

## APPELLATE CRIMINAL.

*Before Currie and Abdul Rashid JJ.*

PURAN SINGH (CONVICT) Appellant

*versus*

THE CROWN—Respondent.

1934

Jan. 31.

**Criminal Appeal No. 978 of 1933.**

*Criminal Procedure Code, Act V of 1898, Section 288: Evidence of hostile witness—given before Committing Magistrate—transferred to record of Sessions Judge—whether can be used as substantive evidence.*

A prosecution witness was declared hostile at the trial and was therefore cross-examined by the Public Prosecutor. His statement before the Committing Magistrate was transferred to the record of the Sessions Judge. It was contended on behalf of the accused that the prosecution could not be allowed to derive any advantage from any part of the statement.

*Held*, (overruling the contention) that the statement of a witness, made before the Committing Magistrate and transferred to the Sessions record in accordance with the provisions of section 288 of the Criminal Procedure Code, is not confined to purposes of corroboration or contradiction of the evidence given before the Sessions Judge, but can be acted upon precisely as if that evidence had been deposed to before the Sessions Judge.

*Amir Zaman v. Crown* (1), *Abdul Gani Bhuya v. Emperor* (2), and *Jhangir Ardeshir Cama v. Emperor* (3), relied upon.

*Surendra Krishna Mondal v. Rani Dassi* (4), and *Khijaruddin v. Emperor* (5), referred to.

*Appeal from the order of Mr. C. M. Ormerod, Additional Sessions Judge, Amritsar, dated 11th July, 1933, convicting the appellant.*

(1) (1925) I. L. R. 6 Lah. 199. (3) (1927) 106 I. C. 100.

(2) (1926) I. L. R. 53 Cal. 181. (4) (1920) I. L. R. 47 Cal. 1043.

(5) 1926 A. I. R. (Cal.) 139.

1934

PURAN SINGH

v.

THE CROWN.

ABDUL  
RASHID J.

BEVAN-PETMAN, for Appellant.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

ABDUL RASHID J.—One Sohan Singh, *alias* Gorkha, was brutally murdered in Katra Dal Singh at Amritsar on the night between the 19th and 20th April, 1933. There were nine injuries on his person. One was the result of a blunt weapon, while the others were caused with sharp-edged weapons such as knives and hatchets. The right temporal and frontal bones were cut, and the lower lobe of the left lung had also been punctured.

Puran Singh, appellant, appeared at the headquarters police station "C" Division, Amritsar, at about 4 A.M. on the 20th April, and made a report to Fateh Din, Head Constable (P. W. 17), to the effect that he was returning from the cinema with Gorkha, deceased, at about 2 A.M. when they were attacked by Hari Singh, Bachi, Budhu, Bhagta, Gopal, Palu and Gaman with *kulharis*, knives and sticks. It was further stated by Puran Singh, appellant, that Budhu had inflicted an injury between the thumb and index finger of his right hand with a *kulhari* while all the other assailants had seriously injured Gorkha. It was mentioned in this report that Jiwan Singh (P. W. 3) and several other persons had seen the fight.

The Head Constable sent information regarding the incident to the Sub-Inspector *Chaudhri* Fazal Din (P. W. 26), and himself proceeded to the place where Gorkha was alleged to be lying. On his arrival at the place of occurrence he found that Gorkha had already expired, and that there were several hatchet and knife wounds on his person. The *kulhari*, exhibit P. 4, was lying on the *thara* of a shop near the scene

of the murder, and there was blood on the blade as well as the shaft of this *kulhari*. The Sub-Inspector reached the spot at 6 A.M. and, after preparing the statement of injuries, began to question Puran Singh regarding the assailants and the nature of the attack. The demeanour of Puran Singh raised some suspicion in the mind of the Sub-Inspector and he began to make enquiries from Jiwan Singh, who had been named as an eye-witness in the report made by Puran Singh. As a result of the investigation carried on by the Sub-Inspector the three appellants were challaned for the murder of Gorkha. They have all been sentenced to death by the learned Additional Sessions Judge of Amritsar, and they have preferred three separate appeals to this Court. Their case is also before us under section 374 of the Criminal Procedure Code for the confirmation of the capital sentences.

The principal evidence in the case consists of the statement of Jiwan Singh, P. W. 3. According to his testimony the case for the prosecution may be briefly stated as follows:—

The appellants Puran Singh, Gura *alias* Larka, and Harnam Singh *alias* Mahant used to live in the same *bazar* as Jiwan Singh, and he had known them for a long time. On the night of the occurrence at about midnight the appellant Harnam Singh called out to Jiwan Singh from the *bazar*. On his coming down he was handed two pairs of shoes and a bottle half full of liquor by Harnam Singh who asked him to keep these things as he intended to go to the Darbar Sahib to sleep there. After Jiwan Singh had taken the shoes into his house Harnam Singh asked him to accompany him to the Darbar Sahib. Jiwan Singh

1934

PURAN SINGH

v.

THE CROWN.

---

 ABDUL  
RASHID J.

1934

PURAN SINGH  
v.  
THE CROWN.ABDUL  
RASHID J.

left for the Darbar Sahib with the appellant, Harnam Singh, and when they reached a turnpike at the end of the road leading to Kaulsar Bazar, Puran Singh and Gura, appellants, met them. All the four stayed there for some time talking to each other, and thereafter, Harnam Singh and Gura went away leaving the witness with Puran Singh. Puran Singh informed Jiwan Singh that he was proposing to fabricate a false case under section 324, Indian Penal Code, against Hari Singh and his companions and requested him to give evidence in that case. Jiwan Singh at first refused to be a party to the fabrication of the false case, but afterwards consented. Puran Singh and Jiwan Singh then went to the stable of Jiwan Singh, and the witness was told by Puran Singh that as the crime was going to be committed in front of the stable, he should sleep there on that night. This stable is not used for keeping any horses, but is merely used for manufacturing phenyle by Jiwan Singh and Sundar Das. Jiwan Singh went into the stable, and after borrowing some bedding from a blind man named Dewa Singh (D. W. 13), went to sleep. After about half an hour he heard the sound of blows and went on to the roof of the stable to see what was happening. He noticed that Gura armed with a *kulhari* and Puran Singh with a knife were assaulting the deceased Gorkha, while Harnam Singh was standing a short distance away. The night was dark, but as the occurrence took place at a point between two electric lamps the witness was able to identify the assailants.

The version of the incident summarised above was given by Jiwan Singh before the Committing Magis-

trate, and was repeated by him during the course of the examination-in-chief at the trial. When he was cross-examined at the trial he completely resiled from his statement. During the course of cross-examination he deposed that neither Harnam Singh nor any one else had asked him to sleep at the stable, nor had Harnam Singh left any shoes or the bottle of liquor with him. He added that he was sleeping at the stable of his own accord as he had been doing so for several nights before the occurrence, and that the real assailants were Hari Singh, Budhu, Bachi and Gaman and that it was the names of these persons that he had given to the police. He added that the police declined to accept his statement, and that *Chaudhri* Fazal Din, Sub-Inspector, threatened him, and that it was the result of this threat that he had implicated Puran Singh, Harnam Singh and Gura in the crime. After the cross-examination of Jiwan Singh had finished he was declared a hostile witness, and was cross-examined by the Public Prosecutor. The statement that he had made before the Committing Magistrate was transferred to the record of the Sessions Court under section 288 of the Criminal Procedure Code.

It was contended on behalf of the appellants that as Jiwan Singh was declared to be a hostile witness at the trial, and was thereupon cross-examined by the Public Prosecutor, the prosecution could not be allowed to derive any advantage from any part of his statement. Reliance was placed in this connection on two rulings of the Calcutta High Court reported as *Surendra Krishna Mondal v. Rani Dassi* (1) and *Khijaruddin v. Emperor* (2). It has been held

1934

PURAN SINGH .

v.

THE CROWN.

ABDUL

RASHID J.

(1) (1920) I. L. R. 47 Cal. 1043.

(2) 1926 A. I. R. (Cal.) 139.

1934

PURAN SINGH

v.

THE CROWN.

ABDUL  
RASHID J.

in the case of *Amir Zaman v. The Crown* (1) that the statement of a witness made before the Committing Magistrate and transferred to the Sessions record in accordance with the provisions of section 288 of the Criminal Procedure Code is not confined to purposes of corroboration or contradiction of the evidence given before the Sessions Judge, but can be acted upon precisely as if that evidence had been deposed to before the Sessions Judge. In the case referred to above one of the witnesses had given a statement before the Committing Magistrate in favour of the prosecution but had retracted that statement before the learned Sessions Judge. The circumstances of the reported case were therefore almost identical with the circumstances of the present case. It was held in *Abdul Gani Bhuya v. Emperor* (2), that evidence recorded by the Committing Magistrate, if admitted under section 288, Criminal Procedure Code, at the trial, must be treated as evidence for all purposes, even as the basis of the finding or verdict. It stands on the same footing as any other evidence before the Court of Sessions, and is to be considered as proper materials on which the verdict or a finding may be given. In *Jehangir Ardeshir Cama v. Emperor* (3) the Bombay High Court held that if a witness is declared to be hostile the Court can rely on that part of his statement which it considers to be true. The statement of Jiwan Singh before the Committing Magistrate is substantive evidence in the case, and the only question for determination is whether this statement can be relied upon without independent corroboration connecting each of the appellants with the commission

(1) (1925) I. L. R. 6 Lah. 199.

(2) (1926) I. L. R. 53 Cal. 181.

(3) (1927) 106 I. C. 100.

of the crime. It must be conceded that where a witness has been demonstrably shown to be a liar, his testimony must be looked upon with a great deal of suspicion, and should not, ordinarily, form the basis of conviction until it is confirmed by other witnesses, or is borne out by circumstances proved in the case excluding all reasonable chance of the innocence of the accused. In the present case Jiwan Singh is not merely a person who retracted his statement before the learned Sessions Judge, but he further agreed to give false evidence even before the crime was committed. The story put forward by him before the Committing Magistrate is in the highest degree improbable as it involves the wounding of a member of their own gang by the appellants in order to revenge themselves against Hari Singh and his gang. In these circumstances it is essential to examine carefully the evidence relied upon by the prosecution in corroboration of the testimony of Jiwan Singh.

*(The remainder of the judgment is not required for the purpose of this report—Ed.)*

CURRIE J.—I agree.

A. N. C.

CURRIE J.

*Appeal accepted.*

1934

PURAN SINGH

v.

THE CROWN.

ABDUL  
RASHID J.