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STATE OF U.P.

v.

BOOTA SINGH & OTHERS

August 22, 1978

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[S. MURTAZA FAZAL ALI AND P. N. SHINGHAL, JJ.]

Appeal against acquittal—Interference—Scope of—High Court misreading evidence, reversing judgment of Sessions Court—Important conclusions arrived at by Sessions Court not displaced—High Court overlooking important circumstances which fully prove the case.

C

Code of Criminal Procedure 1898—Sec. 288—Confession of accused—Use of—Corroboration by other independent evidence—Necessity of—Satisfaction and support in extrinsic evidence—Use of.

Identification Parade—Necessity of keeping accused baparda explained—Evidence of identification—When of weak character.

D

Three of the four accused persons were related to one another and the fourth was a friend. One of them entered into a deal for the purchase of land but found it difficult to finance the transaction. The prosecution alleged that all of them entered into a conspiracy to obtain money by means fair and foul and in pursuance of that they hit upon a plan to hire a taxi, take possession of it, do away with the driver and utilise the sale proceeds for payment of the purchase money. By giving a false reason they hired a taxi in Dehra Dun, drove it by a forest road and after killing the driver they changed the number plate and reached Bombay. When they tried to sell the taxi in Bombay a discrepancy was noticed in the chassis number whereupon respondent No. 1 made good his escape. Eventually respondent no. 1 was caught. He made a confessional statement before a magistrate detailing various parts played by each of the accused. The Session Judge convicted all the respondents under ss. 302 read with s. 34 IPC and also under s. 120B. All the accused were convicted of various other offences.

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On appeal the High Court reversed the judgment of the Sessions Judge and acquitted all the respondents on the ground that (i) since the confession of respondent No. 1 was not voluntary no reliance could be placed on it; (ii) the evidence of identification is a very weak type of evidence and should be closely scrutinised before reliance could be placed on it; and (iii) the statements of P. Ws. 5 and 7 before the trial court were inconsistent with their statements made before the committing magistrate.

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After special leave to appeal to this Court was granted to the State three respondents surrendered while one remained absconding. One of the three later died.

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HELD : (1) The High Court committed errors of law and fact on most vital points. It refused to draw inferences from proved facts and has laid down legally erroneous principles on such vital and crucial evidence as that of identification which is a valuable piece of evidence. On the question of identification it has laid down wrong law on the basis of which it failed to consider

that evidence. Regarding the confession of the respondent it has not made a correct approach which is to take the confession and then to find out how much of it is corroborated by other independent evidence. The confession was discarded on irrelevant grounds based on pure speculation. Normally this Court does not interfere with an order of acquittal passed by the High Court but in this case the High Court has, on the one hand misread the evidence and completely overlooked some of the important circumstances which proved the prosecution case and on the other while setting aside the judgment of the Session Judge has failed to displace the important reasons given and circumstances relied on by the Sessions Judge. There are substantial and compelling reasons for setting aside the order of acquittal passed in favour of respondent No. 1. [333 G-H, 334 A-D]

(2)(a) The High Court was not justified in rejecting the confession or doubting its veracity on the supposed belief that respondent No. 1 was in police custody from the time he was produced before the magistrate to the time when the statement was recorded. Before recording the confessional statement the magistrate put a number of questions to the accused to satisfy himself that the confession was being made voluntarily and without any coercion or undue influence. The respondent stated that he was making the confession to speak the truth. The magistrate took care to see that there was no police officer present in the court when the confession was recorded. The magistrate, after warning the respondent that he was not bound to make the statement, gave him more than three hours' time for reflection. The High Court's conjecture that the respondent must have been sent to police custody after being produced before the magistrate is contrary to the evidence of the magistrate. [305 H, 306 A-D]

(b) As the confession of the accused was a retracted one it could be acted upon only if it is substantially corroborated by independent circumstances. It is not necessary that a retracted confession should be corroborated in each material particular, it is sufficient that there is a general corroboration of the important incidents mentioned in the confession. [308 E]

In the instant case the circumstances proved by the prosecution not only amounted to a complete corroboration of the confession but provided additional circumstantial evidence against the respondent which are of a conclusive nature. [308 F]

(c) The High Court has made a wrong approach to the whole case by not taking the confessional statement first and then finding out whether there are other circumstances corroborating the various parts of the statement made in the confession. This may be due to the fact that the High Court found that the confession was not voluntary and, therefore, should be excluded from consideration. [305 E-F]

(d) In the confessional statement the respondent narrated the motive for the incident leading to the murder of the deceased and this has been clearly corroborated by the evidence of the vendor of the land. The finding of the High Court on the question of motive is against the weight of evidence on record. The trial court rightly pointed out that the prosecution had proved the motive for the offence by clear evidence. [309 H-310 B]

(e) The facts mentioned in the receipt of the taxi-stand fully corroborate the confessional statement of the respondent. The High Court rejected this important document mainly on the ground that it was not mentioned in the report filed with the police by the taxi-stand owner. If he did not mention

A in this report about the receipt as having been given by the respondent, that by itself would not throw suspicion on the authenticity of the receipt. Moreover, the report was not really the report of murder containing a detailed narration of all facts. The witnesses who identified the accused were independent witnesses and were not known to him nor did they bear any animus against him.

[310 F-G, 311 A-B, 311 G-H]

B (f) Although there is no direct corroboration of the actual assault on the deceased the circumstantial evidence admitted in the confession and corroborated by other evidence is a clear pointer to the fact that the deceased had accompanied the respondent from the place they hired the taxi to the place of murder. The respondents were last seen with the deceased before the murder. Taking the circumstances before and after the death of the deceased the murder could not be explained by any other reasonable hypothesis than the guilt of the respondent. [324 B-C]

C (g) There is enough evidence to show that the respondent deliberately changed the number plate of the car to conceal its identity and this was done after the deceased had been put to death. This fully corroborates his statement made in his confession. This important document which demonstrates the incriminating conduct of the respondent, apart from corroborating his statement in the confessional statement, has been completely overlooked by the High Court. [325 C]

D (h) The High Court has taken an artificial and incorrect view in holding that the confession was completely disproved by the medical evidence. The statement of respondent No. 1 regarding the death of the deceased was the only manner in which he was murdered. The Sessions Judge has rightly explained that since only two shots were fired it may be that no shot hit the bones but remained in the flesh and no trace could be found because the flesh had peeled off. Secondly the postmortem report revealed that the head was severed from the body and this could have been only possible if the injury was inflicted by a gandasa. Here too since the flesh had peeled off no trace of the injury could be found. The skeleton had been identified by good and cogent evidence. This finding of the Sessions Judge had not been displaced by the High Court.

[330 E-H, 331 A-B]

F (i) The dead body had been found at the instance of one of the accused and this evidence is clearly admissible under s. 27 of the Evidence Act. This has been proved by independent witnesses. This clearly established the identity of the corpus delicti. [331 E, G]

G (3) The High Court was wrong in laying down a universal rule of application that the evidence of identification is a weak type of evidence. Where a witness correctly identifies the accused at a test identification parade held by a magistrate after observing all the essential formalities and taking the necessary precautions and also identifies the accused in court, the evidence of identification can be believed unless the evidence of the witness suffers from some other infirmity. The evidence of identification becomes strong if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time in broad daylight. [317 C, 318 C-D]

H In the present case the respondent's confession was proved by the evidence of witnesses who saw him at the taxi stand for quite some time. These witnesses were in a position to notice the features of the respondent as closely as possible. Their evidence fully corroborates the confessional statement of the respondent. [318 E-F]

Budh Sen & Anr. v. State of U.P. AIR 1970 SC 1321 explained. A

Ramanathan v. State of Tamil Nadu, [1978] 3 S.C.R. 694, followed.

State of Rajasthan v. Ravitha, AIR 1962 Raj. 78 FB approved.

Dhokal Singh & Anr. v. The State, ILR (1953) 3 Raj. 762 disapproved. B

(4) It is well-established that where a person makes a statement before the trial court which is inconsistent with his statement made before the committing magistrate, it is unsafe to place implicit reliance on his evidence. Before a judge decides to accept the evidence brought in under s. 288 of the Code of Criminal Procedure as true and reliable he has to satisfy himself that this is really so. This satisfaction in most cases can come in only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. But where even without any extrinsic evidence the judge is satisfied that the evidence is true and can be safely relied upon, the Judge will be failing in his duty in not doing so. [321 A-E] C

In the instant case the evidence of P.W. 5 and P.W. 7 fully supported the prosecution case that the accused were seen in a hotel. P.W. 5 categorically stated that what he had stated before the committing court was true and has thus certified that what he stated in the trial court was not the correct version. In his confession statement respondent No. 1 had stated that he, along with the other accused, had taken food in a hotel. Thus there are cogent reason and extrinsic circumstances to lend support to the inference that the statements given by these two witnesses before the committing magistrate were in fact true and correct and the Sessions Judge therefore was right in relying on those statements. On the other hand while rejecting their statements the High Court made no effort to find out whether the prior statements made by them before the committing court was in fact true having regard to the facts and circumstances of the case. The High Court was clearly in error in rejecting the evidence of these two witnesses. [321 F-H, 322 C-E] D

Shranappa Mutyappal Halke v. State of Maharashtra, [1964] 4 SCR 589 followed. E

Harprasad & Ors. v. State of M.P. [1971] 3 SCC 455 applied. F

(5) According to the confessional statement of respondent No. 1, respondent No. 2 was not present in the forest at the time of murder. Nor was there any evidence to show that he was with the respondent No. 1 later. There is some force in the contention that since at the time when the respondent was identified at the parade he had shaved off his beard and that it would be difficult for the witnesses to identify such a person. The possibility of mistake in identification cannot be excluded. Even the trial court has not accepted the evidence of identification against him. In all probability respondent No. 2 was a co-conspirator but it is unsafe to convict him when he had been acquitted by the High Court. [332 E-G] G

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A. CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 32 of 1972.

Appeal by Special Leave from the Judgment and Order dated 29-9-1970 of the Allahabad High Court in Criminal Appeal No. 1511/69.

B *D. P. Uniyal and O. P. Rana* for the Appellant.

A. N. Mulla, Yogeswar Pd., S. K. Bagga and Mrs. S. Bagga for the Respondents.

The Judgment of the Court was delivered by

C FAZAL ALI, J.—This appeal by special leave is directed against the order of the Allahabad High Court dated 29th September, 1970 by which the High Court acquitted the respondents of the charges framed against them by the Sessions Judge, Dehra Dun.

D The Sessions Judge, Dehra Dun by his order dated 16th July, 1969 convicted the respondents Boota Singh, Asa Singh, Trilok Singh and Raghubir Singh under section 302 read with section 34 I.P.C. and also under section 120-B I.P.C. Boota Singh, Trilok Singh and Asa Singh were sentenced to death under section 302 read with section 34 and section 120-B I.P.C. while Raghubir Singh was sentenced to imprisonment for life for the offence under section 302 read with section 34 and section 120-B I.P.C. The four respondents mentioned above were also convicted under section 364 read with section 34 and section 120-B I.P.C. and section 394 read with section 34 and section 120-B I.P.C. and each of them were sentenced to rigorous imprisonment for seven years under each count. Boota Singh was further convicted of the offence under section 419, I.P.C. and section 471 read with section 465 I.P.C. and section 471 read with section 466 I.P.C. and sentenced to rigorous imprisonment for two years, one year and four years respectively. As three of the respondents, viz., Boota Singh, Trilok Singh and Asa Singh were sentenced to death, the Sessions Judge made a reference to the High Court of Allahabad for confirmation of the sentence of death. The respondents who have been convicted by the Sessions Judge also filed appeals against their convictions and sentences.

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G The appeal was heard by a Division Bench of the Allahabad High Court which reversed the judgment of the learned Sessions Judge and acquitted all the respondents of the charges framed against them.

Thereafter, the State of U.P. preferred an appeal to this Court and after special leave was granted by this Court the appeal has been placed before us for hearing. At the time when the special leave was granted, the Court issued non-bailable warrants against the four respondents in pursuance of which Boota Singh, Trilok Singh and Raghubir Singh surrendered but Asa Singh remained absconding.

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During the pendency of the appeal the respondent Trilok Singh died and it is, therefore, manifest that the appeal so far as this respondent is concerned has abated. Before we took up the appeal for hearing we segregated the appeal of Asa Singh as he was absconding and directed that the appeal against other respondents will be heard but the appeal of Asa Singh will be kept pending.

Briefly the prosecution case may be summarised as follows : Respondent Asa Singh and his brother Bal Singh had entered into an agreement with Ram Lal P.W. 16 and his father Kaka Ram for purchasing 68 bighas of land at the rate of Rs. 225 per bigha and an earnest money of Rs. 3200/- had been paid by Asa Singh and Bal Singh at the time of the agreement and the balance of the amount was agreed to be paid on the 25th December, 1963. The respondent Trilok Singh had accompanied Asa Singh and the latter went to Ram Lal for negotiating the aforesaid purchase. The prosecution alleged that Asa Singh and Boota Singh respondents were first cousins and were residents of Chhidarwala. Boota Singh was also related to Trilok Singh inasmuch as Trilok Singh's sister is wedded to the cousin of Boota Singh. After the agreement, Asa Singh appears to have found some difficulties in arranging for the money to be paid to the vendee P.W. 16 Ram Lal and under the terms of the agreement if the money was not paid by the due date the entire amount of earnest money of Rs. 3200/- was liable to be forfeited. In such a situation the four respondents entered into a conspiracy to obtain money by means fair or foul. They accordingly hit upon a plan to obtain a taxi on hire and after taking possession of it to do away with the driver and sell the taxi at some other place and utilise the consideration of the sale for payment to Ram Lal towards the balance of the purchase money. In execution of this common plan Asa Singh remained at Doiwala while Boota Singh, Trilok Singh and Raghubir Singh went to Dehra Dun and contacted Inder Singh P.W. 2 at Punjab Taxi Service, Dehra Dun. Trilok Singh and Raghubir Singh remained standing at the petrol pump a few paces away from the office of the Punjab Taxi Service. Boota Singh respondent went in and approached Inder Singh P.W. 2 and introduced himself as K. Sharma of the Indian Army and gave out that he was on a round for recruiting girls for the military and for this purpose he needed the taxi on hire. The bargain was finally struck and Inder Singh P.W. 2 agreed to provide Boota Singh with his taxi at the rate of Rs. 30 per day. Boota Singh thereafter executed a document Ex. Ka-4 in proof of the receipt of the car and paid Rs. 50/- as advance. Lal Singh, the deceased son of Inder Singh was the driver of the taxi and in fact the virtual owner of the taxi. The taxi given to Boota Singh bore number UPS-6679. Inder Singh directed Lal Singh to take the taxi

A with Boota Singh and his companions. Raghubir Singh and Trilok Singh boarded the taxi when it reached the petrol pump. From Dehra Dun the taxi came to Doiwala where the party of Boota Singh was joined by Asa Singh. Thereafter all the members of the party took their meals at the hotel of Khem Singh P.W. 5 and Boota Singh had purchased a cake of soap from the shop of Jaidev Singh P.W. 7. Thus

B all the four respondents were last seen together at Doiwala by P.W.s 5 and 7. From there the respondents proceeded to Chhidarwala by forest road and after crossing some forest barriers ultimately reached Chiddarwala where it was decided to murder Lal Singh and take complete possession of the taxi. In pursuance of this conspiracy Lal Singh

C was taken to the forest and killed by the respondents. According to the prosecution, as disclosed in the confession of respondent Boota Singh Ex. Ka-81, Trilok Singh first fired two shots at the deceased and then Asa Singh dealt a gandasa blow on the neck of the deceased.

After having accomplished this nefarious feat the respondents took the precaution of removing the number plate of the car and substituted

D a new plate bearing number UPM-3236. Thereafter, the respondents Boota Singh and Raghubir Singh went to Ambala where they tried to get the car with the new number insured, and finally landed at Bombay and negotiated for the sale of the car through a broker and in this connection contacted P.W. 62 Raja Ram Narain Rane who offered to

E buy the car at Rs. 16,000 out of which a sum of Rs. 500 was to be given to Raja Ram Narain Rane P.W. 62. This happened on 16th December, 1963. At the time of negotiations with Raja Ram Narain Rane, Boota Singh gave out his name as J.P. Singh and represented that he was son of S.P., Bareilly. It appears however that some discrepancy in the chassis number and the number of the engine was found

F out which raised a serious suspicion regarding the genuineness of the car and the matter was reported to the C.I.D. by P.W. 62. On the 18th February 1963 respondent Boota Singh along with Anand Singh P.W. 9 went to the office of the R.T.O. at Bombay and contacted P.W. 35 Rati Lal Chhotu Bhai Desai who was a Motor Vehicles Inspector and who was shown various papers by Boota Singh. Desai then saw the

G car and discovered some tampering with the chassis number. The papers were, therefore, placed before the Police Officer and Boota Singh sensing some trouble made good his escape.

Meanwhile as Lal Singh did not return for quite a number of days, his brother Harcharan Singh got worried and filed a missing report

H before the Police Station Dalanwala, district Dehra Dun on 31st December, 1963 wherein he expressed his apprehension that the person who had hired the taxi may have killed Lal Singh and driven away the

car. This report was treated by the Police as F.I.R. and investigation was started in the course of which the blanket of deceased Lal Singh was recovered from the forest and the respondent Boota Singh soon after his arrest made the confession Ex. Ka-81 before a Magistrate making a clean breast of the whole affair. Subsequently, the respondents were identified by some of the witnesses at T.I. parades held at Nainital and Dehra Dun. After the usual investigation, the Police submitted a charge against all the four respondents on the basis of which they were committed to the Court of Sessions and convicted and sentenced as indicated above.

The central evidence against the respondents consists of the confessional statement made by Boota Singh on 16th March, 1964 before Mr. M. L. Sharma, Magistrate First-class who has been examined as P.W. 23 and in the confession Boota Singh appears to have made a clean breast of the entire story detailing the various parts played by him and his other companions. The confession was sought to be corroborated by a large number of circumstances proved by the prosecution at the trial and which will be discussed hereafter. In fact, the motive for the murder of the deceased has been clearly indicated in the confession and was also corroborated by the oral evidence led by the prosecution as also the statement of Respondent Asa Singh recorded under section 342 of the Code of Criminal Procedure.

The High Court does not appear to have made a correct approach to the present case inasmuch as it first tried to deal with the various circumstances which went to corroborate the confession and dealt with the confession in the last and held that as the confession was not voluntary no reliance could be placed on the same. We should have expected the High Court to have dealt with the confession first because that was the sheet anchor of the prosecution case. The other circumstantial evidence adduced by the prosecution went to corroborate the important facts and incidents mentioned in the confession. We have carefully perused the judgment of the trial Judge and the High Court and we are constrained to observe that the High Court has neither marshalled the evidence correctly nor has it considered the effect of some of the most important and vital circumstances which clinched some of the basic issues arising in the case. A major part of the judgment of the High Court is based on pure speculations and some of the reasons given by the High Court for rejecting the prosecution evidence are based on conjectures and surmises.

We would, therefore, like to start with the confession of respondent Boota Singh which is the pivot of the prosecution case. It would appear that before recording the confessional statement of the respon-

A dent Boota Singh the Magistrate had put a number of questions to satisfy himself that the confession was being made voluntarily and without any coercion or undue influence. The respondent Boota Singh on being asked as to why he was making the confession, clearly stated that he was doing so because he wanted to speak the truth. Boota Singh further testified that he was in police custody only for two days

B before making the confession and where his treatment was good. The Magistrate also took care to see that there was no police officer present in the court when the confession was recorded. In his deposition, the Magistrate stated that Boota Singh was produced before him at 1.30 p.m. on the 16th March and thereafter having warned him he sent the respondent back in court custody and recorded the statement

C at about 4.45 p.m. Thus, the respondent Boota Singh was given more than three hours for reflection. The High Court conjectures that the respondent Boota Singh must have been sent to police custody after being produced before the Magistrate on 16th March at 1.30 p.m. This finding of the High Court is contrary to the evidence of the Magistrate who clearly deposed thus :—

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“At the time when the statement was recorded, the accused was produced by the Court Moharrir. No Sub-Inspector was present there. There was no constable as well. When the Court Moharrir came with the accused the accused was already in handcuffs. I got the same removed when he came inside. The Moharrir went outside with the handcuffs”.

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This statement clearly shows that after 1.30 p.m. respondent Boota Singh was in the custody of the Court Moharrir and it was from his custody that the respondent Boota Singh was produced before the Magistrate at 4.45 p.m. for recording the confession. For these reasons, therefore, the High Court was not justified in rejecting the confession or doubting its veracity on the supposed belief that the respondent Boota Singh was in police custody from the time he was produced before the Magistrate to the time when the statement was recorded.

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Another ground on which the High Court rejected the confession was that the respondent Boota Singh was taken by K. N. Sharma, S.I. in police custody from 10-3-64 to 12-3-64 and the High Court thought that this period must have been utilised for coercing the respondent Boota Singh to make a confession which he ultimately made four days later.

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The High Court further found that Vikram Singh P.W. 59 interrogated the respondent Boota Singh as far back as 9-1-1964 and it is not explained by the prosecution as to why there was a delay of two months on the part of the respondent Boota Singh for making the con-

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fessional statement. The High Court further found that immediately after the S.I. sent the respondent Boota Singh to jail custody on 12-3-64, he submitted a report for the confession of the respondent being recorded which throws doubt on the voluntary nature of the confession. The High Court further conjectured that from these circumstances a reasonable inference can be drawn that third degree methods must have been used by the police. With very great respect we are constrained to say that the High Court indulged in pure speculation on this aspect of the matter. There is absolutely nothing on record to show that the respondent Boota Singh was tortured or beaten while in police custody. In fact, D.W. 1 N. S. David, Assistant Jailor District Jail Dehra Dun who was examined on behalf of the defence categorically stated that on 12-3-1964 K. N. Sharma, S.I. admitted the respondent Boota Singh in jail. The witness testified that at the time when he was admitted to jail he had no injury on his person at that time. The witness further states that there was an entry in the relevant registers to show that Boota Singh was sent to the Court on 16-3-1964 and there was no injury on the person of Boota Singh when he was sent to Court. Furthermore, on his return from court to jail, there was also no entry with respect to any injury on his person. This circumstance, therefore, completely rules out the possibility of Boota Singh having been assaulted, beaten or tortured by the police while in their custody. Moreover, the High Court completely overlooked a very important fact which went to show that the confessional statement was true and voluntary. The respondent Boota Singh in his statement under section 342 Cr. P.C. before the committing Magistrate which is Exhibit Ka. 113 in answer to question No. 22 stated thus :—

“Bikram Singh, Sub-Inspector and Kundan Lal Sharma, C.I.D. Inspector, took us to P.S. Dalanwala and locked up us separately from each other. They beat me severely and pressed and threatened me that if I did not make a statement as desired by them, they would kill me.”

“There they beat me to unconsciousness and then brought me and then pressed me to make a statement. I was not at all in my senses, when they brought me back to the lock-up, the court had departed.”

This statement was completely falsified by the circumstances indicated above yet Boota Singh gave a complete go by to this plea taken by him before the committing Magistrate and in his statement before the Sessions Judge he categorically stated that he made no statement before the Magistrate, but his signature was taken on a blank paper which was

A converted into a confession. In answer to question No. 21 regarding the confession having been read out to the respondent Boota Singh, he stated thus :—

“No I did not make any statement. He obtained my signature on a blank paper”

B Thus, the two statements were wholly inconsistent with each other and conclusively show that the stand taken by the respondent which differed from court to court was absolutely false and incredible. This circumstance goes a long way to demolish the case of the respondent Boota Singh that the confession was extorted. We are sure that if the High Court had noticed this glaring inconsistency in the statement of the

C Respondent regarding the manner in which the confession was made it would not have thrown out the confession as it did. On the other hand, we have carefully perused the confession of the respondent which seems to have a ring of truth in it and in which the respondent has in a very straight-forward manner narrated the various incidents in their logical sequence. The Magistrate has also testified on oath that

D he was fully satisfied that the statement of the respondent Boota Singh was true and voluntary. The learned Sessions Judge after considering the circumstances gave a clear finding that the confession was true and voluntary and there was no reason to distrust it. The High Court was, therefore, not justified in brushing aside the well reasoned finding of

E the Session Judge on this point merely on the basis of speculation and the circumstances which were in fact not proved. As however the confession was a retracted one it could be acted upon only if substantially corroborated by independent circumstances. It is not necessary that a retracted confession should be corroborated in each material particular, but it is sufficient that there is a general corroboration of the

F important incidents mentioned in the confession. In the instant case, we find that the circumstances proved by the prosecution not only amount to a complete corroboration of the confession but provide additional circumstantial evidence against the respondent which are of a conclusive nature. We would now deal with the confession in the light of the observations made above.

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To begin with, Boota Singh states in his confession that he was a resident of Churkana in the District of Sheikhpur and at the relevant time he was residing at Kichha in the District of Nainital. Asa Singh and Trilok Singh were cousins, the sons of Chacha and Tau of each other and live together at Chhiddewala. The sister of Trilok Singh

H was married to Piara Singh, the respondent's father's sister's son at village Moonak, as a result of which Asa Singh and Trilok Singh used to visit the respondent at Kichha off and on. The respondent then goes

on to state that Trilok Singh wanted to purchase land at Chidderwala and had paid Rs. 1200/- as earnest money to Hans Raj. The whole transaction was for Rs. 16,000/- or Rs. 17,000/-, but as the purchaser was short of money. Asa Singh, Trilok Singh, Raghubir Singh and Gopi Goojar along with Boota Singh conspired together to bring some taxi from Dehra Dun and sell the same, so that the balance of the consideration money for the land might be paid and the sale-deed got registered. This really constituted the motive for the incident leading to the murder of the deceased, Lal Singh. The gist of the motive mentioned in the confession is clearly corroborated by the evidence of P.W. 16 Ram Lal who has deposed that during the time of the occurrence Asa Singh and his brother Bal Singh wanted to purchase his land and the transaction was settled at the rate of Rs. 225 per bigha, and 68 bighas of land were to be sold. The purchasers had given an advance of Rs. 3200/- which was to be forfeited if the balance of the amount was not paid. The witness further stated that as the balance of the amount was eventually not paid, the vendor did not deliver possession of the land. Thus, shorn of the details Ram Lal corroborates the statement of the respondent Boota Singh in the confession regarding the transaction, whether the earnest money was Rs. 1600/- or the consideration was more than Rs. 16,000 is a matter of detail on which even if there is some discrepancy that will not put the prosecution case out of court, so far as the motive is concerned. It may be mentioned here that the Respondent Asa Singh in his statement before the Sessions Court admitted the purchase of the land from Ram Lal and merely denied the knowledge as to whether Rs. 3200/- had been paid as earnest money. The respondent Asa Singh's statement that the land was to be purchased by Bal Singh and not by him really makes no difference as Ram Lal who was admittedly the purchaser was an independent witness and he testified on oath to the transaction relating to the sale-deed which provided the immediate motive for the murder. The High Court seems to have brushed aside the evidence of Ram Lal merely on the ground that there was no documentary evidence to show that there was any negotiation between the parties before the sale-deed was executed and held that the evidence of Ram Lal was not sufficient proof of the fact that Asa Singh was in any manner concerned with the land purchased by Bal Singh. In coming to this finding the High Court completely overlooked the fact that the nature of the transaction was clearly mentioned in the confession which has been held by us to be true and voluntary. Once the motive mentioned in the confession was corroborated by an independent witness like P.W. 16 Ram Lal whose evidence was and could not be disbelieved by the High Court, that was sufficient to corroborate the

- A** part of the confession which related to motive. The finding of the High Court on the question of motive appears to be against the weight of the evidence on the record. The trial court rightly pointed out that the prosecution had proved the motive for the offence by clear evidence.
- B** The next circumstance mentioned in the confession was that on 8th December, 1963 Asa Singh, Trilok Singh, Raghubir Singh, Gopi Goojar and respondent Boota Singh started in the tractor of Asa Singh and on reaching Doiwala Asa Singh and Gopi stopped there but the other three, namely, Trilok Singh, Raghubir Singh and Boota Singh proceeded to Dehra Dun by bus. Boota Singh went to the Punjab Taxi Stand and had a talk with Inder Singh for hiring a taxi and was ultimately successful in persuading Inder Singh to give the taxi to him on hire at the rate of Rs. 30/- per day. The respondent further mentioned in the confession that he paid an advance of Rs. 50/- and gave a receipt to Inder Singh. Thereafter, three of them proceeded to Doiwala in the taxi hired by Boota Singh which was driven by the deceased Lal Singh who was the son of Inder Singh. This part of the confessional statement is fully corroborated not only by oral but also by documentary evidence. In the first place, there is Exhibit Ka-4 which is a receipt granted by the respondent Boota Singh to Inder Singh for the advance of Rs. 50/- which he had paid to Inder Singh for hiring the taxi. The receipt appears to have been signed by the respondent as K. Sharma. The signature of the Respondent was sent to the expert along with his admitted specimen signatures and the expert P.W. 32 Shiv Ram Singh found that it completely tallied with the signature of the respondent Boota Singh. The expert had marked the signature of the respondent Boota Singh at Exhibit Ka-4 as S-3894. Thus, the facts mentioned in the receipt fully corroborate the statement of the respondent Boota Singh mentioned above and the fact that the signature of the respondent Boota Singh tallied with the signature which he had made on this document is an intrinsic proof of the genuineness of Exhibit Ka-4. The High Court seems to have rejected this important document mainly on the ground that it was not mentioned in the report filed by P.W. 1 Harcharan Singh, brother of the deceased who had lodged a written report at the Police Station Dalanwala, Dehra Dun stating therein that the respondent had hired the taxi at the rate of Rs. 30/- per day on the ground that he had to visit several places like Hardwar, Roorkee, Saharanpur, Meerut, Moradabad, Mathura, Brindaban, Aligarh, Agra etc. The description of the car is given in the report and the witness has expressed the apprehension that the respondent may have killed the driver and driven away the car. By the time the report was lodged Harcharan Singh was not in possession
- C**
- D**
- E**
- F**
- G**
- H**

of full facts, and therefore, he gave a very brief report. If he did not mention the receipt given by the respondent in this report that by itself would not throw any suspicion on the authenticity of the receipt more particularly when the conclusive circumstance that the receipt contained the signature of the respondent as found by the expert had been established. Moreover, the report was not really the report of murder containing a detailed narration of the facts. The brother of the deceased was naturally upset because the taxi having been taken on the 8th December had not returned for 23 days but he did not know what had happened. In these circumstances, there was no occasion for Harcharan Singh to mention every possible detail in this report. Furthermore, what the High Court completely overlooked was that the respondent Boota Singh himself clearly mentioned in his confession that he had paid an advance of Rs. 50/- and executed a receipt.

Apart from this, there is the oral evidence of P.W. 2 Inder Singh, P.W. 8. Pritam Singh and P.W. 14 Jagir Singh that the respondent had approached them for hiring the taxi and he himself executed the receipt Exhibit Ka-4 and affixed his signature in their presence. The respondent had given out his name as one K. Sharma. Apart from the question as to whether these witnesses correctly identified the respondent or not, there was sufficient proof of the execution of Exhibit Ka-4. For these reasons, therefore, we are not in a position to support the finding of the High Court that Exhibit Ka-4 was not a genuine document. Thus, Exhibit Ka-4 being proved must be held to the strongest possible circumstance to corroborate the confession of Boota Singh regarding the first stage of the prosecution case, namely, the hiring of the taxi.

Apart from Exhibit Ka-4 there is independent and reliable evidence to show that Boota Singh and others had approached P.W. 2 Inder Singh for giving the taxi on hire to respondent Boota Singh and the deal was struck as a result of which Rs. 50/- was paid in advance. In this connection, the witnesses examined by the prosecution are P.W. 2 Inder Singh, P.W. 8 Pritam Singh and P.W. 14 Jagir Singh. At a T.I. parade held on 9-3-1964 at Dehra Dun Boota Singh was identified by P.W. 2 Inder Singh and P.W. 14 Jagir Singh as the person who had approached him for taking the taxi on hire. At the same parade the respondent Trilok Singh was identified by P.W. 8 Pritam Singh and P.W. 14 Jagir Singh. All these witnesses were undoubtedly independent witnesses and were not known to Boota Singh at all, nor they bore any animus against him. There was thus no reason for them to depose falsely against the respondents.

A P.W. 2 Inder Singh deposes that on 9-12-63 while he was in his office along with Pritam Singh and Jagir Singh an unbearded gentleman came to him at about 4 to 4.30 p.m. and represented that he wanted to have a taxi car on hire. The witness goes on to say that the driver of the car was his son Lal Singh the deceased and the number of the car was UPS-6679 and it was of Fiat make. The respondent Boota Singh B whom the witness identified later at a T.I. parade settled the hiring charges at Rs. 30 per day and paid an advance of Rs. 50/-. The respondent further gave his name as K. Sharma and wanted the taxi for 20 days. The witness further stated that apart from the respondent Boota Singh who masqueraded as one K. Sharma there were two more Sardars near the petrol pump where the car was standing. To the same effect is the evidence of P.W. 14 Jagir Singh and P.W. 2, Pritam Singh. C The learned Sessions Judge has carefully considered the evidence of these witnesses and has accepted the same.

D The High Court appears to have brushed aside the evidence of these independent witnesses on trivial and speculative grounds. In the first place, the High Court found that there were tell tale circumstances in the case which did not exclude the possibility of the respondent Boota Singh and others having been shown to the witnesses at police station Moonak and Dalanwala before the T.I. parade was held at Dehra Dun. The circumstances relied upon by the High Court may be summarised thus : P.W. 20 Sri Ram Bajaj admits that he had arrested E Boota Singh and Trilok Singh at Moonak and kept both of them locked up at Police Station Moonak.

F P.W. 59 Vikram Singh deposes as follows :—"I found Boota Singh and Trilok Singh at P.S. Moonak. *They had been under custody of the Punjab Police and they were Bapurdah*". (Emphasis supplied).

G On the basis of the evidence of these witnesses the High Court suspected that the respondents must have been shown to the witnesses at Police Station Moonak. In coming to this finding, however, the High Court completely overlooked the evidence of these very witnesses which completely excluded the possibility of the respondent having been shown to the witnesses. P.W. 20 who had arrested Boota Singh and Trilok Singh categorically stated thus :—

H "I arrested Boota Singh and Trilok Singh accused at Moonak in connection with that case. *I made them Bapurdah and told them that they were to be identified. I shut both of them at P.S. Moonak in a Bapurdah state*". (Emphasis ours).

The evidence of these two witnesses clearly shows that every possible precaution was taken to keep the respondent Bapurdah throughout and even at the Police Station Moonak so that the respondent may not be able to see the witnesses. Similarly, P.W. 59 Vikram Singh clearly stated that although he found Boota Singh and Trilok Singh at P.S. Moonak they were in police custody and they were Bapurdah. In the face of this clear and specific evidence where was the question for the High Court to conjecture or speculate that the witness must have been shown to the respondent at the police station Moonak. The High Court ought to have decided this question on the direct evidence of the witnesses concerned rather than on pure surmises and conjectures.

The High Court particularly relied on the evidence of P.W. 3 Amir Ahmad who had stated that he had arrested the respondent Asa Singh on 6-1-1964 and taken him to police station Dalanwala. The witness goes on to state that on 8-1-1964 the Station Officer took him to Moonak and he went along with him. The witness further stated that there were three Sardars with them and one of them was known as Gyani and there were two drivers, one of them was Jagir Singh and the other was Pritam Singh. Thus, the inference the High Court draws from this evidence is that the respondent Asa Singh was shown to the witnesses Pritam Singh and Jagir Singh who were brought together from Dalanwala to Moonak.

The trial Court discussed the evidence of this witness and gave cogent reasons for rejecting the testimony of the witness particularly when the witness was a disgruntled one having been suspended on a criminal charge and therefore, would be ready to oblige the defence. Moreover, the Sessions Judge while criticising the evidence of this witness observed as follows :—

"The defence examined Amir Ahmad (P.W. 3) who was posted as a Head Constable, Karanpur Outpost, Dehra Dun. He stated that Asa Singh was arrested by him on 6-1-64 near Roadways Stand, Dehradun and that he took him to P.S. Dalanwala. In cross-examination he admitted that he did not make any entry as to the arrest of Asa Singh on 6-1-64 in the General Diary, that he left the accused at the Police Station without getting any entry made because it was the work of the Officers. He admitted that he used to get entries of arrival and departure of accused made at the Police Station and he signed the same. He was unable to explain why he did not adopt the same procedure in this instance. The alleged explanation that he did not get an entry made because he had no

- A warrant does not appeal to reason He also admitted that he was being prosecuted for murder by Meerut C.I.D. and that Meerut C.I.D. was responsible for his arrest. He has, therefore, a grudge with the Meerut C.I.D. He did not know Asa Singh before he arrested him. He had no warrant for his arrest. He was not given any direction for the arrest of the accused. He merely knew that the Station Officer had left for his arrest. In the circumstances it was not expected of him to have arrested accused Asa Singh. The entire statement of the witness is untrustworthy and unconvincing."
- C None of the reasons given by the learned Sessions Judge appear to have been displaced by the High Court and were not even noticed by it. In view of the admission made by this witness it is extremely doubtful if the witness in fact had arrested Asa Singh and his entire story appears to be a pure fabrication. For these reasons, therefore, the High Court was not at all justified in relying on the evidence of P.W. 3 at its face value.

Reliance was also placed on the evidence of P.W. 27 Mahendra Singh who states thus :

- E "On 6-1-64 S.O. Vikram Singh Head Constable Amir Ahmad, Constables Raja Ram, Pritam Singh, Tej Ram, Mathma Singh and I reached Manak. There was none from the public from us. We started from Dehradun on 8-1-64. I do not remember the time when we started from there. We reached Mannak in the night of 8th and 9th. We did not go to Police Station Manak. We stayed at Mannak in the night of 8th and 9th. We had gone there to arrest Boota Singh and "others".

- G The High Court appears to have made much of the alleged admission of the witness in the case that P.W. 3 Pritam Singh had accompanied the police party to Moonak where Boota Singh was arrested, and therefore, there is a possibility that Pritam Singh might have been shown to Boota Singh. In the first place, the witness says nothing of the sort and the High Court appears to have misread the evidence of this witness. The words used by the witness are "*Constables Raja Ram, Pritam Singh, Tej Ram, Mathma Singh and I reached Mannak*" which clearly indicate that he refers to Pritam Singh Constable and not to Pritam Singh witness. The witness has further clarified this fact by making a categorical statement "*that there was none from the public with us.*" Merely because there was a constable by the name of Pritam Singh it could not be inferred that P.W. 27 had referred to the witness

and not to the constable. Even so, the evidence discussed above clearly shows that the respondents were kept Bapurdah and concealed from the view of the witnesses. We are, therefore, unable to agree with the finding of the High Court on this point which is not based on proper appreciation of the evidence of P.W. 27.

Apart from this in a recent judgment in *Ramanathan v. State of Tamil Nadu*⁽¹⁾ this Court approving the decision of the Full Bench of the Rajasthan High Court in *State of Rajasthan v. Ranjita*⁽²⁾ and disapproving an earlier decision of the same High Court in *Dhokal Singh and Anr. v. The State*⁽³⁾ observed as follows :—

“It appears however that the learned counsel was not aware of a later decision of the Full Bench of the Rajasthan High Court in *State of Rajasthan v. Ranjita* in which *Dhokal Singh's* case was referred for the purpose of laying down the correct law on the following matters :—

- (1) Whether it is necessary that entries should be made in the various Police records of the precautions that were to be taken for keeping the accused persons ba-parda while under Police custody.
- (2) Whether it should be specified in the warrant of commitment of the accused, when he is sent to the judicial custody that he is to be kept ba-parda till the identification parade takes place, and what precautions should the jail authorities take for keeping the accused ba-parda.
- (3) Whether necessarily entries should be made in the jail records for keeping the accused ba-parda while he is in the judicial lock up”.

The Full Bench of the High Court examined the matter and held that the propositions laid down in *Dhokal Singh's* case could not be regarded as a rule of law and had been far too broadly laid down to merit acceptance even as practical propositions and could only lead to the accentuation of the difficulties of honest investigating officers and truthful witnesses. The Full Bench answered the questions as follows :—

“(1) It is not necessary that entry should be made in the various police records of the precautions that were taken for keeping the accused persons -ba-parda while under police custody.

(1) [1978] 3 S.C.R. 694.

(2) A.I.R. 1962 Raj. 78.

(3) I.L.R. (1953) 3 Rajasthan 762.

A (2) It is also not necessary to specify in the warrant of commitment of the accused when he is sent to judicial custody that he is to be kept ba-parda till the identification parade takes place, nor it is necessary to specify the precautions that the jail authorities are to take for keeping the accused ba-parda.

B (3) It is also not necessary that entries should be made in the jail records for keeping the accused ba-parda while he is in the judicial lock up."

C In the instant case we have already pointed out that there is positive and definite evidence that the respondent was kept ba-parda wherever he was.

D Finally, the High Court relied on the circumstance that Boota Singh was taken from Moonak to Sangrur and thence to Delhi for a T.I. parade but the T.I. parade ultimately never took place. In this connection, the High Court relies on the affidavit of Vikram Singh where the deponent states in para 2 as follows :—

"In the present case, I took the witnesses to Delhi Jail on 24.2.64 for the purpose of identification of the accused Boota Singh and Trilok Singh. On 26.2.64 at about 8 A.M. I came back to Dehradun alongwith the witnesses".

E The High Court infers that as the respondents Boota Singh and Trilok Singh were brought for identification at Delhi and the witnesses were also there, there is a possibility of the witnesses having been shown to the respondents at Delhi on the 25th or 26th February, 1964. The High Court however completely overlooked para 4 of the affidavit of this very witness where he stated thus :—

F "I and the witnesses remained together and during that period the accused Trilok Singh and Boota Singh did not meet me and the witnesses nor did they see us anywhere".

G Thus, from the affidavit of this witness it is clear that although the respondents were brought to Delhi they were not at all allowed to meet or see the witnesses. In view of this clear statement there was absolutely no reason for the High Court to have conjectured that the respondents must have been shown to the witnesses at Delhi. This finding of the High Court is based on no evidence.

H Apart from this, there is another intrinsic circumstance which shows that the respondents were never shown to the witnesses. Even though, according to the High Court, Pritam Singh was one of the witnesses who had an opportunity to see respondent Boota Singh yet it appears

when the T.I. parade took place at Dehra Dun on 9th March, 1964 Pritam Singh was not able to identify Boota Singh who was identified only by P.W. 2 Inder Singh and P.W. 14 Jagir Singh. This completely negatives the suggestion that Pritam Singh could have seen the respondents either at Moonak or Delhi in which case he would have felt no difficulty in identifying the respondent Boota Singh. In view of this circumstance, therefore, we are unable to sustain the finding of the High Court on this point and we are of the opinion that the High Court appears to have reversed the well considered finding of the Sessions Judge without any legal justification.

Another ground on which the High Court rejected the identification of P. Ws. 2, 8 and 14 was by laying down an extra ordinary principle of law, viz., that the evidence of identification is a very weak type of evidence and should be closely scrutinised before reliance is placed on it. The High Court observed as follows :—

“There can be no two opinions about the fact that the evidence of identification is a very weak type of evidence and should be closely scrutinised before reliance is placed on it. Reference can in this connection be also made to the recent decision of the Supreme Court in *Budh Sen and Anr. v. State of U.P.*”⁽¹⁾

In support of its view the High Court relied on a decision of this Court in *Budh Sen & Anr. v. State of U.P.* (supra). We feel that the High Court has completely misdirected itself on this point. In the first place, the decision of this Court relied upon by the High Court does not at all apply to the facts of the present case. In *Budh Sen & Anr. v. State of U.P.* (supra) what was held by this Court was that where an accused is not known to the witness from before and there is no T.I. parade, but the witness identifies the accused for the first time in court such an identification is valueless. In this connection, this Court has observed as follows :—

“As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identi-

(1) A.I.R. 1970 S.C. 1321.

A fication, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding."

B When this Court held that evidence of identification for the first time at the trial was of a weak character, it merely meant that where the evidence of a witness in court is not tested by prior identification parade held in jail not much reliance can be placed on such an evidence. This is however not the case here, nor can we take the afore-

C said decision to lay down a rule of universal application that the identification evidence is a very weak type of evidence. Where the witness correctly identifies the accused at a T.I. parade held by a Magistrate after observing all the essential formalities and taking the necessary precautions and then identifies the accused also in court the evidence of identification can be believed unless the evidence of witness suffers

D from some other infirmity. Moreover, the evidence of identification becomes stronger if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time, in broad day light, when he would be able to note the features of the accused more carefully than on seeing the accused in a dark night for a few

E minutes. In the present case, it is mentioned in the confession of Boota Singh and is proved by the evidence of P.Ws. 2, 8 and 14 that the respondent had a talk with P.W. 2 Inder Singh in the presence of other witnesses for quite some time and struck a deal regarding the taxi and gave a receipt to Inder Singh. These witnesses, therefore, were in a position to notice the features of the respondent Boota Singh as closely

F as possible. In the circumstances therefore, we are unable to agree with the High Court that the evidence of identification of these witnesses is a weak type of evidence. We also disapprove the universal rule of application laid down by the High Court that the evidence of identification is a weak type of evidence. For the reasons given above, we see no reasons to distrust the evidence of P.Ws. 2, 8 and 14 and

G we hold that the prosecution has proved beyond reasonable doubt that the respondent Boota Singh had approached Inder Singh for hiring the taxi and Inder Singh allowed Boota Singh to take the taxi along with his son Lal Singh, deceased. In view of the fact that Inder Singh and Jagir Singh identified Boota Singh at T. I. Parade which has been proved by Magistrate M. L. Sharma, P.W. 23 there was no reason to

H distrust the evidence of identification of these two witnesses as against Boota Singh. For the same reasons there was no reason to distrust the evidence of P.W. 8 Pritam Singh and P.W. 14 Jagir Singh when

they had identified the respondent Trilok Singh at a T. I. parade and also in court. The finding of the High Court on this point is, therefore, wholly incorrect both in law and on facts. A

Thus, the evidence of the aforesaid witnesses fully corroborates the confessional statement of Boota Singh in regard to the first stage of the prosecution case, namely, the circumstances relating to the hiring of the taxi. B

The next circumstance mentioned in the confession is that after hiring the taxi the party of the respondent went to Doiwala where they were found by Asa Singh and Gopi. All of them took tea in a hotel. This fact is also corroborated by the evidence of P.W. 5 Khem Singh and P.W. 7 Jaideo Singh which appears to have been rejected by the High Court on grounds which are not legally sound. To begin with, the respondent Boota Singh made a clear admission that he, Asa Singh and Lal Singh and others had tea at the hotel in Doiwala. P.W. 5 Khem Singh deposed in court that he knew Lal Singh. Two years ago Lal Singh had taken food in his hotel along with 4 or 5 persons who were not known to him. He further says that he knew Asa Singh and he does not remember whether Asa Singh was among the persons who had taken food at his hotel. Although the witness had made quite a different statement before the committing court even in his statement before the Sessions Court he does not disprove the prosecution case because he admits that Lal Singh and 4 or 5 others had taken food in the hotel and he does not know whether Asa Singh had taken the food there or not. Before the committing Court, the witness had stated that Lal Singh and others had taken food in his hotel in the beginning of the month of December and the payment was made by all of them collectively. He had also stated that of these persons who had taken food at the hotel had come out of the taxi of Lal Singh and stayed there for about 10 to 15 minutes. He has also stated that Asa Singh and Trilok Singh had also come to take food. The witness, was, however, declared hostile because he resiled from the statement made before the committing court and after his attention was drawn to the statement, the aforesaid statement was transferred under section 288 and in law became substantive evidence. His statement before the committing court is Exhibit Ka-72. In this statement he deposed as follows :— C D E F G

“My hotel is at the Chaurrah Bazar in Doiwala. In the beginning of the month of December, 1963 it was the time of 6 p.m. I was at my hotel. On the evening of that day these men came by a car to take food. The shop of Jaideo Singh is in front of my shop. These men took food at my H

A shop. Dola Singh is called Jaideo Singh as well. He is present in the Court. He came to take his tea when these men were eating their food. Then he went back to his shop. Out of these men Trilok Singh and Asa Singh accused present in Court were known to me from before. The car belonged to Lal Singh. He too was known to me from before. After taking their food these four men along with Lal Singh went away by the car towards Rishikesh. Out of those four men, two men were not known to me".

C In his statement in court the witness categorically stated that the statement he had made before the committing court was correct. But in cross-examination he made out a new case that the statement before the committing court was made at the instance of the police. Indeed, if it was so, he would have at once complained to the committing Magistrate. Similarly, P. W. 7 Jaideo Singh completely resiled from his statement which he made before the committing court which was also transferred under section 288 Cr. P.C. Before the Committing Court the witness had stated that he had gone to take tea in the hotel of Khem Singh and found Asa Singh. Trilok Singh and Lal Singh were taking food together. He knew these persons from before except respondent Boota Singh whom he identified at a validly held T.I. parade and thereafter in the court of the committing Magistrate. The witness tried to explain in court that counsel for the respondent dictated the report to the reader who took down the same and thereafter he affixed his signature. He further admitted that he did not tell the Magistrate that he would like to read the statement made by him. He further admitted that he did not say anything to the Magistrate in regard to pressure. It is, therefore, clear that the statement of the witness before the committing court was true and he is falsely resiling from the same in order to protect the respondent. It passes one's comprehension that the committing Magistrate would allow counsel for the plaintiff to dictate the statement to the reader when in law the Magistrate has to record the statement himself. The witness further admits that whatever he said before the Committing Magistrate was not due to police pressure. In these circumstances, therefore, there are intrinsic circumstances which clearly go to show that the statements the two witnesses had made before the Committing Magistrate were true. The law on this legal aspect of the matter has been laid down by this Court in the case of *Shranappa Mutyappa Halke v. State of Maharashtra*⁽¹⁾ where this Court observed as follows :—

(1) [1964] 4 S.C.R. 589.

"The question how far evidence in the Committing Court given by a witness who resiles from it at the Trial in Sessions and which is brought in as evidence at the Trial under section 288 of the Code of Criminal Procedure requires corroboration or not, has engaged the attention of most of the High Courts in India in numerous cases."

"Where a person has made two contradictory statements on oath it is plainly unsafe to rely implicitly on his evidence. In other words, before one decides to accept the evidence brought in under section 288 of the Code of Criminal Procedure as true and reliable one has to be satisfied that this is really so. How can that satisfaction be reached? In most cases this satisfaction can come only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. If there be a case—and there is such infinite variety in facts and circumstances of the cases coming before the courts that it cannot be dogmatically said that there can never be such a case—where even without such extrinsic support the Judge of facts after bearing in mind the intrinsic weakness of the evidence, in that two different statements on oath have been made, is satisfied that the evidence is true and can be safely relied upon, the Judge will be failing in his duty not to do so."

This case was followed in a later decision of this Court in *Har Prasad & Ors. v. The State of Madhya Pradesh*⁽¹⁾. Applying the dictum laid down by this Court to the facts of the present case we find that the following facts are established :

1. P. W. 5 Khem Singh and P.W. 7 Jaideo Singh fully supported the prosecution case regarding the presence of Boota Singh and others at the hotel of Khem Singh, P.W. 5.
2. P. W. 5 Khem Singh has categorically stated that what he had stated before the committing court was true and has thus certified that what he stated in the court was not the correct version, but the correct version was what he stated before the committing Magistrate.
3. The fact that respondent Boota Singh along with Asa Singh, Trilok Singh and Lal Singh and others had taken

(1) [1971] 3 S.C.C. 455.

A food at Doiwala at the hotel of Khem Singh is clearly mentioned in the confession of Boota Singh.

B 4. So far as P. W. 7 Jaideo Singh is concerned, the reason given by him for deposing before the committing court is wholly unacceptable viz., that the statement of the witnesses before the committing court was not recorded by the Magistrate but was dictated by the plaintiff's lawyer to the reader of the Magistrate.

C This statement is palpably absurd and has been made for the first time in Court for the purpose of helping the respondent. Thus, there are cogent reasons and intrinsic circumstances to lend support to the inference that the statements given by these witnesses before the committing court were in fact true and correct, and the Sessions Judge, therefore, was right in relying on those statements namely Ka-72 and 73. The High Court appears to have brushed aside the evidence of P.W. 5 Khem Singh and P.W. 7 Jaideo Singh only on the ground that these witnesses had made two inconsistent statements on oath and made no effort to find out as to whether the prior statement made by them before the committing court was in fact true having regard to the facts and circumstances mentioned above. In our opinion, the High Court was clearly in error in rejecting the evidence of the witness on the grounds that it did. In doing so the High Court has not followed the dictum laid down by this Court in the case of *Shranappa Mutyappa Halke v. State of Maharashtra* (supra). Thus, the fact that after hiring the taxi belonging to Inder Singh, Boota Singh and others along with Lal Singh reached Doiwala is clearly established and is fully corroborated by the evidence of P.W. 5 Khem Singh and P.W. 7 Jaideo Singh as discussed above. Thus, this part of the confession of the respondent Boota Singh appears to be fully corroborated and it has been established that after taking the Fiat Car No. UPS 6679 Boota Singh and party including Lal Singh who was driving the car left for Doiwala where they stayed for some time.

G The next statement in the confession is that from Doiwala the respondent Boota Singh and his party proceeded to Chidderwala in the same car (UPS6679). The respondent also mentioned that at the forest outpost Gopi affixed his signature. This fact is corroborated by the evidence of P.W. 11 Digambar Dutt Bandola and P.W. 13 Bacchu Ram and Exhibit Ka-74. P.W. 11 Digambar Dutt Bandola states in his evidence that in December, 1963 he was a clerk at the Song Bridge, Doiwala and was in charge of the register of the Toll Barrier. The witness proves the entry at page 6 of the register about

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the passing of a Fiat car bearing No. UPS-6679 going from Dehra Dun to Rishikesh at 6.00 in the evening. This entry is marked as Exhibit Ka-74. This evidence, therefore, fully corroborates the statement of Boota Singh in his confession that from Doiwala the party proceeded to Chidderwala (which is on way of Rishikesh) and that Gopi had signed the register at one of the forest outposts which is proved by Exhibit Ka-74. It would thus be clear that up to this spot original number of the Fiat car, viz., UPS-6679 was retained, because the evidence shows that the number was changed after the murder of Lal Singh. The High Court has not at all considered the effect of this document nor has it referred to the evidence of P.W. 11 Digamber Dutt Bandola, who is an independent witness. In fact, as pointed out by us, the High Court has made a wrong approach to the whole case by not taking the confessional statement first and then finding out whether there are other circumstances corroborating the various parts of the statement made in the confession. Perhaps, this may be due to the fact that the High Court found that the confession was not voluntary and therefore should be excluded from consideration. We have already indicated the reason why this conclusion of the High Court was manifestly wrong and not legally supportable.

According to Exhibit Ka-74 the car driven by Lal Singh passed the forest barrier at about 6 p.m. It appears that there was another barrier at a small distance from Song Bridge which is called the Bhamiawala outpost. The evidence of P.W. 13 Bacchu Ram is to the effect that he was posted in December, 1963 at this outpost and he made entries in the register of vehicles passing through the forest road. According to the witness, the car bearing No. UPS-6679 crossed this barrier on 8-12-1963 at 6.15 p.m. and the concerned entry in the register is Exhibit Ka-10. According to the witness, one Lt. K. S. Chimni had signed the register and he gave out the number of car as UPS-6620 but the witness checked from the number plate and found that the correct number was UPS-6679. The prosecution alleged that the signature made by Lt. K. S. Chimni was actually made by the respondent Boota Singh himself, but as his signatures were not sent to the expert, there was no proof of the fact that it was the respondent Boota Singh who had signed the entry. Having regard to the identity of the car there could be no doubt that somebody else signed as Lt. K. S. Chimni, but the occupants of the car were the respondents Boota Singh and his party including Lal Singh and it may be possible that Gopi who according to Boota Singh in his statement may have affixed his signature at the outpost as Lt. K. S. Chimni.

The respondent Boota Singh then goes on to state that all of them drank wine at the house of Asa Singh and chalked out a programme

- A** of committing the murder of Lal Singh for the purpose of taking exclusive possession of the car and in pursuance of this conspiracy except respondent Raghubir Singh all the four, namely, Boota Singh, Asa Singh, Trilok Singh and Gopi took Lal Singh to the forest. Trilok Singh fired two shots at Lal Singh and Asa Singh dealt a Gandasa blow on the neck of the deceased. Thereafter the respondents took off the clothes of the deceased and set fire to them and left the dead body in the same condition. Although there is no direct corroboration of the actual assault on Lal Singh, the circumstantial evidence admitted in the confession and corroborated is a clear pointer to the fact that Lal Singh had accompanied the respondent right from Dehra Dun up to Chidderwala forest where he was murdered. Thus, the respondents were last seen with Lal Singh before the murder. Therefore, taking the circumstances before and after the murder of Lal Singh, the murder of Lal Singh cannot be explained by any other reasonable hypothesis except the guilt of the respondent. Even the fact that the dead body was left in the condition in the forest itself is corroborated
- D** by the discovery of the skeleton of the deceased Lal Singh from the forest, his clothes which have been clearly found by the Session Judge as belonging to the deceased Lal Singh and this finding has not been displaced by the High Court.

- We shall deal with this aspect in greater detail when we take up the question of *corpus delicti* which has been argued with great vehemence by Mr. Mulla. At the moment we are confining ourselves to the nature of the corroboration of the confessional statement of Boota Singh. The respondent Boota Singh then says that he along with Trilok Singh and Raghubir Singh went to sell the car at Bombay and all the three of them drove the car by turns. The respondent Boota Singh further says that having come out of the forest he signed the register at the forest outpost and changed the number plate of the car to UPM-3236. This portion of his statement is corroborated by the evidence of P.W. 12 Mangali who was the chowkidar at Gola Thappar outpost in 1963. He deposes that Exhibit Ka-11 is the register of the outpost and as he is illiterate the entries used to be made by the owners of the cars. It is manifestly clear that when the car passed this outpost it must have been after the murder of Lal Singh had already been committed and the number plate of car had been changed, as admitted by respondent Boota Singh in his confessional statement. The relevant entry is Exhibit Ka-27 and is dated 8.12.1963 and shows that a car bearing No. UPM-3236 passed the check post on 8.12.1963. This entry is signed by respondent Boota Singh as K. Sharma at two places which are marked by the expert as Q-2040 and Q-2039. The signatures made by the respondent Boota Singh were

sent to the expert along with the specimen signatures Exhibits Ka-53 and 53A and which were numbered by the expert as Q-3885 and 3886 and the expert has opined that the signatures K. Sharma made on this entry namely Q-2040 and 2039 (Exhibits Ka-27-28) have been made by the same person whose specimen signatures have been taken and which are marked by the expert as O-3885 and 3886 vide evidence of P.W. 32 Shiv Ram and his reports Exhibit Ka-64 and 65 wherein he has given the detailed reasons for his opinion. Learned counsel for the respondent was not able to repel the opinion of the expert. This, therefore, clearly shows that the respondent Boota Singh had deliberately changed the number plate from UPS 6679 to UPM 3236 to conceal the identity of the car and this was done after Lal Singh had been put to death. This, therefore, fully corroborates the statement made by Boota Singh in his confession. This important document which demonstrates the incriminating conduct of the respondent Boota Singh apart from corroborating the statement made in the confessional statement has been completely overlooked by the High Court. It may also be mentioned here that not only did the specimen signature of respondent Boota Singh on Exhibit Ka-53 tally with his signature in the register Exhibit Ka-11, but even the words 'UPM-3236' written by him have been found by the expert to be in the writing of respondent Boota Singh. Thus, it is established by unimpeachable evidence that the respondent Boota Singh not only made the entry in the register Exhibit Ka-11 but also changed the number plate of the car to UPM-3236 with a view to conceal the identity of the car.

The scene then shifts to Ambala where, according to the prosecution, Boota Singh accompanied by Raghubir Singh and others went to Ambala and got the car insured. P.W. 27 Balwant Singh Bhalla deposes that on 11.12.63 a man filled up the insurance form Exhibit Ka-29 and affixed the signatures as J.P. Singh, and handed over the same to the witness who was the agent of North India General Insurance Company. A bare look at the form Exhibit Ka-29 clearly shows that the insurance form was filled for a period of one year i.e. from 11.12.63 to 10.12.64. Unfortunately, however, the learned Sessions Judge has rightly pointed out that the prosecution did not get the respondent Boota Singh identified by the witness P.W. 29 Balwant Singh nor did he get the signatures made by the respondent Boota Singh as J. P. Singh sent to the expert for examination with his other specimen signatures. Even excluding these facts from consideration what has been proved by the evidence of this witnesses is that a car bearing no. UPM-3236 had been insured for one year with the company of the witness at Ambala. It has already been established, as indicated

A above, that it was the respondent Boota Singh alone who had changed the number plate of the car in question, namely, UPS-6679 into UPM-3236 and that this is the car which was taken on hire by Boota Singh and others and was carrying them right from Dehra Dun to Doiwala, Rishikesh and further. The car also undoubtedly reached Ambala when one of the occupants of the car, whoever he may have been, contacted **B** P.W. 29 Balwant Singh and got the car insured for one year. To this extent, this is an important link in the chain of circumstantial evidence which if considered cumulatively corroborates the confession and also serves as a circumstance against the respondent Boota Singh.

C Needless to repeat that Boota Singh had already made a clear statement in the confession that after leaving the dead body he along with Trilok Singh and Raghubir Singh proceeded to Bombay to sell the car and that the number of the car was changed to UPM-3236. The evidence of P.W. 29 Balwant Singh and the insurance form clearly establish that the car which had carried these three persons reached **D** Ambala on the 13th December, 1963 as stated by Balwant Singh, P.W. 29. The respondent Boota Singh then goes on to state that at Bombay he stayed for 3 or 4 days first in a Gurdwara and then in Amrit Hotel and negotiated for the sale of the car through a broker and when the deal was settled the respondent received an advance of 200/- but the intending purchaser insisted that the registration of the car should be changed into that of Bombay. Thereafter the **E** respondent Boota Singh and Trilok Singh went to R.T.O's office, Raghubir Singh having stayed back at the hotel. The respondents learnt there that the police was in their pursuit, so the party left the car and came back. So far as the present occurrence is concerned, the confession ends here but the respondent goes on to narrate **F** another incident in which also the respondent tried to get another taxi. It not necessary for us to dwell on this aspect of the matter, because that is the subject matter of another case. The fact however that the respondent was prepared to make a clean breast not only of the facts of the present case but also of the other incident clearly shows that he was speaking the truth exhibiting real sense of penitence flowing from **G** the pricking of his conscience.

This part of the confessional statement is fully corroborated by the evidence led by the prosecution which we will discuss hereafter. The respondent Boota Singh has clearly stated in his confession that after going to Bombay he contacted a broker for negotiating the sale of the car. **H** P.W. 9 Anand Singh states that he was plying a taxi at Bombay. On 17.12.63 he met the three persons at National Petrol Pump, Bombay with a 1962 model Fiat car having number plate bear-

ing number UPM-3236. The witness paid an advance of Rs. 200/- and got a receipt in the name of Nirbhai Ram Narsic Das. The witness further states that of the three persons who met him two were Sardars and one was without a beard. The person who was without beard gave out his name as J. P. Singh and he affixed his signature on the receipt. On 18.12.63 Boota Singh as J. P. Singh took him to the office of the Ex R.T.O. for getting the registration number changed at Bombay. The witness also says that the total price settled between the parties was Rs. 16,200. Thereafter the so called J. P. Singh went inside the office and the witness remained outside and waited right up to 6 in the evening but J. P. Singh did not return. The C.I.D. Police, Bombay thereafter took the car into custody along with all other papers. The witness gave the receipt given to him by the respondent Boota Singh. The witness had identified the respondent Boota Singh at Dehra Dun and Raghubir Singh at Nainital at an identification parade held by a Magistrate. The witness also identified Boota Singh before the Sessions Court. The witness was subjected to a searching cross-examination, but nothing of importance appear to have been elicited.

P.W. 62 Raja Ram Narain states that he was a broker dealing with the motor cars. On 14-12-63 three persons came to sell a fiat car of 1962 model bearing No. UPM-3236. He had a talk with the person who named himself as J. P. Singh and represented himself to be son of S. P. Bareilly. He demanded Rs. 18,000 for the car and offered a commission of Rs. 500 to the witness. The witness accordingly searched for a customer. The customer after examining the chassis and the engine number of the car became a little suspicious and asked the witness to verify the same and was not willing to purchase unless the car was a genuine one. The witness then reported the matter to Shri D. Silva and the motor vehicle Inspector P.W. 30 Gulzar Singh deposes that he was attached to the crime branch of the C.I.D., Bombay in December, 1963. On 9.12.63 his officer Shri Silva informed him that car bearing No. UPM-3236 seems to be a stolen property and an enquiry should be made from the R.T.O's office. The witness went to the R.T.O's office and took the car into his custody. After some time the man named Anand Singh came there and gave him a receipt relating to an advance payment of Rs. 200/-. The witness then took the documents from the R.T.O's office including the driving licence and the insurance certificate etc. Thus, it would appear that two independent witnesses from Bombay, viz., P.W. 9 Anand Singh and P.W. 62 Raja Ram Narain Rane proved that the respondent Boota Singh contacted them for sale of the car and had shown the car to them. But as there was some discrepancy in the chassis number

- A** and the engine number P.W. 62 Raja Ram Narain Rane became a little suspicious. Both these witnesses identified the respondent Boota Singh at Dehra Dun at a T.I. parade held by P.W. 23 M. L. Sharma as discussed above. Thereafter they identified the respondent Boota Singh both in the committing court and the Sessions Court.
- B** P.W. 62 Raja Ram Narain Rane had categorically stated that he had not seen the respondent Boota Singh anywhere in the intervening period i.e. between the time when he visited him at Bombay and the T.I. parade held at Dehra Dun. Similarly, P.W. 9 Anand Singh has also identified the respondent Boota Singh both in the identification parade and in court. In fact P.W. 9 Anand Singh had identified
- C** Raghubir Singh also. The evidence of these witnesses fully corroborates the facts stated by the respondent Boota Singh in his confession which have been detailed above. The High Court has made no real attempt to consider the intrinsic evidence of these two independent witnesses which lends full and complete assurance to and provide an independent corroboration of the confession made by Boota Singh. All
- D** that the High Court says is that for the reasons it had given for rejecting the other witnesses on the question of identification these two witnesses cannot be relied upon. The High Court completely overlooked the fact that there was no question of these witnesses from Bombay having been shown to the respondent before the T.I. parade. There
- E** is not an iota of evidence to suggest this. Similarly, we have pointed out that the view of the High Court on the nature of identification evidence was clearly wrong. In these circumstances, therefore, as a matter of fact the High Court has not at all considered the evidence of these two witnesses which fully supports the prosecution case and the finding of the High Court, therefore, in rejecting the evidence of
- F** these two witnesses is vitiated by the circumstances mentioned above.

Apart from the facts mentioned above, there is an unimpeachable circumstantial documentary evidence to prove the Bombay incident. Exhibit Ka-34 is a declaration form dated 16.12.63 which was given by the respondent Boota Singh in connection with the registration of the car at Bombay. This is signed by him as J. P. Singh at two

G places; the signatures being Ka-34 and the number given by the expert is 2045. Exhibit Ka-66 which is the form for registration of vehicle in Bombay dated 18.12.63 which is also signed by the respondent Boota Singh as J. P. Singh and his signature is Ka-36, the expert number being 2046.

H There is another declaration form dated 18.12.63 which is signed by the respondent Boota Singh as J. P. Singh and the signature is Exhibit Ka-39. There is another signature which is Ka-40. These

two signatures bear the expert numbers 2048 and 2048A. Exhibit Ka-59 is dated 18-12-63 and contains two signatures of Boota Singh as J. P. Singh, viz., Exhibit Ka-59 and 60. The expert numbers of the signatures are 3895 and 3896.

Reference to the evidence of expert P. W. 32 Shiv Ram Singh would show that all these signatures fully tallied with the specimen signatures of the respondent Boota Singh taken during the investigation, and the signatures J. P. Singh are Exhibits Ka-53 and 54. Thus, the prosecution has adduced conclusive evidence to prove that the car seized by the Police at Bombay was the same which was hired by the respondent Boota Singh and others from P.W. 2 Inder Singh at Dehra Dun. This fact is proved both by oral and documentary evidence discussed above and a very well reasoned finding on this point has been given by the Sessions Judge which runs thus :—

“In Ex. Ka-2 agreement entered into between Lal Singh and Jasbir Singh of Auto Linkers Financiers, the particulars of the car are given as Fiat 1100, 1962 Model chassis No. 950261. These particulars are identical with those of UPM 3236 seized by the Bombay Police. Thus the prosecution has been able to establish that the car seized by the Bombay Police was the one which the accused Boota Singh along with his companions hired from M/s Punjab Taxi service.”

The learned Sessions Judge has also pointed that the original plate exhibit Ka-51 had been recovered by P.W. 18 Vikram Singh from the Car UPM 3236 and sent to P.W. 26 Shariq Alvi who found that there was tampering with the number of the plate. Brij Kishore of R.T.O's office Bareilly stated that UPM 3236 was a fake number inasmuch as it related to a station wagon belonging to a Junior Government High School, Pakkara, District Moradabad. Harcharan Singh, Inder Singh and Mahendra Kaur have also identified the car in question to be the same car which was hired by the respondent Boota Singh on 8th December, 1963. These facts have not been challenged by the defence. Even the High Court has not reversed the finding of the Sessions Judge on this point. Before closing this part of the case we might advert to an argument advanced before us by Mr. Mulla regarding the specimen signature of the respondent Boota Singh taken by the Police during investigation. Mr. Mulla submitted that the act of the investigating officer in taking the specimen signature of the respondent Boota Singh was hit by section 162 of the Criminal Procedure Code and also amounted to testimonial compulsion so as to violate the guarantee contained in Article 20(3) of the Constitution. The matter

A is no longer *res integra* and is concluded by a decision of this Court in the case of *State of Bombay v. Kathi Kalu Oghad & Ors.*⁽¹⁾ where the Court observed as follows :—

B “That is why it must be held that by giving these impressions or specimen handwriting, the accused person does not furnish evidence against himself. So when an accused person is compelled to give a specimen handwriting or impressions of his finger, palm or foot, it may be said that he has been compelled to be a witness; it cannot however be said that he has been compelled to be a witness against himself.”

C It was also held that merely taking a specimen handwriting does not amount to be giving a statement so as to be hit by Section 162 Cr. P.C. In view of this decision of the Court, Mr. Mulla did not pursue the point further.

D Another important comment made by the High Court against the confession was that the manner in which the deceased Lal Singh had been killed, according to the statement of Boota Singh in his confession, is completely disproved by the medical evidence inasmuch as there is no evidence of any gun shot injury having been received by Lal Singh nor is there anything to show that he received any Gandasa injury. With due respects we are constrained to observe that the

E High Court has taken a very artificial and incorrect view of the matter in this regard. The dead body was recovered three weeks after the death of the deceased : During this period the naked body was exposed to wind and weather. The skeleton was burnt and the flesh had peeled off. The learned Sessions Judge has rightly explained that as only two shots were fired at the deceased according to the

F Statement of Boota Singh in his confession, it may be that no shot hit the bone but remained in the flesh which having peeled off, no trace of gun shot injury could ever be found. Therefore, it is not a circumstance to show that there is any real inconsistency between the confessional statement of the respondent Boota Singh and the medical evidence.

G As regards the injury said to have been inflicted by a Gandasa, the same is proved by the circumstantial evidence and the nature of the skeleton of Lal Singh found in the forest. According to the post-mortem report, the lower cervical vertebra was separated from the rest of the skeleton at the level of the joint and the head was found at a distance from the body. This would mean that the head was severed from the body and this could have only been possible if the injury was

H inflicted by a Gandasa as the entire flesh had peeled off and traces of

(1) [1962] 3 S.C.R. 10.

the injury had obliterated by passage of time. The skeleton remained in the forest exposed to rain and in these circumstances we could not expect to find any mark of injury on the skeleton. The fact however is that the skeleton has been indentified to be that of the deceased Lal Singh by good and cogent evidence as found by the Sessions Judge which finding has not been displaced by the High Court. It is obvious that the statement of Boota Singh regarding the death of the deceased was the only manner in which he was murdered. For these reasons, therefore, we are unable to agree with the High Court that the manner in which the deceased is said to have been assaulted according to the confessional statement has not been proved by the prosecution.

This brings us to an argument put forward before us by Mr. Mulla learned counsel for the respondents that there was no reliable evidence to prove the identity of the *corpus delecti*. We are, however, unable to accept this contention. The learned Sessions Judge has given a very well reasoned finding on this point which has not been reversed by the High Court.

To begin with, the body of the deceased was recovered at the instance of respondent Asa Singh and this fact was proved by P.W. 17 Sher Singh and P.W. 31 Jasmer Singh and the Investigating Officer P.W. 59 Gulzar Singh. This evidence is clearly admissible under section 27 of the Evidence Act. The only comment made was that Sher Singh had some enmity with Asa Singh. The learned Sessions Judge, however, pointed out that there was no long standing enmity between Asa Singh and Sher Singh. There were some proceedings about 8 or 9 years ago and there were some proceedings under section 127/117 Cr. P.C. after the occurrence which is wholly irrelevant. No comment has been made as to why Jasmer Singh should not be believed. In this view of the matter the evidence of the recovery of the dead body at the instance of Asa Singh has been proved not only by the Investigating Officer Gulzar Singh but by two independent witnesses Sher Singh and Jasmer Singh. This, therefore, clearly establishes the identity of the *corpus delecti* as being that of Lal Singh. Apart from this some clothes Exhibits 13, 14, 15 were recovered lying at a distance of 3 to 4 yards from the body and this recovery has also been proved by Sher Singh, Jasmer Singh and Inder Singh. Portions of these clothes were burnt which fully corroborates the confessional statement of Boota Singh where he had stated that after taking out the same from the dead body of Lal Singh they had set the clothes on fire. It appears, however, that for some reason or the other only a very small portion of the clothes were burnt.

- A** Another important evidence which clinches the issue was the recovery of Exhibit Ka-8 a dry cleaning receipt from the pocket of the coat of Lal Singh which is Exhibit Ka-13. This receipt bears the signature of Lal Singh. P.W. 3 who was the salesman at Dehra Dyeing and Dry Cleaners deposed that on 9.11.63 Lal Singh had given a pant for dry cleaning and had been given receipt Exhibit Ka-8, the duplicate of which was with the dry cleaning shop and it has also been produced and is exhibit Ka-52. This, therefore, completely clinches the issue and shows that the dead body could have been of none else than that of Lal Singh. Mr. Mulla suggested that this receipt may have been introduced by the police in the pocket of the coat during investigation. There is however no evidence to prove this fact. Nothing has been shown why the police officers would have gone to the extent of fabricating the evidence against the respondents. For these reasons, therefore, we find ourselves in complete agreement with the finding of the learned Sessions Judge that the skeleton recovered from the forest was that of Lal Singh and we accordingly overrule the argument of Mr. Mulla on this point.
- D**

- Lastly, Mr. Mulla vehemently contended that there is no legal evidence against Raghubir Singh. Admittedly, according to the confessional statement of Boota Singh, Raghubir Singh was not present in the forest at the time when Lal Singh was murdered. There is no evidence to show that Raghubir Singh was present at Ambala. It is true that P.W. 2 Inder Singh and other witnesses had identified Raghubir Singh as having accompanied the respondent Boota Singh to Dehra Dun and he was also identified as accompanying Boota Singh by P.W. 9 Anand Singh, but it was contended that as at the time when the respondent Raghubir Singh was identified at the parade he had shaved off his beard, it would be difficult for the witness to identify when at the time they saw him he had a beard. There appears to be some force in this contention. There is clear evidence to show that when Raghubir Singh was identified he had no beard at all. In these circumstances, therefore, the possibility of mistake in identification cannot be excluded. Even the trial Court has not accepted the evidence of identification against him. In all probability Raghubir Singh was there and was a co-conspirator as stated by the respondent Boota Singh himself, but in view of the circumstances mentioned above, we find it unsafe to convict him when he has been acquitted by the High Court. We should not be taken as holding that the confession of the respondent Boota Singh so far as Raghubir Singh is concerned is false. In fact we believe it to be true, but as a matter of extra caution we would like to give benefit of doubt to Raghubir Singh.
- E**
- F**
- G**
- H**

Thus, in short the entire confession of the respondent Boota Singh is not only corroborated by the evidence discussed above but is reinforced by the independent evidence plus identification which has been proved by the prosecution and accepted by us. The offence of conspiracy is also proved.

The trial Court has rightly pointed out that the charge under section 465/471 I.P.C. has been proved. There is direct evidence of P.W. 35 Ratilal Chhota Bhai Desai who has correctly identified Boota Singh that he signed as J. P. Singh in his presence on the papers relating to the registration of the car at Bombay. The signatures made by him are Exhibit Ka-59 and 60 and the documents concerned are Exhibits Ka-34, 36 and 39. The expert P.W. 32 Shiv Ram Singh has clearly stated that Exhibits Ka-38 to 40 were in the handwriting of Boota Singh. It has also been proved as held by the trial Court that these documents were presented by Boota Singh for the purpose of obtaining registration number from the R.T.O. Bombay in respect of the stolen car. Thus, we fully agree with the finding of the trial Court that the charge under section 465/471 and 466/471 I.P.C. has been clearly proved. Apart from this, it has also been proved beyond reasonable doubt that the respondent Boota Singh impersonated as one K. Sharma to Inder Singh and falsely represented to him that he was a military officer in search of recruitment of girls in the Army and on this belief he induced Inder Singh to deliver the taxi to him on hire whereas Boota Singh had no intention whatsoever of returning the car. The intention to cheat Inder Singh by Boota Singh was clearly proved. In these circumstances, the charge under section 419 I.P.C. has also been proved beyond doubt. The High Court has neither referred to the evidence on those charges nor considered the same but has taken a short course of rejecting the entire prosecution case after finding that the confession was not worthy of credence mainly on speculation as pointed out by us. Furthermore, it has also been proved that Boota Singh and others murdered the deceased Lal Singh with a view to take sole possession of the car, and, therefore, the charge under section 394/34 I.P.C. is also proved.

Thus, on a full and complete consideration of the evidence and circumstances of the case we find that the High Court has committed errors of record and has overlooked important circumstances and has drawn more on imagination than on the proved evidence in the case. On the question of identification it has laid down a wrong law on the basis of which it failed to consider that evidence. The confession of the respondent was discarded by the High Court on irrelevant grounds based on pure speculation. Normally, this Court does not interfere with an order of acquittal passed by a High Court but in this case we find that the High Court has misread the evidence and has re-

A versed the judgment of the Sessions Judge without displacing important conclusions arrived at by the Sessions Judge. The High Court has overlooked important circumstances which fully proved the case. Even regarding the confession it has not made a correct approach which is first to take the confession and then to find out how much of it is corroborated by other independent evidence.

B Thus with due deference to the view taken by the Judges of the High Court we find that the High Court committed errors of law and fact on most vital points. It has refused to draw inferences from proved facts which are irresistible and has laid down legally erroneous principles on such vital and crucial evidence as that of identification which is a valuable piece of evidence. The High Court has on one

C hand completely overlooked some of the important circumstances which amply proved the prosecution case and on the other while setting aside the judgment of the Sessions Judge has failed to displace the important reasons given and circumstances relied on by the Sessions Judge. Taking therefore an overall picture of the whole case we find that

D there are substantial and compelling reasons for setting aside the order of acquittal passed by the High Court in favour of respondent Boota Singh.

For these reasons, therefore, we are unable to sustain the judgment of the High Court. We accordingly allow the appeal of the State against

E Boota Singh set aside the judgment of the High Court and convict respondent Boota Singh of offences under section 302 read with section 34 and Section 120-B I.P.C. and sentence him to undergo life imprisonment for these offences. The respondent Boota Singh is also

convicted under section 364 read with section 34 and section 120-B I.P.C. and section 394 read with section 34 and section 120-B I.P.C.

F and sentence him to undergo rigorous imprisonment for seven years under each count. Boota Singh is also convicted under section 419 I.P.C. 471 read with section 465 I.P.C. and section 471 read with section 466 I.P.C. and is sentenced to undergo rigorous imprisonment for two years, one year and four years respectively. All the sentences are to run concurrently. The respondent Boota Singh who is on bail

G shall surrender and serve out the remaining portion of the sentence.

The appeal against Trilok Singh abates as he is dead. The appeal against Asa Singh will be taken on later after he surrenders. The appeal against Raghubir Singh is dismissed and the order of the High Court acquitting him is confirmed.

H