

then it is said the wall here is much higher than the wall was before. What is the consequence of that? One tenant-in-common has, upon that which is the subject-matter of the tenancy-in-common, laid bricks and heightened the wall. If that be done further than it ought to have been done, what is the remedy of the other party? He may remove it. That is the only remedy he can have.”

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v.  
Jheetar Mall  
Kapur, J.

In yet another case which is much more recent, the Nagpur High Court has also taken the same view in *Mithoobhai v. Omprakash* (1), where Mudholkar, J., has reviewed all these cases and has taken the same view as was taken by the Lahore High Court. The weight of authority, therefore, is in favour of the view which was taken by the learned District Judge, and I am in respectful agreement with the view which has been taken by the learned Judges in cases which I have quoted above. I would, therefore, dismiss this appeal with costs.

APPELLATE CRIMINAL

Before Khosla and Harnam Singh, JJ.,

PRITAM SINGH AND ANOTHER —*Convict-Appellants*

*versus*

THE STATE—*Respondent*

Criminal Appeal Nos. 592 and 593 of 1953

*Indian Evidence Act (I of 1872)—Section 114, Illustration (a)—Presumption under—Whether applicable to cases other than of theft.*

*Held*, that though illustration (a) appended to section 114 of the Indian Evidence Act refers to cases of theft, that provision of law is no more than an illustration and the presumption arising thereunder extends to all charges, however penal, including murder. Where it was proved that the deceased with his 14 goats was seen with the accused immediately before the murder, that the accused were found in possession of the goats of the deceased

(1) A.I.R. 1951 Nag. 389

soon after the crime, that the goats had been sold by the accused on the following day on the basis of a receipt, that the shirt worn by one of the accused at the time of his arrest and the shirt produced by the other accused were stained with human blood and that eight goats recovered from and six goats slaughtered by the purchaser of the goats whose skins were recovered from him were the goats of the deceased, it is sufficient to hold that the accused were involved in the murder of the deceased.

*In re Chevveti Ramudu and another* (1), relied on.

*Appeal from the order of Shri Tirath Dass Sehgal, Additional Sessions Judge, Gurdaspur, dated the 12th October 1953, convicting the appellant.*

HEM RAJ MAHAJAN, for Appellants.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

#### JUDGMENT

Harnam Singh,  
J.

HARNAM SINGH, J. In Sessions Trial No. 13 of 1953 the Court of Session has convicted Gehna Singh, aged 25 years, and Pritam Singh, aged 22 years, under section 302 read with section 34 of the Indian Penal Code, hereinafter referred to as the Code, for the murder of Wasakhi Ram, shepherd boy, aged about thirteen years, and sentenced each of them to death. Gehna Singh and Pritam Singh appeal and the proceedings are before us under section 374 of the Code of Criminal Procedure for the confirmation of the sentence of death imposed upon them.

On the 30th of March 1953, at about 8 a.m. Wasakhi Ram as usual took out his goats fourteen in number to the Damtal Jungle in Kangra District while Nanak Chand, father of Wasakhi Ram, went to Pathankot Town to do labour. On the evening of the 30th of March 1953, Nanak Chand seeing that neither Wasakhi Ram nor the goats had returned\*went out in search of Wasakhi Ram along with others but was unable to find Wasakhi Ram or the goats.

Going to the Police Station Pathankot on the 31st of March 1953, Nanak Chand made the report, Exhibit P.A.

(1) (1943) 44 Cr. L.J. 299.

Notices regarding the loss of Wasakhi Ram were sent to Police Stations Indara, Mukerian and Gurdaspur. In villages adjoining the place of occurrence proclamation was also made.

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On the 2nd of April, 1953, Wazir Chand, P.W. 3, went in search of a bullock which he had let loose for grazing. In searching for the bullock in the jungle he reached *Nehrke Beer* where he saw a dead body lying. One of the arms of the body was missing and on the other arm there was iron *kara*, exhibit P. 4. The body had on it shirt of *malatia* cloth, exhibit P. 2, *langota of khaddar* cloth, exhibit P. 3, and *tawiz*, exhibit P. 5. Finding the dead body Wazir Chand reported the matter to Narain Das, P.W. 5. Atma Ram, P.W. 4, was deputed by Narain Das, P.W. 5, to guard the dead body while Wazir Chand, P. W. 3, went to the police station reaching there at 11 p.m. on the 2nd of April 1953.

Harnam Singh,  
J.

Sub-Inspector Uttam Singh, P.W. 44, sent information to Nanak Chand, P.W. 2, about the recovery of the dead body before leaving for the spot. On reaching the spot he prepared inquest report, Exhibit P.P., and injury statement, exhibit P.S.

On the 4th of April, 1953, at 9-15 a.m. Doctor Jagjit Singh conducted post-mortem examination on the body of Wasakhi Ram. In that examination he found left forearm and hand missing, three incised wounds on the left side of the skull, incised wound on the forehead, contusion mark on left shoulder and flesh of left leg missing. Death in the opinion of Doctor Jagjit Singh, was due to injuries on the head caused by sharp-edged weapon. Flesh of left leg in the opinion of Doctor Jagjit Singh may have been eaten away by animals prowling in the jungle. Injury on the left shoulder was due to blunt weapon.

From the medical evidence it appears that injuries were caused to Wasakhi Ram by a sharp-edged weapon and a blunt weapon.

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In the investigation that followed Sub-Inspector Uttam Singh, P.W. 44, went to Dheriwala village. In that village he recorded the statements of Punjab Singh, P.W. 8, Sadhu Ram P.W. 9, and *Mussummat* Subadharan, P.W. 10. Sub-Inspector Uttam Singh sent Assistant Sub-Inspectors Amar Singh and Hari Chand to search for the culprits in different villages. Assistant Sub-Inspector Amar Singh produced Kesar Singh, P.W. 17, Gian Singh, P.W. 18 and Moti Singh, P.W. 19, before Sub-Inspector Uttam Singh at Village Kothi Panditan. Sub-Inspector Uttam Singh recorded the statements of Kesar Singh, Gian Singh and Moti Singh on the 3rd of April 1953.

Sub-Inspector Uttam Singh went to Village Kalichpur. Reaching that village he collected persons living in that village, but did not find anyone answering the descriptions of the culprits.

Assistant Sub-Inspector Hari Chand produced Chuni Lal, *Chowkidar* of Village Jaundi Chaunta, before Sub-Inspector Uttam Singh.

On the 4th and 5th of April 1953, the Police continued their search in different villages. On the evening of the 5th of April 1953, Sub-Inspector Uttam Singh went to Village Bianpur. He made an attempt to collect people of that village but there were old men and children in that village at that time.

On the morning of the 6th of April 1953, Sub-Inspector Uttam Singh collected a number of persons of Village Bianpur. Out of them he picked up Gian Singh, accused, who had a crescent mark on his forehead and answered the description of one of the culprits which he possessed by that time. Sub-Inspector Uttam Singh then picked Pritam Singh for the *kachha*, exhibit P. 9, that Pritam Singh wore on that occasion tallied with the description of the *kachha* given to him during investigation. Shirt, exhibit P. 7, was removed from

the person of Gehna Singh and *kachha* exhibit P. 9, was removed from the person of Pritam Singh. On interrogation Gehna Singh led the police party to his house and from there produced *kirpan*, exhibit P. 8. Pritam Singh led the police party to his house and from there produced shirt, exhibit P. 10.

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Report of the Serologist, exhibit P.V., shows that shirts exhibits P. 7 and P. 10, bore stains of human blood. From the report of the Chemical Examiner it appears that the *kirpan*, exhibit P. 8, was stained with blood but owing to disintegration of the blood-stains on the *kirpan*, the Serologist was not able to determine the origin of that blood.

Sub-Inspector Uttam Singh on information received from the accused went to Gurdaspur where he contacted Sohan Singh, P.W. 34, Harbans Singh, P.W. 35, and Gobind Ram P.W. 36. Sohan Singh produced receipt, exhibit P.C., evidencing the sale of 14 goats to him for rupees 160 by Anokh Singh on the 31st of March 1953. Gobind Ram, P.W. 36, is the scribe of that receipt while Harbans Singh, P.W. 35, is an attesting witness of that receipt.

On the 6th of April, 1953, Sohan Singh produced eight goats described in the memo of recovery, exhibit P.D. That production is proved by the evidence given by Sohan Singh, P.W. 34, Gobind Ram, P.W. 36, and Sub-Inspector Uttam Singh, P.W. 44.

In the Court of the Sub-Divisional Magistrate, Pathankot, thumb-impressions of Pritam Singh were taken on the 27th of June 1953. Shri A. Bannerji, Sub-Inspector, Expert Finger Print Bureau, Phillaur, P.W. 30, gave evidence that the thumb-impressions of Pritam Singh taken in Court corresponded with the thumb-impression on the receipt, exhibit P.C.

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Punjab Singh, P.W. 8, gave evidence that he saw Pritam Singh, accused, with a shepherd boy and one Sikh coming towards Village Simbli Gujran from Dhango side. Near the *bohar* tree situate at a distance of 400 yards from Village Simbli Gujran the goats of the shepherd boy got mixed up with the goats of Sadhu Ram, Jhiwar. Sadhu Ram separated the goats when Gehna Singh, the shepherd boy, and the other Sikh proceeded towards Village Dheriwala. In the identification parade held on the 9th of April 1953, under the supervision of Sardar Ajit Singh, Magistrate, P.W. 40, Punjab Singh, P.W. 8, picked up Pritam Singh, accused correctly and one Achhar Singh for the other accused. To similar effect is the evidence given by Sadhu Ram, Jhiwar, P.W. 9. In the identification parade Sadhu Ram picked up both the accused correctly stating that the accused and the shepherd boy had passed by him at 2 p.m. with herd of goats.

*Mussummat* Subadhran, P.W. 10, gave evidence that she was washing her clothes on the canal bank near Village Dheriwala when she saw Pritam Singh, accused, the shepherd boy and one other Sikh passing the canal bank. In the identification parade *Mussummat* Subadhran identified Pritam Singh, accused, correctly as one of the persons who had passed by her.

Moti Singh, P.W. 19, gave evidence that on the 30th of March 1953, he had seen the accused with the shepherd boy with goats between 2 and 3 p.m. near R.D. No. 23 between Mukimpur and Dheriwala Villages. In the identification parade Moti Singh picked up both the accused correctly.

Punjab Singh, Sadhu Ram and *Mussummat* Subadhran gave evidence that photo, exhibit P. 6, was of the shepherd boy.

Kesar Singh, P.W. 17, and Gian Singh, P.W. 18, gave evidence that between 3 and 4 p.m. on the 30th of March, 1953, they saw two Sikhs with

goats at a distance of 100 yards from Village Mu- Pritam Singh  
kimpur near the canal bank. No other person and another  
was with them at that time. In the identification v.  
parade Kesar Singh picked up both the accused The State  
correctly. In that parade Gian Singh identified  
Gehna Singh, accused, but did not identify Pritam Harnam Singh,  
Singh. J.

Devi Ditta, P.W. 21, gave evidence that two Sikhs passed by his house in Village Gharota with goats. No other person was with them at that time. One of the Sikhs who was shorter in size wore *kachha* exhibit P. 9, while the other Sikh carried the *kirpan*, exhibit P. 8. In the parade Devi Ditta picked up both the accused correctly stating that they had passed by his house a little before sunset.

Chuni Lal, P.W. 23, gave evidence that he saw the two accused with goats sitting under *plaak* tree near his house in Village Jaundi Chaunta. On that night Chuni Lal was on patrol duty at 11 p.m. As Chuni Lal was on duty as a watchman for the whole night he saw the accused sitting with the goats whenever he passed that side. On the 31st of March 1953, the accused left Village Jaundi Chaunta at about 4 a.m. In the identification parade Chuni Lal identified Pritam Singh and Gehna Singh. Chuni Lal deposed that the eight goats which were recovered from Sohan Singh, P.W. 34, were some of the goats that were with the accused on that night.

Devindar Singh, P.W. 24, Anant Ram, P.W. 32 and Sewa Ram, P.W. 33, gave evidence about the arrest of the accused from Village Bianpur. Shirt of Gehna Singh, exhibit P. 7, was removed from his person at the time of his arrest. Gehna Singh produced *kirpan*, exhibit P. 8, from his house. *Kachha*, exhibit P. 9, was removed from the person of Pritam Singh. Pritam Singh produced shirt, exhibit P. 10, from his house.

Sohan Singh, P.W. 34, Harbans Singh P.W. 35 and Gobind Ram P.W. 36, gave evidence about the

Pritam Singh and another v. The State sale of 14 goats on the basis of receipt, exhibit P.C. on the 31st of March 1953, between 10 and 11 a.m.

On the 6th of April 1953, Sohan Singh gave eight goats to Sub-Inspector Uttam Singh in the presence of Gobind Ram, P.W. 36, and Kehr Singh, P.W. 41.

On the 12th of April 1953, Sohan Singh gave skins of six goats to Assistant Sub-Inspector Amar Singh.

Jethu, P.W. 37, and Dula Ram P.W. 38 gave evidence that the eight goats belonged to Nanak Chand, P.W. 2 and skins of goats, exhibits P. 1/A to P. 1/F, were of the other goats of Nanak Chand, P.W. 2. In cross-examination not a single question was put to Jethu and Dula Ram who belong to the Village of Nanak Chand, P.W. 2. To similar effect is the evidence given by Nanak Chand, P.W. 2.

Report of the Serologist, exhibit P.B. shows that the shirt, exhibit P. 7, of Gehna Singh and shirt, exhibit P. 10, of Pritam Singh were stained with human blood.

Not a syllable of evidence is to be found on the record to show that prosecution witnesses had animus to implicate Gehna Singh and Pritam Singh falsely in the murder of Wasakhi Ram.

From the evidence given at the trial the facts specified hereunder stand proved:—

- (1) that Wasakhi Ram with fourteen goats was seen with Gehna Singh and Pritam Singh, accused, between 2 and 3 p.m. on the 30th of March 1953;
- (2) that at about 4 p.m. and thereafter on the 30th of March 1953, the accused were seen with fourteen goats but Wasakhi Ram was not with them;



- (3) that on the 31st of March 1953, between Pritam Singh and another  
10 and 11 a.m. the accused sold four- and another  
teen goats to Sohan Singh on the basis v.  
of receipt, exhibit P.C.; The State
- (4) that shirt, exhibit P. 7, worn by Gehna Harnam Singh,  
Singh at the time of his arrest was J.  
stained with human blood and that  
shirt, exhibit P. 10, produced by Pritam  
Singh, accused, was stained with human  
blood; and
- (5) that the eight goats recovered and the  
six goats slaughtered by Sohan Singh  
were the fourteen goats that Wasakhi  
Ram had taken to Dhamtal jungle on  
the 30th of March 1953.

In arguments it is said that the facts proved are not incompatible with the innocence of the accused.

Now, though illustration (a) appended to section 114 of the Indian Evidence Act refers to cases of theft that provision of law is no more than an illustration and the presumption arising thereunder extends to all charges, however penal, including murder. In numerous cases it has been held that in cases in which murder and robbery have been shown to form part of one transaction, recent and unexplained possession of stolen property in the absence of circumstances tending to show that the accused was only the receiver of the property, would not only be presumptive evidence against the prisoner on the charge of robbery, but also on the charge of murder. In this connection *In re Cheveti Ramudu and another* (1), may be seen. If so, the facts that the accused were seen with Wasakhi Ram immediately before the murder and that they were found in possession of the goats belonging to Wasakhi Ram soon after the crime go to show that they were involved in the murder of Wasakhi Ram. In the present case we have evidence that human blood was

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(1) (1943) 44 Cr. L.J. 299

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found on the shirt of Gehna Singh, exhibit P. 7, and on the shirt of Pritam Singh, exhibit P. 10.

For the foregoing reasons I have no doubt that Gehna Singh and Pritam Singh have been rightly convicted under section 302 read with section 34 of the Code. As stated hereinbefore, sharp-edged weapon and blunt weapons were used in causing the death of Wasakhi Ram showing that at least two persons were involved in this murder.

As regards the sentence it is clear that the crime was deliberate and was committed for the theft of the goats. That being so, I do not see any mitigating circumstance to justify the imposition of the lesser penalty prescribed by law for the offence under section 302 of the Code.

In the result I would dismiss Criminal Appeals Nos. 592 and 593 of 1953 and confirm the sentence of death imposed upon the appellants.

Khosla, J.

KHOSLA, J.—I agree.

APPELLATE CIVIL

Before Bhandari, C.J.,

ROOP CHAND,—Appellant

versus

GULZARI LAL, ETC.—Respondents

Execution Second Appeal No. 369 of 1952.

1952

Nov. 30th

*Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Section 9—Arrears of rent deposited under section 9 by the tenant—Whether liable to attachment in execution of the decree against the tenant—Rule stated.*

*Held*, that in the absence of a specific provision to the contrary, the property which is *custodia legis* cannot be attached in execution of a decree unless the specific purpose for which the property is held has been fulfilled. Thus money paid into Court under statute is not attachable. Protection from attachment does not extend to property where the custody of the officer is not *custodia legis* or where the levy or custody is invalid or wrongful, or where legal custody is discharged or abandoned, or where for any reason whatsoever the custody is changed from *custodia legis* into a personal obligation to the owner. If the property in *custodia legis*