

## APPELLATE CRIMINAL.

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 August, 19. Before Mr. Justice Muhammad Raza and Mr. Justice E.M.  
 Nanavutty.

GENDAN LAL (APPELLANT) v. KING-EMPEROR (COM-  
 PLAINANT-RESPONDENT.)\*

*Principle of falsus in uno falsus in omnibus, applicability of to criminal trials in India.—Acquittal of certain accused persons—Conviction of a co-accused, maintainability of, without other reliable and untainted evidence—Prosecution witnesses found untruthful as to greater part—Conviction of co-accused on residue without corroboration, propriety of—Probabilities and suspicions, if can form the basis of a conviction for murder—Court, whether justified in expressing opinion as to guilt of an accused not on trial before it—Prosecution witnesses falsely implicating innocent men, whether good ground for rejecting their testimony—Shortcomings of prosecution evidence, whether good ground for palliation of accused's brutal conduct.*

The principle *falsus in uno falsus in omnibus*, cannot be applied to criminal trials in India and the fact that certain accused persons have been acquitted is no reason for acquitting a co-accused of theirs also. Before the co-accused can be convicted it must be shown by the prosecution that over and above the evidence which was rejected by the trial Judge as against the accused persons who were acquitted by him there is other reliable and untainted evidence which goes to prove clearly and beyond any reasonable doubt the guilt of the co-accused.

When prosecution witnesses are found to be untruthful as to the greater part of their evidence it would be dangerous to convict the accused on the residue without corroboration. Probabilities and suspicions are not sufficient grounds in law upon which to found a conviction of an accused in a criminal trial especially in a murder trial where the maximum punishment is death. *Hari Krishna v. Emperor* (1), relied on.

Where an accused person is not on his trial before a court it should not express directly or indirectly any opinion as to his guilt.

\*Criminal Appeal No. 300 of 1930, against the order of Syed Ali Hamid, Additional Sessions Judge of Kheri, dated the 30th of May, 1930.

(1) (1914) I.L.R., 42 Calc., 784.

The fact that the prosecution witnesses have told lies and have falsely implicated innocent men is good reason for rejecting their testimony, but no reason for not passing sentence of death upon the person who was found guilty of a brutal murder. The shortcomings of the prosecution witnesses furnish no legitimate grounds for palliation of the brutal conduct of an accused, if he were really held guilty of a horrible murder.

Messrs. *St. G. Jackson* and *Satyanand Roy*,  
for the appellant.

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

RAZA and NANAVUTTY, JJ. :—This is an appeal from the judgment of the learned Additional Sessions Judge of Kheri convicting the appellant Gendai of an offence under section 302 of the Indian Penal Code and sentencing him to transportation for life.

The case for the prosecution is as follows:—

On the morning of the 28th of March, 1930 the deceased Ghurai with his brothers Chotai (P. W. 5) and Kedar (P. W. 6) went to cut the standing crops in the wheat field of Ram Dayal. Some two *gharis* before sunset the three brothers returned to their home in Barwar. When they reached the field of Debi Din in Fakrapur nine men who lay in ambush rushed out of an *arhar* field with *lathis* in their hands. These nine men were Debi Din, Sundar, Bisheshwar, Ram Bilas Salik, Gangaram, Ramzani, Mahadeo and lastly Gendai the appellant before us. Bisheshwar ordered Ghurai to stop. Ghurai refused to do so and tried to run away, but Bisheshwar quickly struck him a *lathi* blow on the head with the result that Ghurai fell down on the ground. Debi Din then called out to his men to kill Ghurai as he lay senseless on the ground and thereupon all the nine men jointly began to beat Ghurai's prostrate body with their *lathis*. Hearing the order of Debi Din, and seeing their brother Ghurai fall down and being belaboured

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by *lathi* blows by all these nine men, Chotai (P. W. 5) and Kedar (P. W. 6) raised an alarm and ran towards their home in Barwar. When they reached the *abadi* or populated site of the village, they met Har Dayal and they told him that their brother Ghurai was killed by these nine men whose names they also took. They also told Bhola, Piare Lal, Ramdin and Din Dayal the same story, and then accompanied by Din Dayal and about fifteen or twenty other men the two brothers, Chotai and Kedar, went back to the spot where Ghurai had been attacked. Ghurai was found lying dead in the field of Debi Din. Chowkidar Gendai with two or three other men was left to watch the dead body and Chotai and Kedar and others returned to Din Dayal's house. Din Dayal wrote out the report to the dictation of Chotai and Kedar and the two latter signed it (exhibit 3). Maiku chowkidar took this written report (exhibit 3) to the thana; Chotai and Kedar refused to go with the chowkidar to the police station as they feared that their enemies might kill them on the way. The thana munshi came to the village the next day and after preparing a *panchayatnama* or inquest report, sent the corpse of Ghurai to Gola for *post mortem* examination. The thanadar came the same day in the afternoon and after completing his investigation prosecuted eight men, viz., Debi Din, Ram Bilas, Sundar Lal, Salik Ram, Bisheshwar Dayal, Ramzani, Mahadeo and Gendai on a charge under section 302 of the Indian Penal Code. Gangaram could not be arrested and he was shown as absconding.

The motive for the murder of Ghurai was alleged to be the long-standing enmity between Ghurai on the one hand and Debi Din and Bisheshwar on the other. About a year ago Ghurai married Musammat Ram Kali, daughter of Din Dayal. Debi Din and Bisheshwar wanted that Musammat Ram Kali

should be married to Gangaram, the same accused person who is at present absconding. Gangaram is the brother-in-law of Bisheshwar accused. Din Dayal refused to marry his daughter to Gangaram whose Brahman sub-caste was according to him inferior to his own. When Ghurai's marriage to Ram Kali was settled Bisheshwar and Debi Din threatened Ghurai and told him that they would be even with him one day. Ghurai made a report under section 506 of the Indian Penal Code at the thana in Asarh last. Ghurai was in the service of Debi Din before his engagement with Musammatt Ram Kali. After he had made his report at the thana concerning the threat given to him by Debi Din and Bisheshwar, Ghurai left the service of Debi Din. After his marriage with Ram Kali, Ghurai was again threatened by Bisheshwar, Debi Din and Gangaram who told him that they would yet be the death of him. Ghurai then left his brothers and began to live with his wife in Raja Ram's house. It so happened that Raja Ram was also once beaten at night, and his house was set on fire on another occasion. This is the alleged motive for the murder of Ghurai. It is significant to note that no personal enmity between Ghurai and the appellant is alleged, nor is the appellant Gendai said to have any motive for joining in the murder of Ghurai.

Of the eight men prosecuted by the police, the learned Additional Sessions Judge has acquitted seven holding that they were falsely implicated in this case. He convicted Gendai alone on a charge under section 302 of the Indian Penal Code and sentenced him to transportation for life. The learned Additional Sessions Judge has given very good reasons for acquitting Debi Din and the six others prosecuted along with Gendai, and it has been strenuously argued on behalf of Gendai, appellant, by his learned counsel, Mr. St.

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George Jackson, that the same reasons which led the learned trial Judge to acquit these men apply with equal force to the case of his client also. The excellent reasons given by the learned Additional Sessions Judge for holding that Debi Din, Bisheshwar and others were not concerned in the murder of Ghurai command the assent of our intellect. It has been held, and rightly held, that Bisheshwar did not begin the attack on Ghurai by striking the first blow and that Debi Din did not tell his men to beat Ghurai all in a body as the latter lay on the ground. The medical evidence clearly shows the falsity of this portion of the prosecution story, for the medical officer-in-charge of the Gola dispensary deposes that there were five contused wounds all on the head of the deceased and there was only one other injury, viz. a bruise, on the left knee. Except for these injuries the rest of the body of Ghurai bore no marks of hurt. Had eight or nine men, as alleged by Chotai and Kedar, struck Ghurai repeatedly as he lay flat on the ground, there would have been innumerable injuries on the side, ribs, thighs, buttocks and legs of the deceased besides the injuries on the head. The absence of all injuries on the lower part of the body except the bruise on the knee clearly goes to show that the story that all eight or nine men struck Ghurai as he lay on the ground with *lathi* blows is not true. Gendai, according to the evidence of the two eye-witnesses to the murder, viz. Chotai (P. W. 5) and Kedar (P. W. 6), only took part in the murder of Ghurai when the latter was struck down by Bisheshwar and when Debi Din ordered all his associates to beat the fallen man. The medical evidence gives the lie direct to this portion of the prosecution story, and the account as to the commencement of the attack on Ghurai by Bisheshwar has been discredited and disbelieved by the learned Additional Sessions Judge of Kheri. The only other evidence which goes to implicate the appellant, Gendai, is that

of Murlidhar, P.W. 12. His evidence is to the effect that three hours before sunset he saw Gangaram and Gendai in Chak Mohammedpur Khairulla and that the field where Ghurai was killed is about two hundred yards from the place where he saw Gangaram and Gendai. This evidence, even if believed to be absolutely true, does not bring home to the appellant his guilt. From the mere fact that a cultivator was seen in a certain field or chak in his village at about three hours before sunset some time before the commission of the murder, no inference can be drawn against him that he must have committed or taken some part in the murder that followed later on. The evidence of Murlidhar, P. W. 12, is therefore quite inconclusive and no inference inimical to the appellant can legitimately be drawn from his testimony.

It has been argued on behalf of the prosecution that the principle, *falsus in uno falsus in omnibus*, cannot be applied to criminal trials in India and that the fact that Debi Din and six others have been acquitted by the learned trial Judge is no reason for acquitting the appellant Gendai. That is true, but before Gendai can be convicted of the murder of Ghurai it must be shown by the prosecution that over and above the evidence which was rejected by the learned Additional Sessions Judge as against Debi Din and six others, there is other reliable and untainted evidence which goes to prove clearly and beyond any reasonable doubt the guilt of the appellant Gendai. No such evidence is, however, forthcoming. The evidence of Murlidhar, P. W. 12, is, as shown above, quite inconclusive. P. W. 13, Nawazi, does not mention the appellant as having been seen by him near the spot prior to the commission of the offence. There remains then the evidence of Chotai (P. W. 5) and Kedar (P. W. 6) against the appellant. Except for mentioning the fact that Gendai was one of the assailants who under the orders of Debi

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Din joined in beating Ghurai to death, these witnesses say nothing more against Gendai. Gendai is a mere servant of Debi Din. He had no personal motive in killing Ghurai or joining others in murdering him. His master and Bisheshwar Dayal, who are alleged to have deeply resented the marriage of Ghurai with Musammat Ram Kali, have been found not guilty of the charge of murdering Ghurai upon the evidence of these two very witnesses Chotai and Kedar. It is therefore next to impossible to convict Gendai the servant of Debi Din, upon this very same tainted evidence of Chotai and Kedar in the absence of any other evidence tending to incriminate him. Unless the case of the appellant can be differentiated from that of the other accused who have been found guiltless of the charge of murder, and unless it can be made manifest by cogent and convincing reasoning that though these witnesses Chotai and Kedar were giving false evidence against Debi Din and six others, they were nevertheless giving true evidence against the appellant, the appellant's conviction based solely upon the tainted testimony of Chotai (P. W. 5) and Kedar (P. W. 6) cannot be legally sustained. The learned Assistant Government Advocate has not been able to point to any other evidence on the record to corroborate the evidence of Chotai and Kedar except the evidence of Murlidhar, P. W. 12. Murlidhar's evidence, as has been pointed out above, is inconclusive and does not serve to prove the guilt of the appellant. From a perusal of the evidence of Chotai and Kedar, the case of the Crown against the appellant Gendai cannot be differentiated from the case against Debi Din and six others who have been let off. The reasons given by the learned Additional Sessions Judge for mistrusting the evidence of these two witnesses as against Debi Din and others, are adequate and convincing. It would be a work of supererogation to recapitulate those reasons in this judgment. Those reasons apply with equal force to the case of the appellant Gen-

dai as they do to that of his master Debi Din and others. The motive for the murder in the case of the appellant is far weaker (if not completely absent) than in the case of Debi Din and Bisheslwar Dayal. Chotai and Kedar are the brothers of the deceased, and as such are partisan witnesses. There is no independent eyewitness of the occurrence to corroborate and give strength to their partisan and tainted testimony. It is a matter for deep regret that the brothers of the murdered man, thanks to their own folly and wickedness in trying to implicate innocent men in this serious crime have by their own conduct enabled the guilty to escape with the innocent. Apart, however, from these moral reflections, this Court is primarily concerned with the question as to whether the guilt of the appellant Gendai is proved beyond any reasonable doubt, upon the evidence on the record. No good reasons have been given by the learned Additional Sessions Judge as to why after rejecting the evidence of Chotai and Kedar as against Debi Din and six others, he thought it proper to act upon it as against Gendai, the appellant. The finding of the learned Additional Sessions Judge against Gendai is summed up as follows :—

“Gendai is admittedly in the service of Debi Din. He therefore must have some sympathy for the failure of Gangaram in not getting his desired wife. Both these men were seen by the *above witnesses*” (this is not correct as a matter of fact) “hovering round the field of Debi Din on the day and about the time when Ghurai was killed. It is therefore *probable* that Ghurai was attacked with *lathis* by Gendai and the absconder Gangaram in the presence of P. W. 5 and P. W. 6” (i.e., Chotai and Kedar).”

It is impossible to accept this finding of the learned trial Judge. As Gangaram was not on his trial before

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the learned Judge, the latter should not have expressed directly or indirectly any opinion as to his guilt. In the second place, the finding against Gendai is only based upon a probability that he along with another man attacked Ghurai with *lathis* and killed him. Probabilities and suspicions are not sufficient grounds in law upon which to found a conviction of an accused in a criminal trial especially in a murder trial where the maximum punishment is death. The reason given by the learned trial Judge for not passing sentence of death upon Gendai is wholly inadequate. The fact that the prosecution witnesses have told lies and have falsely implicated innocent men is good reason for rejecting their testimony, but no reason for not passing sentence of death upon the person who was found guilty of the brutal murder of Ghurai. The shortcomings of the prosecution witnesses furnish no legitimate grounds for palliation of the brutal conduct of the appellant, if he were really held guilty of the horrible murder of Ghurai who was done to death by *lathi* blows on his head.

The appellant, however, is entitled to the benefit of the very serious doubts which the learned Additional Sessions Judge had as regards the guilt of his co-accused. The case of Gendai cannot be separated from that of the other accused tried along with him, and, for the excellent reasons set forth at great length in the judgment of the learned trial Judge, the appellant Gendai is also entitled to an acquittal. When the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it would be dangerous to convict the accused on the residue without corroboration. [See *Hari Krishna v. Emperor* (1).]

For the reasons given above, this appeal is allowed and the conviction and sentence passed upon the appellant Gendai are set aside. He is acquitted of the offence charged and ordered to be released immediately.

*Appeal allowed.*