

APPELLATE CRIMINAL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

SHER MUHAMMAD—*Appellant,*

versus

THE CROWN—*Respondent.*

Criminal Appeal No. 454 of 1922.

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Criminal Procedure Code, Act V of 1898, section 337—pardon tendered while offence was under investigation by the police—legality of such pardon.

A pardon was tendered to an approver by a Magistrate, 1st class under the authority of the District Magistrate at a time when the offence was under investigation by the police, and it was urged that the approver's evidence was inadmissible, the pardon not having been tendered while the offence was under inquiry by the Magistrate.

Held, following Bhalla Singh v. Queen-Empress (1) that when a case has been reported to a Magistrate by the police, and he is asked to tender a pardon and does so, there is an inquiry within the meaning of section 337, Criminal Procedure Code, the word "inquiry" being meant to include everything done in a case by a Magistrate, whether the case has been challaned or not.

Moti Lal Hiralal v. Emperor (2), disapproved.

Appeal from the order of Khan Bahadur Mirza Zafar Ali, Sessions Judge, Lyallpur, dated the 27th April 1922, convicting the appellant.

MUKAND LAL PURI AND BADRI NATH KAPUR, for
Appellant.

D. C. RALLI, Assistant Legal Remembrancer, for
Respondent.

The judgment of the Court was delivered by—

MARTINEAU J.—On the night of the 1st January 1922 a dacoity was committed by six men at the shop of Kirpa Ram in Chak 562 G. B. in the Lyallpur District. Two of the dacoits had pistols, which they fired and a number of villagers collected on hearing shots and were encouraged by Khaire Khan, *Lambardar* (P. W. 12),

(1) 3 P. R. (Cr.) 1897.

(2) (1921) 64 Indian Cases 40.

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to attack the dacoits. A fight took place in which one of the villagers, named Aliah Rakha, and one of the dacoits named Usman were mortally wounded, and another dacoit who is the appellant Abdul Kadir was captured together with a revolver with which he was armed. The other four dacoits escaped. The three appellants Sher Muhammad, Sultan and Abdul Kadir were sent up for trial and have been sentenced to transportation for life for an offence under section 396, Indian Penal Code. Their appeals Nos. 454, 455 and 481 may be disposed of by one judgment.

Suleman (P. W. 11) to whom a pardon was tendered by *Sardar Hukam Singh*, Magistrate, 1st Class, under the authority of the District Magistrate, has given a full account of the dacoity in which he says that he, the three appellants, the deceased Usman, and one other man were concerned. It has been contended that the pardon was not legally tendered to Suleman under section 387, Criminal Procedure Code, because at the time when it was tendered the offence was not under inquiry by the Magistrate but was only under investigation by the police, and that, therefore, the approver's evidence is inadmissible. A ruling of the Bombay High Court published in *Moti Lal Hirralal v. Emperor* (1) is relied on in support of this contention. It appears to us that in that case a too narrow construction has been placed on the word 'inquiry' in section 387. In *Bhallu Singh v. Queen-Empress* (2) it was held by a Division Bench that when a case has been reported to a Magistrate by the police, and he is asked to tender a pardon, and does so, there is an inquiry within the meaning of section 387, Criminal Procedure Code, and that the word 'inquiry' is meant to include everything done in a case by a Magistrate, whether the case has been challaned or not. We agree with that view of the law and hold that the approver's evidence is admissible.

[The remainder of the judgment is not required for the purpose of this report—Ed.]

Appeals dismissed.

(1) (1921) 64 Indian Cases 40. (2) 3 P. R. (Cr.) 1897.