

In our opinion there is no evidence, direct or presumptive, on the present record justifying a finding that the assessee firm had received any interest from Parmeshari Das-Kirpa Ram during the accounting period and we answer both the questions in the negative.

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NARAIN DAS-  
BHAGWAN DAS  
v.  
COMMISSIONER  
OF INCOME-TAX.

TEK CHAND J.

The respondent shall pay the assessee the costs of these proceedings. Pleader's fee Rs. 100.

P. S.

*Reference answered in negative.*

### APPELLATE CRIMINAL.

*Before Bhide J.*

KANSHI RAM AND ANOTHER (CONVICTS) Appellants  
*versus*  
THE CROWN—Respondent.

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Dec. 1.

Criminal Appeal No. 972 of 1933.

*Approver — statement of — corroboration of — retracted confession of co-accused or identification by a witness who failed to identify accused in Court—whether sufficient.*

*Held*, that the omission on the part of a material witness for the prosecution to identify the accused in Court as one who participated in the commission of the crime cannot be treated as a mere immaterial irregularity and the evidence of that witness cannot be accepted as sufficient corroboration of the testimony of an approver.

*Lal Singh v. The Crown* (1), relied upon.

*Held also*, that a conviction cannot ordinarily be based on the mere uncorroborated testimony of an approver and the testimony of an approver, which is itself tainted, cannot be held to be sufficiently corroborated by a retracted confession of a co-accused.

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*Latafat Hossain Biswas v. Emperor* (1), *Debi Dayal v. Emperor* (2), and *Sher Muhammad v. Emperor* (3), relied upon.

*Sher Singh v. The Crown* (4), distinguished.

*Appeal from the order of Mian Ahsan-ul-Haq, Sessions Judge, Lyallpur, dated the 10th May, 1933, convicting the appellants.*

JAI GOPAL SETHI, for Appellants.

NORMAN EDMUNDS, Assistant Legal Remembrancer, for Respondent.

BHIDE J.

BHIDE J.—Criminal appeals Nos. 972 and 928 of 1933 are connected and will be disposed of together.

The appellants Amar Singh, Kanshi Ram and Part Ram were prosecuted in connection with a series of robberies which were committed in Chak No. 91-J. B. in the Lyallpur district on the night of the 21st-22nd April 1932. One Chain Singh was also prosecuted for the abetment of the offence but he was acquitted. The appellants have been found guilty under Section 397, Indian Penal Code. Amar Singh has been sentenced to rigorous imprisonment for 10 years while the other two appellants have been sentenced to rigorous imprisonment for seven years each. Amar Singh has preferred his appeal through the jail authorities and was not represented by any counsel. The appeal on behalf of the other two appellants was argued by their counsel Mr. J. G. Sethi.

The prosecution story has been given in detail by the approver named Sohan Singh. The learned counsel for the appellants, Kanshi Ram and Part Ram, did not attempt to challenge the fact that a series of

(1) 1928 A. I. R. (Cal.) 746.

(3) (1927) 104 I. C. 630.

(2) (1913) 18 I. C. 672.

(4) (1933) I. L. R. 14 Lah. 111.

robberies were committed in Chak No. 91-I. B. on the night referred to above and that the approver Sohan Singh did take part in them. He, however, contended that the statement of the approver is not supported by any corroborative evidence sufficient to bring home the charge to the appellants, Kanshi Ram and Part Ram. The only corroborative evidence on which the prosecution relied was the identification of these two persons by certain witnesses. As regards Kanshi Ram, the only person who identified him was apparently Narindar Singh. Narindar Singh is a lad aged 16 years. He deposed that when the dacoits went to his house he came out and was stopped by them. He identified Amar Singh who belongs to Chak No. 91-J. B. and was well-known to him. The appellant Kanshi Ram was not known to him and it appears that in the statement made before the police he did not mention him. He mentioned that he had identified one Gandu who belonged to his village. It is now admitted, however, that Gandu was not amongst the culprits. Narindar Singh had an opportunity to see the culprits only for a minute or a minute and a half according to his own statement. No description of the culprits was given by him at the time. The identification parade at which he is said to have identified Kanshi Ram was held some seven or eight months after the occurrence. The Magistrate in whose presence the parade was held has merely deposed that Narindar Singh identified Kanshi Ram but he has not further stated that Kanshi Ram was identified as having taken part in the robberies which were committed at Chak No. 91-J. B. on the night of the 21st-22nd April 1932. Lastly, Narindar Singh did not identify Kanshi Ram as having taken part in the robberies even in Court. It is the evidence of Narindar in Court which is material so far as the ques-

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tion of identification is concerned and this omission to identify the appellant Kanshi Ram in Court cannot, therefore, be treated to be a mere immaterial irregularity [*Lal Singh v. The Crown* (1)]. Kanshi Ram is alleged to have been in the house of Narindar Singh for a considerable time when Narindar Singh's sister, *Mussammat* Bhagwanti and mother, *Mussammat* Nand Kaur, were subjected to torture by the culprits, but neither *Mussammat* Nand Kaur nor *Mussammat* Bhagwanti has been able to identify him. In view of all the circumstances the evidence of Narindar Singh cannot be held to be reliable, or sufficient to support the conviction of Kanshi Ram.

As regards the other appellant Part Ram, the identification evidence, on which the prosecution relies, consists of the statements of *Mussammat* Bhagwanti and Abdul Ghafur, a lad aged about 12 years. These witnesses have also, however, omitted to identify Part Ram in Court as one of the persons who took part in the offence with which he was charged. It appears further that these witnesses did not even state at the identification parade that Part Ram took part in the robberies committed in Chak No. 91-J. B. on the night in question. Leaving aside the evidence of these witnesses the only other piece of evidence on which the learned counsel for the Crown attempted to rely was the retracted confession of Amar Singh. But the testimony of an approver, which is itself tainted, cannot be held to be sufficiently corroborated by a retracted confession of a co-accused [*Latafat Hossain Biswas v. Emperor* (2), *Debi Dayal v. Emperor* (3) and *Sher Mohd. v. Emperor* (4)]. The learned counsel for the

(1) (1924) I. L. R. 5 Lah. 396, 400.

(2) 1928 A. I. R. (Cal.) 746.

(3) (1913) 18 I. C. 672.

(4) (1927) 104 I. C. 630.

Crown next contended that even slight circumstantial evidence is sufficient for the purpose of corroboration and cited *Sher Singh v. The Crown* (1). In that case, however, there was evidence in the shape of production of stolen property. In the present case I am unable to see that there is even any circumstantial evidence which can be said to justify the conviction of the appellants, Kanshi Ram and Part Ram. It is true that the approver Sohan Singh has not been shown to have any particular motive to implicate Kanshi Ram and Part Ram falsely but the rule of law is well established that a conviction cannot ordinarily be based on the mere uncorroborated testimony of an approver. The approver Sohan Singh cannot be said to be a man of any high character and it is possible that he may have substituted the names of the appellants to shield some of his friends.

The case of Amar Singh, appellant, who has appealed from jail, stands on a different footing. He belongs to Chak No. 91-J. B. where the robberies were committed and was identified by a large number of witnesses. The corroborative evidence in his case appears to be ample. In addition to the evidence for the prosecution there is also on the record a confession made by him before a Magistrate in the Bikaner State. The confession purports to have been taken down by him in conformity with the provisions of section 164 and is admissible in evidence [*Badan Singh v. King-Emperor* (2)]. This confession which is proved by the evidence of the Magistrate is substantially in accord with the statement of the approver and there is no reason to doubt that it was made voluntarily. Amar Singh was armed with a gun and used it at the time when the robberies were committed and his offence falls

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(1) (1933) I. L. R. 14 Lah. 111. (2) 2 P. R. (Cr.) 1909.

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under section 397, Indian Penal Code. As regards the sentence he was certainly the person responsible for robberies. It was he who apparently organised the robberies out of grudge towards Mohindar Singh who had refused to restore some of the land which had been sold to him.

I, therefore, accept the appeals of Kanshi Ram and Part Ram and acquit them. The appeal of Amar Singh is dismissed.

A. N. C.

*Appeals of Kanshi Ram and  
 Part Ram accepted and that  
 of Amar Singh rejected.*

**APPELLATE CIVIL.**

*Before Tek Chand and Agha Haidar JJ.*

HARPARSHAD-TULSI RAM (PLAINTIFFS)

Appellants

*versus*

JINDAR PARSHAD-NAIM KANWAR

(DEFENDANTS) Respondents.

**Civil Appeal No. 1210 of 1932.**

*Indian Contract Act, IX of 1872, Section 107—Pakka artia—Failure of the principal to take delivery of the goods ordered—Agent's right of re-sale—Property in goods—when passes to the purchaser—Appropriation.*

The plaintiffs, a firm of commission-agents, acted as *pakka artias* for the defendants for the purchase of gram. They accordingly purchased gram from third parties with their own money. Delivery of bags of gram was taken by the plaintiffs from their sellers, and they were put in *kothas* and intimation duly sent to the defendants that these goods had been appropriated to the transaction in question. On the due date the goods were offered to the defendants but they failed to take delivery. At this the plaintiffs sold the goods, after giving notice to the defendants, and subsequently filed a suit for the short-fall. The trial Court decreed the

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 Nov. 29.