APPELLATE CRIMINAL.

Before Mr. Justice Addison and Mr. Justice Skemp.

THE CROWN—Appellant

versus

IBRAHIM AND OTHERS—RESPONDENTS.

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March 23.

Criminal Appeal No. 1203 of 1926.

Criminal Procedure Code, Act V of 1898, section 162—Statement made to the police—use of—Indian Evidence Act, 1872, section 145—necessity for compliance with—First Information Report—use of—only to corroborate or contradict statements made as witnesses—Delay—effect of—when satisfactorily explained.

Held, that the First Information Report made to the police in a criminal case is not substantive evidence and can only be used to corroborate or contradict what the witness who made it states subsequently on oath and that the mere absence of detail in the former statement as compared with the latter does not discredit the witness *nor* must the prosecution case be held to be false owing to delay in making the first information report, provided the delay is satisfactorily explained.

Held further, that the only way a witness can be contradicted by a statement made to the police under the provisions of section 162 of the Criminal Procedure Code, is to prove that portion of his statement to the police which contradicts his evidence and to put it to him under section 145 of the Evidence Act so that the witness may be given an opportunity of explaining the contradiction ; statements made to the police cannot be used at a trial in any other way.

Appeal from the order of G. C. Hilton, Esquire, Sessions Judge, Ferozepore, dated the 1st September 1926, acquitting the respondents.

CARDEN-NOAD, Government Advocate, for Appellant.

ZAFRULLA KHAN, for Respondents.

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ADDISON J.—The nine respondents, Ibrahim, Dillu, Mustaqim, Nizam, Imam Din, Badar Din, Sultan, Khushi Mohammad and Jan Mohammad, who are *Tarkhans* of village Dabra and closely related to each other, were charged under section 302 read with section 149 of the Indian Penal Code with the murder of Bhagat Singh, Honorary Magistrate, on the afternoon of the 3rd May 1926, at Dabra and were acquitted by the Sessions Judge of Ferozepore. An appeal has been presented by the Crown against this order of acquittal.

Bhagat Singh lived at Muktsar but some members of his family live at Dabra. Bhagat Singh and his sons along with his nephew, Balwant Singh and others own *Patti* Ganda Singh of village Dabra, while Fazal, *Lambardar* and others own *Patti* Ram Singh. Fazl and the other owners of the second-named *Patti*, though *Musalmans*, are related to the *Khatri* owners of the other *Patti*. They changed their religion some time ago as is clear from the fact that Fazl's father was also a *Musalman*, by name Mohkam Din. The respondents are occupancy tenants, as well as ordinary tenants, of the proprietors of village Dabra. Litigation was pending at the time of the murder between Bhagat Singh and Ibrahim respondent, namely, a revenue suit for produce and a criminal case of mischief caused by cattle, instituted by Bhagat Singh. There also had been other cases against Ibrahim and other members of his family by the relatives of Bhagat Singh.

The story, as told by the prosecution, is that Bhagat Singh came to Dabra on the afternoon of the 3rd May. He did so in order to arrange for the summoning of witnesses in the pending cases mentioned

above. His nephew Balwant Singh, P. W. 4, complained to him that the ears of some of their wheat sheaves had been stolen, that the *lambardar* Fazl Din, P. W. 8, had promised to make inquiries and that Murid, sweeper, was suspected. Murid was called to Fazl Din's house where he denied the theft and offered to show the ears which he had. Thereupon, Bhagat Singh, accompanied by his nephew Balwant Singh, P. W. 4, his son Jaswant Singh, P. W. 10, Jagat Singh, his cousin once removed, P. W. 11, Fazl Din, *lambardar*, P. W. 8 and his brother Wahab, P. W. 7, both of whom are *Musalman* collaterals of the deceased, and by Murid, sweeper, P. W. 5, who works for Wahab, went to Murid's house, being joined by Shibbu, a *chamar* by caste, P. W. 9, on the way. The respondent Dillu, brother of Ibrahim respondent, was standing there. When they arrived, Jaswant Singh remarked that Murid and the *Tarkhans* had looted them. The ears were inspected and the deceased sent Balwant Singh for a cart which he brought. By this time Dillu, respondent, had disappeared. Rana, P. W. 6, uncle of Murid, sweeper, came with the cart and swore that Murid had not stolen the ears. Wahab also defended Murid. On this the deceased agreed that the ears had not been stolen. At that very instant, Shibbu, *chamar*, called out that the *Tarkhans* were coming. The nine respondents, armed with sticks, *gandhalis* and other weapons, arrived and fell upon the *Khatri* proprietors, inflicting injuries not only upon the deceased, but upon his son and nephew, Jaswant Singh and Balwant Singh. The son and nephew fled but Bhagat Singh fell down and his assailants continued to beat him when he was on the ground. The attack only ceased when the by-standers called out that he had been killed. This took place in the late

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afternoon. Bhagat Singh was carried to his son's house and it is in evidence that he was able to speak, though the doctor, who performed the *post-mortem* examination, said that he thought that he must have become unconscious at once. Bhagat Singh was then placed in a cart and taken to the Muktsar hospital which he reached about 11-30 P.M. The Sub-Assistant Surgeon there attended to the three injured men, prepared certificates of their injuries and wrote two notes to the Sub-Inspector of Police about 4 A.M. and 5 A.M. asking him to come at once as Bhagat Singh was in a precarious condition. The Sub-Inspector came to the hospital at 6 A.M. and recorded the statement of Balwant Singh, his nephew, as the first information report. Bhagat Singh died at 5-40 A.M., before the Sub-Inspector arrived. The above story is told by each of the eight eye-witnesses.

The respondents refused to answer any questions in the court of the Committing Magistrate but put in next day a combined written statement, to the effect that they were not there, and that Bhagat Singh was killed by Murid and other sweepers against whom Bhagat Singh wished to complain. His relatives however did not care to have his death attributed to sweepers and thus accused the respondents "between whom and Bhagat Singh, deceased, there was no love lost". They did not add to this statement before the Sessions Judge and produced no evidence in their defence.

After a very careful consideration of the entire record, through which we have been taken, I can see no reason whatsoever for disbelieving the story told by the eight eye-witnesses regarding whose demeanour the Sessions Judge has said nothing. The deceased had eight injuries on his person, two being caused by

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sharp weapons and the rest by blunt weapons. Of these, four injuries, one being an incised wound, were on the head which was extensively fractured, this being the cause of death. The head injuries were so severe that survival was impossible. The injuries themselves leave no doubt that it was intended to kill him or to inflict such injuries as were likely to cause death. His son and nephew had each four injuries.

Counsel for the respondents urged nothing except the points mentioned in the judgment of the Sessions Judge, none of which, in my opinion, are of any significance. The first was that he thought it inexplicable that the matter was not reported earlier to the police except on the defence theory that the relatives waited till Bhagat Singh was dead. In the first place the medical evidence shows that Bhagat Singh must have become unconscious almost at once. It was known at the hospital that he was dying. It is admitted in the written statement of the respondents that there was no love lost between Bhagat Singh and them. What advantage therefore was there in the so-called delay? In the second place, there was no reason to implicate the respondents instead of the real culprits. In the third place, there was no delay which has not been explained in the most satisfactory way. Bhagat Singh was put in an ordinary cart very soon after the crime and it did not reach the hospital till 11-30 P.M. He was taken first to the hospital and not to the police station as he was in a dangerous condition. It took a considerable time to attend to the wounds of the three injured persons and prepare certificates of their injuries. It was intended to take these certificates to the police station but this was not done as the Sub-Assistant Surgeon had already written to the Sub-Inspector of Police who came at 6 A.M. The evidence

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establishes these facts beyond any question while the theory relied upon is mere conjecture without any basis.

The second point taken by the Sessions Judge was that a conspiracy to give a false version of the affair was not improbable, as the witnesses were either relatives or dependants of relatives of the deceased. I fail completely to understand this argument which is purely hypothetical and unwarranted. The eye-witnesses, except three, are relatives, though two of those relatives are *Musalmans* of a different religion from the deceased. Two are sweepers and dependants of relatives, but Shibbu, *chamar*, has not been proved to be a dependant. It is inconceivable that the eight eye-witnesses deliberately implicated the respondents instead of the real culprits—a finding without any justification.

The third point taken by him was that the story in Court had been improved upon in certain respects as compared with the first information report made by Balwant Singh at 6 A.M. on the 4th May. What was stated by Balwant Singh on the 4th May is not substantive evidence and can only be used to corroborate or contradict what he has stated as a witness. Besides, the story now told by Balwant Singh is nearly the same as that first told by him to the police. There are two omissions only in the statement made by him to the police. The first is that in the first information report it was stated that Jaswant Singh said that there were ears of grain in other houses as well as in Murid's (see page 11, line 16, of the paper-book). According to the evidence given in Court Jaswant Singh said that "Murid and these *Tarkhans* have looted us". Surely that is no real difference. The second is that in the first information report there was no

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mention of the fact that Dillu, respondent, was standing at Murid's house when the party went there and that he had disappeared before the cart came. An argument such as this means that if every detail is not given in the first report to the police, which is not substantive evidence, the case must be held to be false. The witnesses other than Balwant Singh were asked if they told the police about Dillu's presence and replied that they did while the Sub-Inspector said that they did not tell him. The written statements made by these witnesses to the police have not been proved and the only way a witness can be contradicted by statements made to the police under the provisions of section 162, Criminal Procedure Code, is to prove his written statement and put it to the witness under section 145 of the Indian Evidence Act to permit him to explain the contradictions, if any. This was not done. Statements made to the police cannot be used at a trial in any other way. In any case, the respondents must have known that the proprietors, including their enemy, Bhagat Singh, had gone to Murid's house and it is unimportant whether Dillu actually saw them arrive or not. It is frivolous to say that this throws discredit on the prosecution story. On the evidence, however, I have no hesitation in holding that Dillu was there.

The fourth reason given by the Sessions Judge was that the story was improbable as there was then no provocation to the respondents, though there was to the sweepers. But the respondents bore Bhagat Singh a grudge, and there is no reason to disbelieve the evidence that they seized the opportunity to be revenged. The Sessions Judge, when dealing with this point, has clearly erred in saying that the prosecution witnesses, in order to exclude the possibility of

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the sweepers having any motive for making such an attack, introduced at a late stage into their story an improvement to the effect that just before the attack Bhagat Singh, impressed by the protestations of Rana and Wahab regarding Murid's innocence, said "very well, let the matter drop''. All this is in the first information report (see page 11, lines 10-16, of the paper-book) the only difference being that he is there reported as saying "I agree'', words which have the same meaning.

Lastly, the Sessions Judge relied on the fact that Murid absconded for two days as proving that Murid and his friends committed the assault. But there is little in this. Murid has explained that Mustaqim took him away with himself by frightening him. This is a possible explanation, and at the same time, Murid might have been afraid that he too would be implicated as the affair took place at his house. Mustaqim did abscond and was not arrested till the 7th May, though all the others were arrested at once.

Two of the assessors considered that all the respondents were guilty, while two held that the sweepers were responsible for the crime. The evidence is reliable, stands unrebutted, and is overwhelming. In my judgment, there is no possible escape from the conclusion that all the respondents are guilty under section 302 read with section 149, Indian Penal Code, of the murder of Bhagat Singh. I would therefore accept the appeal, convict them of the offence stated and sentence them to transportation for life.

SKEMP J.

SKEMP J.—I concur.

N. F. E.

Appeal accepted.