Gura Singh vs The State Of Rajasthan on 6 December, 2000

Equivalent citations: AIR 2001 SUPREME COURT 330, 2001 (2) SCC 205, 2000 AIR SCW 4439, 2001 ALL MR(CRI) 764, 2001 SCC(CRI) 323, 2001 (3) LRI 1238, 2001 CRILR(SC&MP) 22, 2001 (1) UJ (SC) 299, (2001) 1 MPLJ 624, 2001 (1) SRJ 92, 2000 (3) JT (SUPP) 528, 2000 (8) SCALE 147, (2001) 2 RECCRIR 742, (2001) 1 CRIMES 34, (2001) 1 CURCRIR 12, (2001) 1 EASTCRIC 145, (2001) 1 RAJ LW 26, (2001) 1 RECCRIR 122, (2000) 8 SUPREME 402, (2001) 1 ALLCRIR 26, (2000) 8 SCALE 147, (2001) 1 UC 237, (2001) 42 ALLCRIC 393, (2001) 1 CHANDCRIC 35, (2000) 3 RECCRIR 148, (2000) 3 ALLCRILR 751, 2001 CRILR(SC MAH GUJ) 22

Bench: K.T.Thomas, R.P.Sethi

CASE NO.:
Appeal (crl.) 1184 1998

PETITIONER:
GURA SINGH

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT: 06/12/2000

BENCH:
K.T.Thomas, R.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J SETHI,J.

In an otherwise quite and small village under Police Station Karanpur, District Sriganganagar (Rajasthan) an unusual spine chilling occurrence took place in the wee hours of 7th July, 1976 resulting in the commission of an offence of patricide. The killer is the appellant and victim his unfortunate father. Such a heinous crime was committed on a trifle issue which commenced with the altercation between the father and the son. Father reminded the appellant of his wasteful expenditure which was not to the liking of the son who pulled down the deceased on the ground and smashed his skull with a Kassi (Dagger). On the next morning the appellant went to Jarnail Singh

(PW2) and confessed about the commission of the crime and the manner in which the injuries were caused resulting in the death of the deceased Bhajan Singh. In the company of Jarnail Singh (PW2), the appellant approached Billor Singh (PW5), Niranjan Singh (PW6) and Joginder Singh (PW7) making before them the extra judicial confession and requesting them to help him. Jarnail Singh (PW2) and Billor Singh (PW5) thereafter called Amar Singh, Panch. Jarnail Singh lodged the First Information Report (Exhibit P-2) at 12.30 p.m. at Police Station, Karanpur which was at a distance of 8 kilometers from the place of occurrence. The appellant was arrested on the same day. He made the disclosure statement (Exhibit P21) consequent to which Kassi, the weapon of offence (Exhibit P19), was recovered. Again on 12.7.1976 the appellant made another disclosure statement in consequence of which a Chadar (sheet) (Exhibit P-12) stained with blood was recovered vide (Exhibit P-22). The appellant was committed to the Court of Sessions on 10.2.1977 for standing his trial under Section 302 IPC. After the prosecution produced 12 witnesses, the trial court vide its judgment dated 9.8.1978 held the appellant guilty and convicted him under Section 302 IPC. On the facts and circumstances of the case the appellant was awarded life imprisonment. The appeal filed by the appellant against the judgment of the trial court was dismissed by a Division Bench of the High Court vide the judgment impugned in this appeal. Before appreciating the contentions raised on behalf of the appellant by his counsel, it is useful to note down the conspectus under which the offence was committed. It is also necessary to note the relationship of the witnesses with the deceased and the appellant. Bhajan Singh, the unfortunate victim of the crime had two wives. The appellant is the son from the second wife Ms.Har Kaur who was previously married to one Kapur Singh. Joginder Singh (PW7) is the son and Niranjan Singh (PW6) is the son-in-law from the first wife of the victim. Bhajan Singh, deceased had a brother, namely, Rood Singh whose son is Jarnail Singh (PW2). Bhajan Singh, deceased was in possession of 105 Bighas of land at Badopal (Rajasthan) where he used to live with the appellant. Joginder Singh (PW7) was living in Punjab where he looked after 40 acres of the other land belonging to Bhajan Singh and his family. Some altercation is stated to have taken place between Bhajan Singh and the appellant some days before the occurrence regarding expenditure incurred by the accused in the marriage of his sister-in-law and installation of a hand pump. On the day of occurrence which led to the killing of the deceased, the conversation commenced on the same issue which was not taken of kindly by the appellant who inflicted the Kassi blow at 01 a.m. on 7th July, 1976 resulting in the death of the deceased. Admittedly, there is no direct evidence of eye-witnesses. The case of the prosecution is primarily based upon the extra judicial confession of the appellant coupled with the discovery of new facts leading to recovery of weapon of offence and other incriminating articles. Prosecution has also relied upon the existence of a motive which infuriated the deceased to commit the crime. It is, however, undisputed that the death of Bhajan Singh was homicidal and the manner in which the injuries were inflicted on the vital parts of his body shows the commission of crime of murder within the meaning of Section 300 IPC not falling under any of the exceptions specified therein. Mr.Doongar Singh, the learned Advocate who appeared for the appellant submitted that extra-judicial confession allegedly made by the appellant has not been proved by the prosecution beyond all reasonable doubts. According to him the appellant has wrongly been roped into the charge of murder of his father by the prosecution witnesses with oblique motive of usurping the property left by the deceased. It is contended that as the main witnesses have turned hostile, the conviction based upon their testimony is not justified. It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite

inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [1954 SCR 1098], this Court again in Maghar Singh v. State of Punjab [AIR 1975 SC 1320] held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P. [AIR 1985 SC 1678] this Court cautioned that it is not open to the court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P. [AIR 1990 SC 2140] this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in Baldev Raj v. State of Haryana [AIR 1991 SC 37]. After referring to the judgment in Piara Singh v. State of Punjab [AIR 1977 SC 2274] this Court in Madan Gopal Kakkad v. Naval Dubey & Anr.[JT 1992 (3) SC 270] held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration. In the instant case the extra-judicial confession made by the appellant has been sought to be proved by the testimony of PWs 2, 5, 6 and 7. As noticed earlier, all the aforesaid witnesses are closely related to the appellant in whom, under the normal circumstances, he would have confided hoping help, protection and being safeguarded. The confession has been made instantaneously immediately after the occurrence and is not alleged to have been procured under any undue influence, coercion or pressure. Though the appellant expected a favour from the witnesses, yet none of them is stated to have promised to favour him in case he made a truthful statement regarding the occurrence. Except the alleged usurption of property of the deceased by PWs 6 and 7, there is no other suggestion which could tend to show that their evidence is tainted and that the extra judicial confession was not voluntarily made by the appellant. Assailing the finding of the High Court, the learned counsel appearing for the appellant has submitted that since PWs 2, 5 and 7 have been declared hostile and PW6 is an interested witness, the extra judicial confession attributed to the appellant cannot be held to have been by the prosecution as a fact. It is true that PW5 has been declared hostile and no reliance can be placed upon his testimony for the purposes of deciding as to whether the appellant had made the extra judicial confession or not.

Similarly, the statement of PW7 Joginder Singh to the extent it refers to the appellant having made extra judicial confession is inadmissible in evidence as admittedly by the time this witness reached the place of occurrence, the appellant had been arrested by the police and any confession made by him thereafter is inadmissible in evidence. It is in evidence that the appellant was admittedly arrested before the arrival of Joginder Singh (PW7) in the village. However, there is reliable evidence of Niranjan Singh (PW6) which has been believed by both the courts below and we have not been persuaded to disagree with the aforesaid findings. We are also not impressed by the argument that PW6 had made the statement allegedly for depriving the appellant from succession to the estate of Bhajan Singh, deceased. The time, the manner and the attending circumstances clearly prove that the appellant had made a voluntary extra judicial confession before this witness without any fear, favour or coercion. The testimony of PW2 has been assailed on the ground that as he was allegedly declared hostile by the Public Prosecutor, no reliance can be placed upon his testimony. We have scrutinised the statement of PW2 and find that he had fully supported the case of prosecution in all material particulars. In his examination-in-chief the witness after vividly explaining the manner in which the extra judicial confession was made, stated that after walking on foot for about 4 kilometers he, in the company of others, reached Police Station Karanpur at about 12.00 noon and lodged the report but the Police Station did not register a case on the pretext that it was a family matter and that the report would be registered only after making an enquiry in the village. Finding such a statement to be resiling from the earlier testimony, the Public Prosecutor sought the permission of the court to declare the witness hostile and "cross-examine him on the ground that he had not stated that Exhibit P-2 was not registered at once". The trial court obliged the Public Prosecutor by permitting him to cross-examine to that extent. The cross-examination by the Public Prosecutor is restricted to the lodging of the First Information Report and not with respect to the factum of his deposition in so far as it relates to the making of extra-judicial confession by the appellant. The defence also appears to be conscious of the fact that the Public Prosecutor had sought the permission to cross-examine the witness to a limited extent. The witness was subjected to lengthy and detailed cross-examination with respect to the making of extra judicial confession by the appellant. The trial as well as the High Court rightly relied upon his testimony to hold that the appellant had voluntarily made the extra judicial confession to the aforesaid witness. There appears to be misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. This Court in Bhagwan Singh v. State of Haryana [AIR 1976 SC 202] held that merely because the Court gave permission to the Public Prosecutor to cross- examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness. In Rabindra Kumar Dey v. State of Orissa [AIR 1977 SC 170] it was observed that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of

such witness if that part of the deposition is found to be creditworthy. The terms "hostile", "adverse" or "unfavourable" witnesses are alien to the Indian Evidence Act. The terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English Law. The rule of not permitting a party calling the witness to cross examine are relaxed under the common law by evolving the terms "hostile witness and unfavourable witness". Under the common law a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and a unfavourable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves the opposite test. In India the right to cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading questions cannot be put to the witness in examination-in-chief or in re- examination except with the permission of the court. The court can, however, permit leading question as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Section 154 authorises the court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. Permission for cross-examination in terms of Section 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness. Extensively dealing with the terms "hostile, adverse and unfavourable witnesses" and the object of the provisions of the Evidence Act this Court in Sat Paul v. Delhi Administration [AIR 1976 SC 294] held: "To steer clear of the controversy over the meaning of the terms 'hostile' witness, 'adverse' witness, 'unfavourable' witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared 'adverse' or 'hostile'. Whether it be the grant of permission under Sec.142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross- examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observfations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi), AIR 1922 PC 409. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of 'hostility'. It is to be liberally exercised whenever the court from the witnesses's demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as 'declared hostile', 'declared unfavourable', the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts.

It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction of his own witness by a party. Under the English Law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under S.155. Under the English Act of 1865, a party calling the witness,

can 'cross-examine' and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court considers the witness to be 'adverse'. As already noticed, no such condition has been laid down in Ss.154 and 155 of the Indian Act and the grant of such leave has been left completely to the discretion of the court, the exercise of which is not fettered by or dependent upon the 'hostility' or 'adverseness' of the witness. In this respect, the Indian Evidence Act is in advance of the English Law. The Criminal Law Revision Committee of England in its 11th Report, made recently, has recommended the adoption of a modernised version of S.3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and hostile witnesses by other evidence without leave of the court. The Report is, however, still in favour of retention of the prohibition on a party's impeaching his own witness by evidence of bad character.

The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for, interpreting and applying the Indian Evidence Act has been pointed out in several authoritative pronouncements. In Prafulla Kumar Sarkar v. Emperor, ILR 58 Cal 1404 = (AIR 1931 Cal. 401)(FB)an eminent Chief Justice, Sir George Rankin cautioned, that 'when we are invited to hark back to dicta delivered by English Judges, however, eminent, in the first half of the nineteenth century, it is necessary to be careful lest principles be introduced which the Indian Legislature did not see fit to enact'. It was emphasised that these departures from English Law 'were taken either to be improvements in themselves or calculated to work better under Indian conditions'.

xxxxx xxx From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stand thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discrediated, the Judge should, as a matter of prudence, discard his evidence in toto."

We deprecate the manner in which the prayer was made by the Public Prosecutor and permission granted by the trial court to cross- examine Jarnail Singh (PW2) allegedly on the ground of his being hostile. On facts we find that the said witness was wrongly permitted to be cross-examined. It was only on a post-event detail that he did not concur with the suggestion made by the Public Prosecutor. That single point, in our opinion, was too insufficient for the Public Prosecutor to proclaim that the witness made a volteface and became totally hostile to the prosecution. Otherwise also the permission granted and utilised for cross-examination was limited to the extent of the time of lodging the First Information Report (Exhibit P-2). There is no reason to disbelieve PW2 who is closely related to the appellant and has no reason to falsely implicate particularly when no inducement, threat or promise is allegedly given or assured. We are satisfied that there was sufficient evidence even in the absence of testimony of PWs 5 and 7 to hold that the appellant had made a voluntary extra judicial confession before PWs 2 and 6 without undue influence, pressure,

promise or inducement. Such a statement was made by the appellant instantaneously immediately after the occurrence to witnesses who are independent and reliable. We are also satisfied that the prosecution has proved beyond doubt the recovery of the blood stained Chadar (sheet) belonging to the appellant and Kassi, the weapon of offence, on the basis of the voluntary disclosure statements made by him. Shambu Singh (PW12) has deposed that after his arrest vide Memo (Exh.P-14), the shoes of the appellant stained with human blood were seized and upon his information Kassi (Exhibit P-21) (Article A-1) was recovered from inside his house. Recovery is proved by the testimony of Niranjan Singh (PW6) and Joginder Singh (PW7) besides the IO (PW2). On 12th July, 1976 the appellant gave information about the chadar (sheet) which was recorded as Exhibit P-22 and in presence of Ram Singh, (PW3) he produced the same which was hidden by him in his house kept in a pitcher (earthen water pot). The recovery memo was prepared and signed by Ram Singh (PW 3), Jarnail Singh (PW2) and Shambu Singh (PW12). Chadar was stained with human blood. Both the trial as well as the High Court rightly held that the prosecution has succeeded in proving the making of the disclosure statements by the appellant and consequent recovery of the weapon of offence and chadar at his instance. An hair was found studded with Kassi, the weapon of offence, recovered at the instance of the accused after making the disclosure statement. Hair from the skull and the scalp of the deceased were also seized by the investigating agency. All the three hair were sent to the Forensic Science Laboratory who upon analysis of morphological examination found all the hair to be of human head. Various other articles such as chadar (sheet) turban, pair of shoes, the Kassi were also sent to the Forensic Science Laboratory for analysis. The Forensic Science Laboratory in its report submitted: "Blood was detected in exhibit nos.1, 2 (from packet marked 'l'), 3, 4 (from '2'), 5 (from '4'), 7 (from '6'), 8 (from '7'), 9 (from '8') and 10 (from '9').

Blood stained cuttings/samples from the exhibits along with their respective controls wherever available have been forwarded to the serologist for serological examination.

Samples from exhibit no.5(from '4') and 6(from '5') have been forwarded to the Physics Division for soil examination.

Exhibit no.10 (from '9') has been forwarded As-Such to the serologist for serological examination."

The Serologist and Chemical Examiner to the Government of India found Chadar (sheet) and other items to be stained with human blood. However, the origin of blood stains on items, pair of shoes and Kassi could not be determined on account of disintegration with the lapse of time. Learned counsel for the appellant submitted that as the origin of the blood could not be determined, the appellant was entitled to be acquitted, as according to him the prosecution has failed to connect the accused with the commission of crime. In support of his contention he relied upon the judgment of this Court in Prabhu Babaji Navle v. State of Bombay [AIR 1956 SC 51], Raghav Prapanna Tripathi v. State of Uttar Pradesh [AIR 1963 SC 74], Shankarlal Gyarasilal Dixit v. State of Maharashtra [1981 (2) SCR 384], Kansa Behera v. State of Orissa [AIR 1987 SC 1507]. The effect of the failure of the serologist to detect the origin of blood due to disintegration in the light of the Judgments in Prabhu Babaji and Raghav Prapanna Tripathi's cases was considered by this Court in State of Rajasthan v. Teja Ram & Ors. [1999 (3) SCC 507] wherein it was held:

"Failure of the Serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood in unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in Prabhu Babaji Navle v. State of Bombay [AIR 1956 SC 51] and Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74]. In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that "blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment". In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstances has no evidentiary value 'in the circumstances' connecting the accused with the murder. The further part of the circumstances in that case showed that a shirt was seized from a drycleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for drycleaning, it was not bloodstained.

We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstances arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different."

In view of the authoritative pronouncements of this Court in Teja Ram's case (supra), we do not find any substance in the submissions of the learned counsel for the appellant that in the absence of the report regarding the origin of the blood, the trial court could not have convicted the accused. The Serologist and Chemical Examiner has found it that the Chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with the lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial court as well as the High Court were, therefore, justified in holding this circumstance as proved beyond doubt against the appellant. Taking advantage of the non-mentioning of the dimensions of the stains of the blood on the chadar (sheet) and other articles and relying upon the observations made in Kansa Behera v.

State of Orissa [AIR 1987 SC 1507], the learned counsel for the appellant has submitted that such a failure is fatal for the case of the prosecution and a missing link in the chain of circumstances allegedly proved against him. This submission is also of no help to the accused-appellant in the present case. In Kansa Behera's case(supra), the allegations of the prosecution were that the deceased therein had some dispute with one Jitrai Majhi and is brothers. Jitrai Majhi was alleged to have got the deceased killed through the instrumentality of Kansa Behera. There was no eye-witness and the case of the prosecution was based only upon circumstantial evidence. One of the circumstance relied upon by the prosecution was that the dhoti and shirt recovered from the possession of the appellant, when he was arrested, were found to be stained with human blood. In that context this Court observed: "Few small blood-stains on the clothes of a person may even be of his own blood specially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood-stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn."

The position in the instant case is totally different inasmuch as the blood stained chadar (sheet) was recovered after about 5 days from the date of the arrest of the appellant which he had concealed in a pitcher and kept in his house. But for the disclosure statement made by the appellant, the fact of the chadar (sheet) belonging to him having blood-stains could not have been discovered. It is worth mentioning that before making observations in the case, the Court noted that as regards the recovery of shirt and dhoti, there was no clear evidence to indicate that the accused was wearing those clothes at the time of incident. Otherwise also the observations made in Kansa Behera's case were confined to the facts of that case alone and were not intended to be universally applicable to all cases. The extent of the dimensions of the blood-stains has to be determined in the context of the circumstances of each case. It would be appreciated if the extent is mentioned in the seizure memos but failure to give its details in such memo would not entitle the accused to claim the rejection of the prosecution case on that ground alone. Non mentioning of the dimensions of the stains of blood may perhaps assume importance in cases where the accused pleads a defence or alleges the malafides of the prosecution of fabricating the evidence to wrongly involve him in the commission of the crime. The credibility of such a circumstance cannot be weakened only by referring to the non mention of dimensions of blood stains on the clothes particularly when its adverse effect on the prosecution case is not pointed out. Mere doubt sought to be created on the non mention of dimensions of blood stains by itself is not sufficient as admittedly the accused is entitled to the benefit of only reasonable doubts. We have found, in this case, on facts that this circumstance is fully proved and does not create a doubt, much less a reasonable doubt so far as the commission of the crime by the accused is concerned. We have no doubt in our mind that the appellant had made confessional statement to PWs 2 and 6, made voluntary disclosure statements, led to the recovery of the weapon of offence and chadar (sheet) which was concealed by him in his house, Kassi studded with an hair which was compared with the hair taken from the body of the deceased and upon analysis was found to be of human hair and his chadar (sheet) was stained with human blood. The aforesaid circumstances were sufficient to connect the accused with the commission of crime for which he was rightly held guilty, convicted and sentenced by the trial court which was confirmed by the High Court. There is no merit in the appeal which is accordingly dismissed.