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NISHI KANT JHA

v.

STATE OF BIHAR

December 2, 1968

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[M. Hidayatullah, C.J., J. C. Shah, V. Ramaswami,
G. K. Mitter and A. N. Grover, JJ.]

Evidence—Statement made to village Mukhiya before accused handed over to police—Whether admissible—Statement whether to be acted upon as a whole.

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The appellant was charged for the murder of a fellow student in a railway compartment. The appellant was noticed washing blood-stained clothes, and bathing in a river. He was taken to the village Mukhiya, where he made a statement and signed it. In this statement, he admitted his presence at the scene of murder but stated that the crime was committed by someone else, that he was injured by the knife of assailant when he tried to prevent the crime, and that when the assailant jumped off the train he followed suit being apprehensive of arrest on the charge of murder. Thereafter, the appellant was handed over to the police. A blood-stained knife, which could be the cause of the victim's injuries, was found on his person. Only an incised skin deep injury, which could not account for the profuse blood-stains on the clothes was found on him. In his statement under s. 342 C.P.C. the appellant denied all connections with the crime stating that he was injured at another place in a scuffle—blood-staining his clothes, books etc. he admitted being taken to the Mukhiya's house, and stated that he had signed a blank paper there on being assaulted and threatened, but he denied making the statement in writing ascribed to him. In appeal to this Court, the appellant contended that the statement recorded by the village Mukhiya before handing over the appellant to the police was inadmissible in evidence; and if admissible, the statement had to be taken as a whole, and one portion of it could not be acted upon while rejecting the other. Dismissing the appeal,

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HELD : (i) The contention that the statement was not voluntarily made and as such could not be admitted in evidence must be rejected. No suggestion had been made to any one of the persons who had taken the appellant to the Mukhiya and had been tendered for cross-examination that any one of them had assaulted the appellant nor was any suggestion made that the appellant had been coerced or threatened with dire consequences, if he did not make the statement. The appellant's own version that he was made to give his signature on a blank piece of paper cuts at the root of his case that he made a statement as a result of a threat or assault, for in that case, all that was necessary was to get his signature. [1041 E—G]

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(ii) In the circumstances of this case, the exculpatory part of the statement made before the Mukhiya being not only inherently improbable but also contradicted by the other evidence was rightly rejected and the inculpatory part was rightly accepted. [1047 D]

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Rex v. Clewes, 4 Car. & P. 221; *Hanumant v. The State of Madhya Pradesh*, [1952] S.C.R. 1091; *Palvinder Kaur v. The State of Punjab*, [1953] S.C.R. 94, *Emperor v. Balmakund*, I.L.R. 52 All. 1011 and *Narain Singh v. The State of Punjab*, [1963] 3 S.C.R. 678; referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 190 of 1966.

Appeal by special leave from the judgment and order dated February 4, 1966 of the Patna High Court in Government Appeal No. 14 of 1963.

B. P. Singh and *S. N. Prasad*, for the appellant.

A. S. R. Chari and *U. P. Singh*, for the respondent.

The Judgment of the Court was delivered by

Mitter, J. The main question involved in this appeal is, whether the statement of the appellant recorded by a village Mukhiya before he was handed over to the police is admissible in evidence; and if so, whether the court could reject a part thereof and rely on the remainder along with other evidence adduced to hold him guilty of an offence he was charged with. The evidence against the appellant was all circumstantial and there can be no doubt that if the statement before the Mukhiya is to be left out of consideration, the appellant cannot be held guilty.

The appellant who was a student of a school in Jhajha was charged with the murder of a fellow student of the same school and robbing him of the sum of Rs. 34 on October 12, 1961. The Additional Sessions Judge, Santal Parganas acquitted the appellant of both the charges but, in appeal, the High Court found him guilty of the charge of murder and sentenced him to imprisonment for life. The appellant has come up to this Court by special leave.

The case of the prosecution leading to the discovery of the murder and arrest of the appellant is as follows. When the Barauni-Sealdah passenger reached Madhupur station at about 3.52 p.m. on 12th October 1961 the dead body of a person was discovered in the lavatory of a first class compartment of that train. One Anil Kumar Roy who wanted to board the said compartment at Jasidih station (in between Jhajha and Madhupur) could not get the door opened and had to board another compartment. The dead body was found with the neck cut and besmeared with blood. Blood was coming out from the veins of the neck and there was plenty of it on the floor of the lavatory. The clothes of the deceased and his belongings like a comb, handkerchief were also blood-stained and there were finger marks in the lavatory. Photographs of the deceased were taken and later the body was identified as that of Jai Prakash Dubey, a student of class X-B Science of Jhajha High School. The post-mortem report showed that there were no less than six incised injuries caused by some sharp cutting weapon. The injuries were homicidal and death was caused by bleeding and shock.

- A The appellant was noticed by one Ram Kishore Pandey (P.W. 17) washing blood-stained clothes with soap in the river Patro about one hour before sunset on 12th October 1961. Pandey noticed that the left hand of the appellant was cut and he questioned the appellant as to how he had got his clothes blood-stained. The appellant's version was that when he was coming from the side of Gangamarni a cow boy had assaulted him and cut his finger with glass and snatched away his money. Reaching his house in village Saptar, Pandey mentioned this to Shiv Shankar Pandey, P.W. 25. Shiv Shankar Pandey learnt from his elder brother, Basdeo that a murder had been committed in the Barauni train and the murderer was missing. They suspected that the appellant might be the murderer and decided to go and search for him. All the three along with Pathal Turi and one Ajodhya Turi, two chowkidars went to the bank of that river but could not find the appellant. There they were told by Jaganath Mahto and Rameshwar Mahto (P.Ws. 19 and 20) that they had noticed a man with wet clothes asking the way to Deoghar. Proceeding further, this group of persons found the appellant about a mile from Titithapur going behind a bullock cart. On being accosted the appellant said that he was going to village Roshan to his sister's place and that he had not committed any murder. The appellant was then wearing a pair of trousers and a shirt and had with him some books, an exercise book, a chhura (knife) besides a pair of trousers and a shirt which were both wet. They apprehended the appellant and took him to village Saptar. They called on the Sarpanch of the village who directed them to take the appellant to the Mukhiya not making any enquiry himself. The Mukhiya's place in Lorajore was at a distance of about a mile from Saptar. The party reached there at about 9 O' clock at night and stayed there for 2 or 3 hours. At about midnight on 12th October 1961 the Mukhiya took down the statement (Ex. 6) of the appellant and directed the party to take the appellant to the police station. The party reached Madhupur police station at about 5 a.m. on October 13, 1961. Brij Bihari Pathak, Sub Inspector of Police (P.W. 39) seized the articles which the appellant had with him in the presence of two witnesses and prepared a seizure list. The articles seized from the accused included a shirt, a pair of trousers, a leather belt, a pair of shoes, 4 blood-stained copy books, two books, pages of one being blood-stained. He also prepared an injury report of the appellant and sent him to a doctor for examination. The officer in charge of the Railway Police Station Madhupur, Gorakh Prasad Singh (P.W. 51) proceeded with the investigation, took charge of various articles found in the compartment of the Barauni passenger, received the post-mortem report, examined witnesses and sent all the material exhibits to the Chemical Examiner for examination and report. The report of the Chemical Examiner showed that among the
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articles found with the appellant Nishi Kant Jha and sent up for examination the following were stained with human blood: (1) leather belt cutting (2) cuttings of underwear, trousers and shirt (3) pair of chappal (4) portion of a shoe (5) one big knife and (6) several books, papers and an exercise book. The report also showed that sample of blood found on the deceased was of the same group as that of the appellant.

The appellant pleaded not guilty. Before taking a note of his statement under s. 342 of the Code of Criminal Procedure, it will be useful to re-produce his statement Ex. 6 recorded by Mukhiya at Lorajore before he was handed over to the police. The statement reads :

"I am Nishi Kant Jha, son of Nilkanth Jha, resident of Baburpur, P. S. Jasidih sub-division Deoghar, District Santhal Parganas. To-day 12-10-61 at about 12 midnight, chowkidars Pthal Turi and Ayodhya Turi of village Saptar and Sheo Shankar Pandey, Ram Kishore Pandey and Basudeo Pandey of the same village arrested me and brought me. My statement is that when I boarded the first class compartment in Barauni passenger at Jhajha, an unknown person was sitting in it when the train reached near Simultala and when it stopped there, Lal Mohan Sharma, resident of Deoghar, P. S. Deoghar, district Dumka entered into that compartment. I had been knowing him from before. When the train stopped at the Jasidih station and when I went to get down, Lal Mohan Sharma who had boarded the train at Simultala, did not allow me to get down at the Jasidih station. When the train moved ahead of Jasidih station, in the meanwhile *Lal Mohan Sharma took that outsider into the lavatory and began to beat him.* At this I caught hold of his hand, as a result of which my left fore-finger got injured with knife. Thereupon he asked me to be careful. Then, on being afraid, I sat quietly in that very compartment. He further said that I should not open the door and window of the compartment and if I would do so I would be inviting death. At that very time, he killed him. When the train was reaching near Mathurapur, he jumped down from the running train and fled away. Lal Mohan Sharma fled away. I also jumped down on the other side of Patro river near Madhupur and fled away in order to save my life, because I apprehended that I would be the only person who would be arrested. Thereafter, I came to the village Ratu Bahiar lying by the side of Patro river and afterwards I took my clothes to Patro river and washed them with a soap. Mean-

A while a bullock cart was going to Deoghar. Therefore I sat on that very bullock cart and started for Deoghar. After I had covered about a mile, Pathal Turi, Shanker Pandey, Ram Kishore Pandey, Ayodhya Turi, the chowkidar and Rameshwar Mahto got me down from the bullock cart and brought before you. I know their names after enquiring the same from them."

B At the end of the statement there was an endorsement reading :

"On my understanding my statement, I affix my signature."

C The signature appearing thereunder was admitted by the appellant to be his bearing date 12th October 1961. From the said statement the following emerge :

(1) The appellant had boarded a first class compartment in Barauni passenger at Jhajha already occupied by a person not known to him.

D (2) When the train reached Simultala one Lal Mohan Sharma, resident of Deoghar entered that compartment

(3) When the train proceeded further and stopped at Jasidih station, the appellant wanted to get down but was prevented from doing so by Lal Mohan.

E (4) After the train moved out of Jasidih Lal Mohan caught hold of the first occupant of the compartment and took him into the lavatory and started beating him.

(5) The appellant wanted to prevent this and in trying to catch hold of the assailant's hand he was injured by a knife. Thereafter he took no further steps to prevent the commission of the crime.

F (6) Lal Mohan Sharma threatened him with death in case he wanted to open the door or the window of the compartment and killed the stranger.

(7) When the train was reaching Mathurapur Lal Mohan jumped out of it and ran away.

G (8) The appellant also jumped out of the train after it had crossed the river Patro near Madhupur and fled away to save his life because he was apprehensive of being arrested as the only person left in the compartment.

(9) He went to the village Ratu Bahiar near the river Patro and washed his clothes in the river with a soap.

H (10) Thereafter he took a ride in a bullock cart going to Deoghar but after covering a mile or so he was apprehended by Pathal Turi, Shanker Pandey, Ram Kishore Pandey, Ayodhya Turi, the chowkidar and Rameshwar Mahto.

On the face of it the statement goes to show that the appellant was present in the compartment when the murder was committed by Lal Mohan Sharma, that he did not know the victim, that the murder was committed after the train had left Jasidih station, that he himself was prevented from getting out of the train at Jasidih, that he suffered an injury on his left fore-finger from the knife of the assailant and that he jumped out of the train near the river Patro. He did not mention having been accosted by Ram Kishore Pandey while he was washing his clothes in the river nor did he make any statement to the effect that he had received the injury as a result of a scuffle with a cow boy.

At the trial evidence was adduced by the Headmaster of the school that Jai Prakash Dubey, the victim, was an old student while the appellant had joined that school in the month of March 1961. They belonged to the same standard but were not in the same section inasmuch as one was in the arts section while the other was in the science section. The headmaster deposed to the fact that both of them used to play football and that no enmity was known to exist between the two.

In his statement under s. 342 Cr. P.C. the appellant said that he could not identify the photographs of the victim as those of Jai Prakash Dubey and that he did not know Jai Prakash Dubey. He did not board a first class compartment of Barauni passenger at Jhajha, that he did not jump off the train when it was nearing Madhupur. He admitted having washed his blood-stained clothes in the river Patro near the village of Ratu Bahiar and that a person had enquired of him the reason for his clothes being stained with blood. He did not admit that he had told anyone that while coming from the side of Gangamarni he had been assaulted by some herdsman and cut his finger with glass and said that his reply to the query was that he had an altercation with a herdsman on his asking about the way when the latter wanted to assault him with a sharp-edged knife and on his catching hold of it he had cut his hand. He denied having enquired of anybody about the way leading to Deoghar and he also denied that he was arrested while he was a mile ahead of village Titithapur following a bullock cart. He admitted having held in his hand clothes which had been washed in the river and blood-stained books and copy books, pages of some of the books being blood-stained. He did not admit that he had with him a knife when he was arrested. He admitted having been taken to the house of the Mukhiya, Sudama Raut but his version was that when he reached there they all began to beat him and told him that he must make a statement as suggested by them. With regard to Ex. 6 his version was that it was not his statement but that he had been made to put his signature on a piece of blank paper which was later made use of as his statement. He denied that the writing of the

- A endorsement ascribed to him was his. His account of the activities on that day was as follows. He had boarded a third class compartment in Toofan Express on 12th October 1961 intending to pay a visit to his father's sister's daughter at Roshan and thereafter going to his native place. He had reached Madhupur at about 12.30 p.m. and left for Roshan. He had lost his way
- B after some distance and enquired of some herdsman about the way to the village. These herdsman started to abuse him for having lost his way. On his remonstrance, a scuffle took place. At this point of time another herdsman appeared with a lathi which was shining like glass and wanted to assault him with this. On his catching hold of the lathi he got his hand cut which was bleeding. His clothes and books also got stained with blood
- C whereupon the herdsman ran away. He purchased a soap and went to wash his clothes in Patro river and take his bath. People who met him there had asked him about his injury and he had given them the version just now mentioned. Thereafter when he was nearing the village, Roshan a number of persons came and apprehended him on a charge of murder. They took him to the
- D Mukhiya's house at 8.30 p.m. in the night and kept him there assaulting him with lathis and slaps. The Mukhiya had asked him to confess his guilt and give a statement and on his refusing to do so, he was again assaulted and threatened with death. Through fear he had affixed his signature on a blank paper.

- E On the evidence the High Court found that the train had left Jasidih at 3.23 p.m. its next halt being Madhupur where it reached at 3.52 p.m. The door of a first class compartment was found closed at Jasidih and could not be opened. In the view of the High Court the murder was committed in the lavatory of the first class compartment between Jasidih and Madhupur. On a close scrutiny of the evidence adduced, the High Court found the following
- F incriminating circumstances against the appellant :—

(a) Only about two hours after the murder *i.e.* between 5 to 6 p.m. he was seen washing his blood-stained clothes on the bank of the river Patro.

- G (b) At the time of his apprehension by Ram Kishore Pandey and others he was holding blood-stained exercise books, and other books some of the pages being blood-stained.

(c) He also had with him at that time a knife the length of the blade and the handle of which was about 9".

- H (d) According to the medical evidence the injuries of the victim could have been caused by that knife which was in the possession of the appellant. One of the horizontal incised injuries *i.e.* injury No. 6, was 5" x 2" x $\frac{3}{4}$ ".

(e) The left hand of the respondent was noticed with a cut injury at the bank of the said river. The marks of other injuries on the body of the appellant were compatible with a scuffle with the victim in the compartment of the train.

(f) The explanation of the appellant with regard to the possession of blood-stained clothes and articles and the injury on his body was not acceptable.

In the light of the above incriminating circumstances culled from the evidence, the acceptance of the statement of the appellant in Ex. 6 that he had travelled together with an unknown person, later identified as the victim Jai Prakash Dubey in the same compartment would be conclusive to prove the guilt of the appellant if his further statement in Ex. 6 about the part played by Lal Mohan Sharma be rejected. The appellant had admitted his presence on the scene of the murder, but it was his version that the crime was committed by someone else while he himself was a helpless spectator. When the assailant jumped off the train he followed suit being apprehensive of arrest on the charge of murdering the unknown person. He had done so near the river Patro. Some portions of the statement were not found to be acceptable. It is not possible to believe that if Lal Mohan Sharma wanted to commit the murder he would prevent the appellant from getting off the train at Jasidih so as to have a witness who knew his name and address and testify to his commission of the crime. Lal Mohan Sharma was not in the train at Jhajha and no details were given about any quarrel between him and the victim which might lead the former to make the attack on Jai Prakash. Apparently there was no motive for Lal Mohan Sharma's commission of the crime. Again it is not possible to believe that Lal Mohan Sharma should not have tried to do away with the appellant also. The version of the appellant receiving the injury on his left hand in the railway compartment was also unbelievable. So was his story of a scuffle with the herdsman and cutting his hand as a result thereof. The cause for the herdsman abusing the appellant and his remonstrance followed by an attack on his person all appear to be imaginary. The only incised injury which the appellant had suffered was skin deep and it is impossible to accept the story that the bleeding was so profuse as to have necessitated his washing his shirt and trousers in the river. Nor does such an injury account for the other articles like his belt, shoes and books being stained with blood which was sought to be removed by washing.

The contention urged on behalf of the appellant that the statement was not voluntarily made and as such could not be admitted in evidence was rightly rejected by the High Court. The High

A Court noted that no suggestion had been made to any one of the persons who had taken the appellant to the Mukhiya and had been tendered for cross-examination that any of them had assaulted the appellant nor was any suggestion made that the appellant had been coerced or threatened with dire consequences if he did not make the statement. The appellant's own version that he was made to give his signature on a blank piece of paper cuts at the root of his case that he made a statement as a result of a threat or assault, for in that case, all that was necessary was to get his signature.

C A point was sought to be made by counsel for the appellant that the footprints and finger prints in the lavatory of the first class compartment taken at Madhupur station were found to be different from those of the appellant and that this went to show that the appellant could not have been the murderer. The High Court turned down this contention on the ground that before the police took charge of the situation many people had entered the compartment of the train and the above difference therefore was not a factor on which any reliance could be placed.

D The High Court found that the appellant's version that he did not know the victim unacceptable. His version in Ex. 6 as to how he came to sustain his cut injury was entirely different from that given in his statement under s. 342. The High Court also could not accept his version that he had lost his way to his sister's village at Roshan and that he had suffered an injury in the way suggested by him in his statement under s. 342. But however grave the incriminating circumstances against the appellant as summarised by the High Court may be, they were not enough to fasten the guilt on the accused unless a portion of his statement Ex. 6 is pieced together with them. It is only this statement which contains an admission that he was travelling by the Barauni passenger in a compartment where he saw a murder committed and that he had jumped out of the train near the river Patra before getting to Madhupur and the entire evidence minus the unacceptable portion of Ex. 6 lead to the irresistible conclusion of the appellant's guilt.

G It was contended before us by learned counsel for the appellant that if the statement is to be considered at all, it must be taken as a whole and the Court could not act upon one portion of it while rejecting the other. Counsel sought to rely on three judgments of this Court in aid of his contention that a statement which contains any admission or confession must be considered as a whole and the Court is not free to accept one part while rejecting the rest. In our view, the proposition stated so widely cannot be accepted. As Taylor puts it in his Law of Evidence (11th edition) Art. 725 at page 502 that with regard to the general law of admissions, the first important rule is that

"the whole statement containing the admissions must be taken together; for though some part of it may be favourable to the party, and the object is only to ascertain what he has conceded against himself, and what may therefore be presumed to be true, yet, unless the whole is received, the true meaning of the part, which is evidence against him, cannot be ascertained. But though the whole of what he said at the same time, and relating to the same subject, must be given in evidence, it does not follow that all the parts of the statement should be regarded as equally deserving of credit; but the jury must consider, under the circumstances, how much of the entire statement they deem worthy of belief, including as well the facts asserted by the party in his own favour as those making against him."

With regard to criminal cases, Taylor states :

"In the proof of confessions—as in the case of admissions in civil causes—the whole of what the prisoner said on the subject at the time of making the confession should be taken together..."

But if, after the entire statement of the prisoner has been given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so; and then the whole testimony is left to the jury for their consideration, precisely as in other cases where one part of the evidence is contradictory to another. Even without such contradiction it is not to be supposed that all the parts of a confession are entitled to equal credit. The jury may believe that part which charges the prisoner, and reject that which is in his favour, if they see sufficient grounds for so doing. If what he said in his own favour is not contradicted by evidence offered by the prosecutor, nor is improbable in itself, it will be naturally believed by the jury; but they are not bound to give weight to it on that account, being at liberty to judge of it, like other evidence, by all the circumstances of the case."

In Roscoe's book on Criminal Evidence (16th Edition, page 52), the statement of law is much to the same effect. Roscoe also cites a decision in *Rex v. Clewes*⁽¹⁾ where the confession of the prisoner charged with murder that he was present at the murder but that it was committed by another person and that he took no part in it, was left to be considered by the jury with a direction that the jury might, if they thought proper, believe one part of it

(1) 4 Car. & P. 221.

A and disbelieve another. According to Archbold's Criminal Pleading, Evidence and Practice (Thirty-sixth Edition, page 423) :

B "In all cases the whole of the confession should be given in evidence; for it is a general rule that the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favourable to him, not merely as evidence that he had made such assertion, but admissible evidence of the matter thus alleged by him in his discharge.... It has been said that if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the jury, to say whether the facts asserted by the prisoner in his favour be true."

D In this case the appellant's statement in Ex. 6 on which reliance is placed to show that the appellant could not be guilty of the crime was found wholly unacceptable. His version of Lal Mohan Sharma's commission of the crime, his being prevented from getting down from the train at Jasidih, Lal Mohan apparently committing the crime forcing the appellant to be a witness to it and the latter's version of the manner in which he received the injury were unacceptable to the High Court and we see no reason to come to any different conclusion. The other incriminating circumstances already tabulated, considered along with the appellant's statement that he was present in the compartment when the murder was committed, that he jumped from the train near the river, that he gave a different version as to how he had received his injury, his statement that he had lost his way to the village Roshan being unacceptable, all point conclusively to his having committed the murder.

G There is nothing in the judgments of this Court to which reference was made which can help the appellant. In *Hanumant v. The State of Madhya Pradesh*⁽¹⁾ the facts were as follows. On a complaint filed by the Assistant Inspector General of Police, Anti-Corruption Department, two persons by name Nargundkar and Patel, were tried for the offence of conspiracy to secure a contract of Seoni Distillery by forging the tender Ex. P-3A and for commission of the offence of forgery of the tender and of another document Ex. P-24. The Special Magistrate convicted both the appellants on all the three charges. The Sessions Judge quashed the conviction of both the appellants under the first charge of

(1) [1952] S.C.R. 1091.

criminal conspiracy but maintained the convictions and sentences under s. 465 I.P.C. on the charges of forging Ex. P-3A and P-24. Both the appellants went up in revision to the High Court but without any success. Examining the evidence in the appeal by special leave, this Court held that the peculiar features relied on by the courts below in Ex. P-3A should be eliminated from consideration and it was held that there were really no circumstances inconsistent with Ex. P-3A being a genuine document. In respect of the charge regarding Ex. P-24 the trial Magistrate and the Sessions Judge used the evidence of experts to arrive at the finding that the letter Ex. P-24 was typed on article A which had not reached Nagpur till the end of December 1946 and therefore the letter was antedated. The High Court although of the view that the evidence of the experts was inadmissible proceeded nevertheless to discuss it and place some reliance on it. The lower courts held that the evidence of experts was corroborated by the statements of the accused recorded under s. 342. In rejecting this conclusion it was observed by this Court :

"If the evidence of the experts is eliminated, there is no material for holding that Ex. P-24 was typed on article A. The trial Magistrate and the learned Sessions Judge used part of the statement of the accused for arriving at the conclusion that the letter not having been typed on article B must necessarily have been typed on article A. Such use of the statement of the accused was wholly unwarranted. It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all. If the statement of the accused is used as a whole, it completely demolishes the prosecution case and, if it is not used at all, then there remains no material on the record from which any inference could be drawn that the letter was not written on the date it bears we hold that there is no evidence whatsoever on the record to prove that this letter Ex. P-24 was antedated and that being so, the charge in respect of forgery of this letter also fails."

Learned counsel for the appellant sought to rely on the above statement of law in aid of his contention that the statement in Ex. 6 should either be taken as a whole or rejected altogether. In our view that was not the *ratio decidendi* in *Hanumant's case*⁽¹⁾. As was pointed out by this Court, with the elimination of the evidence of the experts, there was no material for holding that Ex.

(1) [1952] S.C.R. 1091.

- A P-24 was typed on article A and consequently the only evidence on the subject being in the statement of the accused a part of it could not be relied on leaving apart the exculpatory part.

This is made more clear in the next case which was cited by learned counsel. In *Palvinder Kaur v. The State of Punjab*⁽¹⁾ the appellant was tried for offences under sections 302 and 201, Indian Penal Code in connection with the charge of murder of her husband. She was convicted by the Sessions Judge under s. 302 but no verdict was recorded regarding the charge under s. 201. On appeal, the High Court acquitted her of the charge of murder but convicted her under s. 201 I.P.C. With regard to this, the High Court held that the most important piece of evidence in support thereof was the confession made by the appellant which though retracted was corroborated on this point by independent evidence so as to establish the charge. This Court held that there was no evidence to establish affirmatively that the death of the appellant's husband was caused by poisoning and that being so the charge under s. 201 I.P.C. also must fail. According to this Court, the High Court in reaching a contrary conclusion not only acted on suspicions and conjectures but on inadmissible evidence. With regard to the alleged confession of the appellant, it was held that the High Court not only was in error in treating the same as evidence in the case but was further in error in accepting a part of it after finding that the rest of it was false. In that case, the evidence showed that the body of the appellant's husband was found in a trunk and discovered in a well and that the accused had taken part in the disposal of the body but there was no evidence to show the cause of his death or the manner and circumstances in which it came about. Referring to the decision of *Hanuman's case*⁽²⁾ it was reiterated that the Court cannot accept the inculpatory part of a statement and reject the exculpatory part. The Court also referred to the observations of the Full Bench of the Allahabad High Court in *Emperor v. Balmakund*⁽³⁾ and fully concurred therein.

- In the Allahabad case the question referred to the Full Bench was, whether the court could accept the inculpatory part of a confession which commended belief and reject the exculpatory part which was inherently incredible. On reference to a large number of authorities cited the Full Bench observed that these authorities actually established no more than this that (a) where there is other evidence, a portion of the confession may in the light of that evidence; be rejected while acting upon the remainder with the other evidence; and (b) where there is no other

(1) [1953] S.C.R. 94.

(2) [1952] S.C.R. 1091.

(3) I.L.R. 52 Allahabad 1011.

evidence and the exculpatory element is not inherently incredible, the court cannot accept the inculpatory element and reject the exculpatory element. According to the Full Bench of the Allahabad High Court the two rules above stated had been applied during the last one hundred years and the Full Bench answered the reference by holding "where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible."

Relying on the above statement of the law it was said by this Court in *Palvinder Kaur's* case⁽¹⁾ that no use could be made of her statement contained in the alleged confession to prove that the death of her husband was caused by poisoning or as a result of an offence having been committed and once this confession was excluded altogether, there remained no evidence for holding that her husband had died as a result of the administration of potassium cyanide.

The last decision of this Court referred to by counsel, viz., *Narain Singh v. The State of Punjab*⁽²⁾ does not add anything which need be taken note of to the propositions of law laid down in the above-mentioned case.

In this case the exculpatory part of the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under s. 342 Cr. P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, P.W. 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there

(1) [1953] S.C.R. 94.

(2) [1963] 3 S.C.R. 678

- A being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.
- B The appeal therefore fails and the conviction and sentence are upheld.

Y.P.

Appeal dismissed.