perhaps there is proof of the original not being available.' Here again, *Ex parte Broadbent* (1) was cited in support of this remark, but as already pointed out, so far as one can see from the report of that case in 12 L. J. Bankruptcy 96 (1), that case really throws little or no light on the question.

I agree with my learned brother in accepting civil appeal No.616 of 1934 and the connected appeal from the final decree and dismissing civil appeal No.2241 of 1928 and the connected civil appeal No.2208 of 1929 from the final decree with costs as proposed by him.

P. S.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Young C. J. and Abdul Rashid J.

MEWA (CONVICT) Appellant

versus

THE CROWN—Respondent.

1935

Feb. 14.

Criminal Appeal No. 1300 of 1934.
Criminal Revision No. 1552 of 1934.

Criminal Procedure Code, Act V of 1898, section 367 (5) : Deliberate murder by several accused — proper sentence — Jurisdiction of High Court — to enhance improper sentences.

Held, that where three accused persons have been found guilty of a deliberate and premeditated murder there is no justification for refraining from passing the death sentence on all three, merely because it cannot be said which of the accused struck the fatal blow.

Held also, that the High Court has full authority to enhance the sentence, where the reason given for not inflicting the death sentence (*vide* section 367 (5) of the Code of Criminal Procedure) is no reason at all in law.

(1) (1834) 3 L. J. (Bankruptcy) N. S. 95.

1935

MEWA
v.
THE CROWN.

Appeal from the order of S. S. Sardar *Hukam Singh, Sessions Judge, Multan, dated 7th August, 1934, convicting the appellant.*

Nemo, for Appellant.

DEWAN RAM LAL, Government Advocate, for Crown.

KRISHAN SWARUP, for Respondents in the Cr. Revision.

The judgment of the Court was delivered by—

YOUNG C. J.—Mahmud, Mewa and Diwaya were charged with the murder of one Pir Bakhsh in the Court of the learned Sessions Judge, Multan. The learned Judge found all the three accused guilty of a deliberate and premeditated murder, but sentenced them all to transportation for life. Against the sentence the Local Government have filed an application in revision for enhancement of the sentence under section 439 of the Criminal Procedure Code. We have also three appeals against the convictions to consider.

The facts of this case are clear. Pir Bakhsh was acting as a *lambardar*. It was his habit to assist the Police in all criminal matters and in the course of his duties he gave information to the Police concerning crimes committed by Mewa and Mahmud. Some days before the murder, Allah Diwaya, a relation of Mewa, came to Pir Bakhsh in the presence of Ahmad Yar and Moosa, who have given evidence, and told the deceased that he ought to stop giving information to Police, and, if he did not, something would happen to him.

On the evening of the 30th May, 1934, Pir Bakhsh and his nephew, Ahmad Yar, were attacked by the three accused who had hid themselves in ambush to wait for their arrival. Five other persons hearing

the shouts of Ahmad Yar came to the spot and they gave evidence that they saw the murder being committed. There were, therefore, in all six eye-witnesses. There is no reason to doubt the evidence of any one of them. They were not moved by enmity or had any motive falsely to accuse the three appellants of murder. The learned Judge has believed this evidence and we agree with him. The first information report was made without any delay and all these facts and the names of the witnesses were recorded therein. The accused produced no defence.

The medical evidence records that there were as many as 15 injuries on the deceased, no less than 10 of them being on the head. The Civil Surgeon in his evidence says that the right temporal and occipital lobes of the brain were pulped. There can be no doubt that the three accused deliberately lay in wait in ambush in order to murder the deceased. There was a deliberate intention to murder. The nature of the beating corroborates the oral evidence of Moosa and Ahmad Yar on this point. The learned Sessions Judge has come to the same conclusion, but he decides that because it cannot be said which of the accused gave the blow which caused death, he cannot inflict the sentence of death and that transportation for life under the circumstances is proper. The learned Judge relies upon a decision of this Court, *Tara Singh* v. *Emperor* (1).

We are clearly of opinion that in circumstances such as these there is only one penalty which ought to be imposed and that is death. The mere fact that it is impossible to say which of the accused actually inflicted the fatal wound is no reason at all for refraining from passing the death sentence, where the Court

(1) (1932) 137 I. C. 282.

1935

MEWA
v.
THE CROWN.

is satisfied that there was a common intention to murder, brutally carried out, and that all took part in the beating, the result of which was death. In this particular case there being no less than 10 wounds on the head the probability is that each and every one of the accused inflicted a head blow. The only other alternative possibility might be that one of the accused confined himself to beating the head to a pulp while the other two confined their attention to the body. It would make no difference if either of these two alternatives be the fact. If two of the accused, knowing that one of their party was deliberately beating the head of the deceased to pulp, still went on beating the body of the deceased, there would be nothing to choose in the liability of all three. In so far as there may be authorities of this Court, as suggested by the learned Sessions Judge, which state that the sentence of transportation for life is proper under circumstances such as these, we emphatically disagree.

It has been argued that it is not proper, where the lower Court passed a substantial sentence of transportation for life, for the High Court to interfere. We cannot agree, however, with this argument. The High Court has power to enhance any sentence. Further the lower Court must give, under section 367, sub-section (5), reasons why the normal sentence of death is not passed. The reason given by this learned Judge is no reason in law. This Court has full authority to enhance any sentence, if it considers that the sentence passed in the lower Court is improper. Whether this Court will interfere or not will depend on the facts of each case.

We accept the application in revision in this case, set aside the sentences of transportation for life and

1935

MEWA
v.
THE CROWN.

as there is no reason to discriminate between the accused impose in their place in all three cases sentences of death and direct that Mahmud, Mewa and Diwaya be hanged by the neck until they are dead. All the appeals are dismissed.

A. N. C.

Appeals dismissed;
Revision accepted.