

represents the witness's statement as a whole. Whenever a witness denies having made a previous statement it is the obvious duty of the Judge to apply his mind to the question whether he is satisfied that that denial is to be rejected.

\* \* \* \* \*

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

A. N. K.

---

### APPELLATE CRIMINAL.

*Before Din Mohammad J.*

JAIMAL SINGH AND ANOTHER—Appellants.

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 710 of 1933.

*Criminal Procedure Code (Act V of 1898), SS. 154, 169, 170 — Complaint to Police — Aggrieved persons prepared to support their allegations by positive evidence — Police officer in the same position as a Magistrate holding enquiry in cases triable by a Court of Session — Tendency in this country to implicate innocent persons along with guilty.*

*Held*, that where definite allegations are made by aggrieved persons which they are prepared to support by positive evidence, apparently free from taint, it is generally not the function of the police to play the role of Judges and to pronounce their verdict on the truth or falsehood of those allegations. In such cases they are bound to send up the accused for trial and not to discuss the probabilities or the improbabilities of the case and come to a final decision of their own. But unfortunately in this country there is a tendency to implicate innocent persons along with the guilty whenever any occasion arises in that respect, and not only the Courts but the investigating officers must proceed cautiously when they are faced with that situation. To restrain them altogether from using their discretion in such cases would prove detrimental to the interests of the public and would lead

1939

THE CROWN  
v.  
JAIWAN DAS.

1938

Nov. 3.

1938  
 JAIMAL SINGH  
 v.  
 THE CROWN.

to unnecessary harassment of persons who had absolutely no hand in the crime. A police officer is in the same position as a Magistrate holding enquiry in cases triable by a Court of Session and it is well settled that such Magistrate has power to discharge an accused person if the evidence against him is palpably false or legally insufficient and this in spite of the fact that the function of sifting the truth or falsehood of that evidence is within the competence of the Sessions Judge alone.

*Appeal from the order of Mr. D. R. Budhwar, Sub-Divisional Magistrate, exercising enhanced powers under Section 30, Criminal Procedure Code, Rupar, dated 26th July, 1938, convicting the appellants.*

B. R. PURI and GULLU RAM, for Appellants.

MALIK MOHAMMAD AMIN, for Advocate-General, for Respondent.

DIN  
 MOHAMMAD J.

DIN MOHAMMAD J.—This judgment will dispose of Criminal Appeals Nos. 710 and 865 of 1938. The former has been presented by Jaimal Singh and Naranjan Singh through counsel while the latter has been submitted by Sarwan Singh through the Jail authorities. These appellants were convicted of an offence under section 326 read with section 34, Indian Penal Code, and each sentenced to five years' rigorous imprisonment.

This is a peculiar case in which the investigating agency was at loggerheads with the complainant. In the first information report made by Dalip Singh, he had stated that while Sarwan Singh and Naranjan Singh held him fast, Jaimal Singh had given a blow with a *safajang* on his right leg cutting it off clean, and that this occurrence had been witnessed by Maluk Singh, Naranjan Singh, Surjan Singh and some other persons who were known to Maluk Singh. The motive for the attack was also stated in detail. The Sub-Inspector of Police who held the investigation after examining the witnesses produced by Dalip Singh did

not believe that Jaimal Singh and Naranjan Singh had participated in the assault and consequently sent up Sarwan Singh alone on the strength of a few witnesses in whom Dalip Singh placed no reliance. Dissatisfied with this investigation, Dalip Singh made a representation to the authorities on which the Deputy Superintendent of Police was deputed to hold further investigation in the matter. He too agreed with the Sub-Inspector. On receiving the chalan the prosecuting Sub-Inspector reported to the Superintendent of Police that the chalan as sent up would fail even as against Sarwan Singh inasmuch as the witnesses who had been put forward to support the case against him had not made such statements as would lead to his conviction. Despite this report the previous chalan was not amended in any manner. Dalip Singh then put in a private complaint reiterating the allegations made by him in the first information report and the proceedings in the complaint were taken along with the chalan. The Magistrate after recording the evidence of both sets of witnesses came to the conclusion that the Sub-Inspector had conducted himself in an objectionable manner and that Dalip Singh had succeeded in bringing home the offence to all the three persons originally implicated by him in the first information report. He accordingly convicted them as stated above.

I may remark at once that I am not prepared to say that the procedure adopted by the police in this case cannot be approved in any manner. It is true that in cases where definite allegations are made by aggrieved persons which they are prepared to support by positive evidence, apparently free from taint, it is generally not the function of the police to play the role of Judges and to pronounce their verdict on the

1938

JAIMAL SINGH

v.

THE CROWN.

DIN

MOHAMMAD J.

1938

JAIMAL SINGH

v.

THE CROWN.DINMOHAMMAD J.

truth or falsehood of those allegations. In such cases they are bound to send up the accused for trial and not to discuss the probabilities or the improbabilities of the case and come to a final decision of their own. But unfortunately in this country, as has been noticed so often, there is a tendency to implicate innocent persons along with the guilty whenever any occasion arises in that respect, and not only the Courts but the investigating officers must proceed cautiously when they are faced with that situation. To restrain them altogether from using their discretion in such cases would prove detrimental to the interests of the public and would lead to unnecessary harassment of persons who had absolutely no hand in the crime. A police officer in my view is in the same position as a Magistrate holding inquiry in cases triable by a Court of Session and there is a string of rulings which lay down that such Magistrate has power to discharge an accused person if the evidence against him is palpably false or legally insufficient and this in spite of the fact that the function of sifting the truth or falsehood of that evidence is within the competence of the Sessions Judge alone. I do not, therefore, agree with the Magistrate that the conduct of the police in this case necessarily pointed to the conclusion that they had been actuated by sordid motives. Both the Sub-Inspector and the Deputy Superintendent of Police may have honestly believed that Dalip Singh was falsely implicating both Jaimal Singh and Naranjan Singh and on that ground they were quite justified in not showing their willingness to send up the case against them.

Coming now to the merits of the case before me, I am not satisfied that the case against Jaimal Singh and Naranjan Singh is above suspicion. The state-

ment of Dalip Singh has been corroborated by Mal Singh, Amolak Singh and Surjan Singh. Mal Singh was not mentioned in the first information report although he states that he was going ahead of Amolak Singh and Surjan Singh and was thus in close proximity to Dalip Singh and the first to see the occurrence. He has admitted that Jiwa Singh, brother of Jaimal Singh, had instituted a criminal case against his brother Rulya Singh, and that Chhanga, an uncle of Jaimal Singh, had obtained a decree against him in the execution of which his she-camel had been attached. Moreover, the Magistrate has himself remarked that this witness had been prevaricating and, in these circumstances, it would be unsafe to rely on his statement. Amolak Singh is a first cousin of Dalip Singh and, although in the first information report, it had been alleged that both Dalip Singh and Amolak Singh were coming together from their fields, at the trial they did not adhere to this story and Amolak Singh professed to have arrived at the scene of occurrence only when the accused had assaulted Dalip Singh. Surjan Singh is a son of *Mussammatt* Ram Piari and is complaisant enough not to object to her living with Dalip Singh in immoral circumstances and in this respect does not see eye to eye with his brother Sarwan. It is further significant that Naranjan Singh who had been named as an eye-witness was not at all produced at the trial. There is thus no impartial, independent or disinterested evidence on the record and Dalip Singh's enmity with Jaimal Singh being admitted unless there is definite evidence, direct or circumstantial, free from taint, connecting Jaimal Singh and Naranjan Singh with the offence, it would be impossible to maintain their conviction. Only one blow was struck and it is quite possible that in order to implicate

1938

---

 JAIMAL SINGH  
 v.  
 THE CROWN.
 

---

 DIN  
 MOHAMMAD J.

1938

JAIMAL SINGH

v.

THE CROWN.

DIN

MOHAMMAD J.

these two persons successfully the story of their holding Dalip Singh in their grip was introduced.

The Magistrate has laid much stress on the statement of Dr. Pirthi Chand Beri, Sub-Assistant Surgeon, who has stated that the injury inflicted on Dalip Singh was possible only if some body had held him fast. Apart from the fact that the statement made by this witness is not in the nature of expert evidence, persons cannot be convicted merely on scientific theories which may or may not be infallible. The main ground urged by this witness is that the leg should have been stationary before it could have been cut in the clean manner in which it was cut; but it is evident that in a moment of fright a person would cease walking and would thus be stationary for some period at least, however small it may be, and it is also obvious that the striking of a solitary blow with a *safajang* does not take very long. It also cannot be ignored that even in the normal posture of walking one leg is not moving fast when the other leg is in motion. Anyhow, it is a guess-work one way or the other and mere guesses do not take the place of evidence on the basis of which one can maintain a conviction with a peaceful mind. I accordingly accept the appeal of Jaimal Singh and Naranjan Singh and giving them the benefit of the doubt acquit them.

So far as Sarwan Singh is concerned, it is true that Dalip Singh does not attribute the blow to him but he does not exonerate him also from the charge altogether. His statement coupled with the evidence brought on the record on behalf of the police is in my view sufficient to bring home the offence to him. I accordingly uphold his conviction and confirm his sentence.

A. N. K.

*Appeals accepted.*