

APPELLATE CRIMINAL

Before Harnam Singh and Kapur, JJ.

NIKKA SINGH, son of MANA,—Convict-Appellant,

versus

THE STATE,—Respondent.

Criminal Appeal No. 36 of 1950.

1950

Dec. 11

High Court of Punjab—Whether competent to hear the appeal—When the locality where offence committed transferred to another State after the commission of the offence and the filing of duly instituted appeal in the High Court—Criminal Procedure Code (V of 1898), Section 177—All crimes local—Section embodying the general rule of Jurisdiction—Court using statement of witness made before Police for corroborating evidence taken by it—Legality of—Proper use of statements made by witnesses before Police—Criminal Procedure Code (V of 1898), Section 162—Extra-Judicial Confession—Not put to accused in his examination under section 342 of the Code of Criminal Procedure—Whether can be considered in determining his guilt.

A preliminary objection was raised as to the Jurisdiction of the Punjab High Court to hear the appeal on the ground that the village Bhundar, where the crime was committed, had, with effect from the 25th January 1950, ceased to form part of the Punjab State as having been included in the Patiala and East Punjab States Union. The appellant had been convicted and sentenced to death penalty and various terms of imprisonment on the 13th January 1950. He filed appeal in the High Court on 21st January 1950 and it was on 25th January 1950 that village Bhundar was transferred to Patiala and East Punjab States Union.

Held (repelling the contention) that the offence was committed in the Punjab State and the mere fact that the particular locality of Bhundar had ceased to be part of Punjab State did not take away the Jurisdiction of the Punjab High Court to hear the duly instituted appeal.

It is a general rule of law that all crimes are local as Section 177 of the Code of Criminal Procedure enacts that every offence shall *ordinarily* be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. That section embodies the ordinary or general rule of Jurisdiction. The word 'Ordinarily' occurring in section 177 of the Code of Criminal Procedure means "Except in the cases provided hereinafter to the contrary" The rule in section 177 of the Code of Criminal Procedure,

Nikka Singh should, therefore, be read subject to any special provision of law which may modify it, the exceptions contained in the Code of Criminal Procedure not governing the point in controversy.

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Emperor v. Mahbir (1), *Emperor v. Ram Naresh Singh and others* (2), *Emperor v. Ganga* (3), *Emperor v. Sayer Uddin Pramanik* (4), relied upon.

That the continuation of a duly instituted appeal is a right which cannot be taken away except by a clear indication to that effect in some new enactment and such an indication did not appear in section 8 of Provinces and States (Absorption of Enclaves) Order 1950 or in any other provision of the order and therefore the court of appeal from the Judgment passed by the Sessions Judge, Ludhiana, in the present case is the Punjab High Court.

Venugopala Reddiar and another v. Krishnaswami Reddiar and another (5), relied upon.

The judgment of the Sessions Judge under appeal proceeded, *inter alia*, on the statements of witnesses made before the Police.

Held that it was not open to the Sessions Judge to use such statements for the corroboration of evidence given by the witness before him as section 162, of the Code of Criminal Procedure, enacts that the police statement of a witness who has been called by the prosecution can be used by the accused for the purpose of contradicting that witness under section 145 of the Indian Evidence Act and that such a statement cannot be used by the prosecution for the purpose of corroborating the statement of that witness under section 157 of the Indian Evidence Act.

Hazura Singh v. Crown (6), relied upon.

That the extra-Judicial confession of the accused could not be taken into consideration in determining his guilt when it was not put to him in his examination under section 342 of the Code of Criminal Procedure.

Dwaraka Nath Varma and another v. Emperor (7), referred to.

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- (1) I. L. R. (1911) 33 All. 578.
 - (2) I. L. R. (1912) 34 All. 118.
 - (3) I. L. R. (1912) 34 All. 451.
 - (4) I. L. R. 1938 (2) Cal. 357 D. B.
 - (5) 1943 A. I. R. (F. C.) 24.
 - (6) (1949) 51 P. L. R. 327.
 - (7) 1933 A. I. R. (P. C.) 124.

Appeal from the order of Shri M. R. Bhatia, Sessions Judge, Ludhiana, dated the 13th January 1950, convicting the appellant. Nikka Singh
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C. RAI and HANS RAJ SACHDEVA, for Appellant.

RAM PARSHAD KHOSLA, for Advocate-General, for Respondent.

JUDGMENT

HARNAM SINGH J. This order disposes of Murder Reference No. 7 of 1950 and Criminal Appeal No. 36 of 1950.

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Nikka Singh, Mit Singh and Nihal Singh were tried under sections 148, 302|149, 395|397|149, 307|149 and 436|149 of the Indian Penal Code, hereinafter referred to as the Code. By order, dated the 13th of January 1950, the trial Court has convicted Nikka Singh appellant under section 302 read with section 149 of the Code for causing the deaths of Maghar Singh, Mst Dani, Nachhitar Singh, Mehar Singh and the infant child of Zora Singh and sentenced him to death subject to the confirmation of the sentence of death by the High Court. The trial Court has then convicted Nikka Singh appellant under sections 148, 395|397|149, 307|149 and 436|149 of the Code and sentenced him to rigorous imprisonment for two years, seven years, ten years and five years, respectively. Giving the benefit of doubt to Nihal Singh and Mit Singh the trial Court has acquitted them.

In convicting Nikka Singh the trial Court has ordered the sentences of imprisonment to run consecutively if the sentence of death passed on Nikka Singh appellant is not confirmed by the High Court.

Briefly summarised, the prosecution case is that Maghar Singh, brother of Nikka Singh, appellant, used to tease Mst Dani, wife of Zora Singh, P. W. 19, and in April 1948 Maghar Singh had stolen the wheel bearings of the *gadda* of Zora Singh. The matter was reported to the police and during the investigation

Nikka Singh that followed the Police Sub-Inspector recovered the stolen articles. A case was put in Court and summonses were issued to the witnesses for appearance in Court. On receipt of summonses by Zora Singh P. W. 19 Maghar Singh came to the house of Zora Singh and threatened him for having received the summonses. Seeing that Maghar Singh was armed with a rifle Zora Singh P. W. 19 ran into his house for safety. Indeed, Maghar Singh on coming to the house of Zora Singh shot at him. In that incident Zora Singh who was burnt to death gave Maghar Singh, brother of Nikka Singh appellant, *soti* blows with the result that the latter died as a result of those blows. In those proceedings no one was prosecuted for the murder of Maghar Singh, brother of Nikka Singh, appellant.

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On the 13th of October 1948, between 9 and 10 a.m. nine men armed with sten-guns, rifles and other deadly weapons shot down Mehar Singh besides setting on fire the house of Narain Singh. Nachhitar Singh, Maghar Singh, Mst. Dani and Zora Singh's infant child were burnt to death in the house of Narain Singh. The culprits also fired at Jagrup Singh and Narain Singh causing injuries and committed dacoity in the house of Sher Singh. Mst. Rattan Kaur, P. W. 14, was also injured in the incident. Nikka Singh, Mit Singh and Nihal Singh were prosecuted for having participated in the incident. Mit Singh and Nihal Singh have been acquitted while Nikka Singh has been convicted as stated above.

Nikka Singh appeals from the judgment of the trial Court passed on the 13th of January 1950.

The incident was still in progress when Atma Singh P. W. 9 left for police station Ballianwali in Jind State (now in Patiala and East Punjab States Union) for making a report. Learning on the way to Balianwali that the Sub-Inspector Balianwali was at village Dhad, Atma Singh went to village Dhad and reported the matter to Sub-Inspector Surjit Singh, P. W. 22. at 10-45 a.m.

Sub-Inspector Surjit Singh then went to the spot, the distance being two and a-half or three miles between Dhad and Bhundar villages. Before the Sub-Inspector reached village Bhundar the culprits had left the spot. Reaching the spot Sub-Inspector Surjit Singh found that Narain Singh's house was on fire. He, therefore, collected people and put down the fire. Dead bodies of Maghar Singh, *Mst* Dani, Nachhitar Singh and the infant child of Zora Singh were recovered from the burnt material. Mehr Singh's dead body was found in the *chaubara*.

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Sub-Inspector Surjit Singh prepared inquest reports, P. S., P. T., P. V., P. W. and P. X., and the injury statements of Jagrup Singh, Narain Singh and *Mst* Ratto, Exs. P. Y., P. Z. and P. A. A. He also recovered empty cartridges of sten-gun and 303 and 12 bore guns from the roof of Narain Singh. He sent the report, Exhibit P. R., to Shehna Police Station and on the 14th of October 1948, the Station House Officer, Shehna, arrived when Sub-Inspector Surjit Singh handed over the investigation to him.

On the 14th of October 1948, Doctor Amar Singh performed *post mortem* on the dead body of Mehr Singh and found two bullet wounds on that body. The cause of the death of Mehr Singh was rupture of right lung and heart with a bullet fired from a firearm causing shock and haemorrhage.

On the same day Doctor Amar Singh performed *post mortem* on the dead bodies of Maghar Singh, *Mst* Dani, Nachhitar Singh and the infant child of Zora Singh and found these dead bodies to be completely burnt.

In the opinion of Doctor Amar Singh the cause of deaths of Maghar Singh, *Mst* Dani, Nachhitar Singh and the infant child of Zora Singh was the burning of the bodies with fire causing shock.

In the case of *Mst* Dani Doctor Amar Singh found no faecal matter in the small and large intestines,

Nikka Singh while in the case of the other dead bodies Doctor Amar Singh found faecal matter in the small and large intestines.

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On the 13th of October 1948 at 9 p.m. Doctor Lashkari Parshad examined Jagrup Singh, P. W. 17, Narain Singh, son of Hira Singh and Mst. Ratto P. W. 14 and found them injured. The expression "9 a.m." occurring in line No. 20 at page 5 of the paper book is a mistake in print.

Atma Singh P. W. 9, Kaur Singh, P. W. 13, Mst. Rattan Kaur, P. W. 14, Mst. Nihal Kaur, P. W. 15, Bachitar Singh, P. W. 16, Jagrup Singh, P. W. 17, Pritam Singh, P. W. 18, Zora Singh, P. W. 19, Chand Singh, P. W. 21, and Surjit Singh, P. W. 22, gave evidence at the trial. Barring Doctor Amar Singh and Doctor Lashkari Parshad the other prosecution witnesses gave formal evidence at the trial and it is not necessary to deal with the evidence given by them in the judgment.

Of the witnesses mentioned in the preceding paragraph Pritam Singh was tendered for cross-examination and Zora Singh, P. W. 19, gave evidence as to the motive for the crime. Surjit Singh, Sub-Inspector P. W. 22 gave evidence as to the early stages of the investigation while the other witnesses gave evidence as to the participation of the accused in the crime.

In these proceedings *Shri* Ram Parshad Khosla, appearing for the State, urges a preliminary objection that this Court has no jurisdiction to decide the appeal. The argument raised is that as village Bhundar where the crime was committed has, with effect from the 25th of January 1950, ceased to form part of the Punjab State and has been included in the Patiala and East Punjab States Union this Court has lost jurisdiction to decide the appeal.

Now, it is a general principle of law that all crimes are local. In other words, the jurisdiction to try a person for an offence depends upon the crime

having been committed within the area of such jurisdiction. Section 177 of the Code of Criminal Procedure enacts :—

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“Every offence shall *ordinarily* be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.”

Section 177 of the Code of Criminal Procedure embodies the ordinary or general rule of jurisdiction. The word “ordinarily” occurring in section 177 of the Code of Criminal Procedure means “except in the cases provided hereinafter to the contrary”. The rule in section 177 of the Code of Criminal Procedure, should, therefore, be read subject to any special provision of law which may modify it. Counsel agrees that the exceptions contained in the Code of Criminal Procedure do not govern the point in controversy in these proceedings.

As stated above, Nikka Singh was convicted and sentenced to death penalty and varying terms of imprisonment on the 13th of January 1950. Nikka Singh appealed in this Court on the 21st of January 1950, and it was with effect from the 25th of January 1950, that village Bhundar ceased to form part of the Punjab State and was included in the Patiala and East Punjab States Union.

A similar point arose in *Emperor v. Mahbir*, (1). In that case the three applicants were charged under section 325 of the Code. Applicants Nos. 1 and 3 were sentenced to two years' rigorous imprisonment and Rs. 100 fine, and applicant No. 2 to one year's rigorous imprisonment. The particular place where the offence was committed was on the date of the commission of the offence in British India, but by virtue of a notification of the Government of India certain territory, including the place where the offence was committed, was constituted as independent Indian

(1) I. L. R. (1911) 33 All. 578.

Nikka Singh State. The applicants appealed from the conviction
 v. The State to the learned Sessions Judge prior to the constitution
 Harnam Singh came on for hearing the transfer of the territory had
 J. been actually carried into effect. On those facts Rich-
 ards, C. J., and Tudball, J., said :—

“The offence was committed in British India, the appeal was presented to the proper Court, the appellants are at present confined in a jail in British India. Under these circumstances we consider that the learned Sessions Judge had jurisdiction to entertain the appeal. The learned Sessions Judge says, ‘it’ (that is, the court of Sessions Judge of Mirzapur) is no longer a court of appeal for which persons convicted of offences committed outside British India can ordinarily come.’ The learned Sessions Judge has overlooked the fact that the alleged offence in the present case was committed in British India. We do not think that the mere fact that the particular locality has ceased to be British India before the appeal has been determined, takes away the jurisdiction of the learned Sessions Judge.”

Emperor v. Mahbir (1) was followed in *Emperor v. Ram Naresh Singh and others* (2), decided by Karamat Hussain and Chamier, JJ. and in *Emperor v. Ganga* (3), decided by Knox, J.

In the case of *Emperor v. Ram Naresh Singh and others* (2) it was held that the Sessions Court was not deprived of jurisdiction to dispose of the case which had been committed to it for trial inasmuch as the place at which the offence had been committed had in the meantime been transferred to an Indian State.

(1) I. L. R. (1911) 33 All. 578.
 (2) I. L. R. (1912) 34 All. 118.
 (3) I. L. R. (1912) 34 All. 451.

In the case of *Emperor v. Ganga* (1), the offence was committed at a place which was then part of the Mirzapur district. Subsequently one of the persons alleged to have taken part in the offence was arrested in Bengal, and sent to Mirzapur where he was committed by the Joint Magistrate to take his trial before the Court of Session. In the meantime the place where the offence was committed had ceased to be British territory. It was held that this fact did not oust the jurisdiction of either the Magistrate or the District (Sessions) Judge of Mirzapur.

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More recently this very point was examined by the Calcutta High Court in *Emperor v. Sayer Uddin Pramanik* (2). In that case it was held that a commitment properly made is not invalidated by reason of the transfer of the place where the offence was committed to another district subsequent to the taking of cognizance but prior to the commitment.

Clearly, if the case was to be governed by section 177 of the Code of Criminal Procedure and authorities under that section the decision in the case would be that his Court has jurisdiction to decide the appeal.

Shri C. Rai points out that section 8 of the Provinces and States (Absorption of Enclaves) Order, 1950, hereinafter referred to as the Order, enacts an exception to section 177 of the Code of Criminal Procedure and this Court has no jurisdiction to decide the appeal. The relevant portion of Section 8 of the Order reads—

“ All laws in force in an enclave immediately before the appointed day shall, as from that day, cease to be in force in that enclave, and all laws in force in the absorbing unit shall, as from that day extend to, and be in force in that enclave :

Provided that anything done or any action

(1) I. L. R. (1912) 34 All. 451.

(2) I. L. R. 1938 (2) Cal. 357 D. B.

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taken under the laws in force in the enclave before the appointed day shall be deemed to have been done or taken under the corresponding law extended to, and in force in, that enclave as from the appointed day."

In applying section 8 of the Order to the present proceedings we have to bear in mind that the continuation of a duly instituted appeal is a right which cannot be taken away except by a clear indication to that effect in the new enactment. In my opinion such an indication does not appear in section 8 or in any other provision of the Order. That being so, this Court continues to possess jurisdiction to decide Murder Reference No. 7 of 1950 and Criminal Appeal No. 36 of 1950. On this point *Venugopala Reddiar and another v. Krishnaswami Reddiar and another* (1), may be seen. In such cases, the true position, is not whether there is an express provision in the new enactment permitting the continuance of pending proceedings, but whether there is any clear indication in the new enactment against the continuance of pending proceedings to their normal termination.

In these proceedings it is, however, not necessary to elaborate the point set out in the preceding paragraph for admittedly on the point in controversy before us the law in force in village Bhundar immediately before and after the 25th of January 1950 is section 177 of the Code of Criminal Procedure 1908. Indeed, on this point there is no conflict between the law in force in the Patiala and East Punjab States Union and the law in force in the Punjab State. Applying then the law in force in village Bhundar immediately before the appointed day or the correspondent law in force in village Bhundar as from the appointed day to these proceedings the Court of appeal from the judgment passed by the Sessions Judge, Ludhiana, on the 13th of January 1950, is the Punjab High Court and not the High Court at Patiala.

(1) 1943 A. I. R. (F. C.) 24.

For the foregoing reasons, I find that this Court has jurisdiction to decide the appeal.

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Before dealing with the merits of the case, I wish to notice that the judgment under appeal proceeds *inter alia* upon Exhibits D. A., D. B., D. C., and D. D., statements of Kaur Singh, *Mst. Nihal Kaur*, Bachittar Singh and Jagrup Singh made to the police during investigation. That this is so is plain from the judgment of the trial Court printed at p. 46 of the paper book. In my opinion, it was not open to the trial Court to use Exhibits D. A., D. B., D. C. and D. D. for the corroboration of evidence given by Kaur Singh, *Mst. Nihal Kaur*, Bachittar Singh and Jagrup Singh. Section 162 of the Code of Criminal Procedure enacts that the police statement of a witness who has been called by the prosecution can be used by the accused for the purpose of contradicting that witness under section 145 of the Indian Evidence Act and that such a statement cannot be used by the prosecution for the purpose of corroborating the statement of that witness under section 157 of the Indian Evidence Act. *Hazura Singh v. Crown* (1), may be seen on this point.

Turning now to the merits, I find that the extra-judicial confession of Nikka Singh appellant cannot be taken into consideration in determining his guilt. Chand Singh, P. W. 21, stated at the trial that about 10 or 11 a.m. on the 15th of October, he was at the *kassi* in village Dhad when he heard from village Bhundar sound of firing. After some time nine men including Nikka Singh appellant passed by him in that *kassi*. Nikka Singh appellant then told him of his own accord "*that he had taken the revenge for his brother's murder.*" This statement was not put to Nikka Singh appellant in his examination under section 342 of the Code of Criminal Procedure. That being so, I find that the extra-judicial confession of Nikka Singh appellant ought not to have been taken into consideration in determining the guilt of Nikka Singh appellant, on this point *Dwaraka Nath Varma and another v. Emperor* (2), may be seen.

(1) (1949) 51 P. L. R. 327.

(2) 1933 A. I. R. (P. C.) 124.

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But quite independently of the objection mentioned in the preceding paragraph the statement of Chand Singh, P. W. 21, in so far as it concerns the extrajudicial confession of Nikka Singh, appellant suffers from a serious defect. In the cross-examination of Chand Singh it was proved by the defence that Chand Singh had made no such statement in the Court of commitment. That being the case, it will be highly unsafe to act on the evidence of Chand Singh that soon after the incident Nikka Singh appellant had told him "*that he had taken the revenge of his Brother's murder.*"

And this brings me to the consideration of evidence given by Atma Singh, P. W. 9, Kaur Singh, P. W. 13, Mst Rattan Kaur, P. W. 14, Mst Nihal Kaur P. W. 15, Bachhitar Singh, P. W. 16, and Jagrup Singh, P. W. 17.

On the merits Shri C. Rai contends that the incident took place in the early hours of the 13th October 1948 and that nobody saw the incident. In this connection he refers to the evidence given by Dr Amar Singh that he found faecal matter in the small and large intestines of Mehr Singh, Maghar Singh, Nachitar Singh and the infant child of Zora Singh. As stated above, on reaching village Bhundar, Surjit Singh collected people and put down the fire and then recovered the dead bodies of Maghar Singh, Mst Dani, Nachitar Singh and the infant child of Zora Singh from the house of Narain Singh. From the evidence of Sub-Inspector Surjit Singh it appears that the culprits had left the place not very long before his arrival in village Bhundar. Sub-Inspector Surjit Singh left village Dhad at about 10.45 a.m. and he must have reached village Bhundar at about 11.30 a.m. That being so, it follows that the crime was committed as stated by the prosecution witnesses between 9 and 10 a.m.

Shri C. Rai then contends that although the incident is stated to have taken place in broad daylight in the heart of the village there is no independent

evidence in the case. In this connection he points out that Bachittar Singh, P. W. 16, and Jagrup Singh, P. W. 17, are brothers of Mehr Singh, deceased, and Atma Singh, P. W. 9, is son of Sher Singh and Mst Rattan Kaur, P. W. 14, is the wife of Sher Singh, brother of Mehar Singh, deceased, Kaur Singh, P. W. 13, is a brother of Maghar Singh deceased and Zora Singh, P. W. 19, while Mst Nihal Kaur, P. W. 15, is the widow of Bakhshi, brother of Maghar Singh, deceased and Zora Singh, P. W. 19. Clearly, it is established that the witnesses are closely related. In my opinion, however, this consideration *alone* would not be sufficient for the rejection of the evidence given by the witnesses.

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Atma Singh, P. W. 9, left village Bhundar when the incident was in progress and reaching village Dhad he reported the incident to Sub-Inspector Surjit Singh, P. W. 22, at 10.45 a.m. on the information of Atma Singh, P. W. 9, a report was sent to the police station. In the first information report Nikka Singh, appellant is mentioned as one of the culprits and apart from urging that Atma Singh, P. W. 9, should not be relied upon because he was the son of Sher Singh, counsel for the appellant has failed to point out any defect in the evidence given by Atma Singh, P. W. 9. Indeed, from the cross-examination of Atma Singh, P. W. 9, it appears that no attempt was made to challenge the statement of the witness as to the participation of Nikka Singh appellant in the crime.

Kaur Singh, P. W. 13, gave evidence that he saw Nikka Singh among the dacoits after he had closed his door and then identified Nikka Singh by his voice in the house of Mst Rattan Kaur. A perusal of the evidence given by Kaur Singh, P. W. 13, leaves the impression that he has made no effort to state what he had not perceived.

Mst Rattan Kaur, P. W. 14, stated that Nikka Singh appellant gave her a blow with the butt end of the gun and demanded the key of the safe from her. Nikka Singh belongs to village Bhundar and was known to Mst Rattan Kaur previously. There is no

Nikka Singh suggestion in the cross-examination of the witness that
 v. she was not able to identify Nikka Singh appellant
The State in the incident. Indeed, *Mst Rattan Kaur* maintained
Harnam Singh in cross-examination that she was definite that Nikka
 J. Singh participated in the incident.

Mst Nihal Kaur states that at the time of the incident she was wearing golden *dandis* and that Nikka Singh demanded the *dandis* from her, whereupon she took the *dandis* from her ears and handed them over to Nikka Singh. In the police statement *Mst Nihal Kaur* did not state that Nikka Singh demanded the golden *dandis* from her or that Nikka Singh took the golden *dandis* from her. In my opinion, this omission on the part of *Mst Nihal Kaur* is not sufficient for the rejection of evidence given by her for *Mst Nihal Kaur* has not been contradicted by her police statement that the culprits robbed her of golden *dandis*.

Bachitar Singh, P. W. 16, gave evidence that he was hiding himself behind the well when he had a look at Nikka Singh standing on the roof of Narain Singh among the culprits who were firing. The argument raised is that this witness mentioned Indar Singh ex-patwari of the village as one of the culprits. Bachitar Singh, P. W. 16, however, stated that he might have mentioned the name of Indar Singh on information supplied to him by his grandfather Narain Singh. Indeed, he stated that he did not see Indar Singh at the spot. No other criticism was made of the evidence given by Bachitar Singh, P. W. 16. In the case of Jagrup Singh the argument raised is that he mentioned to the police that amongst the dacoits there was a person resembling Kaka. Now, Indar Singh ex-Patwari and Kaka may have participated in the incident and they may not have been prosecuted for want of definite evidence as regards their participation in the crime. In any case there is not a syllable of evidence on the record to show that the explanation given by Bachitar Singh, P. W. 16, on this point is not true.

Nikka Singh Giving the matter my very best consideration I
 v. find that there is no justification for rejecting the
 The State evidence of Atma Singh, Kaur Singh, Mst Rattan
 Harnam Singh Kaur, Mst Nihal Kaur, Bachitar Singh and Jagrup
 J. Singh.

And here I wish to mention that the statement of Chand Singh, P. W. 21, that soon after the incident he saw 9 persons including Nikka Singh, appellant, passing the *kassi* where he was working is relevant to the present enquiry. Considering, however, that the *kassi* is situated at a distance of 2½ miles from village Bhundar and Chand Singh, P. W. 21, does not state that persons who passed by him in that *kassi* were armed, I am not taking into consideration the evidence given by Chand Singh in determining the guilt of Nikka Singh, appellant.

From what I have said above, the participation of Nikka Singh, appellant, in the crime is established beyond any reasonable doubt and I find that Nikka Singh, appellant, has been rightly convicted and sentenced.

In the result I confirm the sentence of death imposed upon Nikka Singh, appellant and dismiss Criminal Appeal No. 36 of 1950 *in toto*.

Before leaving this judgment I wish to mention that Nikka Singh, appellant, was convicted on the 13th of January 1950, and the appeal has been put up before us for disposal on this 11th day of December 1950. Clearly, the sentence of death has been hanging over Nikka Singh, appellant, for about a year. In these circumstances it is for the State to consider whether the case of Nikka Singh, appellant, is a fit case for the commutation of the death penalty imposed upon him.

Kapur J.

KAPUR J.—I agree that the appeal should be dismissed and the sentence of death confirmed.