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Next, as regards interest, it is argued that the pronote was insufficiently stamped and was therefore inadmissible in evidence. The argument proceeded that in the circumstances interest should not be decreed at the rate provided for in the pronote. We are of opinion that no question of admissibility arises when both the defendants admitted the pronote without any objection regarding its admissibility in evidence, and as a result of this the document was exhibited and admitted in evidence. Section 36 of the Stamp Act provides that where an instrument has been admitted in evidence such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The lower appellate court was therefore right in refusing to entertain the objection on the score of the pronote being inadmissible for want of a proper stamp. The liability of a surety being co-extensive with that of the principal debtor, we are of opinion that the courts below were right in making the appellant also liable for interest at the rate provided for in the pronote.

We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice  
H. G. Smith*

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September 18

MANGALI AND OTHERS (APPELLANTS) v. KING-EMPEROR  
(COMPLAINANT-RESPONDENT)\*

*Conflicting versions of a crime—Police must make up their  
mind and send accused for trial on one version alone.*

Where there are two versions of the occurrence of a crime which cannot be reconciled and both of which cannot possibly be true, it is clearly improper that persons should be sent up

\*Criminal Appeal No. 156 of 1936, against the order of S. Shaukat Husain, Additional Sessions Judge of Kheri, dated the 23rd of April, 1936.

for trial on the basis both of one version and of the other. In such a case the police should make up their mind which of the conflicting versions is true, and should send accused for trial accordingly.

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Dr. J. N. Misra and Messrs. *Mohammad Husain, Abrar Husain and Vishunath Singh*, for the appellant.

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

NANAVUTTY and SMITH, JJ.:—These appeals are connected, and can be disposed of by one judgment. In appeal No. 156 eight men have been convicted by Mr. Shaukat Husain, Additional Sessions Judge of the Kheri district, under section 302 read with section 149 of the Indian Penal Code, and every one of them has been sentenced, subject to the confirmation of this Court, to be hanged. The reference in that connection is before us along with the appeal. The eight men in question are:

- (1) Mangali, Kurmi, aged 36,
- (2) Chandan, Kurmi, aged 34,
- (3) Sheo Bakhsh, Kurmi, aged 22,
- (4) Bhagwani, Kurmi, aged 35,
- (5) Fateh, Kurmi, aged 25,
- (6) Ram Din, Barhai, aged 30,
- (7) Ram Lal, Lohar, aged 22, and
- (8) Hulas, Lohar, aged 40.

Mangali, Chandan and Sheo Bakhsh are full brothers, being the sons of one Tula. Bhagwani and Fateh are said to be related to them. The other three men are said to be members of the same party.

In the other appeal No. 285, six men have been convicted. They are:

- (1) Paras Ram, Brahman, aged 24,
- (2) Mewa Ram, Brahman, aged 21,
- (3) Murari, Brahman, aged 18,
- (4) Sewa, Kumhar, aged 30,
- (5) Laltu, Barhai, aged 32, and
- (6) Gaya Prasad, Brahman, aged 25.

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These six men have been convicted by Mr. Khurshed Husain, Additional Sessions Judge of Kheri, under section 147 and sections 325/149, I. P. C. Under section 147 each of them has been sentenced to two years' rigorous imprisonment, and under sections 325/149 each of them has been sentenced to three years' rigorous imprisonment. The two sentences were ordered to run concurrently.

The appellants in both the cases have been convicted and sentenced in connection with an occurrence which took place before dawn on the morning of the 28th of November, 1935, at a place called Shahpur Raja, four miles to the north of the Mohamdi police station. There was undoubtedly some sort of an affray that morning in the village in question, and one Balak Ram was undoubtedly killed in the course of it. Balak Ram was a full brother of Paras Ram and Mewa Ram, two of the men who are appellants in the appeal No. 285 of 1936. There are, however, two conflicting accounts of what took place. These accounts appear first of all in reports made some time after 7 a.m. on the 28th of November by Musammat Sarsuta, the mother of Balak Ram, Paras Ram and Mewa Ram, and by Mangali, who is one of the appellants in the appeal No. 156 of 1936. It seems (vide the evidence of the head moharrir, Brij Bihari Lal, P. W. 11) that the report made by Musammat Sarsuta was recorded shortly before that made by Mangali. According to the report made by Musammat Sarsuta, Balak Ram and one Lal Behari were going out to ease themselves on the morning in question when they fell in with Mangali Kurmi and Ram Lal Lohar, with whom they were previously on bad terms. Balak Ram accused these men of having beaten his brother Mewa Ram on the previous day and said he was going to institute a case about it. Thereupon Mangali threatened to finish him that very day (*tumko aj hi khatam kiye det hain*). Thereupon Sheo Bakhsh, Chandan, Fateh, Bhagwani, Ram Din Barhai and

Hulas Lohar appeared on the scene and proceeded to attack Balak Ram with spears and lathis,—according to the report Mangali and Fateh were armed with spears. Lal Bihari raised the alarm, whereupon Musammat Sarsuta ran up and interceded on behalf of her son. Other villagers presently came up and saw what was going on. They spoke to the assailants of Balak Ram, but the assailants paid no attention to them and carried off Balak Ram to their house (*Balak Ram ko ghar utha le gae*),—apparently the house of Mangali was meant. The report goes on to say that Musammat Sarsuta herself sustained injuries in trying to save her son, and that her son's assailants threatened her and Lal Bihari that they would kill them also if they went to make a report.

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According to the report made by Mangali he was sleeping in his house when one *pahar* before dawn Balak Ram, Paras Ram, Mewa Ram, Murari, Sewa, Lila, Laltu, Anant and Gaya Bakhsh ran into his house armed with lathis and attacked him and his brother Sheo Bakhsh. In order to defend himself against Balak Ram, Mangali said, he used a spear which accidentally struck Balak Ram on the head, knocking him down. On Mangali's raising the alarm, a number of people ran up, whereupon his assailants made themselves scarce, leaving Balak Ram's dead body behind them in Mangali's house.

The police sent up members of both parties for trial, although it is clear that there were two irreconcilable versions of the occurrence which cannot both have been true. In the case based on the version of the occurrence that first appeared in the report made at the thana by Musammat Sarsuta, Mangali and eight others were tried by Mr. Shaukat Husain. He convicted all the accused save one Chote, who was not mentioned in the first report. That trial concluded on the 23rd of April, 1936. The case in which Paras Ram and five others were accused, on the basis of the version that first

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appeared in the report made at the thana by Mangali, was tried later by Mr. Khurshed Husain, whose judgment is dated the 30th of July, 1936. Each of these learned Judges has believed the version that formed the prosecution case before him, with the result that Mr. Shaukat Husain has condemned no less than eight men to death, whereas Mr. Khurshed Husain has accepted the opposing version, which was that only two of those men, Mangali and Sheo Bakhsh, were involved in the affray, and that anything they did was done in the exercise of the right of private defence.

There had undoubtedly been a good deal of trouble in the past between Mangali and his party on the one hand, and Balak Ram and his party on the other hand. On the 17th of November, 1935, Paras Ram, Balak Ram's brother, impounded 29 head of cattle at the Rajapur Vaini cattle pound, and on that same day Mangali released them,—it cost him Rs.13 to do so. On the 22nd of November, 1935, Musammat Nando, the mother of Ram Lal Lohar, made a report under sections 352 and 506 of the Indian Penal Code against Balak Ram, Mewa "Lal" (Ram?), Paras Ram and Murari, alleging that as the result of an exchange of abuse between her son Ram Lal and Murari, Balak Ram and his two brothers rushed up to attack Ram Lal. Yet again, on the 27th of November, 1935, that same woman, Musammat Nando, made a report under sections 323 and 506 of the Indian Penal Code naming Mewa Ram, Paras Ram, Murari, Laltu, Lila and Sewa, though in the detailed report she accused only Mewa Ram and Paras Ram of beating her son, and said that Murari beat her himself. Lastly, that same day (the 27th November), Mewa Ram made a complaint in the court of the Tahsildar of Mohamdi under section 24 of the Cattle Trespass Act and section 323 of the Indian Penal Code against Mangali, Chandan, Sheo Bakhsh, Ram Lal and Hulas. His complaint was to the effect that those persons had attacked him with lathis because he

had impounded some of their cattle earlier in the course of that day.

It is clear from these previous happenings that there were two parties in Shahpur Raja, and that there was considerable ill feeling between them. These facts, however, are of no assistance in determining which party was to blame for the occurrence of the early morning of the 28th of November. Having regard to the previous relations existing between them one party is just as likely as the other to have been the aggressor in that matter. We now proceed to consider the evidence that was adduced in the respective cases.

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In the case against Mangali and his companions the first witness was Musammat Sarsuta. She repeated substantially the story she had told in her first report, the contents of which we have already set forth. The next witness was Lal Bihari. That man is the brother-in-law of Balak Ram, deceased. He said that he and Balak Ram went out to ease themselves, and at a distance of 10 or 15 paces from Balak Ram's house they met Mangali and Ram Lal Lohar, who were afterwards joined by Chandan, Sheo Bakhsh, Fateh, Bhagwani, Kurmi, Ram Din Barhai and Hulas Lohar. Fateh and Mangali had spears and the rest lathis. These men all assaulted Balak Ram. The witness said that he raised the alarm, and a number of persons, including Musammat Sarsuta, came up. Balak Ram was killed and taken away to Mangali's house by Mangali, Sheo Bakhsh, Chandan and Chote Lal.

This version was also supported by Paras Ram, the brother of Balak Ram; a patwari named Baldeo Prasad, who is related to Balak Ram; and Gaya Prasad, who is Balak Ram's cousin. Some of these witnesses mentioned the name of Chote (Chote Lal) as well as the names of the appellants.

One Sewa, a Kumhar by caste, who is an accused in the cross case, said that he saw Balak Ram being attacked by Mangali, Chandan, Sheo Bakhsh, Chote Lal, Hulas,

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Ram Lal Lohar, Ram Din Barhai and others, the assailants numbered in all about twenty. Balak Ram was killed and his dead body was taken inside Mangali's house. This witness says that the affray took place in the lane to the east of his house. The witness lives a little to the east of Mangali's house.

There remain three witnesses, Kallu Dhanuk, Mohan Dhobi, and Bandha Kurmi, the last name of whom was tendered for cross-examination only. Kallu says that he heard a noise at Mangali's house, and saw a lathi fight going on there. Mewa Ram, Paras Ram, Murari, Laltu and Sewa were on one side, and on the other were Mangali, Chandan, Sheo Bakhsh and Chote Lal. The witness said that it was dark at the time.

Mohan said that he saw twenty or twenty-five men in all engaged in a fight at the door of Mangali. On one side he said he recognized Balak Ram, Murari, Gaya Prasad, Paras Ram, Laltu and Sewa, and on the other Mangali, Chandan, Sheo Bakhsh and Chote Lal. Afterwards Mangali, Chandan, Sheo Bakhsh and Chote Lal took away Balak Ram inside the house of Mangali.

Bandha said he heard Mangali calling out that he was being killed (*hai re mare darat hain*), and on running up saw a number of men at Mangali's door. He recognized nobody but Balak Ram, who was saying "beat the salas".

It is clear that the evidence of these three last witnesses does not at all fully support the prosecution case against Mangali and his companions. It really supports the cross case, in which Paras Ram and five others were accused, and, in fact, Kallu was examined as a prosecution witness in that case also. The other witnesses to whose evidence we have made reference are all, with the exception of Sewa (and Sewa appears to have been an adherent of Balak Ram's), relations of the deceased man Balak Ram. They are, therefore, interested witnesses. Their evidence represents that

Balak Ram was attacked near his house, which is No. 2 in the plan, exhibit 8, printed at page 6 of the printed book. According to the witness Lal Bihari, he and Balak Ram fell in with Mangali and Ram Lal Lohar 10 or 15 paces from Balak Ram's house. The plan, however, shows as the place where Balak Ram was injured a point marked 7 in the plan near the house of Mangali,—that point is, according to the plan, half a furlong (110 yards) from the house of Balak Ram. The head constable, Brij Bihari Lal, who drew this plan, said that he found marks of blood at the point marked 7, which is in the courtyard of Mangali's house. He said that this spot was shown to him by Musammat Sarsuta and other prosecution witnesses. The finding of blood at the point marked 7, and the fact that according to the head constable the spot was indicated to him by Musammat Sarsuta herself and other prosecution witnesses as the scene of the attack, make it impossible to believe that the attack really took place about a hundred yards to the east of that place, near the house of Balak Ram. The result is that the prosecution evidence in the case against Mangali and his companions is inconsistent in itself, and the evidence given by the witnesses who as far as can be seen were independent, does not support the prosecution story in this case, but really supports the opposing version, which is that Balak Ram and a number of his companions went to the house of Mangali to beat him. On Mangali's side, moreover, according to the witnesses Kallu and Mohan, there were only four men, Mangali, Chandan, Sheo Bakhsh and Chote Lal.

The accused in this case did not call any evidence in their defence. Mangali in his statement said that he was attacked at his house by Balak Ram and a number of others, and so was his brother Sheo Bakhsh. He said he used a lathi in self-defence, Sheo Bakhsh told the same story. He said that he and his brother Mangali defended themselves with lathis, and the dead body of Balak Ram

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was afterwards kept inside their house. The other accused denied taking any part in the affray.

We are of opinion that the prosecution evidence in the case against Mangali and his companions was quite insufficient to prove that they made an unprovoked attack upon Balak Ram, and although the learned Additional Sessions Judge was in agreement with all the four assessors in convicting the accused in that case, we have no hesitation in saying that the evidence did not justify the convictions.

We accordingly set aside the convictions and sentences imposed upon Mangali, Chandan, Sheo Bakhsh, Bhagwani, Fateh, Ram Din, Ram Lal and Hulas, and direct that they be released at once, if they are not wanted in connection with any other matter.

We now proceed to the connected case, which is based upon the allegation that Balak Ram and a number of his relations and adherents went to the house of Mangali to assault him. In that case the first witness was Mangali himself, who, of course, had to be brought from his condemned cell to give his evidence. According to him, he and his brother Sheo Bakhsh were lying inside their house on the night of the 27th/28th November last, a "pahar" before dawn, when Balak Ram and the accused in that case (we need not repeat their names), came and attacked Sheo Bakhsh with lathis. Mangali said that he and his brother defended themselves with lathis. They received injuries, and on the other side Gaya Prasad, Mewa (Ram), Paras Ram and Balak Ram were hurt. Balak Ram died on the spot, and the witness afterwards took his dead body into his house before going to the thana,—he said he did this in order to prevent the accused from removing it.

Sheo Bakhsh, who also was brought from a condemned cell, said that he was attacked by Balak Ram, Paras Ram, Mewa Ram, Gaya Prasad, Murari, Sewa, Laltu and Lila. He and his brother Mangali defended themselves with lathis. Balak Ram received a lathi blow and fell to the

ground, and the rest of the assailants thereupon ran away.

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One Lila Kurmi said that he heard Mangali and Sheo Bakhsh shouting that they were being killed, and on going to their house saw Balak Ram, Paras Ram, Mewa, Murari, Gaya Prasad and Sewa fighting with Mangali and Sheo Bakhsh.

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Kallu, who, as we have said previously, was also a prosecution witness in the other case, said that he saw a lathi fight going on at the door of Mangali's house. On one side he said he recognized Balak Ram, Mewa, Paras Ram, Murari, Sewa and Laltu, and on the other side Mangali, Sheo Bakhsh, Chandan and Chote. Bani Kurmi gave similar evidence. He said that on one side he recognized Mangali, Sheo Bakhsh and Chote Lal, and on the other Balak Ram, Mewa, Paras Ram, Murari, Gaya Prasad, Sewa and Laltu. The fight came to an end when Balak Ram was brought to the ground.

Bhikhari Pasi said that he saw a lathi fight going on at the door of Mangali's house, and saw on one side Balak Ram, Paras Ram, Mewa, Murari, Gaya Prasad and Sewa, and on the other Mangali and Sheo Bakhsh,—there were two more men, he said, inside the house whom he could not identify.

This is the essential evidence in this case. It was accepted by Mr. Khurshed Husain and by three out of the four assessors who sat in the case. Having carefully considered the evidence in this case, we are of opinion that it does not represent the whole truth of what took place. The medical evidence shows that Balak Ram had no less than nineteen injuries of various kinds mostly contused wounds and contusions,—there were, however, two punctured wounds, which according to the medical evidence might have been caused with a spear, or with an iron-bound lathi. Musammat Sarsuta had seven injuries, mostly bruises; Gaya Prasad had nine injuries, mostly contused wounds and abrasions; Paras Ram had an abrasion and a simple fracture of the ulna bone; Sheo Bakhsh had a contusion on the left forearm,

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and a fractured left ulna bone; Mangali had a contused wound on the top of the head and a diffused swelling on the back of the left forearm; Ram Lal had two contused wounds on his head, a diffused swelling on the back of his left hand, and a faint contusion on the outer side of the right arm. The injuries on Ram Lal, however, were described as five days old,—he was examined by the doctor on the 2nd December last. The dead body of Balak Ram was examined on the 29th November; Musammat Sarsuta was examined on the afternoon of the 29th November, her injuries being described as about thirty hours old; Gaya Prasad was examined on the 8th December,—his injuries were described as about ten days old; Paras Ram was examined on the 29th November,—his injuries were described as about thirty hours old; Sheo Bakhsh was examined on the 5th December,—his injuries were described as about a week old; and Mangali was examined on the 2nd December, his injuries being described as about four days old.

Having regard to the nature of the medical evidence, we cannot believe that Mangali and Sheo Bakhsh would have succeeded in inflicting so many and such severe injuries on Balak Ram and some of his companions, if, as they represent, they were the only two men on their side. Moreover, they say nothing that accounts for the injuries on Musammat Sarsuta. No witness admits having seen anything of Musammat Sarsuta at the time of the fight.

None of the accused in this case admits having anything to do with the affray. They did not call any evidence in their defence.

For the reasons given by us we feel unable to accept the prosecution evidence in this case either, and giving the appellants the benefit of the doubt, we set aside their convictions and sentences, and direct that if in custody they be released at once, unless they are wanted in connection with any other matter. If, as we understand is the case, they are on bail, any bonds executed by them or on their behalf are cancelled.

We cannot take leave of these cases without expressing our views as to the manner in which the police should deal with conflicting versions of an occurrence such as were presented to them in the present matter. We are definitely of opinion that the police should make up their minds which of the conflicting versions is true, and should send accused for trial accordingly. When there are two versions of an occurrence which cannot be reconciled and both of which cannot possibly be true, it is clearly improper that persons should be sent up for trial on the basis both of one version and of the other. When this is done the Magistrate before whom the two cases come is apt to take the view that as he has "prima facie" evidence before him against both sets of accused persons, he is practically bound to commit both the cases to the Court of Session, and leave it to that court to attempt to discover which of the two stories is true. The Sessions Court has then to try two cases instead of one, and the Government Pleader prosecuting is faced with the difficulty of pressing before the court with equal assiduity two cases which cannot both be true. When, as in the present case, each case ends in a conviction, and there are appeals, the learned Government Advocate finds himself here also in an extremely difficult position, since it is clearly impossible for him to urge the correctness of both the opposing versions, and it is extremely difficult for him to decide which case to represent as the correct one. This difficulty was prominent at the hearing of the present appeals, the learned Assistant Government Advocate finding himself bound in the main to leave the arguments in the hands of the learned counsel who appeared before us on behalf of the respective sets of appellants. We find that the Committing Magistrate himself took the view in the case against Mangali and his companions that there were several strong grounds for holding that the story of Musammat Sarsuta and her relations and friends was quite false, and he thought that Balak Ram and his party were the aggressors, but he nevertheless committed Mangali and

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his companions for trial on the ground that they had exceeded their right of private defence. It is, of course, probable, and almost certain, in the present case that the whole truth has not come out, and that it lies somewhere between the two conflicting versions. As we have so often pointed out, however, it is not open to us, while rejecting the definite stories told in court, to arrive at a conjectural theory as to what really happened, and to convict any of the accused on the basis of it. The undesirability of sending two sets of accused for trial on the basis of two contradictory versions of an occurrence could not be better illustrated than by what took place in the present case. As we have said, we have one learned Additional Sessions Judge, in agreement with all his four assessors convicting eight men, and sentencing every one of them to death, and we have another learned Additional Sessions Judge, in agreement with three out of four of his assessors, finding that the only members of that party who were concerned in the affray at all were acting in the exercise of the right of private defence, and that the party really to blame was the party on the basis of whose version the eight accused in the other case were convicted and sentenced to death. The whole history of these two cases has been very unfortunate, and we hope that those concerned will take notice of what we have said, and will endeavour in future, as far as possible, to deal with conflicting stories in a way which will prevent what has happened in these cases from ever happening again.

*Appeal allowed.*