Supreme Court of India
Sarwan Singh vs The State Of Punjab(With ... on 10 April, 1957
Equivalent citations: 1957 AIR 637, 1957 SCR 953
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
SARWAN SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB(with connected appeal)

DATE OF JUDGMENT:
10/04/1957

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
JAGANNADHADAS, B.
SINHA, BHUVNESHWAR P.

CITATION:
1957 AIR 637 1957 SCR 953

ACT:
Confession--Procedure--Duty of the Magistrate--Time to be given to accused to decide to make the confession--Corroboration--Approver--Reliability--Test--Corroboration--Code of Criminal Procedure (Act V of 1898), s.164.

HEADNOTE:
The appellants and G were convicted of the offence of murder by the Sessions Court on the basis of the evidence of the approver, which it considered reliable, and the confession made by the first appellant which it found to be voluntary and true. The High Court held that the evidence of the approver as against G was very discrepant and. unreliable and set aside his conviction but, nevertheless, confirmed the conviction of the appellants. The appellants appealed to the Supreme Court. It was found (1) that the statement originally made by the approver as against the second appellant was wholly inconsistent and irreconcilable with the evidence given by him in Court and that the High Court did not consider the question as to whether the approver was a reliable witness at all, (2) that the Magistrate who recorded the confession did not fully comply with the

procedure to be adopted to ensure that it was voluntary, (3) that the prosecution story as deposed to by the approver was inconsistent with the material statement in the confession, and (4) that the High Court while deciding whether the confession was voluntary assumed that it was true.

Held, that the conviction of the appellants must be set aside.

The appreciation of an approver's evidence has to satisfy a double test. It must show that be is a reliable witness and that his evidence receives sufficient corroboration.

The act of recording confessions under s. 164 of the Code of Criminal Procedure is a solemn one and in discharging his duties under the said section the Magistrate must take care to see that the requirements of sub-s. (3) Of S. 164 are fully satisfied.

When an accused person is produced before the Magistrate by the investigating officer, it is of the utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and he must be sent to jail custody and given adequate time to consider whether he should make a confession at all. Ordinarily, he should be given at least 24 hours to decide.

Even if a confession is voluntary, it must also be established that it is true and, for that purpose, it is necessary to examine it

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and compare it with the rest of the prosecution evidence and the probabilities of the case.

JUDGMENT:

CRIMINAL APPELLATE, JURISDICTION: Criminal Appeals Nos. 22 and 23 of 1957.

Appeals by special leave from the judgment and order dated August 7, 1956, of the Punjab High Court at Chandigarh in Criminal Appeals Nos. 253 and 250 of 1956 and Murder Reference No. 38 of 1956 arising out of the judgment and order dated May 21, 1956, of the Court of Additional Sessions Judge at Ludhiana in Trial No. 17 of 1956 and Case No. 9 of 1956.

Gyan Chand Mathur, for the appellant in Criminal Appeal No. 22 of 1957.

R. L. Kohli, for the appellant in Criminal Appeal No. 23 of 1957.

Gopal Singh and -T. M. Sen, for the respondent in both the appeals.

1957. April 10. The Judgment of the Court was delivered by J. GAJENDRAGADKAR J.-Harbans Singh, Gurdial Singh and Sarwan Singh were charged in the court of the learned Additional Sessions Judge -at Ludhiana with having committed an offence of murder punishable under s. 302 of the

Indian Penal Code. The case against them was that they, along with Banta Singh, the approver, had intentionally caused the death of Gurdev Singh by inflicting injuries on his person with kirpan, toki and dang on November 23, 1955, within the limits of the village Sohian, police station Jagraon. The learned trial judge held that the charge framed against all the three accused had been proved beyond a reasonable doubt. That is why he convicted them of the offence charged and sentenced each one of them to death. On appeal to the High Court of Punjab, the order of conviction and sentence imposed against Harbans Singh and Sarwan Singh was confirmed whereas the order of conviction and sentence against Gurdial Singh was set aside and he was ordered to be acquitted and discharged. Accused No. 1, Harbans Singh, and accused No. 3, Sarwan Singh, have come to this Court in appeal by special leave.

It would be convenient to state the prosecution case very briefly at the outset. Gurdev Singh, the victim of the assault, was the brother of accused No. 1. It appears that the father of the two brothers had left the Ga village some years ago and is apparently no longer alive. Harbans Singh was a shirker and a waster and that made Gurdev Singh impatient. When Gurdev Singh tried to improve Harbans Singh, Harbans Singh resented Gurdev Singh's efforts and his irritation and annoyance had reached such a stage and extent that he began to plan his murder. According to the story of the prosecution, Harbans Singh got in touch with his friends Sarwan Singh and Gurdial Singh and requested them to assist him in his plan to get rid of his brother. It appears that Gurdial Singh himself was on inimical terms with Gurdev Singh because he was angry with Gurdev Singh for having cut jokes with his sister. A few days before the commission of the offence, Harbans Singh and Sarwan Singh were sitting on a canal bank near their village enjoying their drink when Banta Singh joined them. He was also asked to partake of the liquor and was told about the plan to murder Gurdev Singh. A few days later there was another meeting between these three men and it was agreed that an attempt should be made to procure arms for the purpose of carrying out the plan Rakha was accordingly approached and as a result of the negotiations he sold a country-made pistol and a cart- ridge for Rs. 40 to Sarwan Singh. Rakha was also requested to join the conspiracy. He was however unwilling to respond and though he did not openly say 'no' to the proposal, at the material time he refused to join the conspirators. On the day of the offence itself, Sarwan Singh, Gurdial Singh and Banta Singh went by a bus together and got down near the road which leads to the village Sohian. Then they proceeded on foot until they met Harbans Singh near the canal minor. Harbans Singh then advised his co-conspirators to hide themselves in the bushes. He then fetched a bottle of liquor and all the four drank from it, This took them to sunset time, when Harbans Singh left the place and promised his friends that he would send his brother to the place where they would lie concealed. He also told them that he would give a signal as soon as his brother would approach the place of their concealment by clapping his hands. In accordance with this plan Harbans Singh persuaded his brother to go ahead. Sarwan Singh then coughDed and this raised an apprehension in the mind of Gurdev Singh that people for him. So he some may be lying in wait called out to his brother Harbans Singh and said that he suspected that there were some people there. Harbans Singh assured him that he would soon join. Meanwhile, according to plan, the three assailants emerged from their place of concealment and attacked Gurdev Singh. Harbans Singh also arrived on the scene and joined them in the assault. The prosecution case is that Harbans Singh was armed with a kirpan, Gurdial Singh with a lathi, the approver Banta Singh with a toki and Sarwan Singh used a kirpan. The attack was undoubtedly brutal and callous and it resulted in as many as 69 incised wounds and two

contused injuries which had been caused with a blunt weapon. Having assaulted (Gurdev Singh in this brutal manner his assailants ran away.

Harbans Singh returned to his village and raised a hue and cry. He complained that his brother had been carried away by a number of persons and he pretended that his brother's assailants were Darshan Singh, Jagat Singh, Gurnam Singh and Banta Singh of the village Pona. The villagers-, however, found that Harbans Singh was not keen on joining them in rendering help to the victim or in pursuing his assailants. Finally, however, he was persuaded to accompany the villagers and the villagers in the company of Harbans Singh reached the stop where Gurdev Singh's body was found in a pool of blood. Thereafter Harbans Singh went to the police station and made a report of the occurrence at about 10-30 p.m. He alleged in his report that his brother had been murdered by the aforesaid four persons of the village of Pona. Purporting to act on this report, the police reached the spot in the early hours of the next morning and so the investigation commenced.

It is clear that the police had their own doubts about the truth of the report made by Harbans Singh from the start and they suspected that it was Harbans Singh and his friends who were concerned with the commission of this foul offence. Sarwan Singh, Gurdial Singh and Banta Singh were arrested on November 25 and Harbans Singh on November 26. The investigating officer recovered from the person of Sarwan Singh a blood-stained shirt and chadar and obtained from Sarwan Singh's house a pistol and an empty cartridge on information given by him from the person of Gurdial Singh a blood-stained turban was recovered and the information given by him led to the discovery of a stick or lathi. This lathi was blood-stained. From Banta Singh's person a blood-stained chadar was recovered and the information given by him led to the discovery of a kirpan and a toki from a well in which they were thrown after the commission of the offence. The prosecution also alleges that, on the information given by Harbans Singh, some blood-stained clothes were recovered from Gurdev Kaur sister of Gurdial Singh. It appears that, on November 30, Sarwan Singh offered to make a confessional statement and the confession was in fact recorded on the same day. On December 2, Banta Singh was given pardon and made an approver. That in brief is the prosecution case.

All the three accused deny any connection with the commission of the offence. The learned Sessions Judge held that Banta Singh was a reliable witness. Since Banta Singh is, however, an approver the learned Judge considered whether his evidence had received the requisite corroboration in material particulars and he held that it did. The learned Judge also found that the confession made by Sarwan Singh was voluntary and true and in his opinion the evidence of Rakha and the other circumstantial evidence with regard to the blood-stained clothes of the respective accused persons and the recovery of the weapons afforded sufficient corroboration in material particulars. That is how he reached the conclusion that the charge of murder has been proved against all the three accused. On appeal it has been held by the learned Judges of the High Court of Punjab that the evidence given by the approver, Banta Singh, against accused Gurdial Singh was very discrepant and therefore unreliable and so they found that the case against Gurdial Singh had not been proved beyond a reasonable doubt. In the result Gurdial Singh was acquitted; but the view taken by the learned Judges in respect of the prosecution case against Harbans Singh and Sarwan Singh was that the approver's evidence supplied the basis for the prosecution case against them and since it was

corroborated by circumstantial evidence to which reference has already been made and by the confession of Sarwan Singh, there was no difficulty in confirming the order of conviction and sentence passed against these two accused persons. It is this view which is challenged before us by the two appellants in the present appeals.

Since the present appeals have been filed by special leave under Art. 136 of the Constitution, it would normally not be open to the appellants to raise questions of fact before us. Prima facie the orders of conviction and sentence passed against the appellants are based on concurrent findings of fact and we would be slow to interfere with such findings unless we are satisfied that the said findings are vitiated by errors of law or that the conclusions reached by the courts below are so patently opposed to well established principles of judicial approach, that they can be characterised as wholly unjustified and even perverse. On behalf of Harbans Singh, it has been urged. before us by Mr. Kohli that the judgment of the High Court of Punjab suffers from a serious infirmity in that, in dealing with the evidence of the approver, the learned Judges do not appear to have addressed themselves to the preliminary question as to whether the approver is a reliable witness or not. The problem posed by the evidence given by an. approver has been considered by the Privy Council and courts in India on several occasions. It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in ,the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not be right to expect that such independent corroboration should cover the whole of the prosecution story -or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver. Mr. Kohli's contention is that since the learned Judges of the High Court of Punjab have failed to address themselves to this initial question, their appreciation of the approver's evidence suffers from a serious infirmity. In our opinion, this contention is well- founded. We have carefully read the judgment delivered by the High Court but we find no indication in the whole of the judgment that the learned Judges considered the character of the approver's evidence and reached the conclusion that it was the evidence given by a reliable witness. The only statement which we find in the judgment dealing with this topic is that " since the main evidence in the case consists of the testimony of the approver it is necessary to consider the case of each J. appellant individually. " With respect, this observation is open to the

criticism which has been made against it by Mr. Kohli. The argument that the character of the approver's evidence has not been considered by the High Court cannot be characterised as merely academic or theoretical in the present case because, as we will presently point out, the evidence of the approver is so thoroughly discrepant that it would be difficult to resist the conclusion that the approver in the present case is a wholly unreliable witness. Indeed it may be legitimate to point out that the learned Judges of the High Court have themselves criticised the evidence of the approver in dealing with the prosecution case against Gurdial Singh and have ultimately found that the account given by the approver is unreliable and, though there was circumstantial evidence which raised an amount of suspicion against Gurdial Singh, that would not be enough to sustain his conviction. It seems to us that if it was found that the approver's account against one of the accused persons was wholly discrepant, this finding itself should inevitably have led the court to scrutinise his evidence in respect of the other accused persons with greater caution. Besides, it is somewhat unfortunate that the attention of the learned Judges of the High Court was presumably not drawn to the still more serious discrepancies in the evidence of the approver in regard to the part assigned to Harbans Singh in the commission of the offence. In the evidence' given by the approver before the trial court, he has definitely and unequivocally implicated Harbans Singh in the commission of the offence. It has been brought out in the cross-examination that in the very first statement made by the approver before the investigating officer on November 25 he had made statements about Harbans Singh which are wholly inconsistent with the subsequent story. In this statement, the approver had definitely stated that only the three of them were concerned with the commission of the offence, himself, Sarwan Singh and Gurdial Singh. He had also stated clearly in the said statement that Harbans Singh did not join in murdering Gurdev Singh. It is remarkable that in regard to almost every material particular about the part played by Harbans Singh in the commission of the offence the story disclosed by the approver at the trial is inconsistent with his first statement before the police. In his statement at the trial, the approver assigns Gurdial Singh the possession of lathi and according to him Gurdial Singh subsequently took up the kirpan from Sarwan Singh and murdered Gurdev Singh after which Harbans Singh himself gave a blow with it at the neck of the victim. In his statement before the police, the approver had said that Gurdial Singh had carried a kirpan. We are deliberately not referring to the several other minor discrepancies which have been brought out in the evidence of the approver in his cross-examination. In our opinion, the discrepancies brought out in the evidence of the approver qua the prosecution case against Gurdial Singh coupled with the more serious discrepancies in his evidence in the prosecution case against Harbans Singh lead to only one conclusion and that is that the approver has no regard for truth. It is true that in his second statement recorded on November 29, the approver substantially changed his first story and involved Harbans Singh in the commission of the offence, and in that sense, his second statement can be said to be consistent with his evidence at the trial. But we cannot lose sight of the fact that, within three days after the recording of his second statement, he was granted pardon and his statement was recorded under s. 164 of the Code of Criminal Procedure on the same day. Therefore it would be legitimate for the accused to contend that the additions made by the approver in his subsequent statement may be the result of promise held out to him that he would be granted pardon. Apart from this consideration, in view of the positive statements made by the approver in his first recorded statement, there can be no doubt that the subsequent allegations against Harbans Singh are improvements and are the result of his decision to involve Harbans Singh in the commission of the offence. If this was a case where the statements made by the approver on subsequent occasions

merely added details which were not included in the first statement, it may perhaps have been a different matter. It is true that omissions have not always the same significance as contradictions; but in the present case it is patent that the two sets of statements are wholly inconsistent and irreconcilable and that obviously leads to a very serious infirmity in the character of the witness. It is indeed to be regretted that the attention of the learned Judges of the High Court was not drawn to this aspect of the matter and they were not invited to consider the initial question as to whether the approver, Banta Singh, was a reliable witness at all. Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more before the question of corroboration of his evidence is considered by criminal courts.

If the evidence of the approver is discarded as being unreliable the case against Harbans Singh must inevitably fail. No doubt there are some circumstances against him on which the prosecution relies. The evidence of Rakha (P.W.8) would show that Harbans Singh and the other accused persons were concerned with the purchase of a pistol from Rakha. Incidentally this pistol has not been used in the commission of the offence at all and that, in the circumstances, it is difficult to explain. However, the purchase of a pistol from Rakha may merely raise a suspicion against Harbans Singh but suspicions, however strong, cannot take the place of proof. Harbans Singh had injuries on his person and the conduct of Harbans Singh soon after the commission of the offence was very suspicious. That again may raise a suspicion against Harbans Singh but without the basis of the approver's evidence the suspicious circumstances can play no effective part in a criminal trial. The discovery of clothes alleged to have been made at the place of Gurdev Kaur cannot be pressed into service against Harbans Singh because Gurdev Kaur herself has not been examined and the importance of the recovery of a kirpan and a red scabbard from the spot cannot obviously be exaggerated. In our opinion, there is no doubt whatever that, if the approver's evidence is rejected as unreliable, the other evidence on which the prosecution relied against Harbans Singh cannot possibly sustain his conviction of the offence of murder. We must, therefore, hold that the finding of the learned Judges of the High Court that the offence of murder has been proved against Harbans Singh is vitiated by a serious infirmity to which we have just referred and must be reversed. If the learned Judges have failed to address themselves to the initial question of law before dealing with the merits of the approver and if, in dealing with his evidence, they have failed to take into account the glaring and obvious inconsistencies in the account given by the approver, it is open to the appellant to challenge the validity of their conclusion. In the result, the appeal preferred by Harbans Singh must be allowed, the order of conviction and sentence passed against him must be set aside and he must be acquitted and discharged.

That takes us to the case of accused No. 3, Sarwan Singh. We have already pointed out that the order of conviction passed against Sarwan Singh is in the words of the judgment of the High Court based on the fact that " there is the evidence of the approver and it is corroborated in every particular by his own confessional statement ". Besides, there is other circumstantial evidence to which reference has already been made in narrating the prosecution story at the beginning of this judgment. It would at once be noticed that, if we come to the conclusion that the approver is an unreliable witness, the basis of the evidence of the approver on which the learned Judges of the High Court proceeded even while dealing with the case against Sarwan Singh has been shaken. If, in our opinion, the approver is unworthy of credit, then it would not be possible to consider the question of the corroboration that

his evidence receives from the confessional statement made by Sarwan Singh himself. It is, however, true that Sarwan Singh has made a confession and in law it would be open to the court to convict him on this confession itself though he has retracted his confession at a later stage. Nevertheless usually courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case. In the present case, the learned Sessions Judge has considered the question about the voluntary character of the confession made by Sarwan Singh and has found in favour of the prosecution. The judgment of the High Court shows that the learned Judges agreed with the view of the learned trial Judge mainly because the evidence of the Magistrate who recorded the confession appeared to the learned Judges to show that the confession was voluntary. It is this view which is seriously challenged before us by Mr. Mathur on behalf of Sarwan Singh. Prima facie whether or not the confession is voluntary would be a question of fact and we would be reluctant to interfere with a finding on such a question of fact unless we are satisfied that the impugned finding has been reached without applying the true and relevant legal tests in the matter. As in the case of the evidence given by the approver, so too unfortunately in the case of the confession of Sarwan Singh the attention of the learned Judges below does not appear to have been drawn to some salient and grave features which have a material bearing on the question about the voluntary character of the confession. Sarwan Singh was arrested on November 25. His clothes were found blood-stained and he is alleged to have been inclined to help the prosecution by making the statement which led to the discovery of incriminating articles. All this happened on the 25th itself and yet, without any ostensible explanation or justification, Sarwan Singh was kept in police custody until November 30. That is one fact which is to be borne in mind in dealing with the voluntary character of his confession. What happened on November 30 is still more significant. On this day he was sent to the Magistrate to record his confessional statement. The evidence of the Magistrate Mr. Grover shows that the accused was produced before him at about 2-30 p.m. He was given about half-an-hour to(think about the statement which he was going to make and soon thereafter the confessional statement was recorded. It is true that the Magistrate did put to the accused the questions prescribed by the circulars issued by the High Court of Punjab. Even so, when the learned Magistrate was asked why he did not give more time to the accused before his confessional statement was recorded, his reply was frank and honest. He said that the accused seemed to insist upon making a statement straightaway. The Police Sub-Inspector who had taken the accused to the Magistrate was apparently standing in the verandah outside in the Magistrate's office. The doors of the office were closed but the fact still remains that the Sub-Inspector was standing outside. The evidence of the Magistrate also shows that, soon after the statement was finished, the Sub-Inspector went to the Magistrate's room again. The person of the accused showed some injuries and. yet the learned Magistrate did not enquire how the accused came to be injured. It is in the light of these circumstances that the question falls to be considered whether the confession made by the accused can be regarded as voluntary. It is hardly necessary to emphasize that the act of recording confessions under s. 164 of the Code of Criminal Procedure is a very solemn act and, in discharging his duties under the said section, the Magistrate must take care to see that the requirements of sub-s. (3) of s. 164 are fully satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under sub - s. (3) of s. 164 should not be allowed to become a matter of a mere mechanical enquiry. No element of

casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary. Incidentally, we may invite the attention of the High Court of -Punjab to the fact that the circulars issued by the High Court of Punjab in the matter of the procedure to be followed, and questions to be put to the accused, by Magistrates recording confessions under s. 164 may be revised and suitable amendments and additions made in the said circulars in the light of similar circulars issued by the High Courts of Uttar Pradesh, Bombay and Madras. The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in s. 24 of the Indian Evidence Act. There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter. Indeed, any Magistrate with enough criminal experience would have immediately decided to give longer time to Sarwan Singh in the present case for the obvious reason that Sarwan Singh appeared to the learned Magistrate to be keen on making a confession straightaway. The learned Magistrate himself has fairly stated that he would have given him longer time but for his insistence to make a confession without delay. This insistence on the part of Sarwan Singh to make a confession immediately should have put the learned Magistrate on his guard because it obviously bore, traces of police pressure or inducement. Unfortunately, the effect of the failure of the learned Magistrate to' grant enough time to the accused to consider the matter has not been considered by the learned Sessions Judge and has been wholly ignored by the learned Judges of the High Court. Besides, in neither court below has any attention been paid to the fact that Sarwan Singh appeared to have been kept in police custody without any justification between November 26 and November 30. We have carefully considered all the relevant facts bearing on this question and we see no escape from the conclusion that the failure of the learned Judges of the High Court to take into account these material facts has introduced a serious legal infirmity in their conclusion that the confession made by Sarwan Singh is voluntary. That is why we think we must reverse this conclusion.

There is, besides, another fact which is equally fatal to the. prosecution case. Even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case. In our opinion, some material points mentioned in the confessional statement are not shown to be true. Sarwan Singh says that when Gurdev Singh was assaulted he and his brother Harbans Singh were walking together. On the other hand the prosecution story is that Harbans Singh had first contacted his accomplices and had

told them that he would send Gurdev Singh towards the spot where the accomplices would lie in wait for him. The story further is that when Gurdev Singh suspected that there were some people near about he shouted to Harbans Singh and before Harbans Singh came on the spot assault had begun. This part of the prosecution story as deposed to by the approver is inconsistent with the material statement in the confession. According to the confession, Dial Singh gave a Dang blow to Gurdev Singh on the head from the front. This statement is not borne out by medical evidence. There does not appear to be a corresponding injury on the head of the victim. Sarwan Singh says that he took the kirpan which was first used by Harbans Singh and gave two blows to Gurdev Singh on his thigh. This statement again is not borne out by the medical evidence -about the injuries on the body of the victim. Similarly, the statement of Sarwan Singh that the handle of the kirpan was broken and he got his finger injured with it is not easily reconcilable with the medical evidence about the injury itself. Unfortunately these discrepancies between the confessional statement and the main prosecution evidence given by the approver have not been noticed by the learned Judges of the High Court. Indeed, after having found that the confession was voluntary,it appears to have been assumed by the learned Judges that the confession was true and that, in our opinion, is another infirmity in the conclusion reached by the High Court.

That leaves the other circumstances which have been proved against Sarwan Singh to be considered. There were injuries on his person. They are thus described by the doctor:- " 1. A superficial incised wound with a scab, 3/8" x 1/12" on the left side of the face, just above the left moustache.

2.An abrasion with a scab 1/2" x 1/4" on the outer surface of the middle digit of the left ring finger.

3. An abrasion with a scab 1/8" x 1/8" on the outer surface of the middle digit of the left little finger.

4.An abrasion with a scab 1/4" x 1/4" on the outer surface of the terminal inter-digital joint of the left little finger.

All the injuries were simple and of about two days duration. Injury No. 1 was caused by sharpedged weapon and the rest by some blunt weapon."

In his cross-examination Dr. Singh admitted that injury No. I could have been caused by razor blade as suggested by the counsel for Sarwan Singh and injuries Nos. 2 to 4 could have been caused by rubbing against some hard substance. In other words, on medical evidence it is difficult to reject the explanation of the accused as unreasonable or palpably untrue. Then we have the evidence of blood-stains on the shirt and chadar worn by Sarwan Singh. If the explanation given by Sarwan Singh about his injuries is not unreasonable then the presence of blood-stains on his dress cannot be seriously pressed against him. The evidence of Rakha about the negotiations and purchase of a pistol from him and about the part of Sarwan Singh in that transaction no doubt may suggest that Sarwan Singh was associated with the criminals but that is very far from proving the charge of murder against him. Incidentally, as we have already observed, if the pistol was purchased it is difficult to understand why it was not used. Then we have the evidence of the shoes which were found on the spot. The evidence of the shoe-maker Santa Singh suggests that he had identified the pair of shoes as belonging to Sarwan Singh that very night. According to him, he has been

manufacturing shoes like this pair though not on a large scale' Unfortunately, in his examination under s. 342 of the Code, no question had been put to Sarwan Singh about these shoes. It is not unlikely that Sarwan Singh may have offered to demonstrate that the shoes did not fit in with his feet. In any event, failure to give him an opportunity to explain the circumstances by putting an appropriate question to him under s. 342 justifies his argument that this circumstance should not be used against him. Besides, like the evidence given by Rakha, the identity of the shoes would also be a very minor circumstance in relation to the charge of murder for which Sarwan Singh is being tried. The result is that, if the approver's evidence is discarded as unworthy of credit and his own retracted confession is excluded from consideration as not being voluntary or true, whatever circumstantial evidence remains is obviously insufficient to bring home to Sarwan Singh the charge framed against him. If that be the true position, we must hold that the learned Judges of the High Court were in error in convicting Sarwan Singh of the offence of murder. It is no doubt a matter of regret that a foul cold-blooded and cruel murder like the present should go unpunished. It may be as Mr. Gopal Singh strenuously urged before us that there is an element of truth in the prosecution story against both the appellants. Mr. Gopal Singh contended that considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence. We have carefully considered all the arguments which Mr. Gopal Singh urged before us; but we do not think it would be possible to regard the approver as a reliable witness or to hold that the confession of Sarwan Singh is voluntary or true. In the result, the appeal preferred by Sarwan Singh must be allowed, the order of conviction and sentence passed against him must be set aside and he must be acquitted and discharged.

Apppeals allowed.