

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.

KING-EMPEROR (COMPLAINANT-APPELLANT) v. MAST
RAM (ACCUSED-RESPONDENT).*

1930.
December,
12.

*Criminal Procedure Code (Act V of 1898), section 103—
Search not in accordance with the provisions of section
103 of the Code of Criminal Procedure, whether sufficient
ground for acquittal—“Locality” in section 103 of the
Code of Criminal Procedure, meaning of—Arms Act (XI
of 1878), section 19(f)—Gun and cartridges found in a
house—Accused’s possession of gun not proved—Accused
living in the house with other members—Conviction
under section 19(f), how far intified.*

Held, that an accused cannot be acquitted simply because
the search was not in strict compliance with the provisions of
section 103 of the Code of Criminal Procedure.

The word “locality” used in section 103 of the Code of
Criminal Procedure is a comprehensive word and may well
include villages within three or four miles of the village where
the search is to be conducted.

Where a gun and some cartridges are found in a house but
there is nothing to prove that the accused was ever in possession
of these things it cannot be held that he was in possession
of them—simply because he was living in that house along
with other members of the family and he cannot be convicted
of an offence under section 19(f) of the Indian Arms Act.

The Government Advocate (Mr. *H. K. Ghosh*), for
the Crown.

Mr. *Sri Ram Misra*, for the accused.

RAZA and PULLAN, JJ. :—Bhawani Pher and Mast
Ram of village Tilhaya, police station Hyderganj, dis-
trict Fyzabad were convicted by Captain Hardie,
Magistrate, first class, district Fyzabad on the 23rd of
April, 1930, of an offence punishable under section 19(f)
of the Indian Arms Act and sentenced to four months’
rigorous imprisonment each. They appealed and their
appeals were allowed by the learned Sessions Judge of
Fyzabad on the 31st of July, 1930.

*Criminal Appeal No. 481 of 1930, against the order of Babu Shambhu
Dayal, Sessions Judge of Fyzabad, dated the 31st of July, 1930.

This appeal has been filed on behalf of the Local Government against the acquittal of Mast Ram alone.

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The facts established by the evidence are briefly as follows :—

The house occupied by Bhawani Pher, Mast Ram and others was searched by the police in connection with a burglary case on the 20th of November, 1929. Bhawani Pher was not present at the house at the time of the search. His nephew Mast Ram was at the house when the police officers and the witnesses went there. The police found nothing incriminating in the *mardana* portion of the house. The police entered the *zenana* portion and there found one room which had been locked. Mast Ram was told to bring the key. He himself had not got the key with him. He got the key from a certain woman in the *zenana* portion of the house. The room was then opened and two cartridges and some clothes were found in a wooden box in that room. A double-barrel gun was also found on the roof of the room. Bhawani Pher and Mast Ram were then sent up for trial under section 19(f) of the Indian Arms Act.

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We have examined the evidence on the record carefully. In our opinion there is no substance in this appeal. No charge under section 19(f) of the Indian Arms Act has been brought home to the accused Mast Ram. He is a boy of about eighteen years of age. The prosecution has failed to prove that the gun and the cartridges were recovered from the possession of Mast Ram. There is nothing to show that he had these things ever in his possession. He was of course living in the house along with other members of the family, but it cannot be held simply for that reason that he was in possession of the cartridges and the gun. It is in evidence that Bhawani Pher, Ram Raj, Ram Naresh, Girja Dutt, Mast Ram, Ram Sundar and Ram Avadh were living in the house at the time of the search. It is also in evidence that Mast Ram had not the key of the

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room with him. The key of the room was with some woman of the house and he had got it from her. There is nothing to connect Mast Ram with the possession or control of the gun and the cartridges. Under these circumstances we think the learned Sessions Judge was not wrong in acquitting Mast Ram. We should like to note that Mast Ram could not be acquitted simply because the search was not in strict compliance with the provisions of section 103 of the Code of Criminal Procedure. The search was made in the presence of four witnesses, namely, Achhaibar, Ram Lakhan Singh, Deo Datt and Ram Sabad. Ram Sabad alone was the resident of the accused's village while the other three were the residents of village Khajuri which is three or four miles from the accused's village. Some four villages intervene between Khajuri and the accused's village. Achhaibar and Deo Datt alone were examined as search witnesses in this case. It appears that the Sub-Inspector had brought them from Khajuri to Bhawani Pher's village. Section 103 is in the following terms :—

“Before making a search under this chapter (Chapter VII) the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.”

It is not impossible that no respectable person were or could be found in the accused's village. The word “locality” used in section 103 of the Code of Criminal Procedure is a comprehensive word and may well include villages within three or four miles of the village where the search is to be conducted. The police may experience difficulty in finding respectable persons in the immediate vicinity. As the gun and the cartridges were found in the house, it does not matter whether the search was

legal or illegal. That question is of no importance in the circumstances of the case.

Hence we dismiss the appeal. The accused is on bail. The bail bond will be discharged.

Appeal dismissed.

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DWARKA (APPELLANT) *v.* KING-EMPEROR (COMPLAIN-
ANT-RESPONDENT).*

Evidence Act (I of 1872), section 27—Nothing discovered in connection with the crime from the information given by the accused—Section 27, Evidence Act, applicability of—Motive—Corroboration—Murder case—Evidence of motive or of commission of crime to be considered in a murder case.

Held, that section 27 of the Evidence Act has no application where nothing in connection with the crime is discovered as the result of any information given by the accused.

Held further, that in a case of murder the proper course to adopt is to examine the evidence as to the commission of the crime and not the evidence establishing a motive for the murder. The motive may never be discovered and the suggestion of a motive—possibly a wrong motive—may well lead the Court astray.

A motive can hardly be considered as corroboration of the evidence of an eye-witness.

Mr. N. N. Sinha for the accused.

The Assistant Government Advocate (Mr. Ali Mohammad), for the Crown.

RAZA and PULLAN, JJ. :—Dwarka Kumhar and Thakur Pasi have been convicted by the learned Sessions Judge of Lucknow of the offence of murder under section 302 of the Indian Penal Code. They have been sentenced to death and the sentence is before

*Criminal Appeal No. 489 of 1930, against the order of L. S. White, Sessions Judge of Lucknow, dated the 13th of November, 1930, sentencing the appellant to death.