

Hira Singh and ors. Vs. Emperor

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Court : Allahabad

Decided On : Dec-21-1944

Reported in : AIR1946All457

Appellant : Hira Singh and ors.

Respondent : Emperor

Judgement :

Verma, J.

1. There are twenty five appellants in this case. The first two, Hira Singh and Mahipat, have been convicted under Section 302, read with Section 149, Penal Code, and have been sentenced to death. They have also been convicted under Section 147 and sentenced to eighteen months' rigorous imprisonment, with the direction that, if the death sentences are not confirmed, the sentences under Section 147 would run concurrently with the sentences passed by the High Court on these men under Section 302. Appellants 4, 5 and 6, Gorey Lal, Ram Charan and Chhadami, have also been convicted under the same sections as appellants 1 and 2, but they have been sentenced to transportation for life under Section 302/149 and the sentence under Section 147 passed on them is the same as that passed on appellants 1 and 2. Appellants 7 to 25-Zulman, Har Charan, Dulla Ahir, Gurbila, Kamla, Rati Ram, Pearey Lal, Ganga Prasad, Pancha, Munnun, Charna, Dhooram, Balloo, Ghasita, Sabdal, Tunda, Paragi Lal, Ram Prasad and Chatura -

have been convicted under Section 147, Penal Code, and each of them has been sentenced to rigorous imprisonment for eighteen months. Appellant 3, Kalka Prasad, had been charged as an abettor of both the offences of murder and rioting. He has been acquitted by the Court below of the offence under Section 302/109, but has been convicted under Section 147/109 and has been sentenced to rigorous imprisonment for two years and to a fine of Rs. 5000 and has been ordered to undergo rigorous imprisonment for a further period of six months in case of default in payment of the fine. Along with the appellants, there were nine other accused. One of them, Ramdin, died during the pendency of the commitment proceedings in the Magistrate's Court, and eight - Dalla Chamar, Bharosa, Birjis Qadar, Janki, Mohim Singh, Mahangwa, Laljwa and Gokul Prasad - have been acquitted.

2. The incident out of which this prosecution arose is alleged to have occurred at a village called Chauka, in the district of Hamirpur, about 4 o'clock in the afternoon of 3rd January 1943, and the man who was killed was one Ram Singh. This village is situated at a distance of 80-90 miles from Hamirpur. It is necessary to state certain facts which form the background of this incident and about which there is no controversy. It appears that there is a small Indian State, called Alipura, whose territories adjoin parts of the district of Hamirpur. It is one of the group of States for which there is a Political Agent stationed at Nowgong. The capital town of this State is also called Alipura and lies at a distance of 7-8 miles from Chauka. This village, Chauka, is surrounded on all sides by villages belonging to the Ruler of Alipura State. The names of these villages are Ladra, Harpalpur, Galan and Pahari. The deceased, Ram Singh, was a resident of Ladra and has been spoken of as a Jagirdar of the Alipura State. Appellant 3, Kalka Prasad, is a substantial zamindar and cultivator and owns a considerable share in the zamindari of village Chauka, besides other villages. He has at Chauka a dera (collection house) and another building, called Bhandar Khana, which is at a distance of a few paces from the dera. He used at one time to reside at Harpalpur - one of the villages belonging to the Ruler of Alipura State and adjoining Chauka - but had, for reasons presently to be stated, to give up his residence there and to go and reside at Mau Ranipur in the district of Jhansi in or about October 1941. There has for some time past been considerable ill-feeling between the Alipura State and Kalka

Prasad which had its origin in a rivalry between the two with regard to the acquisition of further zamindari. One Anant Singh, who is said to have once been a resident of Chauka and is now residing at village Pahari, executed in September 1941 a sale deed in respect of a fractional zamindari share in village Chauka in favour of Kalka Prasad. It is alleged that Alipura State was desirous of acquiring this share and, with that object in view, instigated the parents of Anant Singh to challenge the sale deed and advanced money for financing the litigation. A sum of Rs. 2000 was advanced by the Ruler of Alipura State to Anant Singh's father, Baldeo Singh, on a mortgage executed by Baldeo Singh in favour of the Ruler's son, Kunwar Vidurji. As is usual, the preliminary skirmish took place in the revenue Court where an objection was filed by Anant Singh's mother against Kalka Prasad's application for mutation. The objection, however, was rejected and the application for mutation was granted. Anant Singh's mother, thereupon, filed a suit in the civil Court on behalf of Anant Singh, alleging him to be a minor and naming herself as his next friend, for the cancellation of the sale deed. It was alleged by the prosecution that the deceased Ram Singh, being a Jagirdar of Alipura State, was naturally siding with it and that he not only refused to pay rent himself to Kalka Prasad but also persuaded other tenants not to pay their rents to Kalka Prasad but to continue to pay to Anant Singh and his father, Baldeo Singh.

3. On 16th July 1942, a complaint was filed in the Court of the Sub-Divisional Officer of Mahoba by Thakur Prasad, a Mukhtar-i-Am of Kalka Prasad, under Sections 147, 426, 447 and 604, Penal Code, against 13 men, one of whom was the deceased Ram Singh. It is further alleged that, somewhere about this time, Ram Singh caught hold of Thakur Das and forcibly took him to his village Ladra, but that Ram Singh's father, Sheoraj Singh, intervened and persuaded Ram Singh to let Thakur Das go on the latter's promising that he would not take the matter to Court, but Thakur Das did file a complaint against Ram Singh which was, pending at the time of the present occurrence; On 14th August 1942, Kalka Prasad sent an application to the District Magistrate of Hamirpur in which he gave a history of the disputes between him and the Alipura State and gave details of various actions on the part of various officials of the State which, according to him, amounted to high-handedness and oppression. This application is Ex. P-56 and is printed at pp. 14-17 of our paper book. It was alleged in para. 20 of this application that the

applicant had been 'practically deprived of all the control over his landed property at Chanka,' that Kashipur people had also turned hostile, that there was 'an apprehension in the mind of the petitioner that he would be killed if he would make an attempt to reach any of those villages,' and that his business at Harpalpur had also to be entirely closed. In para. 9 of the application it was alleged that

the petitioner, apprehending danger to his life and risk to his property, left Harpalpur and village Chauka, which was the permanent abode of the petitioner, with bag and baggage and settled at Mau in October last.

4. It is said that Kalka Prasad had addressed a petition to the Political Agent also. The prosecution case was that, by the end of the year 1942, matters had come to such a pass that Kalka Prasad had become desperate and had decided to adopt measures of retaliation and that, with that object in view, he began to collect a number of his servants, tenants, etc., in the last week of December 1942, at a village called Madhoganj and at Chauka. Three reports were lodged at the State Kotwali at Alipura on 31st December 1942. The first in point of time was one made by Anant Singh, whom we have mentioned above, at 11 A.M. In this report he, accused Kalka Prasad of tyranny and proceeded to state as follows:

Last night I came to know from Mulla Barhai of Chauka that Kalka Prasad had collected about one hundred persons armed with lathis in Chauka in order to make a raid on us and that we should be careful. Today in the morning at Markol, I went to Chauka to look up. There I found about 50 persons sitting outside his house and I heard the noise of some persons inside the house. Thereupon, I, having heard and seen it, came and related the facts to my father, Baldeo Singh, in Pahari. He has sent me to make a report because there is an apprehension that they might come to Pahari and make an attack. I hereby pray that we might be protected.

5. The second report was received at the Kotwali at 2 P.M. It was in writing and was on behalf of the Jagirdar Thakurs and zamindars of Mauza Ladra and was dated a few days earlier. It was entered in the general diary where it was stated that it had been brought by one Ramdin Chamar, resident of Mauza Pahari. The entry further was that Ramdin had stated that one Basor of Mauza Ladra had brought that letter and given it to Ramdin's brother, Tautia, Chowkidar, and that

Tautia, being unable to come himself owing to an injury in his foot, had sent it through Ramdin. The contents of the report were copied out in the general diary and were as follows:

Today at about 11 P.M. some bad characters from outside came near the village. Thereupon the dogs barked loudly. We thought some wild animal had come. When we went to see there we heard the sounds of men. When we went to take up arms, they got frightened. It appears that they must be in some nearby jungle.

6. The third report was also in writing and was from one Sheikh Chand, a Tahsildar in the service of Alipura State. This report was received at 8 P.M. and was dated 30th December 1942. Its contents, as copied out in the general diary, were as follows:

Sir, It is submitted that today at 6 P.M. I have heard from Manni Lohar, resident of Kaukupura, who works at Madhoganj at the place of Kalka Prasad, that 100 or 125 persons armed with lathis have assembled at Madhoganj. Today the whole day the food was cooked. Tonight in the morning a criminal assault would be made on Kunwar Ram Singh of Ladra and on the people of Chauka. I have sent a constable to Alipura so that all the people in the village might become careful. Further your orders will be carried out.

7. Sheikh Chand was examined as a witness by the prosecution in the Court below. There he explained that Manni Lohar had given the information to his peon, Hari Singh, and that the peon had conveyed it to him (the Tahsildar). The Kotwali police informed the State authorities of these reports and possibly also sent copies to them. Copies of these reports were forwarded through the post by one Sheoraj Singh, describing himself as 'Dewan, Alipura State,' with a covering letter dated 1st January 1943 (Ex. P-38), to Rai Bahadur Sham Singh, Superintendent of Police, Hamirpur. The cover reached Hamirpur on 4th January but was not received by Mr. Sham Singh until the evening of 4th January 1943, as the occurrence in question had already taken place and Mr. Sham Singh had had to leave Hamirpur for Chauka at 3 A.M. in the morning of 4th January and could not get back to Hamirpur until 8 O'clock that evening.

8. The prosecution case as to the occurrence in question was as follows. It was alleged that on the morning of 3rd January 1943, one Ghansu came to Ram Singh and told him that Mohim Singh, Gokul Prasad and Ramdin wanted him to go and see them at Chauka ; that it being a Sunday a weekly bazar was held in that day at Chauk ; that Ram Singh went there in the afternoon ; that in the bazar, near the shop of one Raja Ram, Mohim Singh met him and began to talk to him, that then appellant 1, Hira Singh, approached Ram Singh from behind and caught hold of him by the waist and Birjis Qadar caught him by the neck; that 85 or 36 other men, all armed with lathis, came; that some of them lifted Ram Singh up and others surrounded him and all of them carried him to the dera of Kalka Prasad and that on the way they beat Bam Singh with lathis. According to the medical evidence, Ram Singh had died about 8-30 P.M. on 3rd January 1943. It thus appears that he died sometime after he had been carried to the dera. It is alleged by the prosecution that news of this incident spread at once and that men belonging to the police force of Alipura State and others, who were the partisans of the State, surrounded the dera and the Bhandar Khana of Kalka Prasad and prevented those who were inside from escaping. The Mukhia of Chauka, Maharaj Singh (P.W. 34), had witnessed the whole occurrence, and had been instrumental in getting the dera and the Bhandar Khana surrounded. He also des-patched the chowkidar Desraj (P.W. 32) to the police-station at Mahob Kanth to lodge a report. According to Desraj, the police, station is at a distance of ten miles from Chauka and he reached there about 10 or 11 P.M. He could not make a report until the morning for, according to him, the Sub-Inspector was asleep and he had not the courage to wake him up. The report made by the chowkidar is Ex. P-10. It was lodged at 6 A.M. on 4th January and was to the effect that Ram Singh of Ladra had come to the market at Chauka and that the servants of Kalka Prasad had caught hold of him and had carried him away. In the meantime, news of the occurrence had reached Anant Singh - who has already been mentioned - at Pahari about 5 P.M. on 3rd January and he had started at once for Alipura and had lodged a report (Ex. P-23) at the Kotwali there at 7 P.M. stating that he had received information that 40 or 50 men, armed with lathis, whom Kalka Prasad had collected and who were sitting at his house at Chauka, had carried away Ram Singh at 4 P.M., suspended to lathis, to the house of Kalka Prasad at Chauka and had killed him

and that the corpse was in that house. It appears that, on receiving this information, the Ruler's brother, Kunwar Virendra Singh alias Babu Raja, who is described by Mr. Sham Singh as 1 the Dewan of Alipura State, started at once by car for Nowgong and, taking a letter (Ex. p-37) from the Political Agent, proceeded to Hamirpur and arrived at the bungalow of Mr. Sham Singh, the Superintendent of Police, about 3 A.M. It was stated in the Political Agent's letter that, as a result of the quarrel between Kalka Prasad and the Alipura Thakurs there had been an affray in which a Jagirdar of the Alipura State had been killed, and a request was made that suitable action be taken. Mr. Sham Singh started at once and went to Sumerpur police station where he found Circle Inspector Abrar Ali and directed him to take guards with him and to proceed to Chauka. Mr. Sham Singh himself went first to the police station Mahob Kanth and arrived there about 6-30 A.M., while the report of Desraj Chowkidar was being recorded. He took the station officer, Abdur Rahman Khan, with him and proceeded to Chauka. He arrived there shortly after the arrival of the Circle Inspector, Abrar Ali, and while the latter was making arrests.

9. It was alleged by the prosecution that during the night the men who were inside the dera had fired guns at the people who were surrounding it. Two men, Malkhan and Sarmana, had received gunshot wounds. Of the appellants, nine - Mahipat, Zulman, Har Charan, Dulla Ahir, Gurbila, Kamla, Rati Ram, Pearey Lai and Ganga Prasad - were arrested in the dera, and fourteen, namely, those other than appellant 3, Kalka Prasad, and appellant 25, Chatura, were arrested in the Bhandar Khana. Chatura was, later in the day, brought to the Circle Inspector by one Sheoraj Singh of Chauka and was arrested. Kalka Prasad surrendered himself in the Magistrate's Court in July 1943. The arrests at the dera and at the Bhandar Khana were made by Circle Inspector, Abrar Ali, in the presence of the Superintendent of Police. The dead body of Ram Singh was recovered from the dera. On a search of the building the Circle Inspector found two guns and some ammunition in that house. A number of lathis were recovered from the possession of the men who were arrested at the Bhandar Khana as well as at the dera and among them was a lathi recovered from the possession of appellant 1, Hira Singh. This lathi appeared to the Circle Inspector to be blood - stained. He accordingly cut out those portions which appeared to be bloodstained and sealed them up,

after observing the necessary precautions, and subsequently sent the packet to the Chemical Examiner who, later on, forwarded the pieces of the lathi, along with other articles, to the Imperial Serologist. It may be mentioned here that it was reported that those pieces of the lathi were stained with human blood. In the course of his investigation the Circle Inspector was told that a number of men, who had also participated in the commission of the crime, had escaped before the dera and the Bhandar Khana had been surrounded. He accordingly deputed certain police officers for arresting these men and the eight men, who have been acquitted by the Court below, were arrested at various places and on various dates. He was also told that the zamindar, Kalka Prasad, had organised this attack on Ram Singh. He accordingly took steps for his arrest and ultimately reported for proceedings under Sections 87 and 88, Criminal P. C, being taken against him.

10. The investigation was in the hands of Circle Inspector, Abrar Ali up to 11-30 A.M. on 6th January 1948. It was then taken over by Pt. Balwant Singh, Circle Inspector of Path, in whose circle Chauka is situated. The statements of a number of witnesses, including the Mukhia, Maharaj Singh, Sunwar, Khumna, Sheoraj Singh (the father of the murdered man), Sarmana, Jangi and Govind Das, were recorded by Abrar Ali on 4th January 1948. The statements of Hardeo Singh, Malkhan, Mizaji and others were recorded on 6th January. Sarmana and Malkhan, who had received the gunshot injuries, were sent to Mahoba for medical examination. Among the men arrested, Hira Singh, Mahipat, Balloo and Chatura had also certain injuries-bruises, swellings - and abrasions - on their persons and they were also in due course medically examined.

11. As already stated, the occurrence is alleged by the prosecution to have taken place in broad day light in the market place at Chauka. Seven men who are residents of Chauka, have been produced by the prosecution to prove what is alleged to have taken place in the market place. They are the Mukhia, Maharaj Singh, P.W. 84, who has already been mentioned, Hardeo Singh, P.W. 37, Jangi, P.W. 39, Govind Das, P.W. 40, Mizaji, P.W. 41, Thakura, P.W. 42, and Durjana, P.W. 43. Four more witnesses, Mangal, P.W. 44, Kunji, P.W. 45, Ram Prasad, P.W. 46 and Badlu, P.W. 47, who are residents of Harpalpur, have also been produced as eye-witnesses of the incident in the bazar. They are shop-keepers

who had come and kept shops in the bazar at Chauka on that day. Besides these eleven witnesses, who deposed to have seen what is alleged to have taken place in the bazar, two witnesses, Sunwan, P.W. 48, and Khumna, P.W. 49, have been produced. They deposed that they were present at Kalka Prasad's dera when Hira Singh and others, armed with lathis, had gone out and had subsequently returned to the dera with Ram Singh. Sunwan stated that he had been called to the dera in connection with a loan which he had borrowed from Kalka Prasad and Khumna deposed that he was working there as a labourer, preparing mud plaster for the repairs of the building. All the police officers concerned have been examined and as has already been stated, Anant Singh - the man who had executed the sale deed in favour of Kalka Prasad - and Sheoraj Singh - the father of the murdered man - have also been produced, besides other witnesses.

12. The appellants all pleaded not guilty and alleged that no such incident as was alleged by the prosecution had taken place in the bazar. Their suggestion was that Ram Singh had been killed or murdered some where else - one of the theories advanced being that he had actually been murdered by men of the Alipura State itself - and that his dead body was brought to Chauka and planted in Kalka Prasad's dera with the object of falsely implicating him and his men. It could not be denied, and was not denied, that Ram Singh's corpse was recovered from the dera and that the appellants other than Kalka Prasad and Chatura were arrested either in the dera or in the Bhandar Khana. The allegation of the defence, however, was that all these appellants happened to be present in those buildings on the evening of 3rd January 1943, in connection with the payment of their rents or of the loans which they had borrowed from Kalka Prasad and that the Alipura State men suddenly came in force, placed Ram Singh corpse in the dera and surrounded these two buildings.

13. The question, thus, that arose for consideration was whether the version put forward on behalf of the prosecution had been established by the evidence. The learned Judge below approached the case from that point of view, and we have done the same. The case was argued before us ably and exhaustively by Sir Tej Bahadur Sapru and Dr. Kailash Nath Katju on behalf of the appellants and by the Deputy Government Advocate on behalf of the Crown, and we were taken through

the entire evidence. The judgment of the learned Sessions Judge was read to us and was criticised by learned Counsel for the appellants. Having carefully considered the evidence and the arguments addressed to us, we have come to the conclusion that the learned Judge below has written a careful, well considered and well-balanced judgment, and excepting two matters subsequently to be mentioned, we find ourselves in agreement with the conclusions arrived at by him.

14. The learned Sessions Judge adverted to the notorious fact that in cases of this description there is always a tendency on the part of the complainants to rope in a number of persons in addition to those who had actually taken part in the commission of the crime. While considering the evidence given by the prosecution witnesses, he constantly kept this fact in mind. After carefully sifting the evidence, he came to the conclusion that it would not be safe to convict those of the accused who were not arrested in the dera or the Bhandar Khana barring the cases of Chatura and Kalka Prasad. He was of the opinion that the case of Chatura stood practically on the same footing as the cases of those who had been arrested in those two buildings. Chatura had injuries on his person and was arrested by Sheoraj Singh of Cbauka shortly after the arrival of the police and was brought to the Circle Inspector. It was proved by the evidence of Bhangya, P.W. 36, who is a relation of Chatura, that Chatura used to work for Kalka Prasad. So far as Kalka Prasad is concerned, the learned Judge felt that these men must have assembled at his instance or, at any rate, with his knowledge.

15. Having carefully gone through the evidence, we have come to the conclusion that the learned Judge was right in convicting those who were arrested in the dera and the Bhandar Khana and also in convicting Chatura. It appears to us that there is no reason to doubt the truth of the evidence given by the prosecution witnesses so far as these men are concerned. We agree with the Court below that, in the circumstances of this case, the evidence of identification was of no value. The two most important facts to be borne in mind are that the dead body of Ram Singh was found in the dera and that the appellants, other than Kalka Prasad and Chatura, were arrested in the dera and in the Bhandar Khana. The defence theory that Ram Singh was murdered elsewhere and that his dead body was 'planted in the dera is wholly untenable. It is impossible to believe that the dead body could have been

planted in the manner alleged by the defence. The suggestion that Bam Singh was possibly murdered by the Alipura State men themselves in order to get Kalka Prasad's men implicated is a fantastic one. Ram Singh was a Jagirdar of Alipura State and was clearly a staunch partisan of the State. On the other hand, the enmity - not only between the Alipura State and Kalka Prasad and his men, but also between Ram Singh and Kalka Prasad's Mukhtar-i-am, Thakur Das - is clearly established. We are satisfied that Ram Singh was a veritable thorn in the sides of Thakur Das and all those who were responsible for the management of Kalka Prasad's zamindari in Chauka and the neighbouring villages. Ram Singh's activities in connection with the efforts of the Alipura State to deprive Kalka Prasad of the benefits of the share which he had purchased from Anant Singh are clear. It is highly probable, therefore, that Thakur Das and his associates were desirous of getting rid of Ram Singh. Furthermore, the explanation given by the men arrested at the dera and the Bhandar Khana of their presence there at that time is wholly unworthy of belief. People who come to pay their rents or to repay the loans borrowed by them come in the morning or the forenoon, and not late in the evening. It is also highly improbable that so many men happened to arrive at one and the same time. Then, to whom were they making these payments or repayments? Neither Kalka Prasad nor Thakur Das was there. We agree with the opinion of the learned Sessions Judge that, if there had been any truth in the defence allegation that Ram Singh's body had been planted in the dera and that the men present in the dera and the Bhandar Khana had been wrongfully confined there by the Alipura State men, these facts would have been mentioned to Mr. Sham Singh. It is not suggested that any such facts were mentioned to him. We are satisfied that these men had collected there with the object of assaulting and punishing Ram Singh and were responsible for the crime. They were unable to run away or to do away with the corpse as the men of Alipura State surrounded the two buildings. The majority of these men were either the servants or the tenants of Kalka Prasad. We agree with the Court below that Chatura stands on the same footing as those who were arrested in the dera or the Bhandar Khana. In our judgment, the appellants, other than Kalka Prasad, have been rightly convicted. The finding of the learned Sessions Judge on the question of the common object of the various members of the unlawful assembly is also correct.

16. Coming now to the case of Kalka Prasad, the learned Judge below was, in our opinion, wrong in convicting him. This is the first matter in which we differ from him. It is common ground that Kalka Prasad was nowhere near the scene of occurrence. The mere facts that the unlawful assembly consisted mostly of his servants or tenants and that its common object was to do something which was in the interests of Kalka Prasad cannot lead to the conclusion that Kalka Prasad must necessarily have ordered or instigated the formation of this unlawful assembly or the commission of this crime, and that really is the whole basis of the judgment of the Court below against Kalka Prasad. Servants and partisans not unoften, on their own responsibility, do things which they consider to be in the interests of their masters or principals without the latter's knowledge or consent. After stating that on Kalka Prasad's own showing, the Alipura State were doing numerous acts hostile to the interests of Kalka Prasad, the learned Judge below observes as follows:

For these reasons, Kalka Prasad too had become desperate and naturally he wanted to have some force to collect rents from his zamindari in which he has made large investments.

17. The opinion, that Kalka Prasad had become desperate and 'naturally' he wanted to have some force to collect rents from his zamindari, is based, not on any legal evidence, but on suspicion and surmise. The learned Judge then refers to the reports made at the Kotwali at Alipura on 31st December 1942, and argues that those reports 'clearly establish' that a considerable number of people had been collected at Chauka and at Madhoganj and that Kalka Prasad was taking the law in his own hands in order to realise his dues from the tenants and that he wanted to assert his authority to counteract the influence of the State. Whatever value might be attached to these reports as showing that a number of people were collected at Chauka and at Madhoganj, there is no legal basis for the conclusion that it was Kalka Prasad who was taking the law in his own hands and that he wanted to assert his authority. The learned Judge then refers to the report made by the Sub-Inspector who had been deputed to enquire into the allegations contained in Kalka Prasad's application to the District Magistrate. This was not admissible evidence. He then relies on the evidence of a witness, Kanhaiya (P.W.

54), who has deposed that one Salley, who was a cook in the service of Kalka Prasad, had given him certain quantities of wheat and juarto to be taken from Badera to Chauka; that he got grain ground at Harpalpur; that at Harpalpur one Munna Mukhtar of Kalka Prasad gave him (the witness) five seers of ghee to be given to Birjis Qadar and that he (the witness) started with all these articles in a cart belonging to Kalka Prasad but that he was arrested on the way at Harpalpur by a constable who took him to the outpost of Harpalpur and then to Alipura with the cart containing the grain and the ghee. We were told by the learned Counsel for the Crown that Kanhaiya was arrested on 4th January 1943. The Court below has relied upon Kanhaiya's evidence for the conclusion that Kalka Prasad must have ordered these things. There is, however, in our opinion, no such 'must' about it. It may be repeated that it is nobody's case that Kalka Prasad was anywhere near Chauka or Badera or Harpalpur. These provisions might easily have been ordered by Thakur Das and Munna Mukhtar, and Salley was the man through whom their orders were conveyed to this ploughman, Kanhaiya. The fact that Kalka Prasad did not appear in Court until July 1943 is, in the circumstances of this case, of no consequence. In para. 6 of his written statement, filed in the Court of the Magistrate, he stated that he had been ill for a long time, that his illness had increased since December 1942, that, he had to remain under the treatment of the Civil Surgeon of Jhansi and that he was still under his treatment. He further stated that he never came to know that he was required as an accused in this case, otherwise he would have presented himself at once. He also said in that paragraph that he subsequently came to know that his relatives did know that he was wanted as an accused in this case but that they did not give him that information thinking that it might give him a shock which might prove fatal. In our judgment this was not an improbable explanation of the delay on his part in presenting himself before the Court. We have, therefore, come to the conclusion that Kalka Prasad ought not to have been convicted.

18. The other matter in which we differ from the learned Judge below is that of the sentence of death passed by him on appellant 2, Mahipat. So far as appellant 1, Hira Singb, is concerned, we agree with the learned Judge that that appellant deserved the extreme penalty of the law. Apart from other evidence, that furnished by the lathi recovered from his possession was extremely important and practically

conclusive. It was argued on his behalf that the allegation of the prosecution that this blood-stained lathi was recovered from his possession was not true. Reliance was placed in this connection on the list prepared by the Circle Inspector of the articles found on a search of the Bhandar Khana. This list is Ex. P-2. It may be pointed out here that there is a mistake in this document as printed in our paper-book. In the printed document there is a sentence : 'The search list of the houses of the accused will be separately prepared.' We consulted the original and discovered that the word 'houses' was wrong. The words used in the original are 'jama talashi' which mean the search of the person. Learned Counsel also relied on the next sentence in this document which is as follows:

Besides the accused persons, no other article concerning this case was recovered from the house, nor was it taken in possession of the police.

19. It may, however, be pointed out that the jargon employed by the police is somewhat peculiar. To mention only one peculiarity in this sentence, a person is obviously not an article. Apart from that, however, there are Exs. P-3 and p-4 which were both prepared at the same time as Ex. p-2. Exhibit p-3 is headed : 'List showing the articles recovered on search of the persons of the accused,' and Ex. P-4 is headed: 'List showing recovery of lathi belonging to Hira Singh, son of Lal Singh, Thakur, Accused.' Both these documents make it abundantly clear that the lathi in question was recovered from the possession of Hira Singh. Thus, Hira Singh was rightly sentenced to death. The learned Judge below imposed the same sentence on Mahipat as that on Hira Singh on three grounds : (1) that ho was a servant of Kalka Prasad, (2) that he had some injuries on his body and (3) that he took a leading part. There were, however, other men also who, on the finding of the learned Judge, had taken a leading part, for example, Gorey Lal, Ram Charan and Chhadami, and yet the learned Judge sentenced them only to transportation for life. There was nothing to distinguish the case of Mahipat from the cases of these three men. Furthermore, there were also others who were servants of Kalka Prasad or had injuries. In our opinion Mahipat ought to have been given the same sentence as Gorey Lal, Ram Charan and Chhadami.

20. For the reasons given above, we allow this appeal in two respects : (1) we reduce the sentence passed on appellant 2, Mahipat, to transportation for life, and (2) we set aside the conviction of, and the sentence passed upon, Kalka Prasad and acquit him and order him to be released forthwith unless he is required in connection with any other case. The rest of the appeal is dismissed. The sentence of death passed upon appellant 1, Hira Singh, is confirmed. It should be carried out according to law.

21. The connected reference No. 388 of 1944 has arisen thus. The learned Judge below pronounced judgment on 21st March 1944. As already indicated, among the accused there was a man called Paragi Lal, who is appellant 23, in the appeal. As we have stated above, he was acquitted of the charge under Section 302 and was convicted only under Section 147, Penal Code. Thereafter, a communication, dated 24th March 1944, was received in this Court, stating that Paragi Lal had been acquitted of the charge under Section 302 by mistake and that he too should have been convicted under that section. We have come to the conclusion that this 'reference' cannot be entertained. Rightly or wrongly, Paragi Lal has been acquitted so far as the charge under Section 302 was concerned. There is no appeal against that order of acquittal. We do not see how we can, on the basis of this communication of the learned Sessions Judge, convert the order of acquittal into an order of conviction. The so-called reference is, therefore, rejected.

22. We cannot part with this case with-out observing that the contents of the application (Ex. P-56), dated 14th August 1942, submitted by Kalka Prasad to the District Magistrate of Hamirpur, disclose a serious state of affairs. If there is any truth in, any of the allegations made in that application, it is the duty of the appropriate authorities in British India to see to it that the legal rights of a British subject are not trampled upon and that he is not subjected to oppression and tyranny. Those who are proved to have participated in the commission of the crime, out of which this prosecution arose, were wrong in doing what they did and have been punished. But it is also necessary that the grievances of Kalka Prasad and his men, if they are well-founded, be redressed.