

PETITIONER:
STATE OF BIHAR, ETC.

Vs.

RESPONDENT:
KAPIL SINGH, ETC.

DATE OF JUDGMENT:
18/04/1968

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
SIKRI, S.M.
SHELAT, J.M.

CITATION:
1969 AIR 53 1968 SCR (3) 810

ACT:
Murder charge--Evidence of child witness--Non-disclosure of names of culprits--Confined in police custody--Corroborative evidence, suspicious--Whether conviction can be sustained.

HEADNOTE:
Appellants D and R, and respondent K were charged for the murder of a lady. The deceased who was sleeping with her niece--a child aged about 11 years, woke up on hearing sounds while some miscreants were stealing things in the house. She called out to the child. Two of the miscreants rushed at her and another killed her. The child pretended to be asleep, but did not cry out of fear, and continued lying on her cot till dawn. In the morning the child came out of the room and started weeping. On the enquiry of a passer-by, she told him about the murder, and a report was lodged in the police station. Her statement was recorded but she refused to disclose the names of the culprits as her mother had forbidden her lest the persons named might kill her. D, K and R were apprehended. A chadar and quilt stained with human blood were seized from R's 'room, and eartops and its container 'from a room in the house of D and his brother. The child was taken to police station, who 3 days thereafter at about midnight disclosed the names of the three culprits. She named K to be the actual killer and D and R as the attackers. Subsequently the child and her mother's statements were recorded under s. 164 Cr. P.C., and then the child was allowed to return home. D, K and R were convicted by the Sessions Judge under ss. 302 and 34 I.P.C. The High Court, in appeal, acquitted K holding that it was not safe to base any conviction on the solitary testimony of the child witness, but upheld the convictions of D and R, as the evidence of the child witness was corroborated by the recoveries. D and R appealed to this Court against the convictions and the State against K's acquittal.

HELD : The convictions could not be sustained. [820 C]
There were a number of circumstances indicating that it would not be quite safe to rely on the child witness' evidence. It was very unlikely that she could have continued or pretended to be asleep the whole of the time.

In the morning she did not disclose the names of the culprits to the passer-by. The conduct of the passer-by in not trying to find out the names from the child appeared to be quite unnatural. The explanation that her mother had warned her not to disclose the names lest she be killed by the persons named by her, was not convincing. At no stage the suggestion was that the thieves themselves had threatened to kill the child if she disclosed their names. She could not, therefore, be under any fear at the time when she met the passer-by and others. Further the illegal confinement by the police was reprehensive and very adversely affected the value of the evidence obtained by the police. The very fact that she was questioned at the odd hour of midnight made it obvious that compulsion was being used on her to disclose the names. Clearly the police was acting against law in keeping the child confined in the police station with a police constable posted all the time as her companion. The failure of mother to appear as a witness at the Sessions Trial, was another example of the unsatisfactory or unreliable conduct of the investigation of the present case. If she had come in the witness-box, it seemed that she

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could not have supported the prosecution case, so the unconvincing excuse was put forward that she disappeared on the day fixed for her evidence, even though she was staying at the same place as her daughter and was looking after her during the trial of the case. It is also significant that according to the child her mother had told the police that she had not forbidden the child to disclose the names of the culprits. [816 A-F; 817 A-D; 818 A--C]

Even the corroborative evidence adduced, was of very doubtful character. No reasonable explanation was given by the prosecution of how blood came on the quilt and chadar recovered from the house of R. During the season in which and at the place where the murder took place quilt would not be in use. The child did not state that any of the persons was carrying the quilt or chadar or was trying to conceal his features by wrapping in them. The explanation for these blood stains by R had not been accepted and was not very satisfactory; but the failure of an accused to give an adequate explanation does not lead to an inference that these blood stains must be those of the blood of the deceased. [818 D-H]

Similarly the recovery of the eartops and its container was highly suspicious. It was not established that the room from which it was recovered was of D. All the formalities for conducting the search were not complied, as a witness stated that the police inspector was already in the courtyard of the house, when the witness arrived. Further the prosecution made out that D was foolish enough to keep in his room an article connected with the murder about which there could be no difficulty of identification, because the container had on it the name of the daughter-in-law of the deceased and it was kept in a manner to attract the, attention straightaway. [819 C-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 141 and 142 of 1965 and 78 of 1968.

Appeals by special leave from the judgment and order dated December 23, 1964, February 9, 1965 of the Patna High Court in Criminal Appeal No. 545 of 1962.

D. P. Singh, K. M. K. Nair and N. M. Ghatatate, for the appellant (in Cr. A. No. 141 of 1965) and respondent (in Cr. A. No. 142 of 1965).

R. C. Prasad, for the appellant (in Cr. A. No. 142 of 1965).

R. C. Prasad, for the appellant (in Cr. A. No. 78 of 1968).

U. P. Singh, for the respondent (in Cr. A. No. 141 of 1965).

The Judgment of the Court was delivered by

Bhargava, J. These three appeals all arise out of a trial held by the Additional Sessions Judge of Patna in respect of a charge of murder of an old lady Rohini Kuer, wife of Munshi Chaudhary, residing in village Lohra, Police Station Bakhtiarpur, District Patna. The prosecution case was that, on the night between 17th and 18th June, 1961, Rohini Kuer, who was aged about 60 years, was sleeping on a cot in the courtyard of her house and, nearby, on a smaller cot was sleeping her niece,

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Manti, who was about 11 years of age. Munshi Chaudhary himself, his sons and daughter-in-law were at Ranchi where one of his sons had been posted as a Block Development Officer. During the night, Rohini Kuer had closed all the doors and had put a lock from inside on the connecting door between the female apartment and the male apartment of the house. Some time during the night, three miscreants entered the female apartment by cutting a hole in the wall on the western side of the connecting door and began to ransack different rooms of the house. Rohini Kuer woke up on hearing the sounds, while the miscreants were breaking open the boxes and removing the articles. She got up from her bed, accosted the thieves and also called out to Manti. Two of those persons rushed at her, threw her down on the verandah and inflicted several injuries on her body. One of them brought out a sword which was kept in the southern room adjacent to the verandah and cut her neck in the light of the electric torch which had been lighted by the third person. Thereafter, they took away cash, clothes and ornaments having broken open several boxes. They also took away an iron safe. Manti pretended to be asleep and did not cry out due to fear. At one stage, one of the thieves suggested that she should also be killed, but another one intervened and suggested that it was unnecessary to commit her murder. Manti continued lying on her cot till dawn when she came out of the house through the hole which had been cut by the thieves and started weeping while she was in the Baithak of Munshi Chaudhary, one Bhagwat Prasad, who was passing by, enquired what the matter was. She told him that Daiya had been cut. 'Daiya' was the term by which she used to address Rohini Kuer who was her father's sister. Bhagwat Prasad then entered the female apartment through the same hole and found the dead body of Rohini Kuer lying in the verandah. As he came out after seeing the dead body, Ramkishan Chaukidar also arrived. Both of them then went to Harnaut Police outpost four miles away where Bhagwat Prasad lodged a First Information Report which was recorded by Assistant Sub-Inspector Jagdish Singh at about 8 a.m., the date being 18th June, 1961. He sent a copy of the Report to Bakhtiarpur Police Station for institution of a case and himself proceeded to the scene of occurrence at 10.30 a.m. It is said that, in the meantime, Manti's mother had arrived and she told Manti not to disclose the names of the offenders lest she should also be killed. Jagdish Singh, A.S.I., inspected the place of occurrence, noticed the hole

that had been cut in the wall and actually went inside through the same opening. He found the dead body lying in the verandah and also notice some- footprints on the floor near the dead body. A blood-stained sword kept in a sheath was also found by him in a room adjacent to the verandah where he also found another foot print in blood stains. He

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prepared the inquest report and sent the dead body of Rohini Kuer for postmortem examination. The investigation was then taken over by Inspector of Police, Lakshmi Narain Pathak, who took statements of various witnesses, According to him, though he was able to record a detailed statement of Manti covering about two pages. Manti refused to disclose the names of the culprits and started weeping when she was asked to give out the names. He sent a requisition to Patna for a police dog and a photographer. Three days later, on 21st June, the police dog and the photographer arrived in village Lohra, and the Investigating Officer, Pathak, on reaching the spot let loose the dog. The dog went to the house of Ramujagar appellant and entered a room from which one Dasuti Chadar and one quilt stained with blood were seized by the Investigating Officer Pathak-. Thereafter, the dog went to the house of Kapil Singh who, in the meantime, had left his house on seeing the police arriving. He was, however, arrested by the Dafadar. Subsequently, the dog led the police to the house of Deo Singh and his brother Singheshwar where, on a search having been made, a pair of gold ear-tops were recovered from a niche situated in a room facing east. The ear-tops were kept in a cardboard case which bore the inscription "Malti Singh, Women's College Ranchi, P.N.U.N.C.H.2". In the inner cover of the case "M. Singh" had been written in English and the names of the dealers were also printed on it. The old ear-tops and its covering box were seized by the investigating officer. On 22nd June, 1961, Jagdish Singh, A.S.I., Harnaut Police outpost, on searching a well situated about three quarters of a mile away from village Lohra, recovered a Godrej Iron Safe which was taken out and was found to contain articles including insurance Policies in the name of Nandkishore Singh son of Munshi Chaudhary.

The girl Manti was taken to the Police Station by the Investigating Officer on the 19th June, 1961, apparently because she had failed to disclose the names of the thieves whom she had seen inside the house and who had committed the murder of Rohini Kuer in her presence. Manti was kept at the Police Station and was repeatedly questioned. According to the Investigating Officer, Lakshmi Narain Pathak, she was allowed to visit her sister's place in between, but she was always provided with a police escort. At about midnight on the night between 21st and 22nd June, 1961, she is alleged to have disclosed the names of the three culprits. The names that she gave were those of Kapil Singh alias Kapildeo Singh, Ramujagar Singh and Deo Singh alias Surajdeo Singh. She then-amplified the statement by stating that it was Kapil Singh who had actually cut the neck of Rohini Kuer and that Ramujagar Singh and Kapil Singh were the two persons who had attacked her. Deo Singh,

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according to her, was the person who was flashing the torch to give light to his two companions. She added that Deo Singh had said that she also should be killed, Whereupon Kapil Singh said that she was a child and they should leave her.

Subsequently, on 28th June, 1961, Manti and her mother were both produced before a Magistrate who recorded their state-

ments under section 164, Criminal Procedure Code. Manti was allowed to go home after this statement of hers had been recorded by the Magistrate. Samples of the footprints of the three suspects were compared with the footprints in blood found at the scene of occurrence by the police Expert on, Footprints and evidence was sought to be given by him to prove that one of the footprints tallied with the footprint of Deo Singh.

The Additional Sessions Judge accepted as true the evidence of Manti. He further held that there was corroboration of her evidence at least against two of the persons Ramujagar Singh and Deo Singh. His finding was that the quilt and the chadar, which were proved stained with human blood, having been recovered from the house of Ramujagar Singh, provided very good corroboration of the case against him. of participation in this murder. Similarly, the Additional Sessions Judge held that the recovery of the eartops with the cardboard box containing on it the name of the daughter-in-law of Rohini Kuer as well as the circumstance that the blood-stained footprint found on the spot tallied with that of Deo Singh appellant furnished very good corroboration of the case against Deo Singh. These circumstances indicated that Manti had given truthful evidence and, consequently, he convicted all the three persons for the offence under s. 302, I.P.C., read with s. 34, I.P.C. All the three persons were sentenced to imprisonment for life for this offence. Kapildeo was, in addition, found guilty of the substantive offence under s. 302, I.P.C. for committing the murder of Rohini Kuer and he was sentenced to imprisonment for life for that offence. Deo Singh was further found guilty of an offence punishable under s. 411, I.P.C., and sentenced to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. Singheshwar, the brother of Deo Singh, who was also tried with the other three persons, was acquitted of all the charges.

The three convicted persons, Kapil Singh, Ramujagar Singh and Deo Singh appealed to the High Court at Patna. The appeal came up before a Division Bench. Both the learned Judges constituting the Bench held that it was not safe to base any conviction on the solitary testimony of Manti and, consequently, they gave Kapil Singh the benefit of doubt, set aside his conviction and sentences, and acquitted him. On the learned Judges

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was of the opinion that the conviction of the other two persons Ramujagar Singh and Deo Singh should be upheld on the basis of the evidence of Manti as corroborated by recoveries, in the case of Ramujagar Singh, of the bloodstained chadar and quilt, and, in the case of Deo Singh, of the eartops and the cardboard box. Reliance was also placed on the circumstance that the footprint of Deo Singh in blood was found close to the scene of occurrence. The other learned Judge was, however, of the opinion that, in the circumstances of this case, it was not safe to rely on the evidence of Manti at all against any of the persons charged with the offence and, consequently, he expressed the opinion that Ramujagar Singh and Deo Singh should also be given the benefit of doubt and acquitted. Thereupon, the appeal of these two appellants was referred to a third Judge who agreed with the former and held that the conviction and sentences of these two persons must be upheld. As a result, the appeal of 'Ramujagar Singh and Deo Singh was dismissed. Criminal Appeal No. 141 of 1965 has been brought by special leave by the State of Bihar against the acquittal of Kapil Singh, while Criminal Appeal No. 142/1965, also by special

leave, has been brought up by Ramujagar Singh against the judgment of the High Court upholding his conviction. In addition, Deo Singh has also come up to this Court by special leave. Special leave to him was granted at the time of hearing of the two Criminal Appeals Nos. 141 and 142 of 1965. All the three appeals are, therefore, being dealt with together in this one judgment.

The facts enumerated above make it clear that the crucial question that has to be determined in this case is whether the evidence of Manti can be relied upon for the purpose of convicting Kapil Singh, or upholding the conviction of Ramujagar Singh and Deo Singh. She is the only witness who, according to the prosecution, actually witnessed the murder and saw the assailants. It is, of course, clear that the fact that Rohini Kuer was murdered on the night between the 17th and 18th June, 1961 in her house by some thieves, who entered the house by breaking open a hole in a wall, is amply proved by the prosecution evidence. The point that needs to be examined is whether these three persons were amongst the thieves who committed the crime. Manti is a young girl whose age was recorded as 12 years at the time when she was examined in the Court of Session in July, 1962, so that, at the time of the incident, she was only 11 years of age. While such a child witness can often be expected to give out a true version because of her innocence, there is always the danger in accepting the evidence of such a witness that, under influence, she might have been coached to give out a version by persons who may have influence on her. In this case there are a number of circumstances which, in our

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opinion, indicate that it will not be quite safe to rely on her evidence. She stated that she was lying on a cot close to the cot on which her aunt Rohini Kuer was sleeping. She actually saw her aunt being killed and, according to her, there was a threat to her life also when Deo Singh said that she should also be killed, though she escaped when Kapil Singh asked that she should be spared because she was a child. It does not seem to be very likely that a child in such circumstances could have continued to pretend that she was asleep. In the morning, according to her, when she came out, she met Bhagwat Prasad before meeting her mother and she told Bhagwat Prasad that 'Daiya' had been killed. It is surprising that she did not at that stage disclose the names of any of these persons to Bhagwat Prasad. In fact, the conduct of Bhagwat Prasad is not trying to find out the names of the persons who had committed the murder from Manti when she told him about it appears to be quite unnatural. It cannot be expected that, on hearing of the murder, he would quietly enter the house to discover the dead body without at all asking Manti whether she had seen the culprits and who they were. She even met others like the Chaukidar Ramkishan, and witnesses Shyam Ram and Gursahay before she met her mother. In her evidence, she tried to explain her failure to disclose the names by stating that her mother had warned her not to disclose the names lest she should also be killed by the persons named by her. This explanation sought to be advanced on behalf of the prosecution will not at all explain why there was no disclosure of names by Manti to the persons mentioned above whom she met before this warning was given to her by her mother. At no stage has any suggestion been put forward by the prosecution that the thieves themselves had put her in fear of life by threatening to kill her if she disclosed their names. She could not, therefore, be under any fear at

the time when she met Bhagwat Prasad, the Chaukidar and others and there was no explanation at all why their names were not ascertained from her or voluntarily disclosed by her at that stage.

The subsequent story put forward by the prosecution to explain the belated disclosure of the names is highly suspicious and, in fact, indicates that, in this case, the investigation by the Police has not been honest. The Investigating Officer, Lakshmi Narain Pathak, himself states that he arranged that the girl be taken to the Police Station on 19th June, 1961 and she was then kept confined there up to the 28th June, 1961, until her statement was recorded by a Magistrate under s. 164, Cr. P.C. We fail to understand under what law the police was authorised to keep this girl confined in the police station for so many days. Pathak, of course, tried to convert this confine-

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ment into protective custody, adding that she was allowed to go to her sister's house in between; but Manti herself contradicts Pathak. According to her, she was not allowed to leave the Police Station at all until the 28th June. Her statement is that she was kept in a room in the Police Station along with a constable and the room was only opened when it was necessary for her to go out to ease herself. In the day-time, she was allowed to come up to the door of the room, but was not allowed to move away from the door. Each night she was shut inside the room and was kept shut like that for five or six nights. It is true that her mother was allowed to visit her, but this illegal confinement by the Police was reprehensive and very adversely affects the value of the evidence obtained by the police under these circumstances. In this connection, it is significant to note that, even according to Pathak, the names were disclosed to him for the first time by Manti at midnight on the night between 21st and 22nd June, 1961. The very fact that she was questioned at the odd hour of midnight makes it obvious that compulsion was being used on her to make her state the names of these persons. If it was true, as alleged by Pathak, that she was being kept there for her personal protection only, there was no reason at all why she should have been questioned during the night when a child of her age should certainly have been allowed to take undisturbed rest. Pathak has tried to justify the course adopted by him by saying that he thought it to be proper to keep a girl of tender age in police station even for weeks for taking a statement, because he wanted to know the truth. It is surprising that a police officer should hold such views. Clearly, he was acting against law in keeping that girl confined in the police station with a police constable posted all the time as her companion. The excuse that she needed protection is belied by the circumstance that at least for one day from 18th June to 19th June she was allowed to remain out of police custody and there is no suggestion that any protection was afforded to her during that time. It was only on 19th June that she was taken to the Police Station obviously because she had refused to give the names as desired by the Police. The Inspector of Police, Pathak, purported to give evidence as if, in Bihar, it is nothing extra-ordinary to keep such a witness in police custody. We hope that there is no such practice in that State. Manti, whose statement implicating these three persons was obtained in these circumstances, cannot, therefore, be held to be a reliable witness, particularly in view of the circumstance that she did not disclose their names even at the earlier stage when she had not been put in

fear of her life by her mother.

In this connection, importance must attach to the circumstance that her mother, who is said to have put the fear of life in her, did not enter the witness-box at all when the case was,

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tried in the Court of Session. She was, no doubt, examined by the Police and her statement was also obtained under s. 164, Cr.P.C., by producing her before the Magistrate. She was present in the Court of Session when Manti was being examined, but, when her turn for examination came, she disappeared. The Public Prosecutor naturally came out with the explanation that she had been got at by the accused. We are unable to accept this explanation for her non-appearance. It seems that, if she had come in the witness-box, she would not have supported the prosecution and, consequently, the excuse was put forward that she disappeared on the day fixed for her evidence, even though she was staying at the same place as her daughter Manti and was looking after her during the trial of the case. In this connection, it is significant that, according to Manti herself, her mother had told the Inspector of Police that she had not forbidden her to disclose the names of the culprits. This seems to be another example of the unsatisfactory or unreliable conduct of the investigation in the present case.

Apart from these circumstances, which throw considerable doubt on the evidence of Manti, even the corroborative evidence sought to be adduced by the prosecution appears to us to be of a very doubtful character. As against Ramujagar Singh, the corroborative evidence put forward is that a quilt and a Dasuti chadar stained with human blood were recovered from his house; but no reasonable explanation is sought to be given by the prosecution of how the blood came to be on these two articles, if it was the blood of the deceased Rohini Kuer. It is to be noted that the murder took place in June, 1961 and at least a quilt will not be in use at all during that season in the plains of Bihar. A suggestion seems to have been put forward that Ramujagar Singh had taken both these articles to wrap himself in them in order to conceal his identity. This suggestion is, however, clearly nullified by the evidence of Manti who does not state that any one of the persons, whom she saw in the house at the time of murder, was carrying a quilt or a chadar or was trying to conceal his features by wrapping himself in them. Even the alternative explanation that they may have become blood-stained when Ramujagar Singh came home with Rohini Kuer's blood on his body is, on the face of it, highly improbable. Manti herself says that all the culprits washed their hands in the house where the murder was committed before leaving that house. The quilt and the Dasuti chadar had sprinkling of blood and not mere blood-smudges. Obviously, such sprinkling of blood could not appear on the quilt and the Dasuti chadar by their coming merely in contact with Ramujagar Singh after his return to his house, even if some blood-stains remained on his body when he came home. It is true that the explana-

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tion for these blood stains put forward on behalf of Ramujagar Singh that they were from some skin sores of one, of the children of his family has not been accepted and is not very satisfactory; but the failure of an accused to give an adequate explanation does not lead to an inference that these bloodstains must be those of the blood of the deceased. The circumstances seem to indicate that there is

no connection at all between these, blood stains and the murder of Rohini Kuer.

Similarly, the recovery of the gold eartops and the cardboard box, which contained them, is highly suspicious. For one thing, the prosecution have failed to establish that the room, from which they were recovered, was that of Deo Singh appellant. Deo Singh, even according to the prosecution witnesses, was employed outside this village and had only come on a visit from his duty. The room, from which they were recovered, is described as a room for keeping cow-dung cakes. The Investigating Officer naturally could not know who in the family of Deo Singh was in actual occupation of this room, while the only recovery witness, Narsingh Mahto, had to admit that he did not see Deo Singh eating or sleeping in that room, or keeping things, in that room, or taking them out of that room. In fact, when further cross-examined, he admitted that he never saw how that room was used. Obviously, he was not in a position to establish that this room was in the occupation of Deo Singh appellant. The circumstances of the recovery are also doubtful. According to Inspector of Police, Pathak, he observed all the formalities required to be observed when searching the house of Deo Singh. One of the formalities that has to be observed is that the searching officer should give his personal search to the witnesses before entering the premises to be searched and should similarly search the witnesses also in the presence of one another. If the Inspector means that this was done, by stating that all formalities were observed, he is contradicted by Narsingh Mahto who says that, on his arrival, he found the Inspector in the inner courtyard of the house, which means that he had already entered the house without observing the formalities. At the time of recovery, it is said that the cardboard box containing the eartops was kept in a corner of the room covered by a number of tiles. The prosecution story thus purports to make out that Deo Singh was foolish enough to keep in his room an article connected with the murder about which there could be no difficulty of identification, because the cardboard box had on it the name of the daughter-in-law of Rohini Kuer and he kept that box in such a manner under the tiles in the cow-dung room that the attention of the, Police would straightaway be attracted towards it. The whole story of recovery of this cardboard box with the eartops thus sounds highly improbable.

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The only other circumstance, which has been relied upon by the prosecution, is the identity of the blood-stained footprint with that of the sample footprint of Deo Singh appellant. We do not think that it is necessary to discuss it in detail, because that evidence is, in its very nature, a very weak type of evidence and, in fact, in the High Court even the third Judge, to whom the case was referred on difference of opinion, held that it would not be safe to rely on this evidence and discarded it.

In these circumstances, it is clear that it is not at all possible to hold that the prosecution succeeds in proving the charge against any of these three persons. As a result, Cr. Appeal No. 141/1965 filed by the State is dismissed, while the appeals of Ramujagar Singh and Deo Singh are allowed, their conviction and sentences are set aside and they are acquitted of the offences with which they were charged. They shall be released forthwith.

Appeal 141/65 dismissed.

Y.P.

Appeals 142/65 and 78/68 allowed.

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JUDIS