

## Shankaria vs State Of Rajasthan on 26 April, 1978

**Equivalent citations: 1978 AIR 1248, 1978 SCC (3) 435, AIR 1978 SUPREME COURT 1248, (1978) 3 SCC 435, 1978 CRI APP R (SC) 205, 1978 SCC(CRI) 439, AIR 1978 SUPREME COURT 1399, 1978 WLN (U.C) 232 1978 SC CRI R 319, 1978 SC CRI R 319**

**Author: Ranjit Singh Sarkaria**

**Bench: Ranjit Singh Sarkaria, N.L. Untwalia, P.S. Kailasam**

PETITIONER:

SHANKARIA

Vs.

RESPONDENT:

STATE OF RAJASTHAN

DATE OF JUDGMENT 26/04/1978

BENCH:

SARKARIA, RANJIT SINGH

BENCH:

SARKARIA, RANJIT SINGH

UNTWALIA, N.L.

KAILASAM, P.S.

CITATION:

1978 AIR 1248

1978 SCC (3) 435

ACT:

Proof of guilt-Tests to be applied by the Courts in a capital case when relying solely on confessional statement of the accused-Identification of Prisoners Act, Sections 4 and 5-Obtaining of thumb impression in the presence of Magistrate, whether necessary-Track evidence is a relevant circumstance which can be taken into account along with other evidence.

HEADNOTE:

The appellant was tried, convicted and sentenced to death under Section 302, Penal Code for the double murder of Kartar Singh and Mada Singh deceased, by the Sessions Judge, Ganganagar. He was further convicted for offences under Sections 307, 459, 460 and 380 Penal Code. The case of the

prosecution rested mainly on the confessional statement, Ex. p.27, part from supporting circumstantial evidence. The learned Sessions Judge found that the confessional statement though retracted at the time of examination under Section 313, Criminal Procedure Code, had been voluntarily made by the accused and that it was true and had been corroborated in some particulars by the other evidence on record.

Shankaria's appeal to the High Court was dismissed, the reference made by the Sessions Judge was accepted and the conviction and sentence of death were confirmed.

In appeal by special leave, it was contended that (i) the confession was not voluntarily made but was the result of police pressure, inducement and coercion and that this inference was deducible among others, from several features of the case. (ii) after the preliminary questioning, the Magistrate hardly give 20 minutes to the appellant for reflection before recording his confession, which according to the ruling of this Court in Sarwan Singh v. State of Punjab [1957] SCR 953 the Magistrate should have sent the accused back for at least 24 hours to jail to think and decide, as to whether or not he should make a confession and (iii) there is reason to suspect that after recording the confession, the appellant was handed back to the Police Superintendent who then took him to Hanumangarh. If that be a fact, it would amount to a contravention of subsection (3) of Section 164 of the Code of Criminal Procedure, 1973, giving rise to an inference that the confession was not voluntary.

Dismissing the appeal, the Court

HELD : 1. A confession recorded u/s 164 Criminal Procedure Code, if voluntarily and truthfully made, is an efficacious proof of guilt. [744 B-C]

2. When in a capital case the prosecution demands, a conviction of the accused, primarily on the basis of his confession recorded under s. 164 Criminal Procedure Code, the Court must apply a double test;

(1) Whether the confession was perfectly voluntary ?

(2) If so, whether it is true and trustworthy ? Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise, such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the

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second test, does not arise. If the first test is satisfied, the Court must before acting upon the confession, reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should

carefully examine the confession and compare it with, the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test. [744 C-F]

3. (a) In the instant case. both these tests were satisfied. The confession (Ex. P-27) was found to be voluntary and true. Its perusal showed that there was nothing improbable or unbelievable in it. It appeared to be a spontaneous account, studded with such vivid details about the manner of committing the crimes in question, which only their perpetrator could know. The physical facts found at the spot in the morning following the night of occurrence, told a tale which was consistent with the one told by the accused in his confession. Among these physical facts was a dibbi bearing finger-prints, one of which according to the Expert of the Government Finger Print Bureau, tallied with the specimen finger-print of the, accused. The accused's finger-print on the dibbi which was seized from the spot and sealed before the arrest of the accused, and the seals on which remained intact till they were opened by the Finger-Print Expert, was a tell-tale circumstance, pointing towards the guilt of the accused. r 752 D, F, 754 D, 759 A1

(b) The confessional statement received assurance from the other evidence also.

(i) It was corroborated by the medical evidence in regard to the nature of the weapon (kassi) with which according to the confession the injuries were inflicted. This fact was further confirmed by the report of the Serologist who found human blood on the kassi.

(ii) The moulds of the bare-foot prints found at the scene of crime, according to the Expert, tallied with the specimen foot-moulds of the accused.

(iii) Although, by itself, such track evidence could not be deemed sufficient to carry conviction, yet it was a relevant circumstance which taken into account along with the other evidence, reinforced the conclusion as to the identity of the culprit. [755 B, C, 759 D, E]

4. The condition precedent for recording a confession by a Magistrate in the course of Police Investigation, is provided in Section 164(2) Cr. P.C. which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily. In the instant case, the Magistrate fully complied with the condition. The large number of clear and pointed questions put by the Magistrate to the accused for this purpose and the answers given by the latter shows that the Magistrate had cogent reasons to believe that the confession was being voluntarily made. [749 E, F-G]

5. How much time for reflection should be allowed to In

accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged period to jail or judicial lock-up before recording his confession. In the instant case, the accused was got admitted to the judicial lock-up on the 12th June for getting his confession recorded under s. 164 Cr. P.C., and, such admission was made

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under the orders of the Magistrate who, ultimately recorded his confession on the 14th June. The accused was for about two days in judicial custody beyond the reach of the Police. On June 13, 1974 a written request was made to the Magistrate by the Police, for recording the confession of the accused. Even then the Magistrate postponed the recording of the confession till the following day, obviously because he wanted to give the appellant one day more in judicial custody to ponder over the matter free from Police influence. On the 14th June, notwithstanding the fact that the accused Shankaria was in judicial custody from the evening of the 12th June, the Magistrate after the preliminary questioning, allowed 15 minutes more to the accused for reflection. Thus, the accused had in fact about 38 or 40 hours in judicial custody, immediately preceding the confession, and this was rightly considered sufficient to secure to him freedom from fear or influence of the Police. [750 E-F, 751 A]

Sarwan Singh v. State of Punjab [1957] SCR 953; distinguished.

Abdul Razak v. State of Maharashtra AIR 1970 SC 283 followed.

6. There was no infringement of sub-section (3) of s. 164 Crl. P.C. According to the testimony of the Magistrate (PW 6) and the Superintendent of police (PW 22) the custody of the accused was no handed to the to the investigating officer, but to the Challani guard who escort under trials to and from Jail/ Judicial' guard.[751 E-F, 754A]

Regarding the sentence:

7. The crimes were committed in a most brutal and dastardly fashion. The victim were taken unawares when asleep. Two of them were blind. The Neronian conduct of the accused even after the occurrence, in languishing in the stricken premises, looking for something to cat in the kitchen, drinking water, smoking bidis, bringing water and bathing himself, mindless of the specter of the slain and

the groans and gasps of the dying, betrays an extreme depravity of character. The grisly and gruesome nature of the murders, the hapless and helpless state of the victims, the fiendish modus operandi of the appellant the first kill and then steal- all, the heart of law to call for its extreme penalty. [759 H, 760 A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION :Criminal Appeal No. 561 of 1976.

Appeal by special leave from the Judgment and Order dated 5- 5-1976 of the Rajasthan High Court in D. B. Crl. Appeal No. 491 of 1975 and D. B. Reference No. 4 of 1975. S. K. Gambhir (Amicus Curiae) for the Appellant. S. N. Kacker, Sol. Genl, S. M. Jain, Dalveer Singh and Ranjeev Dutta for the Respondent.

The Judgment of the Court was delivered by SARKARIA J.-This appeal by special leave is directed against a judgment of the High Court of Rajasthan, by which the order of the Sessions Judge, Ganganagar, convicting the appellant under Section 302 Penal Code and sentencing him to death for the double murder of two. persons in Village Takhat Hazara, was confirmed.

The facts of the prosecution case are as follows A First Information Report was lodged on September 9, 1973 at about 7.30 a.m. by one Shyam Singh in Police Station Sadul Sahar, to the effect that when he in the morning went to the Gurdwara of his village at about 7 a.m. for brooming and burning incense, as usual, he found three persons, one of whom, Mada Singh, lay groaning on a cot. The informant went back to the village, contacted Jagar Singh, Hari Singh, Sukhdarshan Singh, Amar Singh and others, and in their company returned to the Gurdwara. It was then detected that kartar Singh son of Hari Singh lay dead on a cot with injuries on his head. The other two persons, Mada Singh and Wazir Singh, were lying injured. The locks of the rooms were found broken and the goods lay scattered. After registering the case, the Station House Officer, Bhagwan Singh reached the scene of occurrence. He prepared the site plan (Ex. P-8) and a connected explanatory note in which he recorded the physical facts noticed by him at the spot. Among other things, he found one blood stained Kassi (Article 1) and a Dibbi (small tin-box) (Article 2). Some coins were also lying scattered there. He noticed some finger-prints on the Dibbi (Art. 2). He, therefore in the presence of witnesses including Sukhdarshan Singh (P.W.6), Jaggar Singh (P.W. 8), prepared the seizure, memo (Ex. P. 14) in respect of the Dibbi and sealed it into a parcel. He also sealed the blood-stained Kassi into a parcel, vide Ex. P-12. He also took into possession blood-stained earth, clothes and broken locks from the scene. He also prepared the inquest report (Ex. P- 12) in respect of the dead body of Kartar Singh deceased and sent it for postmortem examination. Bhagwan Singh continued the investigation till September 12, 1973 when it was taken over by Bhanwar Singh.

A large number of crimes of this pattern involving murders or attempted murders were committed in Rajasthan and in the neighbouring States of Haryana and Punjab. Fifteen cases of crimes of a similar nature, were registered in Ganganagar District, alone, from February 1973 to May 1974.

Naturally, the Police machinery of Ganganagar District came into motion. Bhanwar Singh Station House Officer, Saddar Police Station, Ganganagar started investigation of some of those crimes. He took over the investigation of this case also on September 12, 1973. Shri Shyam Pratap Singh Rathore, District Superintendent of Police supervised the, investigation. Suspicion fell on the appellant who was found absent from his native village Karanpur, District Ganganagar.

On June 3, 1974, Shri Rathore accompanied by Bhanwar Singh, S. H. O. and one Subhash (P.W. 23) went to Bhatinda and arrested the appellant, Shankaria who had assumed the alias Rattan Lal. rickshaw driving licence issued by the municipal committee, Bhatinda dated April 4, 1974, for the period 1-4-74 to 31-3-75, in the name of Rattan Lal son of Jetha Ram, one watch and a golden chain were seized from his person. Bhanwar Singh prepared the memo (Ex. P-56A) in respect of the arrest of the appellant-and his personal search. Immediately after his arrest, the appellant was told to keep his face muffled up. which he did. The appellant was then taken by the police to Ganganagar and lodged in the lock-up of the Police Station on June 4, 1974. Under orders of the Inspector-General of Police, the investigation was taken over by Shri Kashi Prasad Srivastava, Superintendent of C.I.D. on June 5, 1974.

On June 12, 1974, the appellant was taken by the police to Raisingh Nagar, and under the orders of the Magistrate lodged in the judicial lock-up there.

On June 13, 1974, Shri Srivastava, Superintendent of C.I.D., submitted an application to the Judicial Magistrate, First Class, Raisingh Nagar, requesting that the confessional statement of the accused be recorded. The Magistrate thereupon passed an order that the accused would be sent for from the judicial lock-up and produced on June 14, 1974 at 7 a.m. for this purpose. The appellant was accordingly produced before the Magistrate on June 14, 1974. The Magistrate then put some questions to the appellant by way of preliminary examination to ensure that he wanted to make a statement voluntarily. The Magistrate gave him some time for reflection and from 8.45 a.m. onwards, recorded his confessional statement (Ex. P-27).

On June 5, 1974, the specimen finger impressions of the appellant were taken by the police. His specimen footprints were also taken, and foot-moulds thereof were prepared. Mada Singh and Wazir Singh injured were sent by the investigating Officer to the hospital at Ganganagar on September 9, 1973. Since some argument was made before us with regard to the nature of the inflicting weapon, it is necessary to note the details of the injuries. Dr. Bahadur Singh found these injuries on Mada Singh

1. Incised wound 1-1/2" x 1/4" brain deep on the right side of forehead 1" above the eye-brow.
2. Incised wound 1/4" x 1/2" x 1" on right eye outer angle.
3. Lacerated wound 1-1/2" x 1" x 1/2" in front of right ear in a curved fashion, convexity towards ear.

In the doctor's opinion, all these injuries were suspected to be grievous and caused with a sharp weapon, like the Kassi (Art. 1). Mada Singh succumbed to his injuries on September 11, 1973 at 6

a.m. in the hospital. Dr. M. P. Agarwal conducted the autopsy of Mada Singh and found these external injuries :

1. Bruise 21" x 1-1/2" on both the right eye-lids.
2. Incised wound 1/4" x 1" at the outer angle of right eye.
3. Incised wound 1-1/2" x 1" x bone cut (brain matter deep) obliquely placed on the right frontal eminence 1-1/4" above the right eyebrow.
- 4 Lacerated wound 1-1/2" x 1/3" x 1" in front of the tragus of right ear-
5. Soft tissues swelling 6" x 5" all over the right face and front temporal region.

On opening the body, the doctor found soft tissue haematoma all over the right temporal, frontal, parietal and occipital region, and a linear oblique fracture of right temporal region with multiple fracture pieces and fracture of right fronto-parietal region under injury No. 3. There was sub- dural haemorrhage and membrane of the brain were found cut under injury No. 3. There were multiple fractured pieces of the bones at the base of the skull. The Injuries 2 and 3 in the opinion of Dr. Agarwal could be caused with the sharp edge and Injury No. 4 with blunt side of the Kassi (Art. 1). The injuries appeared to be caused by separate blows. Dr. Bahadur Singh found these injuries on Wazir Singh (P.W.) on September 9, 1973 :

1. Incised wound 1-1/2" x 1/8" upto brain on right parietal bone 2-1/2" above the ear obliquely upward downward.
2. Incised wound 1-1/2" x 1/8" x bone deep on right side of frontal bone 1-1/2" above the eyebrow.
3. Lacerated wound curved shape outer part of eye starting from lateral side of eyebrow upto maxillary prominence.

Injuries 1 and 2, in the Doctor's opinion, could be caused with the sharp side of the Kassi (Art.1), and were grievous; while Injury 3 could be caused with the blunt side of this Kassi. Wazir Singh was unconscious at the time of his medical examination.

Dr. Bahadur Singh performed postmortem examination of the body of Kartar Singh deceased on September, 9, 1973 and found these injuries :

1. Lacerated wound 2-3/4"x1/2" upto brain matter on the frontal bone 21' above the medial end of right eyebrow upward downward.

Brain matter was seen from the wound. The bone was found fractured.

2. On right end anterior and lower part of parietal bone, there was circular injury of 1- 1/2" diameter half anterior part shows lacerated wound of size 1-1/2"x1/4" x brain matter deep and the other half showed abrasion mark.

3. 'Incised wound 1' x 1/4" x 1/4" above the lateral side of right eyebrow.

In his opinion, injuries 1 and 2, could be caused with the base of the wooden handle affixed to the hook of the Kassi (Art. 1). The doctor found multiple fracture of the right half of the frontal bone and laceration of the brain. The injuries were sufficient to cause death in the ordinary course of nature.

On June 29, 1974, the sealed packets containing the Dibbi (Art. 2) and the locks, together with the specimen finger- prints of the accused, were sent to the Rajasthan Finger- Print Bureau, Jaipur for comparison of the finger impressions and opinion. At the Bureau, the Finger-Print Expert, Shri P. N. Tankha (P. W. 18) examined them and found two chance prints on the Dibbi. He took their enlarged photographs and found that the chance print Q1 on the Dibbi was similar to the left middle-finger specimen print (marked S2) of Shankaria appellant; while the other chance print Q2 on the Dibbi was not distinct enough to admit of comparison.

During his examination at the trial, the appellant denied the prosecution case; he retracted the confession and said it had been made under duress. He also alleged fabrication of evidence of footprints, etc. by the Police. The learned Sessions Judge found that the confessional statement (Ex. P-27) had been voluntarily made by the accused and that it was true. He further held that the confession had been corroborated by the medical evidence and the circumstantial evidence, namely : (a) the presence of a finger-print of the accused on the Dibbi (Art. 2); (b) that one railway ticket was issued from Sadul Shahar to Bhatinda on September 9 1973; (c) the similarity (as per Expert, P.W.19) of the foot-mould prepared from the foot prints found at the scene of crime on 9-9-1973, with the specimen foot-moulds of the accused; (b) sojourn of the accused to Haridwar after committing the crime and his stay in a costly hotel there, on 13th and 14th September, 1973, etc. In the result, the Sessions Judge convicted the appellant under Section 302 Indian Penal Code for the murders of Kartar Singh and Mada Singh and sentenced him to death. He further convicted the appellant under Section 307 I.P.C. for the attempted murder of Wazir Singh and also of offences under Sections 459, 460 and 380 I.P.C. for committing lurking house trespass by night and stealing Rs. 1,100/- from there but he did not award any sentence on these counts in view of the death sentence imposed for the double murder. Shankaria appealed to the High Court; while the Sessions Judge also made a reference for confirmation of the death sentence.

The High Court dismissed the appeal and confirmed the conviction and the sentence of death.

Hence, this appeal by special leave.

There is no ocular evidence of eye-witnesses in this case. At the time of occurrence, the three victims were the only inmates of the Gurdwara. Kartar Singh died at the spot. Mada Singh died in the Hospital without regaining consciousness. The lone survivor, Wazir Singh (P.W. 14) was examined at the trial. He was a blind He had received the head injuries when he was asleep. On receiving those



injuries he lost consciousness and regained it much later in the hospital on September 9, 1973. In these circumstances, P.W. 14 was unable to say as to who had caused him the head injuries. He, however, did depose to the theft of Rs. 600/- which he had kept in the Gurdwara. This amount had been raised from a contribution for construction of a room in the Gurdwara.

Thus the conviction of the appellant mainly rests on his confessional statement (Ex. P-27), which was recorded by the Judicial Magistrate, First Class (Shri S. K. Bansal, P.W. 6) on June 14, 1974, under Section 164 of the Code of Criminal Procedure.

The substantive part of this confessional statement, Ex. P- 27, tendered into English, reads as follows :

"It is an incident of about ten months back that I had purchased a railway ticket from Bhatinda to Matili at 3 p.m. in the day and boarded the train from Bhatinda and reached Matili at about 7.30 p.m. Thereafter took rail track and reached Takhat Hazara. I hid in the nala in the cotton field near Takhat Hazara. There, I kept sitting and stayed there upto 12.30 in the night. At about 12.30 I came out of the nala, crossed the line and reached the Gurdwara. There, I took off my clothes, chappals, and tried to climb the wall by the side, of the line but could not succeed. Therefore, I climbed through the side and one kassi was lying there in a corner. There in the courtyard, three beds were lying. I picked up the kassi and hit on the head of one person from the back (reverse) side of the kassi. Thereafter, I hit another person. I hit the third person after running, as he was sleeping very far. I then drank water, entered the kitchen but could not find anything in spite of search. Then I entered another room, opened the kunda (khuta). There a short was lying, from which I took out a key. I broke open the lock and got Rs. 700/- and got nothing else during the search. Then I broke open the lock of another house with the help of a subble (iron bar). There I was able to get Rs. 400/, out of which Rs. 300/- were in cash and Rs. 100/ as change (small coins). I then remained there for much time, drank water, smoked a bidi, brought water from the nearby Johar (tank) in a bucket, and bathed myself.

"Then I opened the Gurdwara and searched it, but could not find anything. I then immediately left the village Takhat Hazara and took the railway track again and reached the road and got on Abohar-Sirsa Road. There I stayed upto 7 a.m. In the morning I boarded the bus for Sangaria at 7 a.m. and stayed there at the station. I stayed there upto 10 a.m. and took tea. Then I boarded the train for Bhatinda at 10 a.m. and reached Bhatinda at 12.30. There I got the clothes stitched. In the evening at 10, I boarded the train for Delhi, (then said) I went to Bikaner and not Delhi. I stayed for two days at Bikaner. After two days went to Delhi and stayed there for two days. From Delhi, proceeded for Haridwar and stayed there in a rented room @ Rs. 12/- per day. I stayed at Haridwar for 8- 9 days and then from Haridwar I proceeded for Rishikesh. There I stayed for two days and further proceeded for Lachman Jhoola. While returning from Lachman Jhoola I stayed at Haridwar and finally returned to

Bhatinda via Ambala. I did not do any work for one month. Afterwards, I started Rickshaw driving. I used to commit thefts, and the police also used to catch me, I was turned out from the house by the people of my house and that is why I happened to ply the Rickshaw."

This confession was retracted by the appellant when he was examined at the trial under Section 313 Cr. P.C. on June 14, 1975. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 Cr. P.C., the Court must apply a double test :

(1) Whether the confession was perfectly voluntary ? (2) If so, whether it is true and trustworthy ?

Satisfaction of the first test is a sine quo non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24 Evidence Act, it must be excluded and rejected *brevi manu*. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

Now, let us apply these tests to the confession (Ex. P-27):

The first question is whether the confession was voluntary ? In this connection, some undisputed facts may be noted. The appellant was arrested by Shri S.P. Rathore, Superintendent of Police on June 3, 1974 at Bhatinda. He was then taken to Ganganagar in Rajasthan in connection with the investigation of 15 crimes of a similar pattern committed in Ganganagar District. The appellant remained in police custody upto June 12, 1974 on which date in the afternoon, he was brought by the police to Raisingh Nagar, where Shri Sukhdarshan Kumar Bansal, Judicial Magistrate First Class, was then holding his Court. Under the orders of the Magistrate, the appellant was committed to the judicial lock-up at Raisingh Nagar in the evening of June 12, 1974. Thereafter, he remained there in the judicial lock-up for two days more. On June 13, 1974, Shri Kashi Ram, Superintendent of Police, submitted an application to the Magistrate, requesting him to record the confession of the accused. On that application, the Magistrate passed an order to the effect that the accused be sent for from the judicial lock-up on the following day at 7 a.m. for recording his confessional statement. In compliance with the Magistrate's order, the

appellant was brought from the judicial lock-up in the morning of June 14, 1974 and produced before the Magistrate. At 8.20 a.m., the Magistrate put some questions to the appellant by way of preliminary examination to ensure whether he wanted to make a confession voluntarily. The questions put to the accused and the answers given by him during this preliminary examination, as recorded by the Magistrate may be extracted :

"Q. 1. From where did the police arrest you ? On what day or at what time ?

Ans. I was arrested at Bhatinda. I was arrested on 3rd at

2. Q. 2. For how much time are you in police custody ? Ans. I was in police custody from 3rd to 12th. Q. 3. What sort of behaviour was given to you during that period ?

Ans- I have been extended good behaviour by the police. Q. 4. It has been explained to you that it is not necessary for you to make any confession. Do you understand that it is at your discretion whether you make the confession or not ?

Ans. I have understood that it is not binding upon me to make any confession and it is at my discretion. Q. 5. Were you put to any physical torture or shown any fear compelling you to make any confession ? Ans. I was not put to any physical torture or any fear to make confession.

Q. 6. Where you told that you will be released or pardoned or any other benefit will be given, in case you make confession ?

Ans. I was not told that I would be released or pardoned or any other benefit will be given, in case of making confession.

Q. 7. It has been explained to you that you will not be handed over to the police in case you do not make confession and that you will directly be sent to the Jail. Ans. I have understood.

Q. 8. Do you understand that I am a Magistrate and that if you make any confession, it may be used against you in evidence ?

Ans. Yes.

13-315SCI/78 Q. 9. It has fully been explained to you that you are not bound to make confession and that you may give any statement whenever you like to make it voluntarily and that if you make confession that may be used against you in evidence. Now, tell, what you want to say ? Ans. I have understood that it is not binding upon me to make confession and that it may be used against me in evidence."

After this preliminary examination, the Magistrate started recording of the confessional statement at 8.45 a.m. After the completion of the statement (Ex. P-27) (which we have extracted earlier), at its foot, the Magistrate made a memorandum, which rendered into English, reads as follows :

"I have explained to Shankaria alias Ratan Lal that he is not bound to make a confession and that if he does so, any confession whatever he makes, may be used against him in evidence and I believe that this confession of the crime has been made voluntarily by him (Shankaria). This confession has been made in my presence by him (Shankaria). By my reading, over, on hearing it, the accused admitted it to be correct. It is a true and full record of the statement which he (Shankaria) made voluntarily."

The Magistrate, Shri Bansal, was also examined as a witness at the trial. He proved the record of the confession and testified that he had recorded it after fully satisfying himself that the confession was being made voluntarily. Mr. S. K. Gambhir, appearing as amicus curiae, argued the case very thoroughly on behalf of the appellant. It is contended by him that the confession (Ex. P-27) was not voluntarily made but was 'the result of police pressure, inducement and coercion. According to him, this inference is deducible from these circumstances (1) No explanation is forthcoming as to why the accused was brought all the way from Ganganagar to Raisingh Nagar for getting the confession recorded there. Possibly, the police did not want to give the appellant an opportunity of having independent advice which could more easily be available in the District town of Ganganagar rather than at the Sub- Divisional town, Raisinghnagar.

(2) The Judicial Lock-up, Raisingh Nagar, being contiguous to the Police Station is almost a part of it. The appellant therefore, even on the 12th, 13th and 14th of June 1974, during the time when he was an inmate of the Judicial Lock- up, could not be said to be free from police surveillance and influence.

(3) The Magistrate hardly gave 20 minutes to the appellant for reflection before recording his confession. It is maintained that according to the ruling of this Court, the Magistrate should have given at least 24 hours to, the appellant, to think and decide while in the judicial lock-up, as to whether or not he should make a confession. (Reliance in this connection has been placed on the decision of this Court in Sarwan Singh v. State of Punjab(")).

(4) There is reason to suspect that after recording the confession, the appellant was handed back to the Police Superintendent, Shri Srivastava who then took him to Hanumangarh. If that be a fact, it would amount to a contravention of sub-section (3) of Section 164 of the Code of Criminal Procedure, 1973, giving rise to an inference that the confession was not voluntary.

It is proposed to deal with these points ad seriatim. The learned Solicitor-General submits that at the relevant time, Shri S. D. Kumar Bansal was posted as Munsif-cum-Judicial Magistrate First Class at Sri Ganga Nagar, but he used to come to hold his Circuit Court at Raisingh Nagar for 15 days. It is pointed out that on June 12, 1974 when the question of recording the confession of the appellant arose, no Judicial Magistrate of the First Class, competent to record a confession, was

available at Ganga Nagar. Our attention has been invited to the entries in the Roznamacha of Police Station, Sadar Ganganagar which reveal this fact. Stress has also been placed on the fact that no question whatever was put to S/Shri Srivastava (P.W. 20) and Bhan-war Singh (P.W. 21) in cross-examination to show that on June 12, 1974, a Magistrate competent to record a confession under Section 164 Cr.P.C. was available at Ganganagar and that the appellant was taken to Raisinghnagar with a sinister motive or for extorting a confession. There is merit in the submission made by the learned Solicitor- General.

The relevant Roznamcha entries of Police Station Sadar, Ganganagar, which were proved by Bhanwar Singh, S. H. O. (P.W. 21), have been read out to us. From those entries, it appears that the appellant was taken on June 12, 1974 from Ganganagar to Raisingh Nagar for getting his 'confession recorded by a Magistrate, because on that date no Judicial Magistrate of the First Class was available at Ganganagar. It may be noted further, that in cross-examination, no question was put to Shri Bhanwar, Singh or Shri Srivastava to show that on 12-6-74 a Magistrate competent to record a confession, was available at Ganganagar, or that the appellant was taken to Raisingh Nagar with a mala fide motive, although the appellant was at the trial properly defended by Shri Ganpat Ram, who, we are told, is an experienced lawyer. There is nothing on the record to indicate that the appellant was taken to Raisingh Nagar to deprive him of the opportunity of having independent legal advice, or with any other oblique motive.

As regards point No. (2), the appellant during his examination under Section 313 Cr.P.C., stated : "During those days, Kanshi Prasad Ji was staying in the Police Station, Raisinghnagar which is adjacent to the Judicial Lock-up, and used to see and threaten me". Thereafter, the confusional statement (Ex. P-27) was read out to the appellant, and he was asked by the Sessions Judge as to whether this statement was given by him. To this, the appellant replied : '51 did (1) (1957) S.C.R. 953.

not give this statement voluntarily. I have given this statement under compulsion due to the fear, threat and beating given by Shri Kashi Prasad."

In cross-examination, no question was put to Shri Kashi Prasad Srivastava to show that the Judicial Lock-Up Raisingh Nagar is adjacent to the Police Station, nor was he asked whether at the material time, he was staying in the Police Station Raisingh Nagar. Shri Srivastava was however asked as to whether he had compelled and beaten the accused to make the confessional statement. This was sharply denied by him.

Questions were however put to Shri S. K. Bansal, Judicial Magistrate (P.W.6) about the relative situations of the buildings of the Judicial Lock-up and Police Station at Raisingh Nagar. Shri Bansal stated that the Judicial Lock- Up is at a distance of 150 to 200 feet from the Court at Raisinghnagar. He was then questioned: "Is Police Station Raisingh Nagar adjacent to the Judicial Lock-Up?" The witness replied: "The Police Station is constructed near it but the building is a separate one. I do not know whether there is any common wall in between or not. I cannot say whether a man can peep through/'from tile common wall, which is four feet high .... between the Police Station and the 'Judicial Lock-Up. I do not know as to whether the doors of the Police Station and Judicial Lock-Up

are in one side. I cannot say whether the distance in between them is about 30 feet." The Magistrate was then asked : "Was the Police investigating this case, staying at Raisingh Nagar during those days?" The witness answered: "I cannot say, as I had never been to Police Station Raisingh Nagar." The evidence of the Magistrate, referred above, shows no more than the fact that the Judicial Lock-Up at Raisingh Nagar is located in a separate building, near the Police Station. But from the mere fact that the judicial lock-Up is located in the proximity of the Police Station, it does not follow that both are, under the control of the Police. The judicial lock-Up-as appears from the statement of the Magistrate, Shri Bansal-is a Sub-Jail governed by the Jail Manual. The watch and ward staff of the Judicial Lock-Up are under the control of the Jail Superintendent or the Magistrate who may be the ex-officio Superintendent of the Sub-Jail (including the Judicial LockUp). The precise position as to whether Shri Bansal or any other Magistrate was in charge of the Judicial Lock-Up is not clear from Shri Bansal's statement, because he was not specifically and fully questioned in regard to this aspect of the matter. Even so, this much is clear that the Judicial Lock-Up was not under the control. of Shri Srivastava. Even Police Station, Raisingh Nagar, could not be under the administrative control of Srivastava as he was not the District Superintendent of Police but belonged to the C.I.D., and his headquarter was at Jaipur. In these circumstances, it cannot be believed that from 12th to 14th June 1974, Shri Srivastava was staying in Police Station Raisingh Nagar. An Officer of his status, belonging to, another branch of the Police Department, normally is not expected to use a Police Station for his board and lodging while on tour. Moreover. as already mentioned, not a single question was put to Srivastava or Bhanwar Singh to show that they halted in the Police Station.

kaisingh Nagar is a Sub-Divisional Town. There must be a Rest House or an Inspection Bungalow for stay of the Government Officers on official tour. Had these officers been questioned on this point, they would have disclosed their halting place which could be checked with reference to their T.A. Bills or the record maintained at the Rest House. No question was put to these officers as to whether they had at all visited the Police Station. If Srivastava had really visited the Police Station during this period, his visit must have been reflected in the Daily Diary of the Police Station. The Daily Diary of the Police Station was never summoned. It will therefore, be not unreasonable to infer that the entries in the Daily Diary of the Police Station do not show that Srivastava visited this Police Station during the period from 12th to 14th June, 1974.

We therefore, do not find any substance in Point No. 2. It may be noted that despite a specific question put by the Magistrate to the accused during his preliminary examination on 14-6-1974, lie (accused) did not complain about any threat, inducement, pressure or beating given to him by Shri Srivastava or anybody else. The courts below were therefore, right in rejecting the belated plea to that effect set up by the appellant.

This takes us to Point No. (3). The argument is that the Magistrate should have given at least 24 hours to the appellant after his preliminary examination, to think over the matter, in Jail, free from fear of the Police. It is true that the interval between the preliminary examination of the appellant and the recording of his confessional statement was about 15 minutes. But there is no statutory provision in Section 164 Cr. P.C or elsewhere, or even an executive direction issued by the High Court that there should be 'an interval of 24 hours or more between the preliminary questioning of the accused and the recording of his confession. The condition precedent for recording a confession

by the Magistrate in the ;course of Police investigation is provided in Section 164(2) Cr.P.C. which mandates the Magistrate not to record any confession, unless upon questioning the accused person making it, he has reason to believe that it is being made voluntarily. In the instant case, the Magistrate fully complied with the condition. He (Shri Bansal) has testified that before recording the confession he had fully satisfied himself that the accused wanted to make the confession voluntarily. The large number of clear and pointed questions put by him to the appellant for this purpose and the answers given by the latter have been extracted in full earlier. Their perusal shows that the Magistrate had cogent reasons to believe that the confession was being voluntarily made. Although the interval between the preliminary questioning of the appellant and his confession was about 15 minutes, the appellant had no less than 38 hours at his disposal, whilst he was in judicial custody free from fear or influence of the Police, to think and decide whether or not to make a confession. As noticed already, the appellant was brought from Ganganagar to Raisingh Nagar on June 12, 1974 because on that day no Magistrate competent to record the confession of the appellant was available at Ganganagar. The appellant was admitted to the Judicial Lock-Up Raising Nagar under the orders of the Magistrate about or after 4 p.m. on that date. Thereafter, the appellant continuously remained in the Judicial Lock-Up or judicial custody till his confession was recorded on June 12, 1974 from 8.45 a.m. onwards. The Magistrate, Shri Bansal was aware that the appellant was continuously in judicial custody since the evening of June 12, for about 38 or 40 hours preceding the confession. In *Sarwan Singh v. State of Punjab* (supra) this Court had emphasised that before recording a confession, the Magistrate should see that the mind of the accused person was completely free from any possible interference of the police. In that context, it was observed that "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." In this connection, it was suggested :..... 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." The Court was careful enough to preface this suggestion with the remark that "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." (emphasis added).

It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach, of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged period to jail or judicial lock-Up. In the instant case, the accused was got admitted to the judicial lock-Up on the 12th June for getting his confession recorded under Section 164 Cr. P. C., and such admission was made under the orders of the Magistrate who ultimately recorded his confession on the 14th June. The accused was for about two days in judicial custody beyond the reach of the police. On June 13, 1974, a written request was made to the Magistrate by the police, for recording the confession of the accused. Even then, the Magistrate postponed the recording of the confession till the following day, obviously because he wanted to give the appellant one day more in judicial custody to ponder over the matter free from Police influence. On the 14th June, notwithstanding the fact that the accused

Shankaria was in judicial custody from the evening of the 12th June after the preliminary questioning, the Magistrate allowed 15 minutes more to him for reflection. Thus considered, Shankaria bad, as a matter of fact, about 38 or 40 hours in judicial custody, immediately preceding the confession, and this was rightly considered sufficient to secure freedom from fear or influence of the Police to him (Shankaria).

The facts in *Sarwan Singh v. State of Punjab* (ibid) were entirely different. Therein, the accused who had visible marks of injuries was straightaway brought by the Police from its prolonged custody, and produced before the Magistrate who immediately thereupon recorded his confessional statement, while the Police Sub-Inspector remained outside in the verandah of the Magistrate's office. The Magistrate did not ask the accused how he came to be injured. It was in these circumstances that this Court held that the failure of the Magistrate to give adequate time to the accused to consider the matter, stamped it is involuntary.

The facts of the case in hand are, substantially in line with those of *Abdul Razak v. State of Maharashtra*(1) There, the accused was kept after his arrest in police custody for a fortnight. Then, after being kept in jail custody for three days, he was produced before the Executive Magistrate for recording confession. The Magistrate after a warning sent back the accused to jail and then recorded his confession on the following day. Repelling the contention that the accused remained in prolonged police custody and his confession was not voluntary, this Court held that the accused had spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days.

For the above reasons, we negative the third point canvassed by Mr. Gambhir.

As regards point No. (4) the Magistrate has stated that after recording the confession, he had handed over the custody of the accused to the Challani guard i.e. the guard who bring under-trials from the Judicial Lock-up to the Court. The Challani guard was not under the control of the investigating agency. During the preliminary questioning of the appellant, the Magistrate had assured him that in no case-whether he made a confession or not-he would be sent back to Police custody. Accordingly the Magistrate, according to his testimony, did not send the accused back to police custody. Instead, he gave the custody of the appellant to the Challani guard, which means jail or judicial custody.

A suggestion was put to Shri K. P. Srivastava in cross-examination, that after the confession had been recorded, the accused was taken to Hanumangarh and the witness had accompanied him. The witness stoutly refuted this suggestion that the custody of the accused was, after the confession, given to him or the investigating Police. He however, affirmed that the accused was sent to the judicial lock-up Hanumangarh. There was no good reason to disbelieve the evidence of the Magistrate P.W. 6) and the Superintendent of Police (P.W. 22) (1) A.I R 1970 S.C. 283 to the effect that after recording the confession, the custody of the accused was not handed to the investigating police.



Mr. Gambhir's contention, therefore, is not factually correct. There was no infringement of sub-section (3) of Section 164 Cr. P.C. Thus, all the four points pressed into argument by Mr. Gambhir, fail.

Another circumstance which reinforces the conclusion about the confession being voluntary is that it was not retracted at the earliest opportunity. The confession was recorded on June 14, 1974. The trial of the accused commenced on January 10, 1975 when charges were framed and read over and explained to the appellant by the Sessions Judge. At the trial, he was defended by Shri Ganpat Ram, who, as already observed, was an experienced lawyer. The trial dragged on for several months, because witnesses were examined piece-meal on different dates. The prosecution evidence was closed on June 14, 1975 and the accused was then examined under Section 313 Cr. P.C. It was during such examination, the appellant for the first time retracted the confession and took up the plea that he had made it under duress of the police.

After bestowing our best consideration to all the questions bearing on the 'point, we are of opinion that in the circumstances of the case, the High Court was right in coming to the conclusion that this confession (Ex. P. 27) had been voluntarily made by Shankaria, accused. The next question is : Whether the confession (Ex. P-27) is true? In this connection, it may be recalled that the appellant did not say that he was tutored by the Police to make this confession. He did not say that the story adumbrated in the confession (Ex. P--27) was put into his mouth by somebody else. He did not deny the factum of making this confession. His plea in 'substance was that he had made it but under compulsion and threat. He however, added that "the statement (Ex. P. 27) is false." A perusal of the confessional statement (Ex. P. 27 would show that prima facie there, is nothing improbable or unbelievable in it. It appears to be a spontaneous account, studded with such vivid details about the manner of the commission of the crimes in question, which only the perpetrator of the crimes could know.

Now let us compare the statement (Ex. 27) with the rest of the evidence.

In Ex. 27 the accused has inter alia stated facts which may be rearranged as under.

(1) About midnight he took off his clothes, chappals and tried to climb the wall by the side of the railway line. but could not succeed. Therefore, he climbed the wall through the side.

(2) One Kassi was lying there in a corner. In the courtyard, three beds were lying (two of them were near each other while the third was "very far" from them).

(3) "I picked up the Kassi and hit with its reverse side one of those persons, on the head. Thereafter, I hit another person. I hit the third person "after running" to him, "as he was sleeping very far."

(4) "I then drank water, entered the kitchen but could not find anything in spite of search. Then I entered another room, opened the Kunda( Khuta), there a short (shirt) was lying from which I took out a key. I broke open the lock and got Rs. 700/- and got nothing else during the search." (5) "Then I broke open the lock of another house with the help of Subble. There I was able to get Rs. 400/-".

(6) "I then remained there for much time..... brought water from the nearby johar in a bucket, and bathed myself." (7) "Thereafter,I went to Bhatinda. In the evening (i.e. on 9-9-73) at 10 p.m. proceeded by train to Bikaner. I stayed for two days at Bikaner. After two days, I went to Delhi and stayed there for two days. From Delhi, I proceeded for Haridwar and stayed there in a rented room at Rs. 12/- per day."

Facts (1) to (6) in the confession (Ex. 27), find corroboration, firstly, from the reliable circumstantial evidence brought on the record by the prosecution. Ex. P- 8A is a memorandum which was prepared by A.S.I. Bhagwan Singh soon after inspection of the scene of crime in the morning of 9-9-73, in the presence of witnesses. In this memorandum, he noted the physical facts observed by him at the scene, which according to his lights, were relevant. This explanatory memorandum is an annexure to the rough site plan (Ex. P-8) which was then prepared by him. The veracity of this site-plan (Ex. P-8) and the memorandum (Ex. P-8A) was never impeached. No question was put to Bhagwan Singh in cross-examination to challenge the genuineness of these documents. Nor was any suggestion put to him that these documents were prepared subsequently or that the facts noted therein were wrong.

In the memorandum (Ex. P-8A), Bhagwan Singh has inter alia noted :

"The bare-foot prints of the culprit are present at the outer side near the wall towards the Western (side) of the Gurdwara at No. 7. This wall is 7 feet high and is kachh. There are recent scratch marks of the climbing or scaling the wall from outer side. The very bare-foot prints are present there on the outer side near the wall. It is through this way that the culprit entered inside and reached the cots of \* \* \* the sleeping persons."

The circumstantial facts noted in the above extract tend assurance to the portion No. (1) of the confession. Assistant Sub-Inspector Bhagwan Singh has further noted in the memorandum (Ex. P-8A) and the site-plan (Ex. P-8) the presence of three cots of the victims in the courtyard of the Gurdwara. The dead body of Kartar Singh with head injury was lying on one cot at point No. 2 shown in the site-plan. Wazir Singh lay injured on a cot at a distance of 6 feet from that of Kartar Singh, while Mada Singh was lying injured on a cot 8 feet farther away. The blood-stained Kassi (Art. 1) was lying near the cot of Wazir Singh. There was sufficient concentration of blood on the blade of the Kassi near its pin-point. There was blood underneath all the three cots. These facts observed by A.S.I. Bhagwan Singh and recorded in Ex. P-8 and Ex. P-8A, inferentially lend assurance to what was stated by the appellant in the portions (2) and (3), above extracted from his confession (Ex. 27). In Ex. P-8 and Ex. P-8A, Bhagwan Singh noted the presence of bare foot-prints in the bath-room and the kitchen (shown at point Nos. 23 and 24, respectively, in the site-plan). He further observed the marked resemblance of these foot- prints with the foot-prints supposed to be of the culprit, found near the cot on which the sant (divine) lay dead in the vicinity of the courtyard. He has shown these points by arrow marks in the site-plan. Bhagwan Singh has- further noted in the said document that at the site the locks including be detached bolts are lying near the detached frames of the three residential rooms. He has also noted how clothes, small coins, iron trunks and other household articles were lying scattered in the rooms. These circumstantial facts found at the spot tell

a tale which is consistent with the one told by the appellant in the portions (4), (5) and (6) of his confessional statement. The portion marked (7) of the confession receives direct support from the evidence rendered by Sita Ram (P.W. 13), and the record (Ex. P-36) of the hotel at Haridwar which bears the signatures of the appellant Ratan Lal and of the witness, Sita Ram. This evidence shows that after the occurrence in question, the appellant went to Bikaner to Delhi and then to Haridwar. He stayed in a hotel at Haridwar paying Rs. 12/- per day on 13-9-73 and 14-9-73. Mr. Gambhir contends that the medical evidence contradicts the confession inasmuch as it is stated therein that the appellant caused only one injury to each of the victims with the reverse side (i.e. the pin-point) of the Kassi (Art. 1). The contention is devoid of merit. As already noticed, Dr. Bahadur Singh clearly stated that the incised injuries found on the victims could be caused with the sharp edge of the Kassi (Art. 1) while their other injuries could be caused with the reverse side of the same Kassi. It may however, be conceded that from the medical evidence the possibility of the assailant having given more than one blow to the victims cannot be ruled out. But in his confessional statement, the appellant is not categorical with regard to the number of blows inflicted by him on the victims. All that he says is, that he hit each of the three victims, one after the other, in quick succession, on the head. The medical evidence shows that the blows on the heads of the victims had been given with great force. The autopsy of Kartar Singh and Mada Singh revealed that their skull-bones had been broken into fragments. The first blow received by each of the three sleeping victims, two of whom were blind persons, must have stunned them into coma.

Be that as it may, the failure of the appellant to say in his confessional statement the precise number of blows given to the victims, does not amount to a material discrepancy between the confession and the medical evidence. The fact remains that the medical evidence corroborates the confessional statement inasmuch as it is mentioned herein that the injuries to the victims were caused with a Kassi. The report of the Chemical Examiner and the Serologist shows that human blood was found on the Kassi (Art. 1). That report further confirms the confessional statement with regard to the use of this weapon in assaulting the victims. The courts below have further relied upon the circumstance that a finger-print on the dibbi (Article 2) from which Rs. 400/- in cash, kept by Karnail Singh (P. W. 15) had been stolen by the culprit, was identified as that of the appellant. The prosecution case was that among other articles, this dibbi (tin box) was lying in a room in the yard of the Gurdwara. A.S.I. Bhagwan Singh while inspecting the scene of occurrence on 9-9-73, saw some finger impressions on it. He, therefore, took it into possession and sealed it into a packet, vide seizure memo (Ex. P. 14) in the presence of witnesses. Thereafter, he deposited it with seals intact in the Malkhana of the Police Station, Sadul Sahar, and nobody tampered with it so long as the witness remained posted in the Police Station. The sealed parcel containing the Dibbi was sent to the Finger Print Expert under cover of a letter, dated June 29, 1974, from Shri Kashi Prasad Srivastava (P. W. 22), This witness (P. W. 22) testified that the seals on the parcel containing the dibbi were intact when it was sent to the Finger Print Expert. Mr. Gambhir submits that the parcel containing this Dibbi was not sent to the Finger-Print Expert for photographing and preserving the finger-prints said to have been found on it, till the 29th June, 1974, i.e. 24 days after his specimen finger impressions were taken by the Police. It is pointed out that no explanation has been given by the prosecution as to why this Dibbi was not sent to the Finger-Print Bureau, Jaipur, soon after its seizure, for taking enlarged photographs of the alleged finger-prints on it. It is argued that in view of this unexplained delay in sending the dibbi to the Finger-Print Expert, there is reason to suspect

that the finger-print of the appellant on the Dibbi might have been obtained by force or trickery by the police after his arrest. In this connection, it is emphasised that the prosecution has not led any satisfactory or independent evidence that the 'seals on the parcel containing this Dibbi remained intact and had not been tampered with till it was sent on June 29, 1976 to the Finger-Print Expert and was opened by him. A similar contention was raised before the High Court. The learned Judges repelled it with these observations :

"There is no doubt that the prosecution has failed to lead evidence that the finger-prints on the 'dibbi' Art. 2 were 75 6 not tampered with from 9-9-73 to 29-6-74 when they were sent to the Finger-Print Expert. As stated above, there is ample evidence on the record that when the 'dibbi' Art. 2 was recovered, it was sealed. P.W. 22 kashi Prasad has stated that the seals of Art. 2 were intact when they sent it to the Finger- Print Expert. P. W. 16 Shri Tankha has also stated that the seals on Art. 2 were intact when they were received by him. The most important thing, which is to be kept in mind, is that the finger-prints of one individual do not tally with the finger-prints of any other individual. The science of finger-prints is itself a complete science for the purposes of identification. In what manner the finger- prints of the accused Shankaria on Art. 2 'dibbi' could be tampered with, has not been argued or suggested' The finger-prints on Art. 2 have, on examination, been found to tally with the specimen finger-prints of the accused. Tampering of fingerprints on Art. 2 would mean that some other finger-prints were super-imposed or substituted. But no other fingerprints could be substituted or super imposed which would resemble and tally with the finger-prints of the accused Shankaria. Accused Shankaria in his 'statement "under Section 342 (343 ?) Cr. P. C. recorded on 14- 6-1974 and 23-6-74 has not categorically stated that his finger-prints were obtained on an article like the iron 'dibbi' Art. 2. In the absence of such a plea by the accused Shankaria, the non-production of some evidence on the part of the prosecution that the finger-prints were kept intact during all this period, loses all its importance..... In view of these circumstances, we have no hesitation in holding that the finger-prints on the iron 'dibbi' Art. 2 could not be tampered with. As a matter of fact, as stated above, the finger-prints could neither be substituted nor superimposed, and therefore, the apprehension of the de-fence that the finger prints could be tampered with, in the absence of such evidence, is wholly unfounded."

While we agree with the conclusion of the High Court that there was no good reason to suspect that the finger-print of the appellant found on the dibbi, Art. 1, was a fabrication, we will like to clarify and elaborate a little the reasoning by which this conclusion is arrived at. The first aspect of the matter which needs clarification is that this is not a case where the prosecution had led no evidence, to show that the finger-prints on the dibbi, Art. 1, from the date of its seizure to the date they were sent to the finger-print expert, were intact and had not been tampered with. Firstly, there was the evidence of A.S.I. Bhagwan Singh (P. W. 16) that when in the morning of 9-9-73, he inspected the scene of occurrence, in the presence of witnesses, he found the dibbi, Art. 2, in the room of the Gurdwara. Some small coins were lying scattered near it. He saw finger marks on this Dibbi. He therefore, seized it and sealed it into a parcel in the presence of the witnesses and prepared the

memorandum, Ex. P-14, Bhagwar Singh clearly stated that he had deposited the parcel, with seals intact in the Malkhana and nobody tampered with them so long as remained in his charge. Secondly, there was the evidence of Shri Srivastava that on 29-6-74 when the sealed parcel containing the Dibbi was sent to the Finger-Print Bureau, Jaipur, the seals on it were intact.

The only deficiency in the evidence on this point is that Bhagwan Singh was not asked about the date upto which he remained incharge of the Malkhana or posted in Police Station Sadul Sahar. In cross-examination, he expressed ignorance as to when the foot-moulds or the 'dibbi' were sent to the Finger-Print Expert. Probably, he was transferred from this Police Station sometime before that date. At the date of his deposition (10-3-75), he was posted in Police Station Hindu Mal Kot. In cross-examination, it was suggested to P. W. 16, that the "recovery memos of foot-print moulds and dibbi were prepared after the accused was arrested. The witness sharply denied this suggestion.

The failure of the prosecution to bring out these details in evidence, in the circumstances of the case, is no ground to suspect, that the finger impressions on the Dibbi had been tampered with or fabricated. It will bear repetition that the genuineness of the explanatory note (Ex. P-8A) attached to the Site Plan, was not questioned by the defence. The presence of the dibbi (Art. 2), bearing some finger marks, and its seizure and sealing find mention in this document. However, the authenticity of memo (Ex. P-14) in which the presence of finger-impressions on two sides of this dibbi is mentioned.--was questioned, halfheartedly.. This memo purports to bear the attestations of three witnesses, namely : Mithu Singh (P. W. 9) Shyam Singh (P. W. 3) and Jagger Singh (P. W. 8).

The High Court appears to have accepted their evidence with regard to the seizure of this dibbi, without discussion. We will there briefly refer to the 'same.

All these three witnesses speak with regard to the seizure of the Dibbi (Art. 2) by A.S.I. Bhagwan Singh from the scene of occurrence on 9-9-73, although there are natural Variations in regard to details in their evidence. Shyam Singh, P. W. 3, stated, "one' Dibbi" was also taken into possession by the police from there and 'sealed. Its recovery memo, Ex. P-14, bears my signature. The Dibbi, Art. 2, present in the Court, is the same." The witness gave the time of taking this Dibbi into possession, at 8 a.m. Mithu Singh, P. W. 9, corroborated Shyam Singh, P.W. 3. He also identified his signature on the memo (Ex. P--14). Both these witnesses sharply refuted the suggestion put to them by the defence counsel, that the seizure memo, Ex. P- 14 was prepared wrongly, after the arrest of the accused. Even Jagger Singh, P. W. 8, who was allowed to be cross-examined by the Public Prosecutor, testified that the iron Dibbi, Art. 2, had been lifted from the spot and sealed by the Police in his presence.

He, however, stated that "the seizure memo Ex. P-14, does not bear my 'signature". This may be due to a lapse of memory. It does not appear from the record, that the memo Ex. P-14 was shown to him when this question was asked. Nothing was brought out in the cross-examination of these witnesses, particularly P. W. 3 and P. W. 9, to show that they were not speaking the truth. Their evidence taken in conjunction with that of A.S.1. Bhagwan Singh, had established beyond all manner of doubt that when this Dibbi was found at the scene of crime on 9-9-73, it had finger- prints on both sides which could be of the culprit who had opened it and taken away Rs. 400/- from it. That was why

A.S.I.Bhagwan Singh sealed it there and then to preserve those finger-prints-

During his examination at the trial, the appellant did not say in positive specific terms, that after his arrest, he was made to handle the Dibbi (Art. 2); what the appellant then stated on this point was as follows :

"The police had taken many moulds in the police station after my arrest so also many palm impressions on various things were not made. I do not know whether the dibbi was included amongst them or not." When the evidence of the Finger-Print Expert, Mr. P. N. Tankha (P. W. 18), to the effect-that one finger impression on the dibbi, Art. 1, tallied with the middle finger-print of the left hand of the accused was put to Shankaria, the latter answered : "The witness tells false." This reply would be consistent only with the position that his fingerprints on the dibbi were not taken after his arrest.

The failure of the appellant to say in categorical terms that after his arrest he was made to handle this Dibbi. Art. (2), cuts at the root of his vague and omnibus plea that all evidence, including that of the foot-moulds, finger-prints, etc. had been fabricated by the Police. In the first place, as rightly observed by the High Court, fabrication of the fingerprints in the circumstances of the case was difficult, without super-imposition. Secondly, it is impossible to believe that an investigator of the status of a Superintendent of Police, would go to the length of causing substitution of the fingerprints of the accused in place of the original finger-print of another person on the Dibbi.

Mr. Gambhir next contends that in view of Section 5 of the Identification of Prisoners Act, it was incumbent on the police to obtain the specimen thumb-impressions of the appellant before a Magistrate, and, since this was not done the opinion rendered by the Finger-Print Expert, Mr. Tankha, by using those illegally obtained specimen finger impressions, must be ruled out of evidence. The contention appears to be misconceived because in the State of Rajasthan, the Police were competent under Section 4 of the Identification- of Prisoners Act, to take 'the specimen fingerprints of the accused, and this they did, in the instant case, before the Superintendent of Police, Shri K. P. 'Srivastava. It was not necessary for them to obtain an order from the Magistrate for obtaining such specimen fingerprints.

In view of all that has been said above, the presence, of the fingerprint of the appellant on the Dabbi, Art. 1, from which cash was stolen at the time of occurrence, is a tell- tale circumstance pointing towards the guilt of the appellant.

At this place, we may mention that according to the prosecution, the appellant, in order to evade detention and arrest by the Police, had taken up residence at Bhatinda and was holding himself out as Rattan' Lal son of Jetha Mall, although his real name was Shankria son of Raji Ram' and he was a native of Village Karanpur, District

Ganga Nagar. Subhash P. W. 23, was examined by the prosecution to establish this fact. P. W. 23 became a friend of the appellant when the witness and the appellant both were serving jail sentences in Ganga Nagar Jail. P. W. 23 had helped the Police in arresting the appellant from Bhatinda. At the trial also, P. W. 23 identified the appellant as the same person. The evidence of P. W. 23 has been believed by the courts below and Mr. Gambhir has not assailed it before us on any tangible ground.

Now, remains the evidence of the foot-moulds. These, moulds were prepared from the foot-prints of the suspected culprit, found in or near about the Gurdwara on 9-9-73. On 16-6-74, specimen bare-foot prints of the appellant were taken before the Additional District Magistrate and specimen foot-moulds were prepared therefrom. The two sets of foot-moulds were sent to the Expert, Mr. Tankha, at Jaipur on 29-6-74. W. Tankha testified at the trial that the foot-mould 5 (of one of the bare-foot prints found at the scene of crime) tallied with the specimen left foot-mould of the appellant. Although the science of identification of foot-prints and foot-moulds is not a developed science, and track evidence, by itself, may not be deemed sufficient to carry conviction in a criminal trial, yet it is a relevant circumstance which taken into account along with the other evidence, may reinforce the conclusion as to the identity of the culprit. In the instant case, the other evidence per se, was sufficient to fix the identity of the appellant with the crime. The evidence of similarity of the foot-moulds taken in conjunction with the circumstance, 'that If at the scene of occurrence there were bare-foot prints which appear to be of one person, does lend further assurance to what the appellant has stated in his confessional 'statement with regard to his going about bare-footed inside and outside the Gurdwara at or about the time of committing the crimes in question.

To sum up, it was cogently established that the confession (Ex. P-27) was voluntarily made and it is true. Further, it receives assurance in several material particulars from reliable independent evidence, mainly of a circumstantial character. The confession. Ex. 27, coupled with the other evidence on the record, had unerringly and indubitably brought home the charges to the appellant,. The crimes were committed in a most brutal and dastardly fashion. The victims were taken unawares when they were asleep. Two of them were blind persons. His Neronian conduct even after-the occurrence in languishing in the stricken premises, looking for something to eat in the kitchen, drinking water, smoking Bidis, bringing water and bathing himself, mindless of the specter of the slain and the groans and gasps of the dying, betrays an extreme depravity of character. The grisly and gruesome nature of the murders, the hapless and helpless state of the victims, the fiendish modus operandi of the appellant to first kill and then steal-all, steel the heart of law to call for its extreme penalty.

For all the foregoing reasons, we dismiss this appeal, affirm the judgment of the High Court and maintain the conviction of the appellant and the sentence of death awarded to him for the murders of Kartar Singh and Mada Singh.

S.R.

Appeal dismissed.