Magistrate to stay his hands. I do not propose to fetter the discretion of the Magistrate in any way.

My attention has also been called to the provisions of section 146, Criminal Procedure Code, according to which if the Magistrate is of the opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession of the subject of dispute, he may attach it and draw up a statement of the facts of the case and forward the record of the proceedings to a Civil Court of competent jurisdiction to decide the question, whether any, and which of the parties is in possession of the subject of dispute at the date of the order as explained in subsection (4), of section 145. He shall direct the parties to appear before the Civil Court on a date to be fixed by him. It is open to the Magistrate to proceed under section 146, if he has any doubt as to the possession over the land being with a particular party.

In the result, Criminal Revision No. 46 of 1957 is allowed and the case remanded to the Court of Magistrate, 1st Class for decision according to law.

APPELLATE CRIMINAL.

Before Tek Chand, J.

CHANDER,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 267 of 1957.

1957

July, 1st

Code of Criminal Procedure (V of 1898)—Section 237—Indian Penal Code (XLV of 1860)—Sections 201 and 302—Accused charged for murder but acquitted—No charge framed under section 201 but the accused convicted under that section—Conviction, whether legal—Removal of dead

body from one place to another—When constitutes an offence under section 201—"Any evidence of commission of that offence"—Meaning of—Concealment of the weapon of offence, whether amounts to causing the evidence of the commission of that offence to disappear—Legal Ethics—Lawyer, whether should accept a case in which his son or near relation is a witness.

Held, that a person may be convicted of an offence although there has been no charge in respect of it if the evidence is such as to establish the charge that might have been made. Where a person is acquitted of the charge of murder with which he was charged, he can be convicted under section 201, Indian Penal Code, even if no charge under that section was framed, if the evidence is such as to establish that charge if it had been made.

Begu and others v. *Emperor* (1), *Kashmira Singh* v. *The State of Madhya Pradesh* (2), followed.

Held, that the removal of the dead body from one place to another may or may not constitute an offence under section 201, I.P.C. It is an offence if the dead body is removed with the intention of causing the evidence of the commission of an offence to disappear and such an intention is to be gathered from the facts of each case. In a murder case the dead body with stab wounds is an evidence of the offence of culpable homicide and if the *corpus delicti* is removed from the place of occurrence to another with the intention of averting the suspicion from the accused, the accused can be held guilty of an offence under section 201, I.P.C.

Nagendra Bhakt v. *Emperor* (3), *Upendra Chandra Podder and others* v. *Emperor* (4), and *Palvider Kaur* v. *The State of Punjab* (5), distinguished.

Held, that the expression "any evidence of commission of that offence" refers in section 201, I.P.C., not to evidence in the extensive sense in which that word is used in the Indian Evidence Act, but to evidence in its primary sense,

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(1) A.I.R. 1925 P.C. 130
(2) A.I.R. 1952 S.C. 159
(3) A.I.R. 1934 Cal. 144
(4) A.I.R. 1941 Cal 456
(5) 1953 S.C.R. 94

as meaning anything that is likely to make the crime evident, such as the existence of a wounded corpse or blood-stained clothes and weapons, fabricated documents or similar material objects, indicating that an offence has been committed.

Anverkhan Mohamadkhan v. *Emperor* (1), relied on.

Held further, that when a weapon of offence is stained with human blood, it affords a primary evidence of the offence and not any evidence in the extensive sense. The concealment of such a weapon amounts to causing the evidence of the commission of the offence to disappear.

Lal Singh v. *The Crown* (2), referred to.

Held also, that no reputable lawyer should think of accepting a brief in a case in which his son or near relation is witness or is likely to be cited as one.

Appeal from the order of Shri Harbans Singh, Sessions Judge, Rohtak, dated the 28th February, 1957, convicting the appellant.

C. L. AGGARWAL, for Appellant.

L. D. KAUSHAL, Deputy Advocate-General, for Respondent.

JUDGMENT.

TEK CHAND, J.—The appellants are two brothers, Chander aged 19, and Pearey aged 24, and they have come up in appeal to this Court from their conviction under section 201, Indian Penal Code. The Sessions Judge, Rohtak, has sentenced them to undergo seven years rigorous imprisonment each. Tek Chand, J.

The facts of this case are that the two accused appellants of village Khewra were sent up to stand their trial under sections 302/34 of the Indian Penal Code for the murder of one Teku Brahman of the adjoining village Chauhan Joshi. On the early

(1) A.I.R. 1921 Bom. 115
(2) (1947) 48 Cr. L.J. 786

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morning of 8th October, 1956, P.W. 2, Yad Ram of village Rai noticed a dead body which had on it injuries caused by a sharp-edged weapon lying by the side of the Grand Trunk Road between miles 21 and 22. He reported the matter to the police and the Sub-Inspector recorded Exhibit P. A., the first information report, and proceeded to the spot where he prepared the injury statement, Exhibit P. S., and the inquest report, Exhibit P. T., and sent the dead body for *post mortem* examination. As on account of the rains the land where body was found, was soft, footprints were also noticed and the police took care to lift them by means of moulds which are Exhibits P. 1 to P. 3. The body had been identified by Yad Ram to be that of Teku. Inquiries during the course of the investigation led the Sub-Inspector on 10th October, to Giani, a *Chowkidar*. The information received from him brought the Sub-Inspector into contact with P. W. 10 Ram Sarup and P. W. 11 Sri Chand.

According to Ram Sarup, he was cutting his *jowar* crop, four or five days' previous to his being examined by the Sub-Inspector, when he noticed that Chander accused along with his brothel Santu brought their goats which trespassed the fields of Teku deceased. Teku abused them and gave slaps to Santu and snatched a *dau*, which was a sharp-edged instrument, from him and did not return it despite their requests. Ram Sarup, P.W. 10, was asked to use his good offices in getting the return of the *dau*, but Teku despite the requests from Ram Sarup declined to return it as he felt that the flock of the accused had damaged his crop. Some hours later when they were about to leave for their village, Ram Sarup, P.W. 10, stopped for some time with Sri Chand, P.W. 11, and his brother Kali Ram in the nearby field where Teku also joined them. The latter did not

accompany his three companions, as he wanted to keep watch for some time more, lest further damage was done to his crop by the goats of Chander and his brother. While the three persons named above were returning to their village, they came across Chandar and Pearey accused who told them that they were proceeding to get their *dau* back from Teku. Two days later P.W. 10, learnt of the death of Teku and told Giani *Chowkidar* about having witnessed the quarrel between Chander and his brother on the one side and Teku on the other. P.W. 11, Sri Chand supported the story given by Ram Sarup in all material particulars.

Afted recorling the statements of these witnesses, the Sub-Inspector went in search of the accused, but not finding them in their village he left for the police station. That night, it is stated, Rattan Lal, P.W. 3, Duli Chand, P.W. 4, and Chet Ram, P.W. 5, and Sajjan Pal, who was given up by the prosecution as having been won over but was examined as C.W. 1, were sitting in the *chaupal* and talking. Accused Chander and Pearey went there and called out Rattan Lal and told him that they had murdered Teku on account of a quarrel with him over his snatching of *dau* and refusing to return it. They also told them that after having done him to death, they threw the corpse on the Grand Trunk Road. After hearing the story, P.W. Rattan Lal, took them to his other three companions named above, and before them the two accused confessed their crime. The next morning the Sub-Inspector went to the village and Rattan Lal produced the two accused before him.

On interrogation, Chander accused told the police that he had kept the *dau* underneath a *chakki* in his house, and he led the police party to his house and in the presence of P. W.s 3 to 5 and C.W. 1 produced the *dau*, Exhibit P. 8. It was later found to be

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stained with human blood. Thereafter both the accused led the police party to a place near the field of one Sardara close to the field of Teku deceased and indicated a place from where some earth was taken into possession and was later found to be stained with human blood. Thereafter Chander accused also pointed out the place near the Grand Trunk Road from where previously the dead body had been found.

Pearey accused was also interrogated and he disclosed that he had kept a purse in his house and led the police party to his *kotha*, which is different from the *kotha* from where the *dau* had been produced by Chander accused; and produced purse, Exhibit P. 6, from behind a wooden box. This purse contained a *fard* of allotment of some land in the name of P.W. 9 Bhag Mal, uncle of the deceased. P.W. 9 Bhag Mal had stated that he and his nephew Teku deceased were jointly allotted land and the allotment chit had been given by him to Teku deceased for safe custody. The purse has also been identified to belong to Teku by P.W. 8 Lakhi, brother of Teku.

The *post mortem* examination disclosed that Teku had suffered a large number of incised wounds on the head and the neck in addition to an abrasion on the left arm. His trachea had been cut and his skull was fractured. On 26th October, 1956, a track parade of the accused had also been conducted by the Tehsildar. The procedure adopted was that the two accused were mixed with seven others of the same height and the tracker P.W. 15, Pars Ram was then called to examine the tracks. He picked out the track of Pearey accused and declared it to be similar to the moulds, Exhibits P. 1, and P. 2. He also picked out the track of Chander accused and found it to be similar to the impression on the mould, Exhibit P.3.

The accused pleaded not guilty.

The prosecution evidence consisted of—

(1) the motive as deposed to by P.W.s Ram Sarup and Sri Chand on account of the quarrel with Teku because of the damage done to the crop resulting in the snatching of the *dau* and his refusal to return it;

(2) the circumstantial evidence of the two accused proceeding late in the evening to the place where Teku was last seen alive;

(3) track marks of the foot-prints of the accused near the dead body;

(4) the extrajudicial confession; and

(5) the recovery of *dau,* Exhibit P. 8, stained with human blood and the recovery of the purse belonging to the deceased.

The learned Sessions Judge did not consider these circumstances sufficient to convict the accused-appellants under sections 302/34, Indian Penal Code, but he was of the view that on the material on the record, both accused could be held guilty under section 201, Indian Penal Code, He convicted them under section 201 and sentenced them to seven years' rigorous imprisonment each. The learned Sessions Judge felt that the prosecution case about the two accused having gone to the *chaupal* and having confessed did find support from the statement of three witnesses, namely, P.W. Rattan Chand, P.W. Duli Chand and P.W. Chet Ram, but as the learned Sessions Judge could not, from the perusal of the evidence of these three witnesses, determine the exact extent to which each of the two accused had made a confession, felt that it would be unsafe to find the accused guilty of the offence of murder. In his opinion, the circumstances of the case taken together

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were not sufficient to clearly establish that the accused had murdered Teku.

Regarding the part played by Sajjan Pal, C. W. 1, the Sesions Judge rightly made certain adverse remarks. I have read the statement of Sajjan Pal, C.W. 1, who was not produced as a prosecution witness by the police as he had been won over, but the learned Sessions Judge called him as a Court witness, This Sajjan Pal is an M.A., LL.B., and is a professor in Chhotu Ram Arya College. He belongs to village Khewra. He categorically denied the coming of Chander and Pearey accused to the *chaupal* of the village and having said anything about the occurrence. He also denied that in his presence the shirt worn by Chander was taken into possession by the Police. He said this despite the fact that he had signed the memo of recovery, Exhibit P. K. as on attesting witness. When confronted with his signatures as an attesting witness on Exhibit P.K., he came out with the explanation that he did not read this memo at that time. I cannot overlook the conduct of C.W. 1, which to my mind is reprehensible. He is an M.A., LL.B., and a professor. As an attesting witness to Exhibit P.K., I cannot believe that he signed the document without being aware of its contents. I am driven to the conclusion that he had been won over by the defence with a view to screen the accused. The statements of the other three prosecution witnesses who were at the *chaupal* along with Sajjan Pal are straightforward and they appear to be independent and disinterested. Shri Shadi Ram, father of C. W. 1, Sajjan Pal had been conducting the case on behalf of the accused, and the learned Sessions Judge was quite right in questioning the propriety of his being engaged as a counsel in a case in which his son was one of the important witnesses for the prosecution. The father runs the risk of exposing himself to the charge that he might have had a hand in suborning

his son who was, a prosecution witness. No reputable lawyer should think of accepting a brief in a case in which his son or near relation is a witness or is likely to be cited as one. In this case the son was said to be present when the extrajudicial confession was made by the accused. It is regrettable that resort to methods like these should have the effect of obstructing justice. A conduct, of which Sajjan Pal has given proof, would be inexcusable on the part of any witness, but when this person happens to be an M.A.,LL.B., and a professor in a college and a son of the defence counsel in the case, his conduct becomes abhorrent in the extreme and cannot be denounced too scathingly.

It has been argued before me by the learned counsel for the accused that the guilt of the appellants under section 201 has not been substantiated. Mr. C. L. Aggarwal, stated that there was no charge under section 201, Indian Penal Code, drawn up against the accused and this omission has prejudiced the accused and their conviction cannot stand on that ground. A person may be convicted of an offence although there has been no charge in respect of it if the evidence is such as to establish the charge that might have been made. It is true that the accused were not charged with having committed an offence under section 201, but they certainly were tried on evidence which brought the case under the purview of section 237 of the Code of Criminal Procedure. Where a person is acquitted of the charge of murder with which he was charged, his conviction under section 201, Indian Penal Code, without any further charge is not illegal;—*vide* Begu *and others* v. *Emperor* (1). The above view of the Judicial Committee of the Privy Council was endorsed by the Supreme Court in *Kashmira Singh* v. *The State of Madhya Pradesh* (2).

(1) A.I.R. 1925 P.C. 130
(2) A.I.R. 1952 S.C. 159

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It is then argued that the removal of the dead body from one place to another does not constitute an offence under section 201, Indian Penal Code, and reliance is placed upon *Nagendra Bhakta* v. *Emperor* (1), and on *Upendra Chander and Poddar and others* v. *Emperor* (2). All that was decided in these two authorities was that the essence of an offence under section 201 being causing the evidence of the commission of an offence, to disappear, it would not be correct to say, that the mere moving of the body of the victim amounted to causing the disappearance of the evidence of the offence. In view of the particular facts of those authorities the view taken in those cases may be unexceptionable. In this case, however, the fact as to the removal of the corpse from the village to the Grand Trunk Road suggests that by removing the *corpus delicti* the intention was to avert the suspicion from the accused. The removal of the corpse to the Grand Trunk Road was presumably with a view to suggest that the man had been done to death by someone who was a passerby. This act was an attempt with a view to screen the real offenders. I can well visualise to myself that in certain cases a corpse may be removed from one place to another without the intention or object of causing disappearance of evidence of the offence; and again, there can be cases in which removal to an unknown, obscure, out of the way, or a distant place may be, with a view to cause disappearance of evidence within the meaning of section 201, Indian Penal Code. In a murder case the body with stab wounds is an evidence of the offence of culpable homicide. The expression "any evidence of commission of that offence" refers not to evidence in the extensive sense in which that word is used in the Indian Evidence Act, but to evidence in its primary sense, as meaning anything that is likely to make the crime evident, such as the existence of a

(1) A.I.R. 1934 Cal. 144
(2) A.I.R. 1941 Cal. 456

wounded corpse or blood-stained clothes and weapons, fabricated documents, or similar material objects, indicating that an offence has been committed,—*vide Anverkhan Mahamadkhan* v. *Emperor* (1), While at this stage a reference may be made to the recent decision of the Supreme Court in *Balvinder Kaur* v. *The State of Punjab* (2). In this case it was held that to establish a charge under section 201, Indian Penal Code, it was essential to prove that an offence had been committed and that the accused knew or had reason to believe that such offence had been committed. The facts of that case were that 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 who was his wife, took part in the disposal of the body. But as there was no evidence to show the cause of his death, or the manner or circumstances in which it came about, it was held that the accused could not be convicted for an offence under section 201, Indian Penal Code. In this case, however, the body with the stab wounds showed the cause of death as well as the manner in which it came about. The conclusion as to the commission of the offence under section 201, Indian Penal Code, by the accused is inescapable.

Moreover, in this case the *dau* was found to be stained with human blood. It was kept concealed under the *chakki* and produced by Chander, accused. In *Lal Singh* v: *The Crown* (3), Teja Singh, J., observed as under:—

> "There cannot be the slightest doubt that the weapon with which an offence is committed is a very valuable piece of evidence of its commission. More so when the offence is said to be of murder and the weapon is blood-stained, and if a person conceals that

(1) A.I.R. 1931 Bom. 115
(2) 1953 S.C. 94
(3) (1917) 48 Cr. L.J. 786

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weapon, provided his intention in doing so is to screen the offender, he is, in my opinion, guilty of causing that evidence to disappear, etc."

It is true that Sharif, J., did not subscribe to the above view and thought that the concealment of a weapon with which an offence is alleged to have been committed was not "to cause any evidence of the commission of that offence to disappear." According to Sharif, J., the weapon itself is no evidence of the commission of the offence. It is simply an instrument with which the offence could have been committed and its discovery at the instance of a person indicates no more than that he knew where it was to be found. The view expressed by Sharif, J., does not commend itself to me because when a weapon is stained with human blood it affords a primary evidence of the offence and not any evidence in the extensive sense. I prefer to follow the reasoning of Teja Singh, J., in preference to that of Sharif, J., Furthermore, the purse with the allotment slip inside belonging to the deceased was produced by the accused Pearey. Apart from that there were the footprints of the accused at the place where the dead body was found on the side of the Grand Trunk Road. The conclusion under the circumstances is inescapable that the accused who knew and had reason to believe that an offence had been committed caused the evidence of the commission of that offence to disappear with the intention of screening themselves from legal punishment. They are proved to be guilty, and have been rightly convicted by the learned Sessions Judge, Rohtak. The sentence of seven years' rigorous imprisonment awarded to Pearey, who is aged twenty-four years is not excessive. In the case of Chander, accused who is nineteen years of age, I feel that his sentence deserves to be reduced to five years' rigorous imprisonment. Maintaining the sentence and conviction of the accused Pearey, I dismiss his appeal.

I allow the appeal of accused Chander to this extent only that while I maintain his conviction I reduce his sentence to a period of five years' rigorous imprisonment.

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LETTERS PATENT APPEAL

Before Bhandari, C.J., and Mehar Singh, J.

FATAH AND OTHERS,—*Plaintiffs-Appellants.*

versus

SARDARA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 74 of 1954.

1957

July, 4th

Code of Civil Procedure (V of 1908)—Section 100—Finding of fact—Whether can be disturbed in second appeal—Land, whether held by a particular person, finding as to—Whether a finding of fact.

Punjab Tenancy Act (XVI of 1887)—Section 59—Presumption as to occupation of land by common ancestor, when rebutted.

Evidence Act (I of 1972)—Section 114—Presumption—Nature of.

Held, that section 100 of the Code of Civil Procedure accords statutory recognition to the well-known principle that a Court of second appeal will not determine disputed or doubtful questions of fact or disturb findings on pure questions of fact when such findings are supported by evidence and are not unreasonable or perverse. If, therefore, the judgment of the first appellate Court is in accord with correct principles of law and based on competent evidence reasonably tending to support the findings, the order of the first appellate Court will be affirmed even though it would have decided otherwise if it had occupied the place of the trial Court or the first appellate Court.

Held further, that *prima facie* the finding as to whether a particular person has or has not occupied a particular plot of land involves a question of fact. Occupation of a