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It may be pointed out in addition that there is of course no equity in favour of creditors who know quite well how little security the statute leaves them in respect of advances to disqualified borrowers definitely subject to section 12A.

MACPHERSON, J.

In my opinion the Subordinate Judge had no jurisdiction to sell the petitioners' share in mauza Chakla. The appeal must be allowed in respect of it and the sale be set aside to that extent. The appellants are entitled to their costs—pleader's fee two gold mohurs.

DHAVLE, J.—I agree.

Appeal allowed.

APPELLATE CRIMINAL.

Before Terrell, C. J. and Rowland, J.

1929.

June 28, July 2.

LEDA BHAGAT

v.

KING-EMPEROR.*

Criminal Trial—prosecution story disbelieved in essential details—court, whether can rely on a part of story for convicting the accused—reasonable inference drawn from facts proved—duty of offering alternative inference rests on accused.

Where the prosecution story is disbelieved as to its essential details, it is still open to the Court to rely on a part of the story for the purpose of convicting the accused.

Ram Prasad Mahton v. *King-Emperor*(1), followed.

Phatali Singh v. *King-Emperor*(2), not followed.

Where a set of facts is proved from which, having regard to human experience, only one reasonable inference can be

* Criminal Appeal no. 94 of 1929, against a decision of H. R. Meredith, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 28rd March, 1929.

(1) (1919) 4 Pat. L. J. 289.

(2) 1918) Cal. W. N. (Pat.) 288.

drawn, the accused must, if he wishes to escape the consequence of that inference, offer an alternative inference which can compete in probability with that suggested to an ordinary mind by the evidence.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

S. K. Mazumdar, for the appellant.

Assistant Government Advocate, for the Crown.

COURTNEY TERRELL, C. J.—The appellants Leda Bhagat and Kura Bhagat together with one Antu Bhagat, all being brothers and the sons of Goenda Bhagat, were tried in the Court of the Judicial Commissioner at Ranchi on charges under sections 302 and 304 of the Indian Penal Code. The appellants were convicted under section 304 and sentenced to five years' rigorous imprisonment. They were acquitted on the charge under section 302. Antu Bhagat was acquitted on both charges. The accused are Oraons and resided at village Nagar. They have for two years past been in cultivating possession of certain *don* lands upon which they have planted paddy and from which they had on the 5th November last reaped the crop. One Siri Singh holds certain *tanr* lands under a *hukumnama* from the owner. Siri Singh considered that he was entitled also under his *hukumnama* to the *don* lands in the possession of the appellants. The precise circumstances of the occurrence were difficult of elucidation by reason of the persistent and obvious perjury of the witnesses, but the learned Judicial Commissioner has carefully sifted the evidence and has come to a conclusion which, in my opinion, is amply justified and I see no reason to disturb it. The facts as found by him are as follows:—On the 5th November Siri Singh, who lives at some distance from the *don* lands in dispute, sent his servant, the deceased Khudia Musalman, to inspect the paddy on the *don* land. Khudia was a powerful man who habitually carried a heavy *lathi* with which he was armed on this occasion. He was

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accompanied by one or more of three brothers, Deonu, Paras Nath and Saheba who are Katias and are occasionally employed by Siri Singh. Each of these three brothers claims to have been present at some stage of the occurrence. The learned Judicial Commissioner believes on good evidence that one of them was probably armed with a *talwar*. They went to the *don* lands and found that the paddy had been cut and they went from the land to the house of the appellants which is near by. There they found the two appellants carrying threshed paddy from the *khalihan* which adjoins the house into the house itself. They attempted to stop the carrying of the paddy and after an altercation there was a combat. Deonu fled away from the spot and as he ran he received an arrow which stuck in his back but inflicted a relatively trifling wound. Some sort of a fight followed between the deceased Khudia and the two appellants and ultimately Khudia was knocked down and received a great number of injuries on his body and limbs which resulted in his death on the spot. The injuries include a clean cut gaping wound on one of his legs which was probably caused by some weapon in the nature of an axe. The other wounds were clearly inflicted with the *lathi* with which Khudia had himself been armed. There are no wounds on the head and the learned Judicial Commissioner finds that the absence of such wounds shows that there was no intention on the part of his assailants to kill him but all his limbs were broken and the attack must have been of a ferocious character. The appellants themselves bore no trace of injuries and it is perfectly clear that Khudia must have received an injury, probably the axe-cut on the leg, which must have disabled him at the very beginning of the attack. He then fell and in falling dropped his *lathi* which the appellants must have picked up and made use of on their own account. The *lathi* has been produced and is conspicuously blood stained.

The learned Judicial Commissioner was unable to believe any of the evidence of Pares Nath and Saheba,

nor did he believe the evidence of four other witnesses who were called on behalf of the prosecution. It is manifest that all these witnesses were perjured and that their evidence is wholly unreliable. A first information was lodged by Paras Nath who claimed to have been a witness to the crime but his statement is obviously wholly untrue. The occurrence is stated by him as having taken place at some distance from the house or khalihan of the accused. Siri Singh has admitted that he received news from Saheba of the death of his servant Khudia and feared that he would be put in a false position if it were revealed that the assault took place in the khalihan of the accused. He thereupon deliberately tutored the witnesses to state that the attack upon Khudia was made by the three brothers with no provocation at a considerable distance from the house of the accused. The story told in the first information completely broke down at an early stage and the learned Judicial Commissioner rightly holds that he could not rely upon the witnesses for the prosecution. A chaukidar who gave evidence for the prosecution went to the house of the accused and found Khudia dying in the khalihan and the chaukidar states that Khudia told him that he had been assaulted by the three accused persons. After making this statement Khudia expired. The investigating Sub-Inspector found that the khalihan had evidently been the scene of a sanguinary conflict and no blood stains were found elsewhere than in the khalihan. He interviewed the appellants who delivered up to him the deceased's *lathi*, a bow, and the sheath of a *talwar* which they said had been dropped by the attacking party. The appellants stated before the Judicial Commissioner that their khalihan was invaded by Siri Singh, his son, the three Katia brothers and Khudia, that they were armed with *lathis*, that Siri Singh had also a bow and arrows and that Saheba had a *talwar*. Siri Singh accused the appellants of taking the paddy and ordered his followers to beat them. Each says that he then ran into the house and bolted the door; that

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they heard from inside a great noise and when they emerged an hour later they found Khudia Musalman lying dead. The learned Judicial Commissioner has acquitted Antu believing, for reasons not material to this appeal, that he was not there at all. He finds that Khudia and Deonu and probably no others went to the khalihan and wrongfully attempted to interfere with the appellants in carrying the paddy. In view of Khudia's size and strength and the formidable *lathi* with which he was armed he holds that the appellants were justified in using violence to resist the unlawful aggression but he holds that the appellants exceeded the right of private defence.

The points taken on appeal are as follows:—

First, the familiar argument has been advanced that the prosecution witnesses having been largely discredited the Judicial Commissioner should not have accepted any part of their story. In support of this familiar and wholly fallacious argument the customary use has been made of an observation by Mr. Justice Mullick in the case of *Phatali Singh* v. *King-Emperor*(1). There, after reviewing the facts of that case, the learned Judge said "In any event, it is a recognised principle that where a party comes into Court with a story, which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused." Now in spite of the fact that this passage has been explained in such cases as *Ram Prasad Mahton* v. *King-Emperor*(2) it is still fashionable to make use of it in cases like this. In my opinion, and with the greatest respect for the distinguished Judge who was responsible for the quoted passage, there is no such general principle considered as a matter of law. I believe that the learned Judge meant merely to give expression to a generalisation based on human experience and that the statement quoted was merely with reference to the facts of the particular case decided.

(1) (1918) Cal. W. N. (Pat.) 288.
(2) (1919) 4 Pat. L. J. 289.

The second point was raised by way of an answer by the appellants' Counsel to a question from the Court. He was asked what hypothesis he advanced to account for the death of the deceased and the position of the body in the appellants, khalihan. He replied that it was no part of the duty of the defence to offer any hypothesis and that he was entitled to act purely on the defensive. In one sense this is perhaps true; but where a set of facts is proved from which, having regard to human experience, only one reasonable inference can be drawn, the accused must, if he wishes to escape the consequence of that inference, offer an alternative inference which can compete in probability with that suggested to an ordinary mind by the evidence.

Lastly, it was contended that upon the findings the behaviours of the appellants amounted to no more than a proper exercise or justifiable self-defence. Now it is true that on the facts a right of self-defence was clearly established and it has been so found by the learned Judicial Commissioner, but the fact that the appellants bore no marks of injury and this in spite of the strength of the deceased and the heavy weapon which he carried indicate very clearly that he must have been completely disabled at the very beginning of the encounter and so much disabled that he could be deprived of his *lathi*. This being so, it was clearly wholly unnecessary for the appellants to have rained upon the deceased a very violent shower of blows which were indicated by his wounds, and the learned Judicial Commissioner is clearly right in coming to the conclusion that the right of self-defence was grossly exceeded and the conviction under section 304 was justified. But the provocation to the accused was very severe and although the right of private defence was exceeded it would be unreasonable to impose upon these aboriginals full responsibility for their behaviour after they had become justifiably enraged. I would, therefore, reduce the sentences of

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five years' rigorous imprisonment to a period of two years' rigorous imprisonment in each case.

ROWLAND, J.—I agree.

Conviction upheld.

Sentence modified.

MISCELLANEOUS CRIMINAL.

Before Macpherson, J.

1930.

October 31, November 3, 10.

KULO SINGH

v.

KING-EMPEROR.*

Police Act, 1861 (*Act V of* 1861), *sections* 17 *and* 19—*discretion as to the personnel of special Police Officers confided to police authority—requisite qualifications, what should be—physical strength, whether sole or predominant qualification—resident of the neighbourhood being influential or respected or of mature years, whether a disqualification—test of valid appointment—prosecution for refusal to act as special constables—High Court, when should interfere in a case pending in a subordinate court—test.*

Section 17, Police Act, 1861, does not circumscribe the discretion of the Inspector of Police or other senior officer as to the personnel of the special police officers. Suitability indeed depends upon numerous and varying factors and, as in the appointment of the regular police, the discretion is confided to the Police authority.

Umes Chandra Gupta v. *Emperor*(1) (*judgment of Brett, J.*), followed.

Physical force is not the sole or even necessarily a predominant qualification of a police officer even in the regular force and still less when the appointment is under section 17.

It is open to the requisitioning officer to place value upon age or youth, physical strength, intelligence, temperament, especially patience and self-control in the face of galling

* Criminal Miscellaneous Cases nos. 59, 60, 62 and 63 of 1930.

(1) (1906) 10 C. W. N. 822.