APPELLATE CRIMINAL.

Before Mr. Justice Abdul Raoof and Mr. Justice Fforde.

SAJJAN SINGH—Appellant,

versus

THE CROWN—Respondent.

1925

April 20.

Criminal Appeal No. 108 of 1925.

Indian Evidence Act, I of 1872, section 33—Deposition of witness since deceased—Necessity of proving death—First Information Report—hearsay—not admissible—Confession—general statement re — *valueless.*

The information contained in a first information report was relied upon by the trial Court as evidence for the prosecution, though the maker of it did not purport to know anything of the crime first hand, and stated in the witness-box that he had received the information from a lambardar who was not called as a witness.

Held, that this was an entirely improper use of a first information report, which is not substantive evidence, and, as the informant could only speak from hearsay, was not admissible even as corroboration.

Held also, that the deposition of a prosecution witness stated to have died prior to the trial in the Sessions Court, but whose death was not proved, is not admissible under section 33 of the Indian Evidence Act.

Held further, that in the absence of evidence of a conspiracy, a general statement by witnesses that a number of persons admitted having committed a crime, without some indication as to which of the persons made the admission, with some particulars of what was actually said, is valueless.

Appeal from the order of Rai Sahib Lala *Shibbu Mal, Sessions Judge, Ferozepore, dated the 20th November 1924, convicting the appellant.*

NAND LAL for Appellant.

ABDUL RASHID, Assistant Legal Remembrancer, for Respondent.

1925

SAJJAN SINGH v. THE CROWN.

JUDGMENT.

FFORDE J.—The appellant, Sajjan Singh, has been convicted of murder under the provisions of section 302 of the Indian Penal Code, and has been sentenced to death.

The story for the prosecution is shortly as follows:—On the 12th of July 1923, Sohan Singh and Pakhar Singh were ploughing their fields. Waryam Singh was engaged near by in erecting a fence round his sugarcane field. Sohan Singh and Pakhar Singh engaged in an altercation with Waryam Singh, in the course of which Pakhar Singh threw a clod of earth at Waryam Singh. Mangal Singh, son of Wazir Singh, who was ploughing his field in the vicinity, came up to the altercants and separated them. Having done so he returned to his field which is at a distance of 200 *karms* from the place of altercation. Shortly afterwards Thakar Singh arrived with food for Pakhar Singh and Sohan Singh, and Amar Singh also arrived, bringing food for his father Waryam Singh. Amar Singh was then told by Waryam Singh to go to the village and bring assistance, whereupon the former left on that errand. Within an hour of the departure of Amar Singh, Sajjan Singh, appellant, Bhan Singh, Mehnga Singh, Pahara Singh and Pal Singh came on to the scene. Five of them were armed with *gandasis* and one of them, Pahara Singh, was armed with a *saila*. These six men fell upon Thakar Singh, Pakhar Singh and Sohan Singh, inflicting such injuries that Sohan Singh and Pakhar Singh died on the spot, and Thakar Singh subsequently expired in the house of Mangal Singh, having walked there with the aid of Mangal Singh.

This is the Crown case as presented by Mangal Singh, witness No. 4 for the prosecution. In addition

1925

SAJJAN SINGH
v.
THE CROWN.

to this witness the Court below has accepted the statement by another Mangal Singh, son of Sangat Singh, which was made before the Committing Magistrate. The learned Sessions Judge stated in his judgment that this witness had died before the case came to the Sessions Court, and he purports to have admitted the statement under the provisions of section 32 of the Indian Evidence Act. It is obvious that the statement in question could not have been admitted under any of the provisions of this section of the Evidence Act, and the learned Sessions Judge must have intended to rely upon section 33 for its admission. Section 33 would have been applicable if the death of the witness whose deposition was sought to be admitted had been first proved. In the present case there was no such proof, and accordingly the statement is not admissible and must be excluded from consideration.

The trial Judge has also relied upon the statements contained in a document described as the first information report. This document records an account of the crime given by a certain Khetu to the police and taken down by Sub-Inspector Magha Ram. The information contained in this document is entirely based on hearsay and has been so described by the trial Judge in his judgment. It is obvious that such a document cannot be tendered in evidence for the prosecution. Khetu, who was called as a witness, does not purport to know anything of the circumstances of the crime at first hand. He alleges that he obtained his information from Sundar Singh, a *lambardar*, and he adds that Sundar Singh told him that he had not seen the murders with his own eyes but had heard of the same. It appears, therefore, that not only is this first information report based upon information which was hearsay, but the person from whom the informant obtained his knowledge had himself gained

1925

SAJJAN SINGH v. THE CROWN.

it from others. This is a glaring example of the improper use made in this province of a first information report. As such a document could only be used by the prosecution for the purpose of corroborating in the witness-box the person who supplied the information contained in the document, it ought to be fairly obvious that if the informant himself can only speak from hearsay, the report cannot be used to corroborate such inadmissible evidence. I may mention that Sundar Singh, who is stated to have supplied the information upon which the first information report was based, was not called as a witness.

A number of other witnesses were produced by the prosecution who testify to statements made by the alleged murderers after the crime had been completed. These witnesses say that the six alleged assailants whose names have been mentioned returned to the village after the crime, and shouted out threats to certain persons, saying at the same time that they had already killed Thakar Singh, Pakhar Singh and Sohan Singh. The witnesses do not say which of these six persons made the incriminating statement, but speak as if the six men shouted in chorus. Nobody says that the appellant Sajjan Singh made any statement amounting to an admission of the crime; and even if it were clearly established that one or more of the other five had admitted the murders, such admission could not be used as evidence against the appellant unless and until it had been shown that all six persons had conspired to commit the crime. There is no evidence of any such conspiracy. Moreover, a general statement by a witness that a number of persons admitted having committed a crime, is valueless without some indication as to which of the persons made the admission in question, with some particulars of what was actually said.

1925

SAJJAN SINGH v. THE CROWN.

Apart from the evidence of the medical witness, who has given details of the injuries sustained by the victims of the crime, the only evidence which we can legally consider is that of Mangal Singh, son of Wazir Singh. According to him he not only saw the crime committed but saw the appellant and one Bhan Singh assault Sohan Singh. If this evidence is to be believed the appellant undoubtedly took part in the crime, and whether he did or did not cause the death of one of the victims, he would be liable under section 34 of the Indian Penal Code as an abettor, for it is obvious that the common intention of all the assailants was to kill the three men, in view of the nature of the weapons with which they armed themselves and the circumstances of the affair. There are, however, certain discrepancies in the evidence of Mangal Singh which throw considerable doubt upon the truth of his narrative of the crime. He purports in his evidence-in-chief to have heard Waryam Singh tell his son to go to the village and send men to his assistance, but in cross-examination he admits that after stopping the altercation he went back to his field and, as his field is at a distance of 200 *karms* from the scene, it is obvious that he could not have heard Waryam Singh's orders to his son. It is perfectly clear from the whole of his evidence that after the first altercation was over he went back to his own work and did not come again to the scene of the fight until the assailants arrived. This witness also admits in cross-examination that he did not make any statement to the *thanedar* about the murders when Thakar Singh's dead body was removed to his house. *Nor* did he speak to anyone about the occurrence which he is alleged to have witnessed. He says that his son saw the fight in the fields, but his son was not produced as a witness.

I do not think it will be safe to convict the appellant on the sole testimony of this witness, and I would accordingly accept the appeal and set aside the conviction and sentence.

ABDUL RAOOF, J.—I agree.

N. F. E.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice LeRossignol.

1925

April 20.

SHANKAR DAS—Appellant

versus

BEHARI LAL AND OTHERS—Respondents.

Letters Patent Appeal No 13 of 1925.

Civil Procedure Code, Act V of 1908, Order XL, rule 1—Receiver—appointed in a suit for partition of the estate of a deceased person consisting partly of agricultural land —not rendered functus officio *by preliminary decree for partition—Injunction subsequent to preliminary decree in regard to the receiver's possession of the agricultural land—whether* ultra vires.

The succession to an estate consisting of agricultural land and other property being in dispute, a suit was filed, and under order XL, rule 1 of the Civil Procedure Code a receiver was appointed. The Subordinate Judge then granted a preliminary decree declaring the shares of the parties and directing the partition of the property other than agricultural land, and the taking of accounts. An *ad interim* injunction was subsequently passed by the Subordinate Judge restraining one of the parties from interfering with the Receiver's possession of the agricultural land, but it was set aside (by a Single Judge of the High Court) on the ground that on the passing of the decree the receiver had become *functus officio* so far as the agricultural land was concerned and the subsequent injunction was *ultra vires*.