were never owned by Nur Ahmad's father. There is nothing to show, further, that *Must*. Allah Jawai ever had possession of any of her deceased brother's estate, and the will was simply a device. The fact of the lady making it, is not the smallest indication that she had any right to do so.

The net result, then, seems to be that plaintiffs should have the house and (*b*) and (*c*), while defendant takes the Khurara (165 *kanals*) and Bagh (19 *kanals*) lands and (*a*).

We accept the appeal and pass a decree accordingly, the plaintiffs to pay one-half of defendant's costs in this Court.

R.M./R.K.

Appeal accepted.

A. I. R. 1915 Lahore 467

SHAH DIN AND LE ROSSIGNOL, JJ.

Nur Muhammad and *another*—Convicts —Appellants.

v.

Emperor—Opposite Party.

Criminal Appeal No. 251 of 1915, decided on 6th April, 1915, from the Order of Sessns. Judge, Jhelum, dated 27th February, 1915.

(a) Evidence Act (1 of 1872), Ss. 24 to 26—Confession by co-accused implicating other—Value of—It must be corroborated.

Where one of two co-accused makes a confession implicating the other co-accused as well, independent evidence should be forthcoming to corroborate the confession in regard to each accused implicated. [P. 469, C. 1.]

(b) Criminal trial—Confession—Retracted—Value of—Confession of wife against husband—Confession retracted—No corroboration—Held benefit of doubt must be given to both.

Where *N* and *R*, husband and wife, were accused of the murder of *N*'s brother and *R* made a confession before the Committing Magistrate implicating her husband as well, but subsequently retracted the confession:

Held, that as there was no real corroboration of the retracted confession against *N* and against *R* herself there was merely the retracted confession corroborated solely by evidence of her absence from her house during the night of the alleged murder, the accused were entitled to the benefit of the doubt and must be acquitted. [P. 469, C. 1.]

Muhammad Iqbal—for Appellants.

B. Bevan Petman—for the Crown.

Judgment.—The appellants, Nur Muhammad and Rahmtan, husband and wife, have been sentenced to death for the murder during the night of 27th-28th November, 1914 of Fazla, the real brother of the male appellant.

The motive is to be found in the partition of the family property; the land had been partitioned but Nur Muhammad had successfully resisted Fazla's claim to share in the *dhok* or outlying farmstead, the supposed scene of the murder, which lies some 200 *karms* from the main *abadi*.

The animosity engendered by Fazla's claim had long been smouldering, but the immediate cause of the offence is to be found in Fazla's construction on the day preceding the offence of a manger on that portion of the *dhok* occupied by appellant.

It is proved, nay, admitted that Fazla slept in a room of the *dhok*, with the male appellant.

Deceased was married, but his wife being of tender years had not yet joined him. On the last evening of his life he supped with his wife and parents-in-law, P. W. Nos. 2, 3 and 4, and then went off to sleep at the *dhok*. The next morning his body was found lying in a ravine 513 *karms* by a round-about route from the *dhok*. Near it were found a pair of shoes and a *pagri*.

There is no eye-witness of the offence, but witnesses Nos. 2, 3 and 4 prove the standing cause of enmity and the immediate provoking cause of the murder.

Against *Must.* Rahmtan there is no evidence except her admission made before the committing Magistrate on 3rd December, 1914, after the prosecution evidence had been recorded.

In that statement she said that she and her husband had strangled Fasla with a rope, that they had then carried his body with the shoes and *pagri* to the ravine, and she explained the presence of marks of a bite on her wrist by saying that Fazla deceased had bitten her during the death struggle.

Thirteen days after she put in a petition, alleging she had made the admission under police torture. She was at once examined and the medical witness deposes unhesitatingly that the blisters displayed on her neck as well as the circular mark on her wrist could not have been inflicted on the 2nd December, the date on which she alleges she was subjected to torture.

It is worthy of remark that *Must.* Rahmtan had not been in Police custody after 2nd December, 1914.

We have no hesitation in agreeing with the learned Sessions Judge that the injuries displayed by *Must.* Rahmtan on 16th December, 1914, were not the handiwork of the police and the reason she offers for her alleged false admission is clearly untrue.

The medical evidence shows that the death of Fazla was due to strangulation.

The learned Sessions Judge holds that the retracted confession by *Must.* Rahmtan was true and that it is corroborated as evidence against her husband by three main circumstances.

The *first* is that the body was viewed by the villagers from the cliff overhanging the ravine and only Nur Muhammad could identify it from that distance, the *second* is the production from his straw stack by the appellant Nur Muhammad of a blood-stained rag; the *third*, that the murder took place at the *dhok* where none but appellant and deceased lived.

The first item does not greatly impress us; the depth of the ravine was only some 30 feet and it is difficult to believe that from that distance Faxla's body was unrecognisable; in any case his brother would naturally recognise him with greater ease than persons who were not relatives. Moreover, a perusal of the Police diaries does not lend support to this story that the body was not recognisable from the top of the ravine. To this circumstance we attach little value.

To the recovery of the blood-stained rag the Sessions Judge attaches little independent value, but this circumstance, linked up with the immediate identification of the corpse from a distance of 30 feet he regards of great weight. Now it is not suggested that this blood-stained rag was identifiable as the property of the appellants and it seems unnatural that Nur Muhammad should have risked polluting his own clothes by taking it away and hiding it in his stack. It should be noted that his clothes were examined when he reached the *thana*, but were found to be free from blood-stains, his person also bore no marks of a struggle.

Moreover, a perusal of the police diaries reveals that a blood-stained rag lay near the body when the police arrived. What became of that rag? No further mention of it is to be found in the diaries and it was not sent up with the case. Why should two rags have been used to staunch the flow of blood from deceased's nostrils and why was one only secreted by appellant Nur Muhammad?

The alleged production of the rag by Nur Muhammad from the stack appears to be a very suspicious matter and cannot be relied on.

The Sessions Judge's first two corroborative factors appear then to have very little value.

General corroboration of the story told by *Must.* Rahmtan is no doubt to be found in the statement of *Must.* Khan Bano, her sister-in-law, that *Must.* Rahmtan was away from the house for the greater portion of the night of the murder, but corroboration should be in regard to each accused implicated.

The third reason given by the learned Sessions Judge is that the murder certainly took place at the *dhok* where nobody but deceased and Nur Muhammad slept, and he arrives at this conclusion as to the scene of the murder on the strength of the Sub-Inspector's deposition that the soles of the corpse were smeared with cowdung, and that near the bed in the *dhok* was a patch of wet cowdung on which were foot-prints.

Now the Sub-Inspector is the only witness of this important point and the diaries do not bear him out.

We find in the diaries that only one foot of the corpse was smeared with cowdung, further that no mention of a wet patch is made.

There were some foot marks in the ravine and on the floor of the *dhok*, but there is no evidence that they could be identified with the foot-prints of either appellant.

This factor too is thus shorn of all its value. Now deceased is said to have had an intrigue with the wife of Din Muhammad, and Din Muhammad was mentioned in the first report as a suspect. Din Muhammad's wife is *Must.* Fatma, the sister of *Must.* Rahmtan, and when the investigation opened it was ascertained that Mehdi, brother of *Must.* Rahmtan, had left that morning on no intelligible errand and though sought for could not be found by the Police.

Thus it is possible that Din Muhammad and Mehdi were the culprits.

For the appellants it is urged that the admission of *Must.* Rahmtan is meagre and unconvincing, the rope, the alleged lethal instrument, has not been produced

and she may have been induced to implicate herself and her husband in order to screen her brother.

The admission is certainly not very rich in details of what preceded the strangling and it seems strange that the bite on the back of the wrist of *Must.* Rahmtan should have been merely a set of small bruises and not penetrating injuries.

Thus against Nur Muhammad we have no real corroboration of the retracted confession, whilst against Rahmtan there is merely the retracted confession, corroborated solely by the evidence that she was absent from her house during the night.

No doubt there is grave suspicion that the appellants were privy to the murder, but there is no reliable evidence as to the scene of the murder or of their complicity in the deed.

In the circumstances, appellants must be given the benefit of the very real doubt that exists.

The appeal is accepted and they are acquitted.

R.M./R.K.

Appeal accepted.

A. I. R. 1915 Lahore 469 (1)

LE ROSSIGNOL, J.

Ronki – Convict—Appellant.

v.

Emperor – Opposite Party.

Criminal Appeal No. 837 of 1914, decided on 9th January, 1915, from the Order of the Magistrate, 1st Class, Hissar, dated 8th October, 1914.

(a) Criminal Trial—Evidence—No mention of offender in first information report—Subsequent assertion of his having been seen is not reliable.

Where the first report makes no mention of the offender and the complainant when questioned named nobody as his assailant, and there is no assertion therein that any fugitive had been seen, the complainant's subsequent statement that he had identified the accused at the time of the attack and the evidence of his neighbours that they saw him running with the instrument of crime in his hands, cannot justly be relied upon.

(b) Criminal Trial—Evidence.

The track evidence of a flimsy nature should not be believed without sufficient corroboration.

Nand Lal—for Appellant.

Judgment.—The appellant has been convicted of the attempted murder of Hari Chand and has been sentenced to seven years' rigorous imprisonment. The alleged motive is appellant's resentment in respect of a decree obtained by complainant's father against appellant's father shortly before the commission of the offence.

Hari Chand, complainant, was attacked as he lay asleep in the bazaar in front of his shop. The first report was to the effect that Hari Chand, when questioned, had mentioned nobody and there is no mention that any fugitive had been seen.

Hari Chand stated before the Magistrate that he had identified appellant at the time of the attack, but the Magistrate declined to believe this and having seen the police proceedings, I think the Magistrate was quite correct in his conclusion.

But the lower Court has convicted on the evidence of four neighbours of complainant, who say they saw appellant running away with a hatchet in his hand.

I place no reliance on these witnesses. They live quite close to the complainant, they say they heard the alarm and cries of *wadh gaya*, still they did not go to the spot and tell what they had seen. Moreover, appellant had been arrested on suspicion before their statements were recorded.

There is some track evidence of a very flimsy nature and the so-called tracker has not been corroborated. The lower Court does not rely on it.

There is no sound evidence at all against the appellant.

Ground 7 is withdrawn.

The appeal is accepted and the appellant is acquitted.

R.M./R.K.

Appeal accepted.

A. I. R. 1915 Lahore 469 (2)

RATTIGAN AND LESLIE JONES, JJ.

Robert Skinner and *others*—Plaintiffs—Appellants.

v.

Mrs. James Skinner—Defendant—Respondent.

Second Appeal No. 804 of 1912, decided on 18th May, 1915, from the Decree of Divnl. Judge, Delhi, dated 19th February, 1912.

Registration Act (16 of 1908), S. 17—Petition embodying terms of compromise incorporated into judicial record—Registration not compulsory to make it admissible in evidence.