present case? We have evidence to the effect that in the small hours of the morning in question the accused was seen running away from the place where Mt. Sardaran was done to death, and this conduct affords a strong indication of the existence of consciousness in his mind that he had done what was wrong. He then comes to the village and reproaches his aunt for rendering assistance in the elopement of his wife, and states that he has killed his wife and must also punish his aunt. After inflicting injuries on the aunt he goes to the roof of his house and again makes a similar confession. It is therefore clear that his is not a case in which crime was committed without a motive. The evidence of several witnesses also shows that, while they were going with him from the village to the police station, he, not only pointed out the pit where the corpse of his wife was lying, but also gave rational answers to the questions put to him. The Sub-Inspector, who questioned him at the police station, states that he was in a normal condition of mind at that time and could understand his (Sub-Inspector's) questions and gave intelligent answers to those questions. It was only after the expiry of more than 24 hours from the time of the commission of the deed that he developed the signs of insanity which were noticed by the Civil Surgeon. But it is the mental condition at the time of the commission of the alleged crime which must determine the question, and not the state of mind which developed after the expiry of one day.

The onus of establishing the plea relied upon by the prisoner was undoubtedly upon him, and the assessors unanimously returned the verdict that he had not succeeded in establishing that plea. This verdict has been accepted by the trial Judge, and, after examining the evidence on the record in the light of the principle enunciated above, I have no hesitation in endorsing his view. I would accordingly dismiss the appeal.

Agha Haidar, J.—I concur generally in the order proposed by the learned Chief Justice that the case does not come strictly within the provisions of S. 84, I. P. C. At the same time having regard to the opinion of Dr. Murray that "Bagga had unstable brain throughout and by no means a normal one," and also in view of his family history and the fact that well within 24 hours of committing the murders the accused was a raving maniac, and had to be detained for a period of about two years in the Mental Infirmary before taking his trial, it would be desirable that the procedure adopted by a Bench of the Punjab Chief Court in *Chhaju Mal* v. *Emperor* (1) be followed and that the record of this case be forwarded to the Local Government with a view to its being placed before His Excellency the Governor in Council so that His Excellency may be pleased to take such action under S. 401, Criminal P. C., as may be deemed right and proper, in the circumstances of the case.

B.V./R.K. *Appeal dismissed.*

(1) [1909] 11 Cr. L. J. 105=4 I. C. 985.

A. I. R. 1931 Lahore 278

ABDUL QADIR, J.

Jalla—Convict—Appellant.

v.

Emperor—Opposite Party.

Criminal Appeal No. 1110 of 1930, Decided on 2nd February 1931, against order of Sess. Judge, Lyallpur, D/- 22nd November 1930.

(a) Evidence Act (1872), S. 27—Custody—Meaning explained.

For the purposes of S. 27, the word "custody" does not necessarily mean detention or confinement, but submission to custody by word or action under S. 46 (1), Criminal P. C., may be taken to amount to custody: *A. I. R.* 1924 *Rang.* 173, *Ref.* and *A. I. R.* 1927 *Lah.* 541, *Dist.* [P 279 C 2]

(b) Evidence Act (1872), S. 27—Statement by person not accused nor in police custody, is not admissible under S. 27.

The dead body of a deceased was discovered in consequence of a statement made by a person who was not in police custody: the evidence of police did not show how he came to be suspected between the time of the first report and the recovery of the dead body. The second report wherein the accused was suspected for the first time was made after the recovery of the body.

Held: that at the stage at which the accused pointed out the body, he was neither an accused person in the light of the first information report made to the police, nor apparently in police custody and therefore the alleged statement by him preceding the recovery of the dead body could not be regarded as admissible under S. 27. [P 280 C 1]

(c) Penal Code (1860), S. 201—Body found unconcealed where deceased was killed—No conviction under S. 201.

If the body of the deceased is found just where he is killed, and the body is not concealed and is lying apparently where it had been left by

the culprits, there can be no conviction under S. 201. [P 280 C 2]

Mohammad Iqbal—for Appellant.

J. W. Fairlie—for the Crown.

Judgment.—A boy named Gajjan, aged 14 years, was strangled to death on the evening of 23rd March 1930, and his dead body was found lying in a field on the 25th of that month. Sadiq, his brother Jalla, and their nephew Kamir, were committed to the Sessions under S. 302, I. P. C., for having caused the death of Gajjan.

Sadiq and Kamir have been acquitted but Jalla has been convicted of an offence under S. 201, I. P. C. The principal witness in this case was Raju (P. W. 2), who was said to be the accomplice of the alleged offenders, but was granted a pardon and made an approver. There were some other witnesses who professed to have seen the accused with the deceased at a fair on the day of the occurrence. Abdul (P. W. 3) gave evidence that he had been asked by the accused to bring Gajjan from his house to the fair. It is admitted that there was enmity between the accused and Langar, father of Gajjan. The latter does not appear to have realized at first that there had been any foul play. He thought that his son had been lost. He reported the fact of his disappearance to the police on 25th March at 8 a. m., stating in his report that he did not suspect anyone, at that stage, as responsible for the disappearance of his son. In the afternoon however, on the same day, suspicion, somehow or other, fell on the accused and they were called by the police. Jalla alone turned up, and on being questioned pointed out a field where the dead body of Gajjan was lying. It was identified by Langar (P. W. 8), who made a second report to the police, after the recovery of the body, on the evening of 25th March about 8 p. m., wherein he accused the persons abovenamed as well as the approver.

The learned Sessions Judge, after considering the evidence on the record, has come to the conclusion that the testimony of the approver is not trustworthy nor is that of Sillu (P. W. 4), Piranditta (P. W. 5) or Khair Din (P. W. 6), who are wajtakkar witnesses. He therefore regarded this evidence as insufficient to justify the conviction of any of the accused persons under S. 302, I. P. C., but, relying on a statement said to have been made by Jalla before the recovery of the body of Gajjan, he has convicted Jalla of an offence under S. 201, I. P. C., and sentenced him to seven years' rigorous imprisonment, following a decision of this Court in *Basant Singh* v. *Emperor* (1), where it was held to be established that the accused in that case was one of the two persons with whom the deceased was last seen and that he had pointed out the spot where the dead body of the deceased was found.

In appeal it is contended by Sir Mohammad Iqbal, on behalf of Jalla, that no statement made by him before the recovery of the dead body has been proved in this case and, even if the vague allegations made by the prosecution witnesses on this point amount to a statement, that statement is inadmissible in evidence, because it is not shown that Jalla was an accused person or in the custody of the police at the time when the alleged statement was made. It is further contended that the ingredients of an offence under S. 201, I. P. C., are wanting in the present case, as there is nothing to show that the appellant caused any evidence of the commission of the offence of murder to disappear with the intention of screening the offenders from legal punishment. The learned Sessions Judge has found that Jalla and other accused persons were not arrested by the police till 28th March, but they were called as suspects and must be considered to be in police custody from the 25th onwards, even though they were not detained. Reliance is placed for this view on *Maung Lay* v. *Emperor* (2). I am inclined to agree with the view that for the purposes of S. 27, Evidence Act, the word "custody" does not necessarily mean detention or confinement; but submission to custody by word or action under S. 46 (1), Criminal P. C., may be taken to amount to custody.

The question however in the present case, is whether at the stage at which a statement is alleged to have been made by Jalla, there was any kind of custody at all. The evidence of the police officers on the record does not show how Jalla

(1) A. I. R. 1927 Lah. 541=103 I. C. 97 = 28 Cr. L. J. 641.

(2) A. I. R. 1924 Rang. 173 =77 I. C. 429=25 Cr. L. J. 381=1 Rang. 609.

and others came to be suspected between the time of the first report on the morning of 25th March and the recovery of the dead body. One thing is clear that the second report, which is the earliest document distinctly naming the accused as suspects is made after the recovery of the body. Langar (P. W. 8) offered an explanation that he had been informed by Piranditta that the latter has met the accused and the deceased on the day of the occurrence and that he (Langar) mentioned this to the police; but he is not supported on this point by Piranditta (P. W. 5), who distinctly says that he did not give any information to Langar. It is clear therefore that at the stage at which Jalla is said to have pointed out the body, he was neither an accused person in the light of the first information report made to the police. nor apparently in police custody. It is open to serious doubt therefore that the alleged statement by him, preceding the recovery of the dead body, could be regarded as admissible under S. 27, Evidence Act. Three witnesses have been produced to prove that it was Jalla who gave information with regard to the body of Gajjan. They are Umar Daraz Khan, Sub-Inspector (P. W. 24), Samand Khan, retired Sub-Inspector (P. W. 25) and Mirdad (P. W. 12). Their evidence shows that he showed where the body was but as pointed out above, it is open to question whether his knowledge of the whereabouts of the body is any proof of his guilt, if the statement said to have been made by him is not admissible under S. 27, Evidence Act.

As to the question whether any evidence of murder was caused to disappear by Jalla or any of his accomplices, it is not clear from this record whether the deceased was murdered at a place other than that where the body was found. The statement of Raju (P. W. 2) the approver on this point, for whatever it may be worth, would lead one to believe that Gajjan was killed where his body was found. This is the version he gives :

"Sadiq accused put his hand on the mouth of Gajjan and gagged him. Kamir caught him by the throat. Abdul then fled away. I and Jalla then chased and caught him. We warned him that if he made any disclosures to anybody we would kill him also. He promised to hold his counsel and we therefore released him. Gajjan was yet alive when I and Jalla went back to him. Jalla caught his arm. I caught him by the legs. All four of us carried our victim between us to a field of wheat where we threw him on the ground. As he was yet moving, Kamir sat down on his chest and strangled him again with his hand."

If this is anything near the truth as a description of the way in which Gajjan met with his death, it does not appear that after he was strangled for the second time he was removed anywhere. The body was not concealed in any way and was lying apparently where it had been left by the culprits. I fail to see any proof of anyone causing the evidence of the murder to disappear. I think therefore that for the reasons urged on behalf of the appellant, this appeal must be accepted. It may also be mentioned that a feature that distinguishes the present case from that of *Basant Singh* v. *Emperor* (1) is that in that case evidence as to the accused having been last seen with the deceased was believed, while in the present case that evidence has been rejected by the trial Court.

This appeal is therefore accepted and the appellant is ordered to be released forthwith.

K.N./R.K. *Appeal allowed.*

A. I. R. 1931 Lahore 280

DALIP SINGH AND ABDUL QADIR, JJ.

Khair Din and *others*—Appellants.

v.

Emperor—Opposite Party.

Criminal Appeal No. 7 of 1931, Decided on 18th February 1931, against order of Sess. Judge, Lahore, D/- 3rd December 1930.

(a) Penal Code (1860), S. 300, Excep. 4—Even though quarrel be sudden if accused acts cruelly in assaulting deceased, he cannot have benefit of Excep. 4 to S. 300.

Where it is clear that the deceased has as many as six injuries on his head it is difficult to hold that the case falls within Excep. (4), to S. 300, because even assuming that the quarrel was sudden it would seem that the accused acted in a cruel manner in so assaulting and causing all these injuries to a man who was unarmed and who is not shown to have assaulted the accused in any way and caused any injuries. [P 282 C 1, 2]

(b) Penal Code (1860), S. 325—Before framing charge on 20 days rule Court should see that there is some evidence of injured person being in severe bodily pain or unable to carry on ordinary avocations for that period—Merely lying in hospital for that period is not sufficient.

In framing charge because of the fact that the medical evidence showed that the assaulted person had remained under treatment in the hospi-