

**APPELLATE CRIMINAL.**

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

GURDIT SINGH—Appellant,

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 686 of 1938.

*Criminal Procedure Code (Act V of 1898), SS. 339 (A) and 537 — Accused asked whether he pleaded that he had complied with the conditions of his pardon — not before but after the charge was read out to him — Whether an irregularity curable under S. 537 — Accused stating that his statement as approver was completely false — S. 339 (A) — Whether applicable.*

Where, as in the present case, the charge had been read out to the accused and he had been made to plead to it *before* and not *after* he had been asked to plead whether or not he had complied with the terms of his pardon.

*Held*, that it was merely an irregularity under s. 339 (A) (1) curable under s. 537 of the Criminal Procedure Code as no failure of justice had been occasioned thereby.

*Held further*, that s. 339 (A) applies to a case in which the approver's case is still that he was one of the persons who had committed the offence but that the Public Prosecutor was in error in considering that he had, in any way, failed to comply with any of the conditions upon which the tender of pardon was made. The section does not apply at all to the case of an approver who has stated that his statement as an approver was completely false.

*Appeal from the order of Sardar Bahadur Sardar Teja Singh, Sessions Judge, Jullundur, dated 15th July, 1938, convicting the appellant.*

B. R. PURI and HARNAM SINGH, for Appellant.

M. SLEEM, Advocate-General, for Respondent.

The Judgment of the Court was delivered by—

BLACKER J.—Gurdit Singh, son of Mangal Singh, Jat of Mandhali, has been sentenced to death by the

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learned Sessions Judge of Jullundur on a charge under section 302 of the Indian Penal Code relating to the murders of Anup Singh and his son Malkiat Singh at Manko on the night of the 18th of June, 1936. He has appealed against this conviction and sentence and the question of confirmation of the death sentence passed on him is also before us.

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The prosecution case is that Anup Singh, the deceased, had given information to the authorities with regard to some Babar Akalis which led to a meeting of these Babar Akalis being raided by troops and police, in the course of which raid some of them were killed. Anup Singh also became an approver in the subsequent case. After the trial, having obtained his pardon, he migrated for three years to Burma but later came back to his own village Manko. The appellant is also an Akali and it is the case for the prosecution that he, together with two other persons, Kartar Singh and Ujagar Singh, conspired to murder Anup Singh to avenge the Akalis whose death they laid at his door. Accordingly on the night in question they entered his house, slew him as he slept on his roof, then came down into the courtyard, brutally murdered his young son Malkiat Singh before the very eyes of his mother *Mussammatt Ajit Kaur*, and taunted *Mussammatt Ajit Kaur* saying that they would not kill her but would leave her alive to mourn her husband just as the widows of the Akalis whose deaths had been brought about by Anup Singh were mourning their husbands' deaths. The murder took place on the night of the 18th of June, 1936, and for some time remained untraced. In the meanwhile a dacoity was committed at a village called Jagjitpur in the Kapurthala State and the present appellant was caught on the spot by the villagers and

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was injured in the course of his arrest. This happened in December, 1936. He was taken into custody by the Kapurthala Police and detained at Phagwara. His plea at the time was that he was an innocent passer-by, but the Kapurthala Police did not believe this and they kept him for some time interrogating him with regard to this dacoity. In due course Gurdit Singh gave the names of his accomplices in the dacoity and the Kapurthala police called in the aid of the Punjab police in order to secure their arrest as they were stated to be in British territory. In pursuance of this matter *Chaudhri* Bhim Singh, an Inspector of the Punjab Criminal Investigation Department visited Phagwara on 5 or 6 occasions during the time that the appellant was in custody there and used to interrogate him on various matters. Eventually one of the other dacoits, Kartar Singh was arrested and he told the police that he and the appellant had both been concerned in the murder of Anup Singh. Each of these two persons, on hearing that the other had given him away, was prepared to make a statement and accordingly on the 22nd of March, 1937, the present appellant was produced before *Lala* Daryai Lal, a Magistrate of the Kapurthala State, whereupon he made a full confession of several offences including the murder which is the subject of the present appeal. After this confession he was confined in the judicial lock-up at Kapurthala. From there he was taken by the British Indian Police to Jullundur and a report was made to the Superintendent Police that either he or Kartar Singh should be made an approver in the case. The Superintendent Police elected to make the present appellant the approver. The appellant accepted the tender of pardon and made a long and detailed statement before *Pandit* Lakshmi Chandra, Magistrate of

the 1st Class, at Jullundur. He was then put into the judicial lock-up at Jullundur. This statement was made on the 23rd of April, 1937, and the appellant was produced before the Committing Magistrate on the 4th of May. In the Court of the Committing Magistrate he entirely resiled from his evidence and stated that he had been induced to make a statement under the pressure of the police who had ill-treated him in various ways. He adhered to this position at the trial of Kartar Singh and Ujagar Singh which was held by *Sardar* Indar Singh, Sessions Judge of Jullundur. Nevertheless both the accused in that case were convicted by the learned Sessions Judge. They appealed to the High Court where the conviction of Kartar Singh was upheld but Ujagar Singh was acquitted as there was some doubt in the minds of the Judges of the Division Bench as to his identification. Thereafter the learned Public Prosecutor granted a certificate that the appellant had forfeited his pardon and he was also put upon his trial. He was tried by the learned Sessions Judge of Jullundur and convicted and sentenced to death.

A preliminary objection was taken against the trial that the provisions of section 339-A of the Criminal Procedure Code had not been carried out. There were two objections: the first was that the charge had been read out to the accused and he had been made to plead to it before and not after he had been asked to plead whether or not he had complied with the terms of his pardon. The record bears out that this irregularity did occur, but we are satisfied after hearing counsel that it is an irregularity curable under section 537 of the Criminal Procedure Code and that it need not detain us. The second objection had more

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substance in it. It was to the effect that although the appellant had pleaded that he had complied with the conditions of the pardon, the learned Sessions Judge had not come to a finding with the aid of the assessors on this point before passing judgment. The position of the learned Sessions Judge was that section 339 had no applicability at all to the case, and after hearing counsel on this point we agree with the learned Advocate-General that the learned Sessions Judge's view is correct. In our opinion section 339-A does not apply at all to the case of an approver who has stated that his statement as an approver was completely false. In the very nature of the things it cannot so apply. Where the approver's case is that the statement which he made on a tender of pardon was entirely false, it is impossible to decide whether he is now telling the truth without deciding the whole case and deciding that he was actually a murderer. In other words it would be begging the question. We agree with the learned Advocate-General that section 339-A clearly applies to a case in which the approver's case is still that he was one of the persons who had committed the offence but that the Public Prosecutor was in error in considering that he had in any way failed to comply with any of the conditions upon which the tender of pardon was made. This appears to us to be the only reasonable interpretation of the law on the subject. We, therefore, overrule the objection.

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

A. K. C.

*Appeal dismissed. Sentence confirmed.*