

APPELLATE CRIMINAL.

*Before Harnam Singh and Kapur, JJ.*AMAR SINGH,—*Convict-Appellant.**versus*STATE,—*Respondent.*

Criminal Appeal No. 324 of 1954.

Code of Criminal Procedure (Act V of 1898)—Section 363—Remarks about the demeanour of witness—Whether Court competent to record remarks about the credibility or the substance of the deposition of the witness—Duty of Court in cases where witness gives evasive replies stated.

1954

June, 17th

Held, that Section 363 of the Code of Criminal Procedure empowers the Sessions Judge or Magistrate to record such remarks, if any, as he thinks material respecting the demeanour of any witness while under examination but no judge is authorised by section 363 of the Code of Criminal Procedure to record remarks about the credibility or the substance of the deposition of the witness, the reason for the rule being that that would amount to prejudging the case.

Held, that in Civil and Criminal cases when a Judge finds that the answers given by the witness are evasive and not straightforward it is his duty to record the evidence of that witness in the form of questions and answers so as to bring on the record sufficient material for the appellate Court to form its own opinion as to the demeanour of the witness whilst under examination.

Appeal from the order of Shri Harbans Singh, Sessions Judge, Ludhiana, dated the 6th May, 1954, convicting the appellant.

J. G. SETHI, A. R. KAPUR, and D. K. KAPUR, for Appellant.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Sessions Trial No. 5 of Harnam Singh, 1954, the Sessions Judge, Ludhiana, has convicted J. Amar Singh, under section 302 and section 307 of

Amar Singh v. State
 Iarnam Singh, J.

the Indian Penal Code, hereinafter referred to as the Code and to suffer rigorous imprisonment for seven years under section 307 of the Code, sentence of imprisonment to take effect if the sentence of death is not confirmed.

Amar Singh appeals under section 410 of the Code of Criminal Procedure from his conviction and the sentence imposed upon him and proceedings under section 374 of the Code of Criminal Procedure are before us for the confirmation of the sentence of death imposed upon him.

In Sessions Trial No. 5 of 1954 the motive for the crime was stated to be that Amar Singh, accused, felt that he was not being given his share of the produce of the joint land by Balwant Singh, P.W. 4. In July, 1953, there was a quarrel between Balwant Singh, P. W. 4, on the one side and Amar Singh, accused, on the other side when Balwant Singh gave two or three *khunda* blows to Amar Singh. On that occasion Jiwan Singh intervened and separated the parties. On the date of the occurrence Amar Singh seeing Balwant Singh, P. W. 4 and *Mussummat* Mohinder Kaur, P. W. 5, taking tea in the early hours of the morning shouted that while they were having good things to eat he was being given nothing.

On the 30th of November, 1953, at about 9 A.M. Rachhpal Singh, aged 8 years, and Brijindar Singh, aged four years and three months, went out for play. On that day between 3 and 4 P.M. Amar Singh, accused, gave *gandasa* blows to *Mussummat* Mohinder Kaur, P. W. 5. In the course of that beating Amar Singh shouted that he had killed Rachhpal Singh and Brijindar Singh, sons of *Mussummat* Mohinder Kaur. *Mussummat* Kartar Kaur, wife of Jiwan Singh,

came to the spot on the alarm raised by *Mussummat* Mohinder Kaur. Pal Singh, P. W. 6, who had come to the house to fetch tea for Balwant Singh, P. W. 4 and *Mussummat* Kartar Kaur raised *raula* asking the accused not to give beating to *Mussummat* Mohinder Kaur whereupon Amar Singh left.

Amar Singh
v.
State

Harnam Singh,
J.

Mussummat Mohinder Kaur asked Pal Singh, P. W. 6, to give information to Balwant Singh, P. W. 4, about the incident. Pal Singh met Balwant Singh in the doorway and told him what had happened. *Mussummat* Mohinder Kaur told Balwant Singh that she was given injuries by Amar Singh who had told her that he had killed her two sons.

Balwant Singh, P. W. 4, went to Kum Kalan and from there brought the Lady Doctor to attend to the injuries of *Mussummat* Mohinder Kaur. In the afternoon Balwant Singh, P. W. 4, Pal Singh, P. W. 6 and other people searched for the children in three or four villages thinking that they might have gone to any of those villages. From Village Panjeta the search party went to villages Rampur and Partap Garh. No clue was obtained till about 11 P.M on the 30th November 1953, when the search was discontinued.

On the 1st of December, 1953, Balwant Singh and the party renewed the search. Inder Singh, P. W. 8, who was going to the sugarcane field for a round met Balwant Singh, P. W. 4 and Pal Singh, P. W. 6, along the bank of the water-course. On being told by Balwant Singh and Pal Singh Inder Singh, P. W. 8, told them that Amar Singh had met him the day before with the two children and had told him that he was taking them to the sugarcane field.

Amar Singh On the information given by Amar Singh,
 v. P. W. 8, the search party went to the sugarcane
State field and found Rachhpal Singh lying dead and
 Brijinder Singh lying in an unconscious state.
Harnam Singh,
 J.

From the field Brijindar Singh was brought home while Gahia, *chowkidar*, P. W. 11, was detailed to guard the dead body of Rachhpal Singh in the field.

On the 1st of December, 1953, *Mussummat* Mohinder Kaur and Brijindar Singh were admitted in the hospital at Kum Kalan. From Village Kum Kalan Balwant Singh accompanied by Jiwan Singh, son of Bishan Singh and Harnama, *chowkidar* and Babu Singh, P. W. 9, went to Police Station Sanehwal where he made the report, Exhibit P.A., at 1 P.M. on the 1st December, 1953.

From the first information report it is plain that Balwant Singh had left Brijindar Singh in an unconscious state in Kum Kalan hospital.

Searching the sugarcane field of Balwant Singh and Amar Singh, Head Constable Hans Raj, P. W. 17, found the dead body of Rachhpal Singh under the guard of Gahia, *chowkidar*. Head Constable Hans Raj prepared inquest report, Exhibit P. B. From the field Head Constable Hans Raj went to the civil dispensary at Kum Kalan. In the hospital he recorded the statements of *Mussummat* Mohindar Kaur and Brijindar Singh.

Doctor Balwant Singh who examined *Mussummat* Mohindar Kaur on the 1st of December, 1953, at 9-30 P.M., found three contused wounds, one incised wound, seven contusion marks, one swelling and one abrasion.

Doctor Balwant Singh examined Brijindar Amar Singh Singh on the 1st of December, 1953. In that examination Doctor Balwant Singh found ecchymosis on the front of the neck, swelling on the left lower angle of the lower jaw bone, superficial marks on the chin, face and chest and redness in the left illiac region.

v.
State

Harnam Singh,
J.

In X-ray examination Doctor C. L. Sharma found that there was a fracture in the middle one-third of the left clavicle of Brijindar Singh.

Doctor Harbans Singh performed *post-mortem* examination on the body of Rachhpal Singh on the 2nd of December, 1953, at 11-54 A.M. In that examination Doctor Harbans Singh found seven nail marks, nine abrasions and injury in right upper clavical region. Death of Rachhpal Singh was in the opinion of Doctor Harbans Singh due to strangulation.

Balwant Singh, P. W. 4, *Mussummat* Mohindar Kaur, P.W. 5, Pal Singh, P.W.6, Brijindar Singh, P.W. 7, Indar Singh, P.W. 8, Babu Singh, P.W. 9, Ranjit Singh, P.W. 10, Gahia, *chowkidar*, P.W. 11 and Head Constable Hans Raj, P.W. 17, gave evidence for the prosecution. Jiwan Singh, son of Bishan Singh and *Mussummat* Kartar Kaur, wife of Jiwan Singh were given up by the prosecution.

Indar Singh, P.W. 8, of Panjeta gave evidence that on the 30th of November, 1953, he saw Amar Singh from a distance of about fifty *karams* taking with him the two small children of Balwant Singh to the sugarcane field.

Ranjit Singh, P.W. 10 of village Uppal gave evidence that on the 30th of November, 1953, at about 4 P.M. he saw Amar Singh, accused, coming out of the sugarcane field.

Amar Singh In paragraph 8 of the judgment under appeal
 v. the Sessions Judge said—
 State

Harnam Singh,
 J.

“Inder Singh, P. W., who belongs to Village Panjeta deposed to the effect that when he came to Kum Khurd for a round of his sugarcane field at about noon time, he saw Amar Singh at a distance of about 50 *karams* taking the two small children of Balwant Singh and going towards the field, and that on enquiry he was told by Amar Singh that he was taking them to get them sugarcanes. Ranjit Singh of Village Uppal is another witness who had come to Kum to purchase fodder on the date of occurrence and he saw the accused coming out of the sugarcane field at about 4 P.M. He had given the time in the Court of the Committing Magistrate as 12 noon and this fact was got out in cross-examination. Both these witnesses were produced in order to show that the accused was seen immediately before with the children, and soon after without the children near the sugarcane field. Both of them are chance witnesses from different villages, and I was not *impressed* with their evidence and I feel that it would be safer not to place any reliance thereon.”

In arguments the finding given by the Sessions Judge in regard to the evidence given by Ranjit Singh, P. W. 10, is not challenged. From the cross-examination of Ranjit Singh, P. W. 10, it is plain that the answers given by him were evasive.

In regard to the evidence given by Inder Amar Singh Singh, P. W. 8, the Sessions Judge recorded :—

“In cross-examination, this witness gives the answers in an evasive manner and is not giving the answers in a straight manner, and no reliance can be placed on his evidence.”

v.
State

Harnam Singh,
J.

Section 363 of the Code of Criminal Procedure provides that when a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Rule 2 of Order XVIII of the Code of Civil Procedure provides that the Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

In *Nand v. Gopal*, (1), it was said that where Judges of the High Court had the advantage of seeing the demeanour of a witness in the witness-box it would be difficult to reject their appreciation of the evidence given by that witness, except upon grounds which clearly prove that their view was wrong.

In *Yuill v. Yuill*, (2), Lord Green, M. R. said :—

“That it is open to an appellate Court to find that the view of the trial Judge as to the demeanour of a witness was ill-founded has indeed been recognised by the House of Lords itself.”

(1) A.I.R. 1940 P.C. 93

(2) (1943) I.A.E.R. 183 C.A.

Amar Singh
v.
State

Harnam Singh,
J.

In the present case from the record of evidence given by Inder Singh, P. W. 8, it does not appear that the answers given by him were evasive or that they were not given in a straight-forward manner. In any case there was no justification for recording the note that no reliance can be placed on the evidence given by Inder Singh, P. W. 8. Plainly, no Judge is authorised by section 363 of the Code of Criminal Procedure to record remarks about the credibility or the substance of the deposition of the witness, the reason for the rule being that that would amount to prejudging the case. Indeed, in *Golam Bari Gazi v. Yar Ali Khan* (1), where a Magistrate, while recording the evidence of a witness, made a note not only as to his demeanour but also that he had not spoken the truth, it was held that there was sufficient ground for the transfer of the case to some other Magistrate.

In civil and criminal cases when a Judge finds that the answers given by the witness are evasive and not straight-forward, it is his duty to record the evidence of that witness in the form of questions and answers so as to bring on the record sufficient material for the appellate Court to form its own opinion as to the demeanour of the witness whilst under examination.

Inder Singh belongs to Village Panjeta to which Village Babu Singh, P. W. 9, brother of *Mussummat* Mohindar Kaur, P. W. 5, belongs. In an earlier part of this judgment I have mentioned that Balwant Singh and others went to Village Panjeta on the 30th of November, 1953. From that village the party dispersed in different

(1) A.I.R. 1925 Cal. 480,

directions in search of Rachhpal Singh and Amar Singh Brijindar Singh. No information was given by Inder Singh to any one in the village that he had seen Amar Singh with Rachhpal Singh and Brijindar Singh going to the sugarcane field.

v.
State

—————
Harnam Singh,
J.

In 1953, Sadhu Singh, C. W. 1, maternal uncle of Rachhpal Singh, deceased, and Inder Singh, P. W. 8, cultivated the field of Ude Singh jointly. In this connection the statement of Balwant Singh, P. W. 4, may be seen. In cross-examination Inder Singh, P. W. 8, maintained that he never jointly cultivated with Sadhu Singh.

In cross-examination Gahya, *chowkidar*, P. W. 11, stated :—

“It was about one hour after sunrise that the children were found. We had started the search at about sunrise. I do not know if anybody met Bant Singh during the period of search and gave him any information about the children. Nobody met him in my presence. Inder Singh, P. W. (shown to the witness) is known to me. He did not meet us during our search. At least I did not see him.”

In these circumstances, I do not think it safe to act on the evidence given by Inder Singh, P. W. 8.

In rejecting the evidence given by Pal Singh, P. W. 6, the Sessions Judge said :—

“Pal Singh is not better than a chance witness, and it was suggested on behalf of the accused that both Balwant Singh and Pal Singh came together to the

Amar Singh
v.
State

Harnam Singh,
J.

house, and none of them saw anything with their own eyes. From the way in which Pal Singh gave evidence, I felt that he lacked understanding as well as intelligence, and I am not inclined to place much reliance on his evidence."

In regard to the demeanour of Pal Singh, P. W. 6, the Sessions Judge recorded :—

"The witness has impressed me as unintelligent. He gives answers to the questions put to him after getting the question repeated twice. He gives the impression that he lacks understanding."

In cross-examination Pal Singh stated that going to Village Panjeta he had informed Babu Singh that the two small boys were not available and had probably been killed. On that point Babu Singh, P. W. 9, gave evidence that he did not know as to who had given injuries to his sister *Mussummat* Mohindar Kaur nor did he know about the death of Rachhpal Singh or injuries to Brijindar Singh before 10 or 11 P.M. on the 30th of November, 1953. In material particulars of the story Pal Singh, P. W. 6, was contradicted by his previous statements. In these circumstances, I think that the evidence given by Pal Singh, P. W. 6, has been rightly rejected.

In Sessions Trial No. 5 of 1954, Babu Singh, P. W. 9, gave evidence about the extra-judicial confession made to him by Amar Singh, accused.

Mr. Har Parshad appearing for the State candidly conceded that no reliance can be placed upon the evidence given by Babu Singh, P. W. 9, about the extra-judicial confession made to him by Amar Singh, accused.

In deciding the case the Sessions Judge has found that the evidence given at the trial does not disclose adequate motive for the crime. Balwant Singh, P. W. 4, gave evidence that the produce of the land was sold by their father, *Jamadar Bakhtawar Singh*, who sometimes lived with him and sometimes with Amar Singh, accused.

Amar Singh
v.
State
Harnam Singh,
J.

From what I have said above it is plain that the conviction of Amar Singh, appellant, can be sustained only if the evidence given by *Mussummat Mohindar Kaur*, P. W. 5, and Brijindar Singh, P. W. 7, can be accepted.

That *Mussummat Mohindar Kaur*, P. W. 5, was injured on the 30th of November, 1953, is not disputed. *Mussummat Mohindar Kaur* gave evidence that those injuries were caused on her person by Amar Singh, appellant. For causing those injuries Amar Singh was prosecuted under section 307 of the Indian Penal Code in another trial. In my opinion, the evidence given by *Mussummat Mohindar Kaur* would connect the accused with the crime of murder if it was possible to believe the evidence given by *Mussummat Mohindar Kaur* that Amar Singh while giving blows had shouted that he had killed *Rachhpal Singh* and Brijindar Singh.

From the evidence given by Balwant Singh, P. W. 4, it is plain that in the afternoon of the 30th of November, 1953, they had searched for the children in three or four villages thinking that they might have gone to that side. In my judgment, if Amar Singh had shouted while giving blows to *Mussummat Mohindar Kaur* that he had killed her sons, Balwant Singh, P. W. 4, and the party would not have gone in three or four villages in search for the children thinking that they might have gone to those villages. That being so,

Amar Singh I refuse to act on the evidence given by *Mussum-*
v. *mat* Mohindar Kaur about the confession of Amar
 State Singh.

Harnam Singh,
 J.

Balwant Singh, P. W. 4, father of Brijindar Singh, P. W. 7, gave evidence that Brijindar Singh was born about two years after the partition of the country. That being so, Brijindar Singh was four years and three months old on the date of the occurrence.

In cross-examination Brijindar Singh was asked whether his father had told him to state that he was beaten by Amar Singh. That question being repeated Brijindar Singh replied "Hun".

In the Court of commitment Brijindar Singh stated that no enquiry was made from him by the police. In the Court of Session Brijindar Singh gave answer suggesting that he was interrogated by the police.

Plainly, Brijindar Singh was not competent to understand the questions put or to give rational answers to those questions by reason of tender years.

In *Rameshwar v. The State of Rajasthan* (1), Bose, J., delivering the judgment of the Court said at page 57—

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of

(1) A.I.R. 1952 S.C. 54,

prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of *tutoring* and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.”

Amar Singh
v.
State
Harnam Singh,
J.

From the evidence given by Balwant Singh, P. W. 4, it is plain that when they found Brijindar Singh in the sugarcane field at about 10 A.M. on the 1st of December, 1953, Brijindar Singh was unconscious. From the field Brijindar was taken to the house of Balwant Singh in Village Kum Khurd and from there *Mussummat* Mohindar Kaur and Brijindar Singh were taken to the hospital at Kum Kalan. As stated hereinbefore, Balwant Singh, P. W. 4, made the first information report, Exhibit P. A. on the 1st of December, 1953 at 1 P.M. In the first information report, Exhibit P. A. it was stated that Brijindar Singh was unconscious.

In no part of the evidence given by Balwant Singh, P.W. 4, or *Mussummat* Mohindar Kaur, P.W. 5, is it stated that on regaining consciousness

Amar Singh v. State
 Harnam Singh, J.

Brijindar Singh mentioned Amar Singh to be his assailant. Doctor Balwant Singh who was in-charge of Kum Kalan Dispensary was not questioned as to when Brijindar Singh regained consciousness or what was the statement made by Brijindar Singh on regaining consciousness. In these circumstances it cannot be sustained that the likelihood of tutoring Brijindar Singh is eliminated.

Finding as I do, that Brijindar Singh was prevented from understanding the questions put to him and that the likelihood of tutoring Brijindar Singh has not been eliminated I do not think it safe to act on the evidence given by him without corroboration. In the present case there is no corroboration of the evidence given by Brijindar Singh.

For the foregoing reasons, I give the benefit of the doubt to Amar Singh and acquit him.

Amar Singh who is in jail should be set at liberty forthwith.

Sentence of death imposed upon Amar Singh is not confirmed.

Kapur, J. KAPUR, J. I agree.

CIVIL WRIT.

Before Khosla, J.

KRISHAN DAYAL AND OTHERS,—Petitioners

versus

THE GENERAL MANAGER, NORTHERN RAILWAY,
 BARODA HOUSE, NEW DELHI.—Respondent.

Civil Writ Application No. 121-D of 1954

1954
 June, 17th

Indian Railway Establishment Code, Volume II, Rule 2046(2)(a)—Meaning of—Constitution of India—Article 311—Compulsory retirement—Whether removal from service—Indian Railway Establishment Code, Volume I, Rule 1727—Petition or memorial to the President—Whether only remedy.