NATIONAL LAW UNIVERSITY, JODHPUR

Re-Mid Term Examination-2023

Semester: UG IV Semester

Subject: Crime and Punishment II

Time: 90 Mins. **Marks: 50**

Instructions:

I. *Do not write anything on the question paper.*
II. *No explanation can be sought from anyone on the contents of the question paper.*
III. *No books, articles, notes, computer & similar devices, mobile phones and other electronic gadgets, are allowed to be carried during examination.*
IV. *Answer all the questions.*

Q.1 Critically examine the ratio in the case of Selvi v. State of Karnataka (2010) 7 SCC 263. (Marks 15)

Q.2. Critically analyse the issues and challenges in the public prosecutorial system in India with the help of decided cases (Marks 20)

Q. 3. Discuss in detail the law relating to the process to compel production of things under the code of criminal procedure 1973 with the help of decided cases. (Marks 15)

10 MAY 2023

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination April – May -2023

Semester: UG IV Semester

Subject: Crime and Punishment II

Time: Three Hours **Marks: 100**

Instructions :

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II. *No explanation can be sought from anyone on the contents of the question paper.*

III. *No books, articles, notes, computer & similar devices, mobile phones and other electronic gadgets, are allowed during the examination.*

IV. *Answer any five of the following questions.*

Q.1 Consider the decision in Gautam Navlakha v. National Investigation Agency, 2021 SCC Online SC 382, decided on 12.05.2021 and answer the following questions. (Marks 10x2=20)

I. Is the House arrest of the appellant not custody under Section 167 of the Cr.P.C. on the score that the appellant could not be interrogated by the competent investigating officer?

II. Whether broken periods of custody otherwise traceable to Section 167 Cr.P.C. suffice to piece together the total maximum period of custody permitted beyond which the right to default bail arises or whether the law giver has envisaged only custody which is continuous?

Q.2 What is "anticipatory bail"? Under what circumstances can such bail be granted? By which court can such bail be granted? (Marks 20)

Q.3. Examine the decision in State by the Inspector of Police, Chennai v/s S. Selvi Criminal Appeal No. 2190 of 2017 (Arising from SLP(Crl.) No. 2375 of 2016) Decided On, 15 December 2017 (Scope of Sections 227 and 228 of the Code) (Marks 20)

Q.4. *"More than four decades back Krishna Iyer J. speaking for the Court in Maru Ram & Ors. v. Union of India and Ors. (1981) 1 SCC 107, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn."* Discuss in detail the importance of victim compensation in the criminal justice system with the help of decided cases. (Marks 20)

Q.5. Write notes on

a) Police diary and its use
b) Judicial control over police investigation

(Marks 10x2=20)

Q.6. Discuss in detail the right to counsel during investigation with the help of decided cases.

(Marks 20)

Relevant provisions.

Section 357 and 357 A in The Code of Criminal Procedure, 1973

357. Order to pay compensation.

1. When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-
   a. in defraying the expenses properly incurred in the prosecution;
   b. in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
   c. when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
   d. when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.
2. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
3. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.
4. An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

357A. Victim compensation Scheme.

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide

the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

Section 227 and 228 in The Code of Criminal Procedure, 1973

227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;
b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 167 in The Code of Criminal Procedure, 1973

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167. Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) 1 the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. 1 Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2 Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]

(2A) 1 Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and

thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section,

27 FEB 2023

NATIONAL LAW UNIVERSITY, JODHPUR

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Q.1 Non-bailable warrant issued against Shiv Sena leader Sanjay Raut in defamation suit filed by Medha Somaiya [6 January, 2023] (https://www.opindia.com/2023/01/non-bailable-warrant-issued-against-shiv-sena-leader-sanjay-raut/)

On Friday, January 6, a Mumbai court issued a non-bailable against Shiv Sena leader Sanjay Raut for failing to appear before the court for proceedings in a Rs 100 crore defamation suit filed against him by BJP leader Kirit Somaiya's wife Medha Somaiya.

The Sewri metropolitan magistrate issued the warrant. The magistrate recorded the complainant Medha Somaiya's statement and set the hearing for January 24.

Medha Somaiya's counsel Advocate Vivekanand Gupta informed that despite court orders, the Shiv Sena leader remained absent from the court proceedings. "After this, we gave an application to issue a non-bailable warrant against Sanjay Raut, consequently, the court issued a non-bailable warrant against him," Advocate Gupta informed.

Taking to Twitter, BJP leader Kirit Somaiya informed about the issuance of a non-bailable warrant against Sanjay Raut and wrote, "Sewree Court issued Non-Bailable Warrant against #SanjayRaut for not attending the court. Court recorded Complainant Medha Somaiya's statement for an hour, in Dr. Medha Kirit Somaiya's defamation case against Sanjay Raut. Next hearing 24 Jan."

This is not the first time the politician has been issued a warrant by the court in the case. In July 2022, Mumbai Metropolitan Magistrate had issued a bailable warrant against him for failing to appear in court. It is notable that during a hearing in the case in June 2022, the court had said that Prima facie, Sanjay Raut had harmed the reputation of the complainant.

"The documents and video clips produced on record prima facie revealed that the accused made defamatory statements against the complainant on April 15 and 16, 2022 so that it will be seen by public at large and read by the public in the newspapers," metropolitan magistrate PI Mokashi had said.

It is worth noting that Medha Somaiya, wife of BJP leader Kirit Somaiya, filed a complaint against Sanjay Raut, accusing him of making malicious and unwarranted statements in the media about her and her husband. She had requested that he be charged under sections 503, 506, and 509 of the Indian Penal Code.

Medha also claimed that Raut planned to criminally intimidate and threaten her with character assassination without providing any proof. She later filed a defamation suit against Raut on May 24, 2022, seeking Rs 100 crore in damages.

Notably, Sanjay Raut in April last year had claimed that Medha Somaiya and the Yuva Pratishthan, a non-government organization managed by the Somaiya family, were involved in a Rs 100 crore toilet scam.

Sanjay Raut, the editor-in-chief of the Shiv Sena mouthpiece 'Saamna', had published an article stating that Medha had built unauthorized toilets and had cut mangroves without getting the requisite permissions from environmental authorities. It also added that she had looted the public money in the name of toilets and was leading a 'fake and fraudulent NGO named Yuva Pratishthan.

Apart from the Saamna article, Raut had also repeated the allegations in bites given to electronic media. Medha Somaiya refuted the charges, saying he was saying this only to tarnish her reputation.

A. Read the above new item and discuss in detail the law relating to issuance of non bailable warrant with the help of decided cases. (Marks 15)

Q.2 Read the attached two case laws (Annexure I) and critically analyse the ratio relating to Section 100 (3), (4), (5) and (7) for search and seizure under The Code of Criminal Procedure, 1973. (Section 100 of the Cr.P.C 1973, combines old section 102-103) (Marks 20)

Q.3. "*In one of the most important contributions to systematic thought about the administration of criminal justice, Herbert Packer articulates the values supporting two models of the justice process. He notes the gulf existing between the "Due Process Model" of criminal administration, with its emphasis on the rights of the individual, and the "Crime Control Model," which sees the regulation of criminal conduct as the most important function of the judicial system.*" Discuss. (Marks 15)

Section 100 of the Code of Criminal Procedure, 1973

100. Persons in charge of closed place to allow search.

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub- section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub- section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

Annexure I

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Supreme Court of India
Sunder Singh vs State Of Uttar Pradesh on 3 November, 1955
Equivalent citations: AIR 1956 SC 411, 1956 CriLJ 801
Author: Sinha
Bench: Bhagwati, V Ayyar, Sinha
JUDGMENT Sinha, J.

1. This is another appeal which comes before this Court on "leave" granted by the High Court of Judicature at Allahabad which does not fulfil the requirements of Article 134(1)(c) of the Constitution. Only the other day this Court in the case of Baladin Lodhi v. State of Uttar Pradesh, had occasion to draw the attention of that Court to the observations made in the reported case of Nar Singh v. State of Uttar Pradesh .

It was observed by this Court that the grant of a certificate under Article 134(1)(c) is not a matter of course but that the power has to be exercised after considering what difficult questions of law or principle were involved in the case which should require the further consideration of this Court. If the case as decided by the High Court oh the face of it did not involve any such questions, then apparently there was no justification for the High Court to certify that the case is a fit one for appeal to this Court.

It was further observed that the word "certifies" in Sub-article (1) (c) is a strong word which requires the High Court to look closely into the case to see if any special considerations arise. If a case does not involve any question of law, then however difficult the question of fact may be, that would not justify the grant of a certificate under Article 134(1) (c) of the Constitution, because if the High Court has any doubt about the facts of a criminal case, the benefit of that doubt must go to the accused.

If, on the other hand, the High Court has no doubt about the guilt of the accused and confirms the order of conviction passed by the trial Court, ordinarily there could be no ground for entertaining an application for a certificate that the case was a fit one for a further appeal to this Court. Where the High Court has reversed an order of acquittal of an accused person and sentenced him to death or where it has withdrawn for trial before itself any case from any Court subordinate to it and has convicted an accused person and sentenced him to death, those cases would be covered by the provisions respectively of Article 134(1)(a) and 134(1)(b) of the Constitution.

Therefore, ordinarily in a case which does not involve a substantial question of law or principle in an affirming judgment, the High Court would not be justified in granting a certificate under Sub-article (c) of Article 134(1) of the Constitution.

2. As will presently appear, the present case does not at all involve any question of law, far less any such question of unusual difficulty or importance. The conviction by the Courts below is based entirely on circumstantial evidence.

The only question before the High Court was whether the circumstances disclosed in the evidence do or do not unmistakably point to the conclusion that the accused was the guilty person. If the High

Court had any doubt about the guilt of the accused or had any difficulty in accepting the evidence, its clear duty was to acquit. If, on the other hand, the High Court found, as it did find in the case in hand, that the evidence pointing to the guilt of the accused was clear, cogent and reliable, it had to dismiss the appeal.

No further question of doubt or difficulty could arise thereafter. In our opinion, therefore, the High Court's order which is the last sentence in the judgment appealed from in these terms: "Leave to appeal to the Supreme Court has been asked for and is allowed" was erroneous. In the result, we must hold that the certificate, if it can be called one, granted by "the High Court does not fulfil the requirements of Article 134(1)(c) of the Constitution.

3. But that conclusion does not necessarily mean the end of the appeal. We have to consider whether in the circumstances of this case this Court could have thought fit to grant special leave in terms of Article 136 (1) of the Constitution. We therefore proceed to examine the case from that point of view.

4. The facts of this case are simple. The accused Sunder Singh, was one of the several police constables attached to the D.I.G. of Police, Central Range, U.P. He was functioning as his orderly peon and used to drive his car. He along with a number of police constables used to stay in the out-houses with six rooms, attached to the official quarters of the D.I.G. of Police. The appellant, Het' Ram (P.W. 1), Sadhu Ram (P.W. 6), and Ram Lal, constables used to live in some of the rooms of the out-houses.

The appellant and Ram Lal apparently were on friendly terms. The appellant used to go to the room occupied by Ram Lal and his wife. The other constables were not living with their families. The prosecution case is that on the night between the 2nd and 3rd February 1954 at about 10 P.M. the appellant and Ram Lal aforesaid together left the bungalow of the D.I.G. on a cycle. Ramlal pedalled on the carrier. They proceeded towards the La Martiniere Ground, which is adjacent to the West of the D.I.G.'s bungalow with pucca roads on the north and west.

There is a culvert on the pucca road running east to west on the north of the La Martiniere Ground. The appellant returned alone by about 1 A.M. the same night. The next morning one Jagat Narain, a constable of the Armed Guard, noticed the dead body of a constable lying behind the residence of Shri Hukum Singh, Minister, near the La Martiniere Ground. He informed the D.I.G. of Police. Het Ram (P. W. 1) and other inmates of the servants quarters went and saw the dead body which they identified to be that of Ramlal. It had multiple incised wounds. Het Ram lodged the first information report at 7-40 A.M. on 3-2-1954, at Hazratganj thana in the city of Lucknow.

Sub-Inspector Ishtiaq Ahmad (P. W. 16) arrived at the spot and started investigation. After holding the inquest and sending the dead body for post-mortem examination, he noticed blood marks on the shoes of the appellant who was with him during the investigation. He formally arrested him at about 3 P.M. and interrogated him. He took possession of his shoes in the presence of two rickshaw drivers whom he picked up on the road and prepared the seizure list (Ex. P-8) of the shoes (Ex. VIII).

Thereafter accompanied by the appellant and the two witnesses aforesaid, he went to search the appellant's room which he found locked. The appellant opened the lock. Inside the room was a box which was also unlocked by the appellant with his key. From inside the box were recovered bloodstained khaki shirt and pants (Exs. IX and X). From there he was taken to the culvert aforesaid on the road on the north of the Ground at a distance of about 200 paces from the quarters.

From underneath the culvert a karauli (Ex. P-XI) (which is a small sword) was recovered as pointed out by the accused. These articles, namely, the bloodstained shoes, shirt, pants and the karauli were sent for examination and the report was that they were stained with human blood. The post-mortem examination was held by the Civil Surgeon of Lucknow, Dr. C.P. Tandon, who found as many as 32 incised and stab wounds, including one small abrasion which may have been caused by a fall.

The most serious of those wounds were on the back of the neck and back of the head which were homicidal and caused by "a sharp-edged sharp pointed weapon". A number of ribs were cut and so were the pleura, the larynx, the right lung, the pericardium (membrane of the heart), the large vessels on the left side of the neck, aorta and pulmonary artery and oesophagus. The stomach contained about 10 ounces of semi-digested food.

In the opinion of the doctor, death was due to "shock and haemorrhage from the extensive injuries" which "could be caused by the weapon Ex. XI shown to me". In cross-examination the doctor (P. W. 7) stated that "the wounds on the neck could also be caused by a sword. There was a very remote possibility of stab wound having been caused by a spear".

5. As pointed out by the Courts below, the deceased Ramlal was butchered to death in a brutal manner. From the medical evidence it is also clear that the murder took place a few hours after the deceased had taken his night meal some time during the night of 2nd-3rd February, 1954 as alleged by the prosecution and that the karauli (Ex. XI) most likely was the weapon used for causing the multiple stab and incised wounds found on the body of the deceased.

6. At the trial the prosecution adduced no direct evidence implicating the appellant. The case therefore depended entirely on circumstantial evidence which consisted of the following facts:

(1) that the deceased and the appellant were last seen going together on a cycle at about 10 P.M. on the night of the 2nd February, 1954 towards the La Martiniere Ground where the dead body was discovered the next morning;

(2) that at about 1 A.M. on the 3rd February, 1954 the appellant came back alone;

(3) that the investigating Sub-Inspector seized the shoes worn by the appellant (Ex. VIII), which were found to be stained with human blood as reported by the Serologist;

(4) that on the search of the room occupied by the appellant from the box which was unlocked by him were recovered bloodstained khaki shirt and bloodstained pants (Exs. IX & X) which were also reported by the Serologist to be stained with human blood; and (5) the recovery of the karauli as

pointed out by the accused from underneath the culvert on the pucca road to the north of the La Martiniere Ground.

7. All these incriminating circumstances have been brought out in the evidence of P. Ws. 1, 6, 10 and 15, members of the constabulary belonging to the personal staff of the D.I.G. of Police, Central Range, and the investigating Sub-Inspector (P. W. 16).

The Courts had therefore no doubt that the evidence consisting as it did of his fellow constables and armed guards who had no sort of enmity against the accused, was reliable. They also found that the accused had a motive for murdering the deceased person inasmuch as according to the evidence there was a liaison between him and the wife of the deceased.

The learned Judges of the High Court have also pointed out that the nature of the most serious injuries, namely, those on the back part of the neck were such as could have been caused by a person sitting behind when the cycle was being pedalled by the deceased. After those serious injuries had been caused to the deceased he could easily have been overpowered and done to death by the other multiple injuries actually found on the dead body.

The Courts below therefore agreed in convicting the appellant of the murder of the deceased and imposing upon him the extreme penalty of the law in the absence of any extenuating circumstances.

8. In this Court the learned counsel for the appellant has argued in the first instance that the seizure of the bloodstained shoes by the Sub-Inspector (P. W. 16) was not free from doubt as the witnesses who are said to have witnessed the seizure, Md. Irshad (P. W. 12) and Abdul Habib (P. W. 14) were not "respectable inhabitants, of the locality in which the place to be searched is situate" as required by Section 103, Criminal P. C.

On the face of it, section 103 would not apply to the seizure of the shoes which were being worn by the accused at the time he was with the investigating police officer. The section applies when a search is to be made of a place. It does not apply to the search of a person. In this case the Sub-Inspector saw, the accused putting on the pair of shoes and he seized them. There is no question of search either of a place or of a person.

Hence it was not necessary strictly in accordance with the provisions of Section 103 of the Code that there should have been two independent search witnesses. But the Sub-Inspector out of abundant caution asked those two rickshaw wallahs to be present as they were the persons most easily available.

The Sub-Inspector in spite of his efforts could not get any person from the Minister's quarters to be present at the projected search and most of the occupants of the servants quarters of the D.I.G. of Police were police constables or members of the armed guard. The Sub-Inspector naturally thought that the search witnesses should be persons other than constables or members of the arm ed guard.

9. In respect of the search of the room occupied by the appellant and the recovery of the bloodstained shirt and bloodstained pants aforesaid it was necessary to have at least two search witnesses as required by section 103. Assuming that the two rickshaw-wallahs who actually witnessed the search as found by the Courts below were not respectable inhabitants of the locality, that circumstance would not invalidate the search.

It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of Section 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence which is a matter for Courts of fact and this Court would not ordinarily go behind the findings of fact concurrently arrived at by the Courts below.

It was also contended that the malkhana register and the seizure list were not all written in the same ink, but some portions were in different ink and that therefore they were not above suspicion. But these are again matters for Courts of fact. The Courts below have not omitted to consider those special features of the case and have come to the conclusion that those were not circumstances which affected the veracity of the witnesses examined in support of the prosecution case.

10. The learned counsel for the appellant also sought to attack the findings of the Courts below on the question of motive by pointing out that on the evidence of the prosecution witnesses themselves it appeared that there was intimate friendship between the deceased and the appellant previous to the date of the occurrence.

The Courts below have considered that aspect of the case. It has been pointed out that the accused may have had an eye on the handsome wife of the deceased and that he had already developed a liaison with her. It cannot be said that those circumstances were not sufficient motive for the dastardly crime.

That is again a matter for Courts of fact. The learned counsel for the appellant has failed to make out any illegality or serious irregularity in procedure which can be said to have occasioned a failure of justice. No reasons have been adduced for interference with the concurrent findings of fact arrived at by the Courts below. The appeal must therefore be dismissed.

Punjab-Haryana High Court
The State Of Punjab vs Ram Parkash on 17 May, 1977
Equivalent citations: 1978 CriLJ 601
Author: S Goyal
Bench: S Sandhawalia, S Goyal
JUDGMENT S.P. Goyal, J.

1. The primary question involved in this appeal against acquittal is as to whether the evidence of the official witnesses is to be looked at with suspicion simply because no independent witness is taken along with the raiding party.

2. Amar Singh, Head Constable, accompanied by Excise Inspector Gurbans Singh and the other excise staff proceeded to conduct an excise raid at village Kanganwal on January 9, 1973, at about 10.30 A. M. When they reached the canal bridge near the Kanganwal distributory they noticed the accused (respondent) coming from the opposite side who on seeing the police party tried to slip away. He was, however, stopped by the Head Constable and from a search of his person 80 grams of opium wrapped in a piece of paper was recovered from the front pocket of his shirt. It was converted into two parcels and taken into possession vide memo Exhibit P.A. One parcel of 10 grams was sent for chemical examination and its contents were found to be opium.

3. On the basis of the above facts, the respondent was tried for an offence Under Section 9 of the Opium Act and in support of its case the prosecution relied on the statements of P. W. 1 Gurbans Singh, Excise Inspector, and P. W. 2 Amar Singh. Head Constable. The learned Magistrate without discussing the statements of the said witnesses and relying on Dalip Singh v. State, 1S75 Chand LR 398 acquitted the accused on the ground that no independent witness having been joined to the raiding party the evidence of the official witnesses has to be looked at with suspicion. It is the correctness of the said judgment which has been challenged by the State in this appeal against acquittal.

4. In Dalip Singh's case 1973 Chand LR 398 (supra) 1750 grams of Opium was recovered under similar circumstances from the search of the person of the accused. At the trial the prosecution to prove the recovery relied on the statements of Joginder Singh. Sub-Inspector and Gurbachan Singh, Head Constable. The accused was convicted by the learned Magistrate but his conviction was set aside in revision by Gujral, J. (as he then was) with the following observations :

The case against the petitioner only rests on the testimony of Joginder Singh, Sub-Inspector and Gurbachan Singh, Head Constable. No independent witness was joined by Shri Joginder Singh in the raid. The main attack on the evidenoe of the witness is that in view of their failure to join an independent witness, their evidence be looked with suspicion. To me there seems plausibility in this argument which was raised before the Courts below also. It is the case of the prosecution that Joginder Singh, Sub-Inspector was heading a party which was going for excise checking and patrolling. In that situation Joginder Singh could have visualised that he may be able to find some contraband articles with some of the persons he would be searching. It was therefore, necessary for him to join independent witness in the party so that the recovery could be established beyond doubt.

I am of the view that the failure of Joginder Singh to take an independent witness with him would show the anxiety on his part to make the raid a success and that would attach a taint to his evidence. In these circumstances it is not safe to accept the evidence of Sarva shri Joginder Singh and Gurbachan Singh without independent carob oration, which is lacking in this case.

With greatest respect to the learned Judge we are unable to subscribe lo and sustain this view which can be supported neither on any provision in the statute nor on judicial authority.

5. Apart from Section 103 (now Section 100) of the Criminal Procedure Code which requires that an officer making search shall call upon two or more independent and respectable inhabitants of the locality to join and witness the search there is no other provision in the Code which deals with the search by a police officer. But as held in Radha Kishan v. State of Uttar Pradesh "the search of the person of a man is not governed by the provisions of this section. Consequently, howsoever desirable the presence of the witnesses at the time of such a search it may be, it cannot be ruled that the absence of the independent witnesses would render such proceedings unreliable or open to suspicion.

6. As for the judicial authorities, it would suffice to refer to a Division Bench decision of this Court in State v. Sadhu Singh wherein the provisions of Sub-section (7) of Section 10 of the Prevention of Food Adulteration Act were under consideration and it was held that though the provisions of said Sub-section were mandatory yet the non-compliance with these provisions by itself was not sufficient to vitiate the proceedings of the taking of sample. The Bench further observed, "the provisions like those contained in Sub-section (7) of Section 10 of the Prevention of Food Adulteration Act are intended as safeguards not only in the interest of an accused person but also to ensure purity of administration and to guard against victimization of innocent persons. When the law lays down such safeguards, they must be scrupulously observed by the persons concerned. If they are disregarded without adequate reasons, then the conduct of the person whose duty it is to comply with those provisions would certainly arouse suspicion against his bona fides, and, accordingly, the evidence relating to the taking of samples would have to be subjected to careful scrutiny so as to exclude the possibility of foul-play or victimization." From the perusal of the observations of the Bench noticed above it is evident that even in a case under the Prevention of Food Adulteration Act. the non-compliance with the provisions of Sub-section (7) of Section 10, which was held to be mandatory, the non-securing of the attendance of the two persons at the time of taking of the sample by itself was held not sufficient to vitiate the proceedings or the trial. There being no provision of law requiring the attendance of any independent witness at the time of the search of the person of a suspect, the recovery proceedings cannot, therefore, be held to be suspicious or unreliable simply because no independent witness was opted to join the raiding party. At best, it would be a suspicious circumstance which would require the Court to scrutinise the prosecution evidence with more caution and care but in no case by itself it can warrant the discredit of the prosecution case. We are, therefore, of the considered view that Dalip Singh's case 1973 Chand LR 398 (supra) was not correctly decided and the dictum laid down therein that the failure to join an independent witness on the part of the police official would attach a taint to his evidence, has to be disapproved.

7. Om facts, however, we are not satisfied that it is a fit case to order retrial. Admittedly, the police along with the Excise Inspector had formed a raiding party to make a raid at village Kanganwal on the basis of some secret information. It is surprising that the raiding party remained content with the recovery of this small quantity of Opium and therefore returned to the police station. No explanation was given as to why the raiding party did not proceed to village Kanganwal to make the intended raid. Moreover, Head Constable Amar Singh did not even state that he got his person searched before searching the person of the respondent.

8. Keeping in view the commonplace story and the other circumstances discussed above, we feel that the case against the accused is not free from reasonable doubt and dismiss the appeal accordingly.

Sandhawalia, J.

9. I agree.