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will be prevented from acting and pleading anywhere by virtue of the provisions of article 220 of the Constitution. It is, therefore, not necessary to give the word "practise" the wider meaning contended for by the petitioner Aswini Kumar Ghosh. We must also remember that the general rule relied upon may be excluded by the subject or context.

For reasons stated above, whether we adopt one or the other method of construction suggested above, in my opinion, this petition cannot succeed and must be dismissed.

Appeal allowed.

Agent for the respondents: *P. K. Bose.*

Agent for Intervener No. 1: *P. K. Mukherjee.*

Agent for Intervener No. 2: *Sukumar Ghose.*

Agent for Intervener No. 3: *I. N. Shroff*, for *P. K. Bose.*

Agent for Intervener No 4: *Rajinder Narain.*

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Oct. 22.

PALVINDER KAUR

v.

THE STATE OF PUNJAB

(RUP SINGH—Caveator)

[MEHR CHAND MAHAJAN, CHANDRASEKHARA AIYAR and BHAGWATI JJ.]

Criminal trial—Circumstantial evidence—Duty of courts to safeguard themselves against basing decision on suspicions—Confession—Must be accepted or rejected as a whole—Self exculpatory statement containing admission of incriminating facts—Admission of incriminating portion as true rejecting exculpatory portion as false—Legality—Indian Penal Code, 1860, s. 201—Essential ingredients of offence.

In cases depending on circumstantial evidence courts should safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong.

Rex v. *Hodge* (1838) 2 Lew. 227, and *Nargundkar* v. *State of Madhya Pradesh* [1952] S.C.R. 1091 referred to.

To establish a charge under s. 201, Indian Penal Code, it is essential to prove that an offence has been committed (mere suspicion that it has been committed is not sufficient); that the accused knew or had reason to believe that such offence had been committed; and that with the requisite knowledge and with the intent to screen the offender from legal punishment the accused caused the evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false. Where the evidence showed that a person had died, that his body was found in a trunk and was discovered in a well and that the accused took part in the disposal of the body but there was no evidence to show the cause of his death or the manner or circumstances in which it came about: *Held*, that the accused could not be convicted for an offence under s. 201.

A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory matter is of some fact, which if true would negative the offence alleged to be confessed. A confession must either admit in terms the offence or at any rate substantially all the facts that constitute the offence.

Narayanaswami v. *Emperor* (1939) 66 I.A. 66, referred to.

It is a well accepted rule regarding the use of confessions and admissions that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible.

Emperor v. *Balmukand* (1930) I.L.R. 52 All. 1011, followed.

Where the statement made by the accused contained an admission that she had placed the dead body of her husband in a trunk and had carried it in a jeep and thrown it into a well, but with regard to the cause of the death the statement made by her was that her husband had accidently taken a poisonous substance which was meant for washing photos erroneously thinking it to be a medicine: *Held*, the statement read as a whole was exculpatory in character and the whole statement was inadmissible in evidence and the High Court acted erroneously in accepting the former part of it and rejecting the latter part as false.

Judgment of the High Court of Punjab reversed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 41 of 1952. Appeal by Special Leave from the Judgment and Order dated the 3rd October, 1951, of the High Court of Judicature for the State of Punjab at Simla (Bhandari and Soni JJ.) in Criminal Appeal No. 86 of 1951, arising out of the Judgment and Order dated the 31st January, 1951, of the Court of the Sessions Judge, Ambala, in Case No. 23 of 1950 and Trial No. 2 of 1951.

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Jai Gopal Sethi (*R. L. Kohli* with him) for the appellant.

H. S. Gujral, for the respondent.

Bhagat Singh Chawla, for the Caveator.

1952. October 22. The judgment of the Court was delivered by

MAHAJAN J.—Palvinder Kaur, was tried for offences under sections 302 and 201, Indian Penal Code, in connection with the murder of her husband, Jaspal Singh. She was convicted by the Sessions Judge under section 302 and sentenced to transportation for life. No verdict was recorded regarding the charge under section 201, Indian Penal Code. On appeal to the High Court she was acquitted of the charge of murder, but was convicted under section 201, Indian Penal Code, and sentenced to seven years' rigorous imprisonment. Her appeal by special leave is now before us.

Jaspal Singh, deceased, was the son of the Chief of Bhareli (Punjab). He was married to Palvinder Kaur a few years ago and they had two children. The husband and wife were living together in Bhareli house, Ambala. It is said that Jaspal's relations with his father and grandfather, were not very cordial and the two elders thought that Palvinder Kaur was responsible for this. It is also said that Jaspal lived on the allowance he got from his father and supplemented his income by selling milk and eggs and by doing some odd jobs. Mohinderpal Singh (a fugitive from justice) who is related to the appellant and was employed as a storekeeper in Baldevnagar Camp, Ambala, used occasionally to reside in Bhareli house. It is suggested that he had started a liaison with Palvinder.

The prosecution case is that Sardar Jaspal was administered potassium cyanide poison by the appellant and Mohinderpal on the afternoon of the 6th February, 1950. The dead body was then put into a large trunk and kept in one of the rooms in the house in Ambala city. About ten days later, *i.e.*, on the

16th February, 1950, Mohinderpal during the absence of the appellant, removed the trunk from the house in a jeep when he came there with Amrik Singh and Kartar Singh (P. Ws.), two watermen of the Baldev-nagar Camp. The trunk was then taken to Baldev-nagar Camp and was kept in a store room there. Three days later, on the 19th February, 1950, Mohinderpal accompanied by Palvinder and a domestic servant, Trilok Chand (P. W. 27), took the trunk a few miles on the road leading to Rajpura, got on to a *katcha* road and in the vicinity of village Chhat took the jeep to a well on a mound and threw the box into it. The jeep was taken to a gurdwara where it was washed.

After the disappearance of the deceased, his father made enquiries from Mohinderpal regarding the whereabouts of his missing son. Mohinderpal made various false statements to him. On the 8th March, 1950, the father advertised in the "Daily Milap" begging his son to return home as soon as possible as the condition of his wife and children and parents had become miserable owing to his absence.

On the 10th March, 1950, *i.e.*, a month and ten days after the alleged murder and 19 days after the trunk was thrown into the well, obnoxious smell was coming out of the well, and the matter being reported to the lambardars of village Chhat, the trunk was taken out. The matter was reported to the police and Sardar Banta Singh, Sub-Inspector of Police, on the 11th March arrived at the scene and prepared the inquest report and sent for the doctor. The post-mortem examination was performed on the spot the next day. No photograph of the body was taken and it was allowed to be cremated. After more than two and a half months, on the 28th April, 1950, the first information report was lodged against the appellant and Mohinderpal and on the 26th June a challan was presented in the court of the committing magistrate. Mohinderpal was not traceable and the case was started against the appellant alone.

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There is no direct evidence to establish that the appellant or Mohinderpal or both of them administered potassium cyanide to Jaspal and the evidence regarding the murder is purely circumstantial. The learned Sessions Judge took the view that the circumstantial evidence in the case was incompatible with the innocence of the accused, and held that the case against the appellant was proved beyond any reasonable doubt. The High Court on appeal arrived at a different conclusion. It held that though the body found from the well was not capable of identification, the clothes recovered from the trunk and found on the body proved that it was the body of Jaspal. It further held that the cause of death could not be ascertained from the medical evidence given in the case. The evidence on the question of the identity of the dead body consisted of the statement of constable Lachhman Singh, of the clothes and other articles recovered from inside the trunk and of an alleged confession of the accused. As regards the first piece of evidence the High Court expressed the following opinion:—

"There is in our opinion considerable force in the contention that not only are foot constable Lachhman Singh and Assistant Sub-Inspector Banta Singh testifying to the facts which are false to their knowledge *but that the prosecution are responsible for deliberately introducing a false witness and for asking the other witnesses to support the story narrated by Lachhman Singh that he identified the body to be that of Jaspal Singh on the 11th March* and communicated the information to the father of the deceased on the following day."

As regards the extra-judicial confessions alleged to have been made to Sardar Rup Singh and Sardar Balwant Singh, father and grandfather of the deceased, they were held inadmissible and unreliable. The confession made by Palvinder to the magistrate on the 15th April, 1950, was however used in evidence against her on the following reasoning:—

"It is true that strictly speaking exculpatory statements in which the prisoner denies her guilt cannot

be regarded as confessions, but these statements are often used as circumstantial evidence of guilty consciousness by showing them to be false and fabricated."

It was also found that though Palvinder might have desired to continue her illicit intrigue with Mohinderpal she may not have desired to sacrifice her wealth and position at the altar of love. She may have had a motive to kill her husband but a stronger motive to preserve her own position as the wife of a prospective chief of Bhareli and that in this situation it was by no means impossible that the murder was committed by Mohinderpal alone without the consent and knowledge of Palvinder, and that though a strong suspicion attached to Palvinder, it was impossible to state with confidence that poison was administered by her. Therefore it was not possible to convict her under section 302, Indian Penal Code.

Concerning the charge under section 201, Indian Penal Code, the High Court held that the most important piece of evidence in support of the charge was the confession which Palvinder made on the 15th April, 1950, and this confession, though retracted, was corroborated on this point by independent evidence and established the charge.

The judgment of the High Court was impugned before us on a large number of grounds. *Inter alia*, it was contended that in examining Palvinder Kaur at great length the High Court contravened the provisions of the Code of Criminal Procedure and that the Full Bench decision of the High Court in *Dhara Singh's case*(1) was wrong in law, that the alleged confession of the appellant being an exculpatory statement, the same was inadmissible in evidence and could not be used as evidence against her, that it had been contradicted in most material particulars by the prosecution evidence itself and was false and that in any case it could not be used piecemeal; that the offences under sections 302/34 and 201, Indian Penal Code, being distinct offences committed at two different times and being

(1) (1952) 54 P.L.R. 58.

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separate transactions, the appellant having been convicted of the offence under section 302, Indian Penal Code, only by the Sessions Judge, the High Court had no jurisdiction when acquitting her of that offence to convict her under section 201 of the same Code; that the statements of Mohinderpal to various witnesses and his conduct were not relevant against the appellant; that Karamchand and Mst. Lachhmi were in the nature of accomplices and the High Court erred in relying on their testimony without any corroboration; that the High Court having disbelieved eight of the witnesses of the prosecution and having held that they were falsely introduced into the case, the investigation being extremely belated and the story having been developed at different stages, the High Court should not have relied on the same; and lastly that the pieces of circumstantial evidence proved against the appellant were consistent with several innocent explanations and the High Court therefore erred in relying on them without excluding those possibilities.

The decision of the appeal, in our view, lies within a very narrow compass and it is not necessary to pronounce on all the points that were argued before us. In our judgment, there is no evidence to establish affirmatively that the death of Jaspal was caused by potassium cyanide and that being so, the charge under section 201, Indian Penal Code, must also fail. The High Court in reaching a contrary conclusion not only acted on suspicions and conjectures but on inadmissible evidence.

The circumstances in which Jaspal died will for ever remain shrouded in mystery and on the material placed on the record it is not possible to unravel them. It may well be that he was murdered by Mohinderpal without the knowledge or consent of Palvinder and the incident took place at Baldevnagar Camp and not at the house and that Mohinderpal alone disposed of the dead body and that the confession of Palvinder is wholly false and the advertisement issued in "Milap" correctly reflected the facts

so far as she was concerned. The evidence led by the prosecution, however, is of such a character that no reliance can be placed on it and no affirmative conclusions can be drawn from it. The remarks of the Sessions Judge, that the consequences had definitely revealed that justice could not always be procured by wealth and other worldly resources and that the case would perhaps go down in history as one of the most sensational cases because of the parties involved and the gruesome way in which the murder was committed, disclose a frame of mind not necessarily judicial. It was unnecessary to introduce sentimentalism in a judicial decision. The High Court was not able to reach a positive conclusion that Palvinder was responsible for the murder of her husband.

Whether Jaspal committed suicide or died of poison taken under a mistake or whether poison was administered to him by the appellant or by Mohinderpal or by both of them are questions the answers to which have been left very vague and indefinite by the circumstantial evidence in the case. In view of the situation of the parties and the belated investigation of the case and the sensation it created, it was absolutely necessary for the courts below to safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong. It seems to us that the trial court, and to a certain extent the High Court, fell into the same error against which warning was given by Baron Alderson in *Reg.* v. *Hodge*(1), where he said as follows:—

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

(1) (1838) 2 Lew. 227.

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We had recently occasion to emphasize this point in *Nargundkar* v. *The State of Madhya Pradesh*(1).

In order to establish the charge under section 201, Indian Penal Code, it is essential to prove that an offence has been committed—mere suspicion that it has been committed is not sufficient,—that the accused knew or had reason to believe that such offence had been committed, and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false. It was essential in these circumstances for the prosecution to establish affirmatively that the death of Jaspal was caused by the administration of potassium cyanide by some person (the appellant having been acquitted of this charge) and that she had reason to believe that it was so caused and with that knowledge she took part in the concealment and disposal of the dead body. There is no evidence whatsoever on this point. The following facts, that Jaspal died, that his body was found in a trunk and was discovered from a well and that the appellant took part in the disposal of the body do not establish the cause of his death or the manner and circumstances in which it came about. As already stated, there is no direct evidence to prove that potassium cyanide was administered to him by any person. The best evidence on this question would have been that of the doctor who performed the post-mortem examination. That evidence does not prove that Jaspal died as a result of administration of potassium cyanide. On the other hand, the doctor was of the opinion that there were no positive post-mortem signs which could suggest poisoning. He stated that potassium cyanide being corrosive poison, would produce hypermia, softening and ulceration of the gastro-intestinal track and that in this case he did not notice any such signs. He further said that potassium cyanide corrodes the lips and the mouth, and none of these signs was on the body. This evidence

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

therefore instead of proving that death was caused by administration of potassium cyanide, to the extent it goes, negatives that fact.

The High Court placed reliance on the confession of Palvinder made on the 15th April, 1950, to hold this fact proved. The confession is in these terms :—

"My husband Jaspal Singh was fond of hunting as well as of photography. From hunting whatever skins (khalls) he brought home he became fond of colouring them. He also began to do the work of washing of photos out of eagerness. One day in December, 1949, Jaspal Singh said to my cousin (Tay's son) Mohinderpal Singh to get him material for washing photos. He(Mohinderpal Singh) said to Harnam Singh, who is head clerk in Baldevnagar Camp, to bring the same from the Cantt. Harnam Singh went to the Cantt. and on return said that the material for washing photos could be had only by a responsible Government official. He told so to Mohinderpal Singh, who said that Harnam Singh should take his name and get the medicine. Thereupon Harnam Singh went to the Cantt. and brought the medicine. I kept this medicine. As the medicine was sticking to the paper I put it in water in a small bottle and kept it in the almirah. In those days my husband was in Ambala and I lived with him in the kothi in the city. He went for hunting for 2-3 days and there he developed abdominal trouble and began to purge. He sent for medicine 3-4 days from Dr. Sohan Singh. One day I placed his medicine bottle in the almirah where medicine for washing photos had been placed. I was sitting outside and Jaspal Singh enquired from me where his medicine was. I told him that it was in the almirah. By mistake he took that medicine which was meant for washing photos. At that time, he fell down and my little son was standing by his side. He said 'Mama, Papa had fallen'. I went inside and saw that he was in agony and in short time he expired. Thereafter I went to Mohinderpal Singh

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and told him all that had happened. He said that father of Jaspal Singh had arrived and that he should be intimated. But I did not tell him, because his connections were not good with his son and myself. Out of fear I placed his corpse in a box and Mohinderpal Singh helped me in doing so. For 4-5 days the box remained in my kothi. Thereafter I said to Mohinderpal Singh that if he did not help me I would die. He got removed that box from my kothi with the help of my servants and placing the same in his jeep went to his store in Baldevnagar Camp and kept the same there. That box remained there for 8-10 days. Thereafter one day I went to the camp and from there got placed the trunk in the jeep and going with Mohinderpal Singh I threw the same in a well near Chhat Banur. I do not remember the date when Jaspal Singh took the medicine by mistake. It was perhaps in January, 1950."

The statement read as a whole is of an exculpatory character. It does not suggest or prove the commission of any offence under the Indian Penal Code by any one. It not only exculpates her from the commission of an offence but also exculpates Mohinderpal. It states that the death of Jaspal was accidental. The statement does not amount to a confession and is thus inadmissible in evidence. It was observed by their Lordships of the Privy Council in *Narayanaswami* v. *Emperor*(1) that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. In this view of the law the High Court

(1) (1939) 66 I.A. 66; A.I.R. 1939 P.C. 47.

was in error in treating the statement of Palvinder as the most important piece of evidence in support of the charge under section 201, Indian Penal Code. The learned Judges in one part of their judgment observed that strictly speaking exculpatory statements in which the prisoner denies her guilt cannot be regarded as confessions, but went on to say that such statements are often used as circumstantial evidence of guilty consciousness by showing them to be false and fabricated. With great respect we have not been able to follow the meaning of these observations and the learned counsel appearing at the Bar for the prosecution was unable to explain what these words exactly indicated. The statement not being a confession and being of an exculpatory nature in which the guilt had been denied by the prisoner, it could not be used as evidence in the case to prove her guilt.

Not only was the High Court in error in treating the alleged confession of Palvinder as evidence in the case but it was further in error in accepting a part of it after finding that the rest of it was false. It said that the statement that the deceased took poison by mistake should be ruled out of consideration for the simple reason that if the deceased had taken poison by mistake the conduct of the parties would have been completely different, and that she would have then run to his side and raised a hue and cry and would have sent immediately for medical aid, that it was incredible that if the deceased had taken poison by mistake, his wife would have stood idly by and allowed him to die. The court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible. Reference in this connection may be made to the observations of the Full Bench of the Allahabad

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High Court in *Emperor* v. *Balmakund*(1), with which observations we fully concur. The confession there comprised of two elements, (a) an account of how the accused killed the women, and (b) an account of his reasons for doing so; the former element being inculpatory and the latter exculpatory and the question referred to the Full Bench was: Can the court, if it is of opinion that the inculpatory part commends belief and the exculpatory part is inherently incredible, act upon the former and refuse to act upon the latter? The answer to the reference was that where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. The alleged confession of Palvinder is wholly of an exculpatory nature and does not admit the commission of any crime whatsoever. The suspicious circumstances from which an inference of guilt would be drawn were contained in that part of the statement which concerned the disposal of the dead body. This part of the statement could not be used as evidence by holding that the first part which was of an exculpatory character was false when there was no evidence to prove that it was so, and the only material on which it could be so held was the conduct mentioned in the latter part of the same statement and stated to be inconsistent with the earlier part of the confession.

The result therefore is that no use can be made of the statement made by Palvinder and contained in the alleged confession and which the High Court thought was the most important piece of evidence in the case to prove that the death of Jaspal was caused by poisoning or as a result of an offence having been committed. Once this confession is excluded altogether, there remains no evidence for holding that Jaspal died as a result of the administration of potassium cyanide.

(1) (1930) I.L.R. 52 All. 1011.

The circumstantial evidence referred to by the High Court which according to it tends to establish that Jaspal did not die a natural death is of the following nature: That Palvinder and Mohinderpal had a motive to get rid of the deceased as she was carrying on with Mohinderpal. The motive, even if proved in the case, cannot prove the circumstances under which Jaspal died or the cause which resulted in his death. That Mohinderpal was proved to be in possession of a quantity of potassium cyanide and was in a position to administer it to the deceased is a circumstance of a neutral character. Mere possession of potassium cyanide by Mohinderpal without its being traced in the body of Jaspal cannot establish that his death was caused by this deadly poison. In any case, the circumstance is not of a character which is wholly incompatible with the innocence of the appellant. The other evidence referred to by the High Court as corroborating the latter part of Palvinder's alleged confession in the view of the case that we have taken does not require any discussion because if the confession is inadmissible, no question of corroborating it arises.

Mr. Sethi argued that the statements contained in the alleged confession are contradicted rather than corroborated by the evidence led by the prosecution and that the confession is proved to be untrue. It is unnecessary to discuss this matter in the view that we have taken of the case.

The result, therefore, is that we are constrained to hold that there is no material, direct or indirect, for the finding reached by the High Court that the death of Jaspal was caused by the administration of potassium cyanide. If we believe the defence version his death was the result of an accident. If that version is disbelieved, then there is no proof as to the cause of his death. The method and manner in which the dead body of Jaspal was dealt with and disposed of raise some suspicion but from these facts a positive conclusion cannot be reached that he died an unnatural death necessarily. Cases are not unknown

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where death is accidental and the accused has acted in a peculiar manner regarding the disposal of the dead body for reasons best known to himself. One of them might well be that he was afraid of a false case being started against him. Life and liberty of persons cannot be put in jeopardy on mere suspicions, howsoever strong, and they can only be deprived of these on the basis of definite proof. In this case, as found by the High Court, not only were the Sub-Inspector of police and police constables and other witnesses guilty of telling deliberate lies but the prosecution was blameworthy in introducing witnesses in the case to support their lies and that being so, we feel that it would be unsafe to convict the appellant on the material that is left after eliminating the perjured, false and inadmissible evidence.

For the reasons given above we allow this appeal, set aside the conviction of the appellant under section 201, Indian Penal Code, and acquit her of that charge also.

Appeal allowed.

Agent for the appellant: *Sardar Bahadur.*

Agent for the respondent: *P. A. Mehta.*

Agent for the caveator: *Harbans Singh.*

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Oct. 23.

RAJA KAMAKSHYA NARAYAN SINGH BAHADUR

v.

CHOHAN RAM AND ANOTHER

[MEHR CHAND MAHAJAN, CHANDRASEKHARA AIYAR and BHAGWATI JJ.]

Transfer of Property Act (IV of 1882), ss. 66, 65-A—Mortgage —Mortgagor in possession—Power to lease—Law before amendment Act of 1929—Permanent lease by mortgagor—Validity.

Under the law as it stood prior to the enactment of s. 65-A of the Transfer of Property Act, by Act XX of 1929, the question whether the mortgagor in possession had power to lease the mortgaged property has got to be determined with reference to the