

**APPELLATE CRIMINAL.**

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*Before Young C. J. and Blacker J.*

**THE CROWN—Appellant,**

*versus*

**JIWAN DAS (ACCUSED) Respondent.**

**Criminal Appeal No. 721 of 1938-**

*Procedure — Witness confronted with a portion of his police statement — which witness repudiates — Police Officer recording that statement — to be questioned specifically with regard to that portion and not with regard to particular document representing witness's statement as a whole.*

*Held*, that when a witness is confronted with a portion of his police statement, which he repudiates, the police officer recording his statement should be questioned specifically with regard to that portion of the statement.

The practice of merely asking the police officer perfunctorily whether a particular document represents the witness's statement as a whole condemned.

*Appeal from the order of Mr. S. M. Haq, Sessions Judge, Mianwali, dated 28th May, 1938, acquitting the respondent.*

MOHAMMAD MONIR, Assistant to the Advocate-General, for Appellant.

B. R. PURI, for Respondent.

The judgment of the Court was delivered by—

BLACKER J.—\*                   \*                   \*                   \*                   \*  
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There is only one circumstance which tells in any way against the evidence of Nawaz Khan and *Mussammât Fatto*, and that is that their story in Court is inconsistent with their police statements in one particular, namely that after she was shot *Mussammât Fatto* ran away into her house. They have both denied making such statements and it must be con-

1939

Jan. 9.

1939

THE CROWN  
v.  
JIWAN DAS.

fessed that it seems unlikely that the woman, at any rate, would have made such a statement as it would be quite inconsistent with the rest of her story that she had witnessed the firing upon her son. In this connection we consider it necessary to comment upon the slipshod manner in which it has been attempted to prove that these witnesses did make the statements which they deny having made. A mere perfunctory question was put to the Sub-Inspector of Police whether the statements as a whole were recorded correctly by him during the investigation, to which he replied in the affirmative. No effort was, however, made to ask him the specific question whether the witnesses did make those two particular statements which they now deny having made and whether the witness can be certain that he recorded their actual statements accurately and could not in any way have misunderstood them. This is very important in this case first because, the witnesses deny having made the statements and secondly because it seems to us unlikely that they did make them in the exact form in which they appear in the record, and thirdly, because there is not such a very great difference between them and the statements given in Court as to put it beyond the bounds of reasonable possibility that the police officer who was not examining them with a view to extracting every detail of the story with meticulous accuracy could not have misunderstood them on this point. We consider that in every such case when a witness is confronted with a portion of his police statement which he repudiates, the police officer recording his statement should be questioned specifically with regard to that portion of the statement. We cannot but condemn the practice of merely asking the police officer perfunctorily whether a particular document

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.

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

A. N. K.

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### 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.