learned counsel for the appellant that after the copy of the sale deed had been admitted by the learned counsel for Kallu, there was no necessity to summon the original sale-deed and to seek the permission of the Court to lead secondary evidence to make it admissible in evidence. After it was admitted by the learned counsel for Kallu, it could be admitted into evidence forthwith and it was done in the instant case. The learned lower appellate Court erred in not placing reliance on the copy of the sale-deed Exhibit P.W. 2/1.

(6) As observed above, the copy of the sale-deed Exhibit P.W. 2/1 clearly supports the case of the appellant that the vacant site in the east of the house purchased by Kallu was a thoroughfare. The claim of the appellant that the vacant site marked R. 1, R. 3, R. 4 and R. 11 in the east of the house of Kallu being a thoroughfare was therefore, wrongly declined by the learned lower appellate Court.

(7) In view of the above discussion, I accept this appeal and setting aside the judgement and decree of the learned lower appellate Court restore the judgment and decree of the learned trial Court dated October 15, 1966, *in toto*. The parties are, however, left to bear their own costs throughout.

H.S.B.

APPELATE CRIMINAL

Before D. S. Tewatia and D. B. Lal JJ.

JAGJIT SINGH,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 1563 of 1974

February 13, 1978.

Code of Criminal Procedure (V of 1898)—Section 342—Indian Penal Code (XLV of 1860)—Section 302—Prosecution story found unreliable in its entirety—Accused in his statement under Section 342 admits to have caused death but pleads right of private self defence — Exculpatory part of such statement — Whether can be ignored and inculpatory part relied upon to convict the accused.

Held, that if the entire prosecution case is held to be unreliable and there is no positive proof on behalf of the prosecution to support any part of its story, the statement of the accused under section 342 of the Code of Criminal Procedure 1898 can only be availed of in its entirety. If it is a case where some part of the prosecution case is supported by positive evidence and strength is solicited from a portion of the statement under section 342, so that the said positive part of the prosecution case is believed then the case may be different. Where the entire prosecution case is positively held to be untrue there is hardly any occasion to consider the piecemeal statement of the accused under section 342. The whole of the statement of the accused containing the admission must be taken together on the principle that the inculpatory portion is to be read in its true context. Unless the whole statement is read, the true meaning of the part that is taken as evidence against the accused cannot be ascertained. In such circumstances the inculpatory part of the statement cannot be separated from the exculpatory portion. The prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. nor can the Court of its own make out a new case for the prosecution and convict the accused on that basis. When the stratum of the evidence given by the eye witnesses is found to be false, the only prudent course in the circumstances is to throw out the prosecution case in its entirety against all the accused.

(Paras 7 and 8)

Appeal from the order of the Court of Shri Jaginder Singh Chatha Sessions Judge, Kapurthala, dated the 10th December, 1974, convicting the appellant.

Charge : Under section 302 I.P.C.

Sentence : To undergo imprisonment for life.

H. S. Sandhu, Advocate of Jullundur, (Bhopinder Singh Bindra and B. S. Basi, Atvocates with him),—*for the appellant.*

G. S. Bains, A.A.G. Punjab,—*for the Respondent:*

JUDGMENT

D. B. Lal, J. (oral).

(1) Jagjit Singh appellant has been held guilty under section 302 of the Indian Penal Code by the Sessions Judge, Kapurthala and sentenced to undergo life imprisonment.

(2) The case of the prosecution was that on May 31, 1974 at about 8.30 p.m., Lachhman Singh went to the house of his son Harpal Singh deceased in Model Town, Phagwara. Harpal Singh was not found present and thereafter Lachhman Singh went to the house of one Ajit Singh. While he was talking with Ajit Singh, Tarsem Singh and Mota Singh also arrived. Some times later Harpal Singh also came and thereafter he left, saying that he would return subsequently. After about 15/20 minutes, some alarm was raised from the direction of the house of Jagjit Singh accused. When Lachhman Singh, Mota Singh and Tarsem Singh went to that side, they found that Jagjit Singh accused, along with Balwant Singh, his two companions Tarjeeb Singh and Bhupinder Singh and Kulbir Singh who is a nephew of Jagjit Singh, were catching hold of Harpal Singh and were giving him a beating. It was stated that during the course of that beating, Jagjit Singh accused was holding a knife and he gave a knife blow which caused instantaeous death of Harpal Singh. It was further stated that the deadbody of Harpal Singh was removed by the accused to the house of Jagjit Singh. Thereafter Lachhman Singh left for the Police Station and met S.I. Sarup Chand at the Police Station. He made a statement Exhibit P. A. before him which forms the basis of the first information report (FIR) which was instituted at 9.40 p.m. on May 31, 1974 at Police Station, Phagwara. The special report of the case, however, reached the Magistrate at Phagwara on the next day at 12.05 p.m., on June 1, 1974 although the distance of the Court of the Magistrate from the Police Station was only 100 yards. S.I. Sarup Chand, according to him, reached the spot during the very same night. He performed the inquest and got removed the deadbody for *post mortem* examination which was conducted by Dr. Indra Khosla on the next day, on June 1, 1974 at 11 a.m. The doctor found one incised wound on the region of the neck which was sufficiently deep and the death was the result of this very injury. Besides one incised wound, one fracture was detected over the right ankle joint. Three abrasions were found on the right forearm and right elbow joint and one contusion over the left eye brow. According to the doctor, the incised wound which was injury No. 1 was sufficient to cause death in the ordinary course of nature. Subsequently, a disclosure statement was supposed to have been made by Jagjit Singh accused and the knife Exhibit P. 1 was said to be recovered at his instance. Some times later the accused was again interrogated on June 4, 1974 and a gold chain and a gold *kara* which were said to belong to the deceased, were recovered from him. On these facts and allegations,

Jagjit Singh accused besides the other four was sent up to stand trial under section 302. He was also prosecuted for the offences under section 148 and 404 of the Indian Penal Code.

(3) The Prosecution relied upon the eye witness account which was supplied by Lachhman Singh (P.W. 1). Tarsem Singh (P.W. 2) and Mota Singh (P.W. 3). Ajit Singh (P.W. 5) was also examined. Dr. Indra Khosla came to prove the injuries.

(4) The defence was one of emphatic denial. Jagjit Singh, however, stated that when he returned to his house at 8.30 p.m., he found that his wife Amarjit Kaur was struggling with a person who was attempting a rape upon her, in as much as her *salwar* was untied and her clothes were torn and she had also fallen on the ground. The accused attempted to save his wife but the person attempting to commit rape did not desist with the result that the accused gave a knife blow to him and the assailant fell down dead near his *deorhi*. Subsequently, the Police came to the spot and at the instance of Lachhman Singh and others, this case was falsely foisted upon him.

(5) The learned trial Judge cosidered the entire prosecution evidence and in his opinion the case set up by the prosecution was not proved. It was held that the FIR was inordinately delayed and was probably made up on the next morning at the instance of the Investigating Officer. The learned trial Judge discovered that yet a sixth assailant by the name of Kale was mentioned in the inquest report, but subsequently, Kale was given up. Similarly, in the statement made by Lachhman Singh to the Investigating Officer, one Ravinder Singh was also mentioned as one of the assailants. He, too was given up. About Tarsem Singh (P.W. 2), he held that he did not support the prosecution case. Mota Singh (P.W. 3) similarly did not support the prosecution story. About Lachhman Singh (P.W. 1) on the statement of Ajit Singh (P.W. 5), he held, that Lachhman Singh was not present at the time of the occurrence. Accordingly, the learned trial Judge concluded that the report to the Police was made only in the morning and the entire story was concocted against the accused. Though the trial of blood was said to be found on the spot, as according to the prosecution, the dead body of Harpal Singh was removed from the street to the *deorhi* by the accused, the learned trial Judge held that the trial of blood never existed and it was created later on. The recoveries, including the recovery of knife Exhibit P. 1, were also disbelieved.. About the

gold chain and gold *kara* said to belong to the deceased, again the offence under section 404 of the Indian Penal Code was stated not to be made out and the accused was acquitted of that charge. With these findings, the learned trial Judge acquitted four of the companion accused of Jagjit Singh.

(6) However, in respect of Jagjit Singh, the learned trial Judge solely relied upon the statement under section 342 of the (old) Code of Criminal Procedure. The statement made by Jagjit Singh was partly held to be correct. It was considered that the Court could believe that part of the statement by which Jagjit Singh took upon himself the responsibility of giving the knife blow. The other part of the very same statement, namely that Harpal Singh was attempting rape upon his wife, was disbelieved. Accordingly, it was held that Jagjit Singh was guilty of the offence under section 302 of the Indian Penal Code and was convicted and sentenced in the manner stated above. Feeling dissatisfied with that decision, he has preferred this appeal.

(7) The learned counsel for the appellant has strenuously urged that the learned trial Judge, after discarding the entire prosecution case and after categorically holding that no part of the case was dependable, nor could the same form the basis of conviction, yet he chose to convict the appellant after formulating a new case neither set up by the prosecution, nor taken up by the defence. According to the learned counsel, that course was not permissible and the conviction could not be sustained. The learned counsel further argued that the exculpatory statement of the accused under section 342 of the (old) Code of Criminal Procedure was not separable from the inculpatory part of his statement. According to the learned counsel, the inculpatory part is to be read out in its true context. It could not be said that the exculpatory portion of this statement was in any manner inherently improbable or was contradicted by any evidence on the record. The argument then proceeded, that if one takes the entire statement of the appellant into consideration, he gets the right of private defence of person and has got to be exonerated from committing any offence and he could even cause the death, of the assailant of his wife, in the circumstances. According to the statement of Jagjit Singh, when he entered his house, he found that his wife had fallen down and that the assailant had untied the string of her *salwar* and that her clothes were also torn. The appellant naturally attempted to save his wife, but when he became helpless he had to attack the assailant with the knife which he found lying

on the kitchen table. It is obviously correct that the assailant was none else than Harpal Singh deceased, because his dead body was subsequently discovered lying there. Since the entire prosecution case was held to be unreliable and there was no positive proof on behalf of the prosecution to support any part of that story, in our opinion, the statement of the accused under section 342 of the (old) Code of Criminal Procedure could only be availed of in its entirety. It is not a case of that category where some part of the prosecution case is supported by positive evidence and strength is solicited from a portion of the statement under section 342, so that the said positive part of the prosecution case is believed. Rather, it is a case where the entire prosecution case was positively held to be untrue and in such a situation there was hardly any occasion to consider the piece-meal statement of the accused under section 342. That apart, it is abundantly clear that the assault followed the attempted rape and the appellant very much stated about the rape and thereafter about the assault made by him. There is nothing contradictory or inherently improbable in that statement made by the appellant. If the entire statement is read in its true context, it is difficult to consider the assault portion of the statement separate from the other portion of the said statement dealing with the attempted rape upon Smt. Amarjit Kaur.

(8) The learned State counsel relied upon *Nishikant Jha* v. *State of Bihar*, (1). In that case, their Lordships were considering an extra-judicial confession made by the accused and since they found that the exculpatory portion of the extra judicial confession was inherently improbable and was also contradicted by the statement of the very same accused under section 342 of the Code of Criminal Procedure, they desisted to utilise the exculpatory portion of the confession and relied upon the inculpatory portion of the confession. At the same time their Lordships held, following the observations made in Taylor's Law of Evidence that the whole statement of the accused containing the admissions must be taken together on the principle that the inculpatory portion is to be read out in its true context. Unless the whole statement is read, the true meaning of the part that is taken as evidence against the accused cannot be ascertained. If that principle is applied to the instant case, in our opinion, the whole of the statement made by the accused will have to be considered and the learned Sessions Judge committed error of separating the inculpatory statement from the exculpatory portion

(1) A.I.R. 1969 S.C: 422:

of the same statement. Therefore, *Nishikant Jha's* case supra, relied upon by the learned counsel, having a reference to the facts which arose in that case, will not be of any assistance. In *Bhagirath* v. *State of Madhya Pradesh,* (2), their Lordships were considering a case where the Court reconstructed a story different from the one propounded by the prosecution and convicted the accused on that basis. It was held that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence, nor can the Court of its own make out a new case for the prosecution and convict the accused on that basis. When the stratum of the evidence given by the eye witnesses examined by the prosecution was found to be false, the only prudent course, in the circumstances, left to the Court was to throw out the prosecution case in its entirety against all the accused. Following the ratio of this decision, we consider that the entire prosecution case had to be thrown out. Since Jagjit Singh appellant made an attack to save his own wife on whom Harpal Singh attempted to rape, he could not be held guilty for the offence for causing the death of Harpal Singh. He got a right of private defence to save the person of his wife Smt. Amarjit Kaur and as such, he was completely exonerated. He could not be convicted under section 302 of the Indian Penal Code. The appeal is allowed and the conviction and sentence are accordingly set aside. The appellant is in custody and he shall be released forthwith unless required in connection with any other offence.

K.T.S.

APPELLATE CRIMINAL

Before B. S. Dhillon and R. N. Mittal, JJ.

STATE OF HARYANA,—*Appellant.*

versus

RAM NIWAS,—*Respondent.*

Criminal Appeal No. 874 of 1974.

February 15, 1978.

Code of Criminal Procedure (2 of 1974)—*Sections* 100 *and* 165—*Raid by a police party* — *Police officer—When to offer himself for*

(2) 1975 S.C.C. (Col.) 742.