and the sentence of death imposed upon him. Criminal Appeal No. 438 of 1976 filed by him is accordingly dismissed.

(3) We uphold the conviction of accused Nos. 9, 10 and 11 under s. 302 read with s. 34 of the Penal Code and

A the sentence of death imposed upon them. We acquit accused No 12 by giving him the benefit of doubt and direct that he shall be released. Criminal Appeal No. 437 of 1976 filed by accused Nos. 9 to 12 thus succeeds partly in so far as accused No. 12 is concerned and fails in so far as accused Nos. 9, 10 and 11 are concerned.

B Before concluding, we would like to make a few observations concerning the detection and investigation of these crimes. It is a matter of grave concern that the police were not able to obtain any clue whatsoever to the numerous murders which were committed so systematically in the small village of Manwat. The spate of those atrocities commenced with the murder of Gayabai on November 14, 1972 and ended with the murders of Haribai and her two daughters on January 4, 1974. C All along, a strong patrol of policemen was keeping vigil in the very locality in which most of the murders were committed. The evidence of Dy. S. P. Waghmare shows that apart from the mobile police, fixed-post patrols were deputed to keep a close watch on the activities of all and sundry in the area which was chosen by the murderers for their criminal activities. Haribai and her daughters were murdered under D the very nose of the policemen. Quite a few of them were on duty a few hundred yards away from the scene of occurrence and yet the culprits could escape with impunity. And it is astonishing that when the three dead bodies were lying in close proximity, the police with their trained hawk-sight could see only one. All this hardly does any credit to the efficiency and watchfulness of a system which in Maharashtra has won many encomiums. Eventually Providence, and perhaps E the police, persuaded Samindrabhai Pawar, accused No. 4, to make a confessional statement on December 28, 1973 and the wheels of a baffled machine started moving fast.

It would perhaps have been more conducive to greater efficiency if an unduly large number of senior police officers were not commissioned for the investigational work. No one seems to have assumed an overall responsibility for investigation and so many of them working together F spoiled the broth like so many cooks.

It is plain common-sense that suspects are seldom willing to furnish a quick and correct clue to the crimes for which they are arrested. A certain amount of coaxing and promising has inevitably to be done in order to persuade the accused to disclose at least the outlines of the crime. But the use of strong methods of investigation, apart from G raising problems concerning the observance of decency in public affairs and of human dignity, is fraught with the danger that the very process by which evidence is collected may become suspect and fail to inspire confidence. Ganpat, the approver, was driven to admit that he was tortured while in the lock-up and we have serious doubts whether the injury caused on his head was, as alleged by the police, self-inflicted. A witness called Ramchandra also admitted that while under interroga- H tion the police pulled out his pig-tail. We have resisted the failing which tempts even judicially trained minds to revolt against such methods and throw the entire case out of hand. But we must, with hopes for the future, utter a word of warning that just as crime does not pay

so shall it not pay to resort to torture of suspects and witnesses during the course of investigation. History shows that misuse of authority is a common human failing and, therefore, Courts must guard against all excesses. The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must, in the larger interests of justice, be nipped in the bud. A B

GOSWAMI, J.—I am in agreement with the judgment proposed by my brother Chandrachud which is a piece of conspicuous clarity after marshalling and compressing a mass of evidence. I also agree with the views expressed therein on the legal questions raised in these appeals. Even so I feel obliged to add a few lines. C

I would particularly emphasise that there is no mandatory direction for remanding any case in *Santa Singh* v. *The State of Punjab*(1) nor is remand the inevitable recipe of section 235(2) Code of Criminal Procedure, 1973. Whenever an appeal court finds that the mandate of section 235(2) Cr. P. C. for a hearing on sentence had not been complied with, it, at once, becomes the duty of the appeal court to offer to the accused an adequate opportunity to produce before it whatever materials he chooses in whatever reasonable way possible. Courts should avoid laws' delay and necessarily inconsequential remands when the accused can secure full benefit of section 235(2) Cr. P.C. even in the appeal court, in the High Court or even in this Court. We have unanimously adopted this very course in these appeals. D

Treasure-trove legend survives generations. There had been many casualties in honest exploits to the peaks of gold bars. Gold was not found. So was treasure-trove not located in spite of the notorious Manwat murders. E

The gruesome story revealed in these cases beggars description of the limit of human credulity, horrid avarice and unconcerned and heartless execution of evil ends. I am not on that. The final curtain, so far as legal process goes, is drawn. F

Conviction in these cases does no credit to the police, nor to the hoodwinking demonstration of flashy 'dog-squad'. Murders committed, one after the other in series, under the very nose of a publicised ring of a camping platoon of police personnel widely cordoning the entire scene of occurrence for months with check-posts, for recording names of passers-by, may secure banner in newspapers, but no laurels for the police. G

But for the blazing lust for life of the confessing approvers supplying the infrastructure for the prosecution case which, we find, is corroborated in material particulars by independent testimony so far as some of the appellants are concerned, there is much more to be desired in an investigation of such awe-inspiring cases. The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the H

(1) [1976] (4) SCC 190.

police investigation. The investigation does not reflect any imaginative drive on the part of the police in a crime of this magnitude.

To mention one item only, even Balabhau Lad, a close neighbouring relative of the deceased Haribai and master of Umaji, the star witness against accused 9 to 12, has not been produced in this case to corroborate the sudden and instant disappearance of Umaji for four days from the very scene of murder, being his master's field, by leaving his horse tethered therein. Next, having got blood stains in the articles produced by the accused there was no attempt to ascertain the blood group of the accused's family members. In fact accused No. 9 did tell the court that the blood stains in the exhibit were from his wife's injury from the axe. Again, accused No. 10 said that the blood stains on the exhibited clothes were from his child's bleeding nose. We have disbelieved the pleas of the accused but that does not redound to the credit of the quality of the investigation of these dastardly crimes.

It is distressing that when three murders took place on the 4th of January, 1974, and all the dead bodies were lying at the same field, only one dead body was located and the other two were not traced until next morning. If the murderers could escape from the barricaded area in broad day light by throwing dust in the eyes of the police, what would have happened if the other two dead bodies were removed during the night beyond trace ? Is this investigation with a 'dog-squad' at command ? A dog is its master's voice. Did the police play the true master ?

The police should remember that confession may not always be a short-cut to solution. Instead of trying to "start" from a confession they should strive to "arrive" at it. Else, when they are busy on this short route to success, good evidence may disappear due to inattention to the real clues. Once a confession is obtained, there is often flagging of zeal for a full and thorough investigation with a view to establish the case *de hors* the confession. It is often a sad experience to find that on the confession, later, being inadmissible for one reason or other the case founders in court.

It is an irony that a Sub-Divisional Magistrate holding executive charge of a Sub-Division was completely ignorant of the duties imposed on him under section 164, Code of Criminal Procedure and we had to reject the confessions. Under the new Code such powers are exercised by a Metropolitan or Judicial Magistrate. The pitfalls in recording confession may be so disastrous that it may be of immense value for the Magistrates to have some practical guidance from superior officers for properly discharging their function under section 164, Cr. P.C.

Even after conclusion of the trial in a heinous case of this magnitude, the police should be well-advised to pursue clues and for missing links to unearth the yet undiscovered guilty ones and should not rest satisfied with the result of these cases. There is yet room for a wider probe into men and matters in connection with these ghastly crimes.

Counsel drew our attention to a very disquieting feature in the attempt of the police to see that the accused did not get the assistance of the local Bar. The suggestion has of course been denied by the police officer. If there is any truth in this unholy move for denying proper defence to the accused, no matter how heinous the offence, it is highly obnoxious to the notions of fair play and all that justice stands for. Such ideas should be banished.

A

B

I hasten to add that the accused before us could not have been better defended as has been done by the three conscientious young counsel who impressed us with their industry and ability.

P.H.P.