

Tahsildar Singh Vs. State

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Court : Allahabad

Decided On : Sep-11-1957

Reported in : AIR1958All214; 1958CriLJ324

Judge : Mukerji and ;James, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 367, 512 and 512(1); [Evidence Act, 1872](#) - Sections 5 and 32(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 53

Appeal No. : Criminal Appeal No. 1387 of 1956 and Referred No. 132 of 1956

Appellant : Tahsildar Singh

Respondent : State

Advocate for Def. : K.L. Misra, Adv. General, ;K.N. Srivastava, A.G.A. and ;Pt. Ram Asrey Misra, Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, ;A.K. Misra, ;S.S. Tiwari, ;R.A. Wadhvani and ;G.K. Sahai, Advs.

Disposition : Appeal dismissed

Judgement :

Mukerji, J.

1. This is an appeal by Tahsildar Singh, aged about 39 years, resident of Khera Rathore, Police Station Bah, District Agra, against his conviction by the learned Additional Sessions Judge of Etawah. The trial was conducted by the learned Additional Sessions Judge as a Special Judge appointed to conduct certain trials which were referred to him by the State Government under a notification. The trial was held in jail because of reasons of security.

2. The incident in respect of which the appellant has been convicted took place as far back as 4-7-1940 in village Khera Rathore which is said to be the village of residence of the appellant.

3. The incident led to the death of two persons Sohanpal Singh and Ratan Singh, and in that incident, according to the prosecution case, an attempt was also made on the lives of Ram Chandra Singh and one Prahlad Singh. The appellant was also alleged to have been a member of an unlawful assembly, the common object of which assembly was to commit the murder of certain people.

4. The appellant has, in consequence, been convicted under Section 148 of the Indian Penal Code and has been sentenced to three years' rigorous imprisonment. He has further been convicted under Section 302/149 I. P. C. for the murder of Sohanpal Singh and has further been convicted under the same section for the murder of Ratan Singh and has been sentenced to death for both the murders. For the attempted murder of Ram Chandra Singh he has been convicted under Section 307/149 I. P. C. and has been sentenced to transportation for life.

In respect of the injury alleged to have been caused to Prahlad Singh the appellant has been convicted under Section 324/149, I. P. C. and has been sentenced to two years' rigorous imprisonment. There is, along with this appeal, the usual reference by the trial Judge for the confirmation of the sentences of death awarded by him to the appellant.

5. At this stage it may be pointed out that in respect of the incident out of which this conviction has arisen, there were three sessions trials: (1) Sessions Trial No. 51 of 1940, in which Gandharb Singh, Chhab Ram and Murat Ram were convicted; (2) Sessions Trial No. 66 of 1940, in which Fateh Singh was tried and

(3) Sessions trial No. 77 of 1940, in which Raghunath Singh was convicted. Gandharb Singh, Raghunath Singh, Chhab Ram and Murat Ram were convicted under Section 302/149 I. P. C. and were sentenced to transportation for life.

They were further convicted under Section 307/ 149 I. P. C. for the attempted murder of Ram Chandra Singh and were awarded five years' rigorous imprisonment each under this count. There was against them a further conviction under Section 324/149 I. P. C. for injury caused to Prahlad Singh and under this count they were sentenced to six months' rigorous imprisonment each. They were also convicted under Section 148 I. P. C. Fateh Singh was given the benefit of doubt and acquitted. An appeal was preferred to the High Court by the convicted persons and this was numbered as Criminal Appeal No. 267 of 1941. The appeal was dismissed by the High Court on the 13-8-1941.

6. A first information report of the incident was made by Khem Singh at police station Bah at 6 a.m. on the 5-7-1940. The incident was alleged to have taken place at about 8 or 9 p.m. on the 4-7-1940. Police station Bah, where the report was made, was 8 miles away from Khera Rathore, the village of incident. In the first information report the following persons were nominated as assailants:

Dhanman Singh, --

Subedar, |-- sons of Man Singh ----

Tahsildar, -- |

Gandharb Singh, son of Nawab Singh; |

|

Raghunath Singh, son of Durg Singh; | All residents

|---- of village

Fateh Singh, son of Sarwan Singh; | Khera Rathore and

| Thakurs by caste; |

|

Chhab Ram; ---- ----

and |--- Brahmans.

Murat Ram ; ----

7. As has been pointed out, only Chhab Ram, Murat Ram, Fateh Singh, Gandharb Singh and Raghunath Singh were tried in 1940, and the result of their trial has already been noticed earlier. Appellant Tahsildar Singh, though nominated in the first information report as an accused, could not be brought before the Court in 1940 as he absconded. Proceedings under Sections 87 and 88 of the Code of Criminal Procedure were drawn up against him. Proclamations and warrants of attachment were issued but they produced no results. Tahsildar Singh, therefore, was prosecuted as an absconder and proceedings under Section 512 Cr. P. C. were taken and evidence was recorded as provided for under that section against the accused in absentia.

8. In order to fully appreciate the reason for the assault on the 4-7-1940, it is necessary to know the background of the relations that subsisted between the accused, on the one hand, and the deceased and their relations and friends, on the other.

9. There were two Thakur families and two Brahman families in Khera Kathore which aligned themselves against each other one Thakur family joining hands with one Brahma family formed one rival party, while the other Thakur family in conjunction with the other Brahman family formed the other rival group. The relations, between these parties came to breaking point as far back as the year 1928 when these two parties had a violent collision with each other in Khera Rathore on the forenoon of 30-6-1928.

Behari Singh Thakur had a largish family consisting of two sons and nine grandsons. His ally Bahadur Singh Brahman had three sons and one grandson: some of these joined hands to fight the rival group of Chhidda Singh Thakur, who had in Talfi Ram Brahman his ally. Chhidda Singh had five sons and four

grandsons, while Talfi Ram had a brother, a nephew and a grand-nephew to help Chhidda Singh's party.

10. Chhidda Singh Thakur's family and Behari Singh Thakur's family were both Rathore Thakurs and apparently they at one time belonged to the same stock, and as often happens, these two families developed a feud which moulded the future history of Behari Singh's family. Khera Rathore, situated in the police station of Bah in the district of Agra, is a small village, but nevertheless, it was inhabited by some Thakurs of the Rathore clan who appear to have had violence and defiance to law and order in their blood. Behari Singh's two sons, Nawab Singh and Man Singh, appear to have inherited all the fire and venom of their ancestors and they also to have transmitted to their own sons the same traits.

Behari Singh had two sons, Nawab Singh and Man Singh. Nawab Singh had four sons, Gandharb Singh, Darshan Singh, Udal and Raj-pat, while Man Singh had five sons, namely, Jaswant Singh, Subedar Singh, Tahsildar Singh, Sheobaran Singh and Dhanman Singh. Bahadur Singh, their ally, had three sons, Murat Ram, Chhab Ram and Surat Ram, and a grandson Rupa, son of Chhab Ram. In the rival group of Chhidda Singh were his five sons, Ram Chandra Singh, Kesho Singh, Sohanpal Singh, Ratan Singh and Bhola Singh. The others of this family, who came into the picture in some shape or form, were the three sons of Kesho Singh, namely, Khem Singh, Reghubir Singh and Prah-lad Singh. Their Brahman ally family of Talfi Ram had himself, his brother Khunji, nephew Ram Gopal, and the grand-nephew Ram Sarup to help.

11. One of the outstanding events which in all probability gave a trend to subsequent events was a d'acoity that was committed in the house of one Chhidda Barhai in village Mahua, a mile away from Khera Rathore, on the 4-3-1928. In this dacoity Man Singh, Jaswant Singh and Surat Ram were alleged by Baldeo Bania and Ganga Prasad Brahman to have taken part. There was no prosecution for this dacoity and so Chhidda Barhai complained to the District Magistrate against non-action by the police in the matter and he was advised to file a complaint in court.

Talfi Ram and one Budha offered to finance Chhidda and assist him in seeing his complaint through court. The Barhais, to which caste Chhidda belonged, refused

out of sympathy for Chhidda, their caste-fellow, to work for Behari Singh's family. It appears that this act of the Barhais and the assistance which they received from Talfi Ram and Budha incensed the sons of Behari Singh, in particular Man Singh, so that the party of Man Singh made an aggression on the Barhais and their helper Talfi Ram on the afternoon of 30-6-1928, in which Mata Prasad Brahman and Baldeo Bania were shot dead, while Budha Barhai, Ganesh Singh, Talfi Ram, Ochhey Barhai, Ganga Prasad Brahman, Sukhbasi Barhai and Net Ram Brahman were injured.

This riot led to the prosecution of some 23 persons of the party of Man Singh. Twenty-two persons, however, actually faced their trial in Sessions Trial No. 47 of 1928 and Man Singh and 21 others were convicted under Sections 302/149, 148 and 325/149 I. P. C. on 15-11-1928, by Mr. Edward Bennet, who later became Mr. Justice E. Bennet of the Allahabad High Court. Jaswant Singh, the eldest son of Man Singh, absconded and he could never be prosecuted. At the trial the important prosecution witnesses came from the family of Talfi Ram Brahman. Man Singh, Gandharb Singh son of Nawab Singh, and Surat Ram son of Bahadur Singh Brahman (also an uncle of Rupa) received sentences of transportation for life under Section 302/149 I. P. C. and three years' rigorous imprisonment each under Section 143 I P. C. Chhab Ram, Rupa's father, was, however, acquitted.

12. The absconding of Jaswant Singh in 1928 appears to have caused some headache to the police and they attempted to trace Jaswant Singh out, with the result that they pressed Khem Singh, who was distantly related to Man Singh, to disclose the whereabouts of Jaswant Singh. Darshan Singh, son of Nawab Singh, also appears to have joined his cousin Jaswant Singh.

Khem Singh and Jodha Ram Brahman, who belonged to the family of Talfi Ram, appear to have laid some information before the police in regard to the whereabouts of Jaswant Singh and Darshan Singh in December, 1937, for an encounter took place between the police, on the one hand, and Jaswant Singh and Darshan Singh's party of outlaws, on the other, on the 5th of December, 1937. Jaswant Singh and Darshan Singh were shot in this encounter. Nawab Singh, brother of Man Singh, and two other relations of his, Lakha and Narayan, were

arrested. Lakha and Narayan were tried and convicted and they were undergoing imprisonment at the time when the incident of 1940, out of which this appeal has arisen, took place.

13. Man Singh was released from jail after serving out his sentence, sometime in 1939, and when he came back he appears to have been apprised of all that had happened to the family and all that the rival group did against the family. Man Singh, thereafter, started harassing Khem Singh's family and the family of the late Talfi Ram.

The relations between the parties became so strained that the police prosecuted both the parties under Section 107 of the Code of Criminal Procedure. Both parties were bound down by the Magistrate but on appeal Khem Singh and his party were discharged and their bonds cancelled. Man Singh's party, however, was not so fortunate and this again provided yet another circumstance to add to the already embittered feelings.

14. In 1939 Man Singh instituted a case under Section 107 Cr. P. C. against Khem Singh. Khem Singh, however, was acquitted in September, 1939. The parties still continued to be bitter against each other and troublesome to the forces of law and order, with the result that the police were again forced to prosecute Khem Singh and his party under Section 107 Cr. P. C. They were bound down by the Magistrate, but once again on appeal the order of the Magistrate was set aside.

15. The bonds which Man Singh and his party had been made to execute in respect of the proceedings initiated against them under Section 107 Cr. P. C. expired on 30-5-1940, so that, the restraints which they felt due to their security bonds disappeared and the storm of party feeling again started gathering.

The result was that there was a riot on the night between the 4th and 5th of July, 1940, between 8 and 9 p.m.: this was the riot in which Sohanpal Singh and Ratan Singh lost their lives and Ram Chandra Singh and Prahlad Singh sustained their injuries and for participating in which the appellant has been convicted, as has already been indicated above.

16. The foregoing narrative would clearly indicate that there was bitter enmity between the two rival factions and that Man Singh and his party were out not only to wreak vengeance, but, if possible, to completely break down the resistance of their rival party.

17. One other matter that need be noticed at this stage in order to realise the alignments of the parties, is to know how many of the members of the two warring groups were alive or were available for participation in the incident of the 4th of July, 1940. Of the family of Behari Singh, Darshan Singh had been shot in the police encounter of 1937; Jaswant Singh had also been killed in that very encounter; and Sheobaran Singh appears to have died a natural death after this incident of 1940.

On the side of Chhidda Singh, it has been noticed that Mata Prasad Brahman and Baldeo Bania had been killed in 1928. Of the family of Behari Singh, the persons alive at the time of the incident of 1940 were Behari Singh, Nawab Singh, though alive was in jail; Man Singh was free, and so were Gandharb Singh, Subedar Singh, Tahsildar Singh, Dhanman Singh; Udal and Rajpat, the latter two however, appear to have been rather small boys at that time. Of their ally, the Brahman family of Bahadur Singh, were alive and free, Bahadur Singh himself, Murat Ram, Chhab Ram, Surat Ram and Rupa.

18. The first information report of the incident, as already noticed, was made by Khem Singh and it may usefully be quoted here, in extenso. This is what the first information report stated :

"I got Nawab Singh, Narain Singh and Lakhuwa Thakurs arrested. Jaswant Singh and Darshan Singh were killed at the spot. Jaswant Singh was the 'real brother' (the translation is inaccurate because in the Vernacular what is stated is 'chachera bhai') of Dhanman, Subedar, Tahsildar and Gandharb Thakurs. These men have borne me bitter grudge since the time I informed against them.

Yesterday, at about 8 or 9 p. m. when we were sitting and lying at our door, Dhanman Singh and Subedar, sons of Man Singh, armed with swords, and Tahsildar, son of Man Singh, Gandharb, son of Nawab Singh, Raghunath, son of

Durg Singh, Fateh Singh, son of Sarwan Singh, all residents of the village and Thakurs by caste, Chhab Ram, father's name not known, and Murat Ram, father's name not known, Brahmans by caste and residents of the village, armed with lathis, suddenly appeared at our door, abused and said 'Betichod, beware', and at once attacked us with swords and lathis.

Sohanpal, Ratan Singh and Ram Chandra received injuries from swords and lathis. Sohanpal is dead. Ram Chandra and Ratan Singh have been injured. On hearing shouts, Mulu Singh, Sarwan Singh, Bhola Singh, Pahlad and Sultan Singh, Thakurs, who were present there came up. Due to fear of the accused persons, I could not come to make a report in the night. Now, getting an opportunity, I have stealthily come to make a report. Other facts will be known from Bhola Singh and others. Yesterday I was not at the house in day time. My complaint against all the accused persons is that they committed riot, marpit and murder.'

19. From the first information report it is clear that only eight persons were actually nominated by the informant as having participated in the riot. Sohanpal Singh is said to have died, but there was no mention in the first information report of Ratan Singh having died, nor was there a mention of Prahlad Singh having been injured. The witnesses mentioned are Mulu Singh, Sarwan Singh, Bhola Singh, Prah-lad and Sultan Singh. The first information report was slightly belated, in so far as it was made, at 6 a. m. on the morning of 5th of July, 1940, while the incident took place at about 8 or 9 p. m. on 4th of July, and the police station Bah, where the report was lodged, was only 8 miles away from the village of incident.

The informant, therefore, in the first information report gave the reason for the apparent delay in making it. In the first information report it was stated that the informant could not come to make the report during the night -- this was slightly amplified in evidence, for it was stated in evidence by Khem Singh that he did leave the village for the police station in the night but when he went as far as village Ranibagh he saw two or three torches being flashed on the way and, therefore, he thought that the accused were round and about, trying to waylay him. So he stayed the night at Ranibagh and left early next morning for the police

station.

20. When the first information report was recorded at police station Bah by Baijnath Singh, Head Constable, Thakur Babu Singh, the Station Officer of Bah, was also present there and he, therefore, immediately left for the scene of occurrence with his Second Officer Mansoor Ali and some constables, among whom were Akbar Ali, Ram Charan and others. On arrival at the village, the Station Officer and his Second Officer found the dead bodies of Sohanpal and Katan Singh, the latter apparently succumbed to his injuries after Khem Singh had left for the police station to make his report, because it has been already noticed that no mention of Ratan Singh having died was made in the first information report of Khem Singh. Inquests were held on the two dead bodies and the bodies were sent for postmortem examination.

21. Post-mortems were conducted on the bodies of Sohanpal and Ratan Singh by Dr. Waheed Uddin, who described himself as Medico-legal Officer, Agra, on 6th of July, 1940, at 11.30 a.m. and 12 noon respectively. The injured Ram Chandra Singh and Prahlad Singh were sent to the Bah Dispensary with constable Ram Charan for medical examination. They were examined by Dr. Madan Mohan Misra, Medical Officer Incharge of Bah Dispensary, on 5th July, 1940, at 5.45 p. m. It was discovered by the Medical Officer that Ram Chandra Singh needed better medical aid and so he was sent to Agra and was admitted there to the Surgical Ward. His injuries were again examined there by Dr. Waheed Uddin on 7th of July, 1940, at 11 a.m.

22. The post-mortem on the body of Sohanpal Singh who is alleged to have died on the spot, was conducted, as we have already pointed out, on 6th of July, 1940, at 11.30 a.m. According to the doctor, who conducted the post-mortem, the probable time since death was 36 hours. Though rigor mortis was said to be present in some degree in the upper part of the body, yet blisters were said to have been forming all over the body.

The record in regard to the stomach contents which may have been made by the doctor could not be deciphered by us because the portion of the paper where such record should have been made was torn in the original. The small intestines are

recorded to have been half full, while the large intestines were found to have been full. The bladder, however, was empty. In the case of Ratan Singh, who was alleged to have died later than Sohanpal Singh, the post-mortem was conducted on 6th of July, 1940, at noon.

In his case also, though it was found that rigor mortis was partially present, yet blisters were found to have been forming all over the body. The stomach in his case was found full of semidigested food -- Ata and Dal. We were, however, unable to know whether there was any further note by the medical officer in regard to the stomach contents because the paper at this place was also torn in the original. The small intestines were found to be empty, while the large intestines were found to be full.

The bladder, however, was empty. The post-mortem report on Ratan Singh's body did not record the opinion of the doctor in regard to the probable time since death but Dr. Waheed Uddin, who conducted the post-mortem, stated in the Committing Magistrate's Court, where his statement was recorded under the provisions of Section 512, Cr. P. C. (Ex. P-41), that the deaths of both the persons on whose bodies he performed post-mortems, took place, according to him, about 36 hours before examination. From the stomach contents it may, in our opinion, be safely inferred that the attack was made soon after the deceased and taken their meals.

It is common knowledge that in villages villagers take their last meal rather early in the evening. The opinion of the doctor was that the probable time of death was 36 hours before examination. After allowing for the usual margin of error in such estimates --which is admitted on medical authority to be between 3 to 4 hours -- the time of death given by the doctor tallied with the prosecution version of the time of assault. The opinion expressed by the doctor about the time of taking meals in relation to the time of death can rarely be a sure guide: the estimate given by the doctor in this connection does not, in our opinion, really or vitally militate against the prosecution case in regard to the time of the assault.

23. The Investigating Officer was handed over a scabbard of a sword by Bhola Singh. A recovery memorandum in respect of this was prepared at the spot and has been marked as Ex. P-19 in the case. A site plan was also prepared by

Station Officer, Babu Singh, and this plan has been marked as Ex. P-22. A search of the house of Subedar Singh, Tahsildar Singh, Sheobaran Singh and Dhanman Singh was made in the presence of P. W. 4 Dwarka Prasad Patwari and from there were recovered two blood-stained dhotis (Exs. III and IV) and a blood-stained Chadar (Ex. V).

These were taken into custody and a recovery memorandum prepared in respect of these, which was marked as Ex. P-23. These were packed and sealed and sent to the police station. On 19th of July, 1940, this sealed bundle was taken to the Chemical Examiner, Agra, by Akbar Ali constable. An examination by the Chemical Examiner and the Serologist of the dhotis (Exs. III and IV) and the chadar (Ex. V) revealed that these were stained with human blood. The Chemical Examiner's report is Ex. P-24 and the Serologist's report is Ex. P-124. A search was made for the assailants named in the first information report by Babu Singh and Mansoor Ali but they were all found absconding. Station Officer Babu Singh recorded the statements of the witnesses on 5th and 6th of July, 1940.

24. Gandharb Singh presented himself at the police station on 5th of July, 1940, and was arrested by Baijnath Singh. His person was searched and an electric torch and a bloodstained lathi were recovered from him and a recovery memorandum was prepared in respect of these and has been marked as Ex. P-12. Chhab Ram, Murat Ram, Fateh Singh and Raghunath Singh surrendered later. Station Officer Babu Singh subsequently submitted a charge-sheet against the afore-mentioned accused and as against Tahsildar Singh and some other absconders.

25. It has already been noticed that in respect of the incident of 4th of July, 1940, there were three sessions trials which resulted in conviction for all the accused in two and an acquittal in one of the trials. Tahsildar Singh appellant could not be arrested and, therefore, he was prosecuted as an absconder and evidence as against him was recorded under Section 512, Cr. P. C.

26. Tahsildar Singh was arrested on the morning of 3rd of September, 1954, according to the prosecution, at a place called Bhua Khar, but according to the defence, at a place some distance away, namely, at Barechha Ghat, which is a

ferry crossing on the river Chambal. The circumstances in which Tahsildar Singh is alleged to have been arrested is a story in itself. It may here be pointed out that the incident that led to the arrest of the appellant formed the subject-matter of another trial, namely, Sessions Trial No. 22 of 1955 and is the subject-matter of Criminal Appeal No. 1389 of 1956 of this Court.

It is, however, necessary to briefly indicate the circumstances in which, according to the prosecution, Tahsildar Singh was arrested. The police had information that the gang of Man Singh -- as the associates of Man Singh had been constantly referred to during evidence --was moving northwards from the side of river Kunwari and was likely to cross the Chambal in the north. The police presumed that the gang was most likely to pass through an area of ravines between the two rivers and, therefore, they took a large police force to that area to, if possible, intercept the gang.

There was, as anticipated by the police, a meeting with the gang and an encounter took place between the police force, on the one side, and the gang of Man Singh, on the other. The results of the encounter were that the gang suffered two casualties in death, while the police party suffered one dead, two injured, as also an informer, Karan Singh, was alleged to have been killed by one of the members of the gang. The main gang dispersed on the evening of 2nd of September, 1954, while Tahsildar Singh is said to have been left behind, possibly because he had an injured leg and locomotion for him without some conveyance was impossible.

A part of the police force is alleged to have noticed Tahsildar Singh sitting under cover at a place which has been called Bhua Khar and so during the night he was kept 'surrounded'. On the morning of 3rd of September, 1954, Subedar Bhagwat Misra of the P. A. C. is alleged to have arrested him. On arrest Tahsildar Singh was interrogated by Bhagwat Misra and it is stated by Bhagwat Misra that he gave out his name as 'Tahsildar Singh, son of Man Singh of Khera Rathore'. Bhagwat Misra found the accused had an injured leg.

The accused was thereafter brought to the Thana by Circle Inspector Mushtaq Ahmad and Station Officer Abdul Hameed. The accused was sent on 6th of September, 1954, to Etawah along with Izzat Ullah, Company Commander,

Constable Chhatrapal Singh and other members of the police force. The appellant was, as has been already mentioned, nominated as one of the assailants in the first information report made by Khem Singh on 5th of July, 1940.

27. There is ample evidence that he was not found after the 1940 incident, although every effort was made to arrest him. Nathu Lal, Station Officer of Bhind (P. W. 25), has stated that there were two encounters between the police and the gang of Man Singh: one, on the night between 27th and 28th of August, 1954 and the other on 30th August 1954. As a result of the first encounter a member of the gang of Man Singh had received serious injuries, for a lot of blood and some splinters of bones were found lying at the place where the encounter had taken place.

On 30th of August, after the encounter, Nathu Lal went to village Uddotpura, the village of residence of Tahsildar Singh's relations, and on 1st of September, 1954, he made a search in that village for Tahsildar Singh because he had had information that it was Tahsildar Singh who had received injuries in the encounter which took place on the night between 27th and 28th of August, but Tahsildar Singh was not found at Uddotpura. Tahsil-dar Singh was, therefore, absconding from July, 1940 to 3rd of September, 1954.

When his trial commenced before the Court of Session in May, 1956, the incident had been almost 16 years' old. So that, however tenacious the memory of witnesses may have been, the evidence could not be expected to unfold all the details with that clarity and precision with which the evidence would have been put forward, had the trial taken place within a reasonable time of the incident. It is necessary to bear this circumstance clearly in mind in order to be able properly to judge the probative value of the evidence that has been put forward by the prosecution in this case.

28. At this stage, it would be appropriate to notice, in brief, the defence of the appellant which was in effect a denial of the entire prosecution case. The accused denied that he was Tahsildar Singh, son of Man Singh of Khera Rathore. He claimed that he was Bhanwar Singh, son of Zahar Singh, a resident of Uddotpura within the police station of Bhind in Madhya Bharat. He denied that he had any

motive to join the other assailants in the incident. He ascribed his implication to his incurring the displeasure of the police as he did not assist them in apprehending the gang of Man Singh.

In regard to his arrest he admits that he was arrested on 3rd of September, 1954, by Subedar Bhagwat Misra, but his case was that he was arrested not at Bhua Khar, as was alleged by the prosecution, but at Barechha Ghat. His case was that he had sustained an injury in his leg due to a shooting misadventure of some Shikaris and that he was being taken on a Doli for being carried across the Chambal for treatment when the police appeared and the bearers of his Doli ran away through fear of the police and left him there. So the police arrested him on suspicion.

29. It has already been noticed that there were earlier trials in respect of this very incident in 1940. At those trials the prosecution produced six eye-witnesses of the incident, namely, Ram Chandra Singh, Raghubir Singh, Prahlad Singh, Khem Singh, Bhola Singh and Ram Sarup. Out of the aforementioned six witnesses only three were available for production when the trial against Tahsildar Singh commenced in 1956, namely, Ram Chandra Singh, Raghubir Singh and Prahlad Singh.

Khem Singh was alleged to have been killed by the gang of Man Singh and so was Ram Sarup. Bhola Singh, however, died a natural death. As has already been observed, evidence against Tahsildar Singh had been recorded by the Magistrate in respect of the earlier commitments under Section 512, Cr. P. C. The evidence so recorded of Khem Singh, Bhola Singh and Ram Sarup, which gave an eye-witness account of the incident has been produced in this case and this evidence is to be found in Exs. P-45, P-46 and P-49 respectively. The evidence of Talfi Ram, which was also recorded under Section 512, Cr. P. C. and is to be found in Ex. P-47, was also produced.

30. Section 512 (1) of the Code of Criminal Procedure is in these words :

'If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial

such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.'

Sub-section (2) of Section 512 is not material for our purposes and, therefore, need not be quoted. (31) This section engrafts an exception on, the general rule that all evidence against an accused should be tendered before the Court in his presence. The reason for this exception is not far to seek. The reason being that Courts always desire to have the best evidence about any matter and since there always is danger of evidence being lost if there is delay in recording it, the Legislature in its wisdom thought it proper to empower the Court to record evidence against a person who, by his own conduct, has chosen to be absent while such evidence is being recorded.

This rule is as much a rule of natural justice as the general rule that a man should have the opportunity of hearing the evidence against him before he is called upon to explain that evidence, for natural justice must equally take into account both sides of the picture because natural justice is essentially a rule of 'fair-play'. The ex parte recording of evidence permitted by Section 512, Cr. P. C. is necessitated by the conduct of the accused himself for, by his absconding, he creates a situation which faces the Court with two alternatives : first, either to record all the available evidence so that such evidence may not be lost due to the deaths of witnesses, or secondly, to stay its hands in recording that evidence till such time as the accused is apprehended and brought before it.

If the law did not provide for a situation which has been provided for by Section 512, Cr. P. C., then the law would have deprived the Court, without adequate justification, of having a record of the available evidence within a short time of the commission of the offence : at a time when the memory of witnesses was fresh and the details of the incident had not faded away from their memory due to lapse

of time; and further it would have deprived the Court completely of the evidence of those witnesses who may die between the time of the commission of the offence and the apprehension and trial of the accused.

32. The law definitely looks with disfavour on absconding. An accused is expected by the law to appear the moment he is called upon by the Court to answer a charge levelled against him. The law provides for the arrest of an accused person and for his being brought before the Court for trial. The Code of Criminal Procedure provides for several coercive processes to be brought into use against an accused person who avoids apprehension.

Section 87 of the Code authorises a Court to issue a proclamation against a person against whom a warrant has been issued, if it has reason to believe that that person has absconded or is concealing himself so that such warrant cannot be executed. Under Section 88 of the same Code the Court issuing a proclamation under Section 87 may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person. The attached property is liable to be sold as provided for by Section 88.

Section 89 makes it further clear that the law looks upon an absconder with very great disfavour, for Section 89, which provides for the restoration of attached property in certain cases, makes it perfectly clear that restoration in favour of an alleged absconder is only possible if he satisfies the Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had no notice of the proclamation as to enable him to attend within the time specified therein. Although absconding is not by itself an offence punishable by the Code, yet a person who harbours an offender is liable to punishment. Section 212 of the Indian Penal Code provides as follows :

'Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.....'

There is, however, an exception provided for and the exception is as follows:

'Exception: The provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.'

From the above provision it is clear that not only the law makes harbouring of an offender punishable but that the punishment provided for against the harbourer is made to conform to the gravity of the offence committed by the person who is being harboured, for in the case of the harbourer the offence does not in the essence vary in gravity. The fact that the law makes a difference in the punishment of the harbourer, according to the nature of the offence committed by the absconder, or if we may say, the 'harbouree', indicates that the more serious the offence committed by the absconder the greater is the disfavour shown by law to an accused being harboured or screened from legal punishment.

33. It was argued that even if the statements recorded under Section 512, Cr. P. C. were admissible, the probative value of such evidence was nil. It was further argued that since the statements recorded under Section 512, Cr. P. C. had not been tested by cross-examination they should not be made available to support the prosecution case. Cross-examination is undoubtedly a very potent weapon in the hands of an accused person for his defence, yet it cannot be said that if an accused person has by his own conduct not made use of that weapon, then the evidence which has not been cross-examined cannot be used against him.

If the proposition for which counsel for the defence contended were given effect to, then the Courts would be placing a premium on absconding, a thing which is clearly against the policy of the law. No person is in law permitted to take advantage of his own wrong. Absconding is undoubtedly a wrong, though not punishable by law, and, therefore, if by taking resort to a wrong an accused person could cheat justice, then it would be not only placing a premium on improper conduct but would, without justification, be thwarting, in many cases, justice.

34. The value of the evidence recorded under Section 512 Cr. P. C. has, therefore, to be judged like any other evidence given by witnesses at the trial. As a rule of prudence and abundant caution the Court may, and normally would, not only test that evidence on the touchstone of probabilities but would also require 'such evidence to be corroborated by the circumstances of the case and other evidence on the record before relying on it. If the Court finds that the evidence recorded under Section 512 Cr. P. C. is contradicted or is rendered doubtful on the probabilities of the matter, or if such evidence does not find adequate support from the circumstances of the case, then it would undoubtedly not rely on such evidence.

What, however, needs being emphasised is that there is nothing inherently wanting in the evidence recorded under Section 512 Cr. P. C. which can make its reception and its being relied upon by a Court as any other evidence produced at the trial, different. The probative value of this evidence has to be assessed like any other evidence produced in the case and 'special' or 'different' standards have not to be forged for weighing this evidence. We should like here to point out that counsel were unable to place any authority of any Court touching on this question before us.

35. It was contended in the last resort that the evidence recorded under Section 512 Cr. P. C. should be judged by the same standards by which a dying-declaration is judged. A dying-declaration stands on a different footing from evidence recorded under Section 512 Cr. P. C. for several reasons, and a few of these may be noticed here in order to see the difference that separates the one from the other and places them in different categories.

36. A dying-declaration is made by a person when he is in extremis and often a man in extremis is unable to give a coherent and an accurate description of events. The record of a dying-declaration often suffers from the fact that the declarant is unable, due to his condition, to put in words what he wishes to convey. A dying-declaration may also suffer because the person recording such a declaration may misunderstand the declarant's utterances. None of these infirmities or weaknesses appear in the case of evidence recorded under Section 512, Cr. P. C.

This evidence is recorded in Court, on oath, and the person giving such evidence is in his best mental condition. The fact that such evidence is not subjected to cross-examination does not necessarily make that evidence any worse than the evidence of a witness which is not subjected to cross-examination, voluntarily, by an accused. When an accused does not cross-examine a prosecution witness he in effect makes no effort to break or challenge that evidence : in a case where evidence is recorded in the absence of an accused under Section 512, Cr. P. C., the accused by his conduct denies himself the opportunity of challenging the evidence. On principle there is, therefore, no substantial difference between the two positions.

37. What the law requires is that an accused person should have opportunity to cross-examine a witness. In a case where evidence is recorded under Section 512, Cr. P. C. the accused person certainly has all the opportunity any accused could have to cross-examine. The fact that the accused did not avail of that opportunity should be no ground for suspecting that evidence or placing that evidence on a lower footing than any other evidence.

When a person gives evidence on oath the presumption should be that he has spoken the truth -- that is the oath he takes -- and the burden must lie on him that challenges the veracity of that statement to show that it is not true and if that burden is not discharged by any of the recognised legal methods, then a Court can have no legal justification for not relying on the evidence of a witness given on oath. Throwing over-board the sworn testimony of witnesses merely by using phrases like 'the statement does not ring true' or 'the statement does not carry

conviction' is never legally sufficient. A Court has to give reasons for coming to the conclusion as to why 'the statement does not ring true' or 'the statement does not carry conviction' or why it does so.

38. Lord Coleridge rightly points out in *Rex v. Dickson* that

'The law does not demand that you should act upon certainties alone.....In our lives,in our acts, in our thoughts we do not deal with certainties; we ought to act upon just and reasonable convictions founded upon just and reasonable grounds.'

It is undoubtedly true that the law has not laid down any clear standard for the sufficiency of evidence to induce belief : it is also true that belief is rarely the consequence of a strictly logical process and that sometimes the same evidence which to one may be convincing, to another may seem absurd. But nevertheless the matter of believing evidence is not left to the mere intuition of an individual Judge, for a Judge, in believing or disbelieving evidence-acts on his reason in conformity with his knowledge, observation and experience which always furnish adequate grounds for believing or dis-believing evidence.

39. Bearing in mind what has been stated above, let us now turn to the facts and circumstances in which the appellant is said to have absconded. The offence was committed on 4th of July, 1940, and the accused was arrested on 3rd of September, 1954. He was arrested under circumstances which have been deposed to by P. W. 7 Subedar Bhagwat Misra.

Whatever else may be true or false, one thing is perfectly clear on the evidence of Bhagwat Misra that there was, what has been called, 'an encounter' between a gang of outlaws and the police force in the ravenous area lying between the two rivers Kunwari and Chambal at a place known as Panderi Khar and that the accused was apprehended on the morning of the day following the encounter somewhere in the neighbourhood of the place where the encounter had taken place.

40. The evidence of Nathu Lal, who was the Station Officer of Bhind in August, 1954, indicates that a band of outlaws had an encounter with the police on the

night between the 27th and 28th of August, 1954, and also on 30th of August, 1954, and that in the earlier encounter one of the outlaws had been injured. Blood was found in an area of 2 cubits and as many as six small splinters of bones were also recovered by Nathu Lal.

Nathu Lal's evidence further indicates that he searched for Tahsildar Singh in village Uddotpora because he had information that it was Tahsildar Singh who had sustained injuries in the encounter which took place between the police, on the one hand, and the outlaws, on the other, on the night between 27th and 28th August, and on that information he expected that Tahsildar Singh might go to Uddotpora to have his injuries attended to as he had relations at Uddotpora.

That part of Nathu Lal's statement in which he says he got information that Tahsildar Singh has sustained injuries in the encounter of 27/28th August may not be strictly admissible, but nevertheless, the fact that Tahsildar Singh was searched for at Uddotpora and not found there and the reason why he was searched for would clearly be admissible. This evidence of Nathu Lal, coupled with the evidence of Mansoor Ali, Station Officer, Bah (P. W. 29), is sufficient to establish the fact that not only had Tahsildar Singh absconded but that he had joined a band of outlaws, which was, in all probability, led by the appellant's father Man Singh.

It is important in this connection also to bear in mind the fact that other members of the family of the appellant had also absconded in the past : Jaswant Singh, the eldest brother of the appellant had absconded in 1928 and he had been shot in an encounter with the police in 1937; the other brother Subedar Singh too had absconded; Dhanman Singh, younger brother of the appellant, also appears to have absconded; and the appellant's uncle Nawab Singh and cousin Darshan Singh had also been absconders.

This absconding of Tahsildar Singh, therefore, was not of the type of absconding of a man whose courage fails after he has committed a crime, in the heat of passion, and thereafter runs away for fear of the retribution of law. The absconding of Tahsildar Singh followed the pattern laid down by the other members of his family. The absconding of Tahsildar Singh, therefore, was a deliberate act calculated not only to save himself from the retribution of law but, as subsequent

events proved, to live a life of crime.

41. The evidence of Mansoor Ali (P. W. 29) indicates that the people of Khera Rathore and the surrounding villages were terror-stricken by Man Singh's gang from about the year 1939. His evidence further indicates that several witnesses, who could give evidence of crimes committed by Man Singh and his gang, had been shot dead by the gang. The evidence of Ram Chandra Singh (P. W. 5) indicates that Khem Singh was shot dead by the accused and Subedar Singh and others sometime in 1948 or 1949 and that Talfi Ram and Ram Sarup had also been shot by the gang of Man Singh.

The price that the forces of law and order paid for their inability to apprehend members of the appellant's family for crimes was, therefore, fairly large. If under the aforementioned circumstances the Court were to brush aside lightly the evidence that was taken under Section 512, Cr. P. C., on the ground that that evidence had not been cross-examined, then the Court would in effect publicise the fact that absconding by a person accused of a serious offence was a paying proposition.

42. The evidence of Raj Narain Saxena (P. W. 15), who was the Reader of the Court of Sri Shyam Narain Nigam, Magistrate 1st Class, Agra, in 1940, indicates that Sri Nigam passed an order under Section 512, Cr. P. C. on August 16, 1940, and recorded the statements of witnesses under that section: the aforementioned order of Sri Nigam is Ex. P-43 in this case. The requisite formalities for recording evidence under Section 512, Cr. P. C. had, therefore, been complied with, and indeed, learned counsel appearing for the appellant, did not challenge the fact that the evidence had properly been recorded under Section 512, Cr. P. C.

43. Chronologically, the evidence of Khem Singh, Bhola Singh, Ram Sarup and Talfi Ram, recorded under Section 512, Cr. P. C., comes first and we wish now to notice that evidence in the light of what we have said in the preceding pages.

44. The evidence of Talfi Ram is not the evidence of an eye-witness of the occurrence. His evidence only establishes that there had been a longstanding enmity between Khem Singh and others on the one side, and Man Singh and his

group, on the other. The evidence of Talfi Ram further indicates that when Man Singh was freed after having suffered the imprisonment which had been awarded to him in regard to the murders in which he was involved in 1928, the bitterness between the two parties increased.

Talfi Ram stated that a month or two prior to May, 1940, Man Singh and some others had threatened that they would commit murder after the expiry of the term of their bonds --the bonds were to expire on May 30, 1940. Talfi Ram was subjected to some cross-examination though not by the accused. This cross-examination did not touch any of the important points made by Talfi Ram in his evidence against the then accused persons, except bringing out the fact that Talfi Ram's statement in his examination-in-chief, that Subedar's mother had said to her sons that if they were brave they should avenge the death of Jaswant Singh and others, was based on hearsay information; nevertheless, the specific statement which Talfi Ram made that a month or two before (May 1940) Man Singh and others had threatened that they would commit murder after the expiry of the term of their bonds was not challenged as being based on hearsay.

The evidence of Talfi Ram clearly establishes that there had been a long-standing enmity subsisting between the family of the accused and their helpers, on the one hand, and the family of the deceased and their helpers, on the other. Indeed, learned counsel appearing for the appellant did not challenge this part of the prosecution case. Learned counsel in a manner relied on this part of the prosecution case, for his contention was that the appellant had been falsely implicated in the incident that took place on 4th of July, 1940, due to this enmity.

Whether the accused has been falsely implicated due to enmity or not is dependent on whether or not reliance could be placed on that testimony of witnesses which says that the accused was actually seen participating in the assault. Enmity is a double edged weapon: it no doubt often provides motive for false implication but it also more often than not provides motive and incentive for making an attack.

So that, merely because there subsists enmity between the witnesses, on the one hand, and the accused, on the other, is not sufficient to throw over-board the

testimony of the witnesses, unless there is further material on which the testimony can be doubted. Where there is enmity between the prosecution witnesses and the accused, the evidence has to be scrutinised with greater care, which means that the evidence has to be tested more fully in the crucible of probabilities.

45. Khem Singh was examined under Section 512, Cr. P. C. on 16th August, 1940. He stated that a month and 11 days ago in the evening he was at his door and with him were Sohanpal Singh, Ratan Singh, Ram Chandra Singh, Prahlad, Sultan Singh, Bhola Singh, Badan Singh and Mulu Singh as well. Some of these men were lying, while the others were sitting on cots. Gandharb Singh, Subedar Singh, Tahsildar Singh, Sheobaran Singh, Chhab Ram, Murat Ram, Fateh Singh and Raghunath Singh came from the east and behind them followed Dhanman Singh. Dhanman Singh and Subedar Singh were armed with swords and the rest had lathis.

The accused, when they came, challenged in abusive language and thereafter they attacked Sohanpal Singh, Ratan Singh and Ram Chandra with swords and lathis. Ratan Singh and Sohanpal Singh, according to the witness, were lying on cots when they were attacked and they fell down on the ground after the attack. Ram Chandra is stated to have plied a lathi but he too was laid low by the attackers. According to this witness, Prahlad Singh also received injuries. On alarm being raised, the accused fled away. Sohanpal died on the spot, while Ratan Singh was lying gasping and Ram Chandra lay injured. Khem Singh states that he thereafter proceeded to make a report at the police station Bah, He says that he stayed the night at Ranibagh due to fear and left for the police station next morning and made the report then.

46. The first information report in this case was made, as has already been stated earlier, by Khem Singh at police station Bah on 5th of July, 1940, in the morning at 6. In the first information report Khem Singh nominated all the accused persons whom he named in Court as having participated in the assault. Khem Singh in his testimony clearly indicated the enmity that subsisted between his partisans and Man Singh and others. He stated that he gave information to the police whereupon they organised a raid in which Jaswant Singh and Darshan Singh were killed and

Nawab Singh was injured and arrested.

Two other men, Narain Singh and Lakhuwa, who had joined the gang of Man Singh, were also apprehended. Khem Singh had given the first version of the prosecution in the first information report that he lodged. On the explanation which Khem Singh gave as to why the report was not lodged the same night but was lodged the next morning, it could not be said that there was any unexplained delay in making the first information report. The explanation which was offered by him was not only plausible, but under the circumstances appeared to be true.

It was contended that this witness introduced the name of Sheobaran Singh at the trial though he had not been named in the first information report and he had made a variation in regard to the position of Dhanman. These in our view, were not variations of a character that could make his entire evidence suspect.

47. Bhola Singh was also, like Khem Singh, examined on 16th of August, 1940. He was one of the persons who were sitting at the place where the attack had been made on Sohanpal Singh, Ratan Singh and others. Bhola Singh was not a relation of Khem Singh or the two deceased, Sohanpal Singh and Ratan Singh. His house adjoined the Bakhar of Khem Singh and he had a common exit out of that common Bakhar. He was, therefore, a witness of the immediate locality and was a very natural witness to the scene of occurrence.

He stated, that while they were at the door Dhanman Singh, Subedar Singh, Tahsildar Singh, Raghunath, Fateh Singh, Chhab Ram, Murat Ram and Gandharb Singh suddenly appeared with swords and lathis -- Dhanman Singh and Subedar Singh, according to this witness, were armed with swords and Chhab Ram carried both a lathi and a sword, while others had lathis. This witness also clearly stated that Tahsildar Singh also had, both a lathi and a sword. This witness also spoke of the abusive challenge preceding the attack.

He stated that when the assailants started entering the house he brought out a spear from his own residential house and struck, though he could not be sure as to who got an injury from his spear-blow. P. W. 6 Raghbir Singh has corroborated Bhola Singh's statement in regard to his having brought out a ballam from inside

the house in his testimony in Court. This witness also mentions the injuries received by Ram Chandra Singh and Prahlad Singh. Bhola Singh is alleged to have picked up the scabbard which Subedar was carrying and which dropped from his hands at the spot.

This part of his testimony is corroborated by Talfi Ram in his statement Ex. P-47 and by Investigating Officer Babu Singh in his statement Ex. P-50. Bhola Singh was not cross-examined at all. As has been noticed above, he clearly mentioned Tahsildar Singh being armed both with a lathi and a sword -- a version that is supported by the prosecution evidence led in this case. Though this witness was a close relation of, the deceased yet that fact did not influence his testimony, for he did not, in any manner, attempt to implicate anyone other than those named in the first information report.

Criticism was levelled against this part of Bhola Singh's evidence on the ground that the first information report made by Khem Singh made no reference to Tahsildar Singh having been armed with a sword as also a lathi, for the first information report clearly indicated that Tahsildar Singh was only armed with a lathi. We shall notice this argument again and, therefore, we think it sufficient at this stage to dispose of this argument by saying that this argument is not sufficient to make the testimony of the witness of doubtful value.

48. Ram Sarup was examined on 24th of August, 1940. He stated that he was at the door of one Sultan, some ten paces away from the door of Bhola when Subedar, Tahsildar, Dhanman, Sheobaran, Raghunath, Chhab Ram, Murat, Fateh, Sobhu Mahraj, Mardan, Zomdar. and Hukum made the attack on Ratan Singh and Ram Chandra with swords and lathis. According to this witness, Subedar and Dhanman were armed with swords only, while Sheobaran, Chhab Ram and Tahsildar carried both swords and lathis; others had lathis only.

This witness stated that Sohanpal died instantaneously and Ratan Singh died shortly afterwards and Ram Chandra lay injured. This witness was Brahman by caste and, therefore, obviously not related to the complainant's family. It was, however, suggested that this witness, being the grand-nephew of Talfi Ram Brahman, was as much inimical towards the accused as any of the members of

the family of the deceased. Ram Sarup was undoubtedly the grandson of Kunji, who was Tain Ram's brother.

This also is true that Talfi Ram had aligned himself with Chhidda Singh who had the rivalry with Behari Singh, who was Man Singh's father. From the evidence it does not appear that Kunji, his son Ram Gopal, and Ram Gopal's son Ram Sarup had ever actively participated in the disputes that subsisted between Chhidda Singh's family and Behari Singh's family, nor does it appear from the evidence that Ram Sarup ever shared the animosity which his grand-uncle gathered against the family of Behari Singh, but even so the fact remains that Talfi Ram, the grand-uncle of Ram Sarup, had died at the hands of the family of the accused.

So that, he may have had reason to be bitter against the family of the accused, but this circumstance alone was not, in our view, sufficient to completely discard the testimony of this witness, particularly when the evidence which this witness gave against the appellant had been corroborated in material particulars by other evidence. Had his evidence stood alone or had not his evidence been adequately corroborated we would have hesitated in accepting his testimony. We have chosen only, therefore, to rely partially on his testimony.

49. On examination of the evidence which had been recorded under Section 512, Cr. P. C., in the light of our conclusions as to what value was to be attached to such evidence, we have seen no reason not to rely on that evidence.

50. Minor variations and omissions of details cannot make that evidence suspect. This evidence was recorded at the earliest opportunity and had once earlier stood, successfully, the scrutiny of Courts. We wish, however, to make it perfectly clear that we have not let this last mentioned circumstance weigh with us, in any way, in judging this evidence on its merits: we have stated this circumstance only to show that the conclusion to which we have arrived is in consonance with the conclusion arrived at by Courts in 1940.

51. We need now examine the eye-witness testimony given at the trial by P. W. 5- Ram Chandra Singh, P. W. 6 Raghbir Singh and P. W. 27 Prahlad Singh to see how far that evidence, on its merits, was believable and further to see how far that

evidence corroborated the evidence of those witnesses who had been examined under Section 512, Cr. P. C.

52. P. W. 5 Ram Chandra Singh states that his ancestors were residents of Khera Rathore, that he belonged to a Rathore Thakur family and that Ratan Singh and Sohanpal Singh, who were killed in this incident, were his real brothers. Kesho Singh was his real brother and Khem Singh and Prahlad Singh were his nephews being the sons of Kesho-Singh. Man Singh was also a resident of Khera Rathore and was a Rathore Thakur and belonged to the same family as the witness Ram Chandra Singh.

His evidence clearly establishes the fact that there had been a long-standing enmity between his family and the family of Man Singh, so much so that it necessitated proceedings being taken against both the groups under Section 107 of the Code of Criminal Procedure. The family of the witness was more fortunate in the matter of the proceedings initiated against them under Section 107, Cr. P. C. than were Man Singh and his companions. According to this witness, the incident, out of which the present appeal has arisen, took place some 15 or 16 years ago at about 8 or 9 p. m.

The witness, along with Bhola Singh, Khem Singh, Badan Singh, Sarman Singh, Mulu Ram, Sarup Brahman, Sultan, Ratan Singh and Sohanpal Singh, was present outside his door. They were sitting, lying, chatting or smoking when a band of men came, eight or nine in one group, and the rest in another. The group that came first included Subedar Singh, Tahsildar Singh, Sheobaran Singh, Dhanman Singh, Gandharb Singh, Chhab Ram, Murat Ram, Raghunath and Fateh Singh.

According to this witness, Subedar Singh, Tahsildar Singh, Sheobaran Singh and Dhanman Singh had a sword each : Tahsildar Singh had also a lathi and so had Sheobaran Singh : the others had only lathis. This witness states that when the band of men came they shouted to the persons sitting, 'beware' and after abusing them started inflicting lathi and sword blows. Sohanpal Singh died on the spot, while Ratan Singh succumbed to his injuries sometime later.

The witness himself received a sword-cut on his left hand and was sent to Bah Hospital and from there to Agra for treatment. The fact that the witness was injured by a sword-cut is sufficient guarantee of the fact that he must have been present when the attack was made. The witness stated that he recognised all the people, who had come to make the attack, fully. The fact that the witness was a victim himself of the assault and the further fact that the assault was made by lathis and swords on those who were sitting close to each other made it almost certain that those who were-present at the door of the witness could have recognised the participants in the attack.

The witness, when examined at the trial, stated that he did not recollect if there was any light at the place of occurrence : the witness had, however, in the Committing Court, stated that there was a lantern kept on the small chabutra and that there was light and everything was visible. The witness was confronted with the statement he had made in the Committing Court and he thereafter stated that he did not recollect if he had made such a statement but he did say that if he had so stated, then it must have been a correct statement.

The defence naturally attempted to make the most of this omission of a mention of light on the part of the witness in the Court of Session, but the defence cannot, in our judgment, succeed in making us hold that there was no light or that visibility was so poor that the witnesses,could not recognise the assailants, for more than one reason. First, the witness clearly stated/ on oath, that he had fully recognised the assailants and there was nothing brought out in the cross-examination on which it could be said that that statement of his was false or improbable: secondly, the witness had in the Court of the Committing Magistrate stated that there was a lantern burning at the chabutra close-by which emitted sufficient light to illuminate the area of assault; and thirdly, it must be remembered that this witness was giving evidence in this case after a lapse of 15 or 16 years and the witness did not pretend remembering a thing when he in fact did not.

The presence and the position of the light at the scene of occurrence was a matter of detail and not of substance and if that matter of detail escaped the memory of the witness at the time when he was giving evidence in Court then that could not

make this witness's evidence in any manner suspect. The statement of the witness that he had recognised all the assailants fully, contained in it, by clear implication, the fact that there was sufficient visibility for him to recognise the assailants.

53. The next criticism against this witness was that he had stated in his cross-examination that he was not only lying on his charpoy but was sleeping when the assailants came and that he woke up only when he received the first sword-blow, which would indicate that the witness could not gather sufficient awareness to be able to recognise all the assailants within the short time in which the assault had been completed. The entire statement of this witness on this point, in cross-examination was as follows :

'I was not only lying but sleeping when the assailants came. I woke up when I received the sword blow. Subedar gave that sword blow to me. I then wanted to get up and give a lathi blow to Subedar. Subedar gave me a second sword blow and I fell down on the ground. I then became unconscious and could see nothing. I did not see who gave blows to Sohanpal, Ratan Singh and Prahlad. But I saw that the assailants ran away towards east. I had seen who had what weapon. I saw this before I received the sword-blows. I did not see the assailants after I received the sword-blows. But I had seen them before I received the sword-blows.'

In re-examination the witness stated this :

'Both the statements are correct that I was awake when the assailants came abusing 'Hoshiar ho jao, beti chodo aye' and that I was asked when I came. The truth is that I was lying on the charpoy half awake half asleep. As soon as they shouted 'Hoshiar ho jao, beti chodo aye' I became alert and stood up.'

The statement made by the witness in cross-examination was apparently contradictory and appears to have been made by the witness under some kind of mis-apprehension due to confusion arising in his mind in regard to the sequence of the assault because of the lapse of time. We are satisfied that his statement in re-examination that he was half awake and half asleep and that he became alert on the abusive challenge thrown out by the assailants, is correct. The testimony of this witness does not savour of any attempt being made by him to supply details

which would in any manner strengthen the prosecution case. The witness frankly stated what he remembered or did not remember without weighing the consequences of such a statement--this is not a sign of a false witness but is a characteristic of a truthful witness, though an unintelligent one.

54. One other criticism which was levelled against this witness was in regard to his statement about Tahsildar Singh being armed both with a sword and a lathi and of Tahsildar Singh having given lathi blows and not having used the sword. In the earlier sessions trial and at the committal stage of that trial the witness had not mentioned the fact that Tahsildar Singh was armed with a lathi or used a lathi. The omission by this witness of a reference to a lathi in the hands of Tahsildar Singh at the earlier trial does not make the present statement of the witness false, for by placing a lathi in the hands of Tahsildar Singh the witness was in effect minimising the gravity of the assault by Tahsildar Singh.

The number of incised blows inflicted by the assailants were large enough to make any witness, if he so chose, say that Tahsildar Singh also used the sword with which he was armed. The defence suggestion is that the present change in the version has been made in order to reconcile the statement made in the first information report with the evidence led in the case. In the first information report Tahsildar Singh was said to be armed with a lathi.

No mention in it was directly made of Tahsildar Singh having been armed with a sword also. Unfortunately the person, who made the first information report, namely, Khem Singh, was not available at the trial because he was dead, and so no explanation could be had from him as to why there was an omission to mention a sword also with Tahsildar Singh. A reading of the first information report makes it perfectly clear, however, that Tahsildar Singh was not alleged to have used a sword but to have used a lathi only in the assault.

The evidence of Ram Chandra Singh does not depart from this, for Ram Chandra Singh also says that Tahsildar Singh only used his lathi. The fact that Tahsildar Singh also had a sword, according to the witness, does not necessarily make that part of his statement false. Khem Singh, who made the first information report, may have omitted a mention of it for the reason that Tahsildar Singh had not used

his sword but had used a lathi only in the attack, or because Khem Singh may not have seen, from where he was, a sword hanging from the person of Tahsildar Singh.

The trial Judge has relied on the testimony of this witness and we have seen no adequate reason not to rely on it.

55. P. W. 6 Raghbir Singh, the next eyewitness, is the nephew of Ram Chandra Singh. Khem Singh, the person who made the first information report, was his real brother. He was inside the house when the attack was made by the assailants and he came out, so he states, when he heard an uproar and the clanging of swords and lathis. He states that he saw Sohanpal, Ratan Singh and Ram Chandra being beaten by Subedar Singh, Tahsildar Singh, Dhanman, Sheobaran, Raghunath, Heti, Madho, Chhab Ram, Murat Ram, Gandharb, Hukum Singh, Fateh and some others present on the side of the assailants.

According to this witness, they were in all 17 or 18 men. The witness, however, clearly states that all the 17 or the 18 persons did not participate in the assault which was made only by Subedar Singh, Tahsildar Singh, Dhanman, Sheobaran, Chhab Ram, Murat Ram and Fateh. This witness stated that Subedar, Tahsildar, Sheobaran, Dhanman and Murat Ram were each armed with a sword. The witness states that there was a lantern burning near the scene of occurrence.

According to this witness, Khem Singh, Bhola and he brought out ballams from inside the house, presumably to counter-attack, and as they came out the assailants ran away. From the cross-examination of the witness it appears that the witness came to the door on hearing the noise outside and saw what was happening and then went in to fetch his ballam, and came back again with it and then the assailants ran away. This shows that the witness had two clear opportunities of seeing the assailants.

56. This witness was not cross-examined in regard to Tahsildar Singh having a sword and a lathi or his only having a lathi and not a sword. The only contradiction that was, to some extent, brought out in his cross-examination, was in regard to the light. In cross-examination he stated that the lantern was hanging by the door-

frame of the sadar darwaza and that there was no other lantern besides that. In the Committal Court he had stated that the lantern was kept burning outside the house on the chabutra.

His statement in regard to this matter, in the Court of the Committing Magistrate, was brought on the record under the provisions of Section 288 of the Code of Criminal Procedure. He was asked to say whether his statement in the Committing Court or in the Sessions Court was true. He, however, stated -- and we think rightly -- that he could not correctly say which of the two statements was correct because it was difficult to recollect what was the position 16 years back. It was, however, brought out that he had not stated in regard to the lantern at the 1940 trial. This omission appears to us to have been due to the fact that no question in regard to the lantern was raised at that trial, for it appears to have been taken then that the statement that the witnesses saw the assailants clearly conveyed in it by necessary implication that there was sufficient visibility.

57. It was contended that since the name of this witness was not mentioned in the first information report as one of the persons who were present on the scene of occurrence, the statement of the witness to the effect that he saw the incident should be rejected. The mere non-mention of the name of this witness in the first information report, in our view, is- not by itself enough for any one to hold that the witness did not see the occurrence. The witness undoubtedly resided in that very house in front of which the attack had been made by the assailants.

In normal course, the witness, who was at the time of the assault a young boy of 14 or 15 years of age, would not be away at that hour of the evening from home -- the probabilities all point to his presence at the place. The fact that his name was not mentioned in the first information report does not, therefore, necessarily make his presence doubtful on the spot: The omission of his name from the first information report may have been due to the fact that at the time of the assault the witness was inside the house and not at the place of incident and immediately after the assault was over the witness ran away through fear to the house of the Gadariyas and stayed the night there.

It was contended on behalf of the defence that the witness never saw the assault but that when he heard the uproar outside he went away and took refuge in the house of the Gadarfyaa We are unable to accept this contention because this would be against the common experience of conduct displayed by youth in its teens, as during this period, youth, with rare exception only, has an abundance of curiosity and a pathetic lack of caution. We are, therefore, of the opinion that when this witness stated that on hearing the noise he came out and saw the assault he must have done so. The fact that he subsequently ran away and hid himself in the house of the Gadariyas shows that he got upset only after he had seen the results of the assault, namely, the almost instantaneous death of Sohanpal and the mortal injuries sustained by Rataa Singh.

58. Another reason which was suggested for discarding the testimony of this witness was that he was not mentioned in the charge-sheet submitted by the police in respect of the trials of 1940, as a witness. This fact, in our opinion, does not make his evidence doubtful, particularly when we know that Raghubir Singh was examined as a witness in 1940 under Section 512, Cr. P. C. He was also examined by the Investigating Officer as early as 6th of July, 1940.

The omission of the name of Raghutair Singh from the charge-sheet of 1940, was, therefore due to some inadvertence and not because he was not considered to be an eye-witness by the prosecution. The trial Judge relied on this witness and we had seen no adequate reason to completely reject his testimony. The fact that Raghubir Singh mentioned a larger number of accused than were mentioned by Khem Singh in the F. I. R. may make the value of his evidence against those not mentioned in the F. I. R. weaken but this fact could not completely destroy the evidentiary value of his testimony against those who were clearly nominated as accused in the F. I. R. because this witness did not ascribe the assault to all those named by him, for he said that only some of those that came did the beating while the others remained standing. Left by himself we would have hesitated in relying on any part of this witness's testimony but our hesitation has been greatly minimized because we find his evidence as against the appellant adequately corroborated by other unimpeachable evidence : oral and circumstantial.

59. P. W. 27 Prahlad Singh was the last eye-witness produced in the case. He also was a lad of 14 or 15 years at the time of the assault in 1940. He stated that he was sitting at the door and that there was a lighted lantern kept on the chabutra outside the door, that he saw 15 or 16 persons coming from the east, and that he recognised all those 15 or 16 persons. He further states that he saw Subedar Singh, Tahsildar Singh, Sheobaran Singh, Dhanman Singh, Fateh Singh, Chhab Ram, Murat Ram, Raghunath, Maharaj Singh, Mardan Singh, Jamadar and others whose names he did not then recollect.

According to this witness, all the 15 or 16 persons were armed with lathis and swords. Subedar Singh and Dhanman Singh, according to this witness, had swords, while Sheobaran, Tahsildar Singh and Chhab Ram had both lathis and swords, and the others had only lathis. This witness stated that the assailants came in two groups, one of eight, ahead of the rest. In the group that led were Subedar, Tahsildar, Dhanman, Sheobaran, Chhab Ram, Murat Ram, Raghunath and Gandharb and these were the persons who started striking Sohanpal Singh, Ratan Singh and Ram Chandra with lathis and swords, while the others, who came behind, did not participate in the assault.

This witness also mentions the fact that Khem Singh, Bhola Singh and others brought out ballams and thereupon the assailants ran away. According to this witness, he sustained an injury during the course of the assault. The exact nature of the injury and the weapon with which the injury was alleged to have been caused is a matter of a good deal of dispute. Prahlad Singh was examined by Dr. Madan Mohan Misra, Medical Officer of Bah Dispensary, on 5th of July, 1940, at 5.45 p.m. Dr. Misra noted his injury as follows :

'Wound 4', 3" and skin-deep on the left side of the back of the chest -- simple -- by sharp pointed weapon -- the weapon was dangerous.'

In the remarks column, this is what the Medical Officer noted :

'The injured said that the wound has been inflicted, by 'Chharra' of a gun. But I could not find any 'Chharra' in the wound.'

The witness, when asked, stated that he had told the doctor that he had received bullet injuries. Thereupon he was asked this question :

'How did you tell the doctor that you had received bullet injuries when you say that you did not see a gun and that you did not hear gun fire?'

The witness answered as follows:

'I must not have told the doctor that I had received bullet injuries. It is wrong that I told the doctor that I had bullet injuries because I had not seen the weapons which the assailants had. I had seen what weapons they had.'

The value of this witness's testimony, apart from the difficulty in finding, for certain, whether he received any injury in this incident or not, is reduced to practically nil against the appellant because during the course of his statement in the Committing Magistrate's Court he had stated that he could not be certain whether the man in the dock was Tahsildar Singh or not.

Although the witness made an attempt to explain his statement away in the Court of Session, yet we think prudence demands that we should place no reliance on the testimony of this witness against the appellant. On behalf of the State it was argued that this witness had been won over by the defence. Portion of this witness's testimony does create the impression that, for some reason, this witness was out to suppress facts. Whether that was because he had been won over or for some other reason, we do not consider it necessary to investigate, for, in our view, the testimony of this witness has to be discarded as it cannot be relied upon against the appellant.

60. At this stage, we may briefly refer again to the defence of the appellant in order to see whether or not that defence could, in the light of the prosecution evidence, be believed. The defence of the appellant that he was not a participant and had been falsely implicated, because he had incurred the displeasure of the police by not assisting them in apprehending the gang of Man Singh, cannot stand in the face of the evidence which we have just noticed.

In regard to his contention that he was not Tahsildar Singh but was Bhanwar Singh, we may again state that this part of his case was not reiterated before us. Mr. Chaturvedi, appearing on behalf of the appellant, stated that he had been instructed not to press this defence in view of the overwhelming evidence adduced on behalf of the prosecution to support their case.

61. The case of the appellant that he was arrested not at Bhua Khar but at Barechha Ghat also cannot stand scrutiny. The evidence of Subedar Bhagwat Misra satisfies us beyond doubt that the appellant was arrested somewhere in the area of Panderi Khar and Bhua Khar on the morning of 3rd of September, 1954, after the encounter which the police had with Man Singh's gang on the afternoon of 2nd of September, 1954.

The explanation of the appellant that he was being taken across the Chambal because he had sustained an injury at the hands of some Shikaris can also not be believed in the face of the evidence of P. W. 25 Nathu Lal, Station Officer of Bhind. We are satisfied that the appellant received the injury to his leg in the encounter which he and his gang had with the police on the night between 27th and 28th of August, 1954.

62. Now that we have noticed the entire eye-witness account, both recorded at the trial and recorded under Section 512, Cr. P. C., as also the defence case, it would be helpful to see the circumstances which made the participation of the appellant in the incident of 4-7-1940, highly probable.

63. Man Singh had been convicted of murder in 1928 and had been sentenced to transportation for life. Khem Singh in 1937, laid information before the police as a result of, which there was an encounter between the police, on the one hand, and a band of men, amongst whom were Jaswant Singh, the eldest Son of Man Singh, and Dharshan Singh, one of the nephews of Man Singh, on the other. The result of the encounter was that Jaswant Singh and Darshan Singh were killed and Nawab Singh, brother of Man Singh was injured and arrested, and further two of their relations Narain Singh and Lakhuwa were also arrested.

64. In March 1939 Man Singh was released from prison and returned to Khera Rathore. Old enmities were revived with greater vigour, necessitating proceedings being taken under Section 107 of the Code of Criminal Procedure between the warring parties. Khem Singh, leader of the rival party, obtained a release from his bonds on appeal, while Man Singh and his followers could not. Man Singh took action against Khem Singh under Section 307, I. P. C. but Khem Singh was acquitted on 28th of September, 1939, by an Assistant Sessions Judge.

The bonds of Man Singh expired on 30-5-1940. So that, it would be most natural for Man Singh to take revenge. Very little time was lost by Man Singh to organise the revenge. It was argued by the defence that even if Man Singh had been impelled to take revenge, there was nothing to indicate that the appellant also shared the feelings of his father. It was stated that Tahsildar Singh had not figured in any of the earlier incidents that had taken place since 1928 and, therefore, there was no reason to think that all of a sudden in 1940 Tahsildar Singh would follow the foot-steps of his father.

This argument *prima facie* looks attractive but when analysed has little substance. In 1928 Tahsildar Singh was a small boy -- much too young to take part in any incidents of the character in which his father took part. In 1937 Tahsildar Singh had no reason to abscond and, therefore, he could not be in the group of Jaswant Singh, Darshan Singh and Nawab Singh. There is on record no evidence to indicate who were the persons who were actually bound down under Section 107, Cr. P. C. as belonging to the group of Man Singh. Assuming, that Tahsildar Singh was not one of the persons who were bound down, it cannot be said from this circumstance that in 1940 he would not join his brothers in an armed aggression.

65. By 1940 Tahsildar Singh had attained an age when he could render valuable and effective support to his depleted family in any violent activity. It has further to be noticed that by 1940 the grievances which Man Singh's family had against the family of Khem Singh and others had mounted tremendously. It has also to be remembered that by 1940 the family of the appellant had lost three valued members, two having been killed and the third, Nawab Singh, having been injured and arrested. So that, the non-participation of the appellant in the incidents prior to

1940 was really not a circumstance of any value.

66. One other circumstance of considerable importance that need be noticed in this connection is that ever since the disputes started in the year 1928, there is nothing to show that there was any attempt made on behalf of Khem Singh and others to implicate everybody belonging to either the rival party or the rival family indiscriminately.

67. When the incident of July 1940 took place Behari Singh was alive; Man Singh was alive and free; Udal and Rajpat were also, apparently, alive and free, but none of these persons-was named as accused in the case. The non-implication of Man Singh falsely is a circumstance of considerable importance, for Man Singh had for some years been the arch enemy. The fact that Man Singh chose to keep away from this attack of 1940 shows that this time the sons took upon themselves the responsibility of avenging the wrongs done to their father and uncle by the family and friends of the deceased.

68. Yet another important circumstance which has to be taken into account is the circumstance of the appellant's absconding immediately after the offence had been committed. As has already been seen, the absconding of Tahsildar Singh was not one for a short period, nor was it of the nature of absconding resorted to by a man who develops cold-feet after committing a crime in the heat of the moment -- Tahsildar Singh's absconding was of a pattern set up by some of the elder members of the family of Tahsildar Singh. He had been absconding for over 14 years and surprisingly enough he has offered no explanation for this, except denying that he ever absconded, which denial was obviously false.

69. There is yet another circumstance which, though not as important as the one noticed just earlier, nevertheless, is of some significance and that is the circumstance of the appellant setting up an entirely false defence. His assertion that he was not Tahsildar Singh but was Bhanwar Singh was clearly false. The prosecution led a vast volume of evidence to establish to the satisfaction of the Court below that the appellant was Tahsildar Singh, son of Man Singh, resident of Khera Rathore, and not Bhanwar Singh, son of Zahar Singh, resident of Uddotpora.

It may here be pointed out that Mr. P. C. Chaturvedi, appearing for the appellant, did not challenge 'before us the finding recorded by the trial Judge that the appellant was Tahsildar Singh and not Bhanwar Singh. Mr. Chaturvedi refrained from challenging the finding not merely in the exercise of his discretion as counsel for the appellant but he obtained instructions from his client on this aspect of the case and thereafter took his decision not to challenge the finding.

70. Mr. Chaturvedi raised a few general arguments in order to show that on the probabilities the prosecution case was doubtful.

71. The first argument that he raised was that the past conduct of the appellant in not associating himself with his father and other relations in any of the earlier incidents was clearly indicative of the fact that he did not share the view of the other members of his family and, therefore, his participation for the first time in the incident of 4-7-1940, was rendered highly improbable. We have already noticed this argument' at an earlier stage in our judgment and, therefore, suffice it to say here that this argument has no substance and cannot be accepted.

72. The next argument of Mr. Chaturvedi was that the omission to mention a light in the first information report by Khem Singh and the omission of a reference to there being a light near the scene of occurrence in the statements recorded under Section 512, Cr. P. C. indicated that there was no light near the place of occurrence and, therefore, the witnesses who stated that they saw the appellant could not be believed as they would not have enough visibility to recognise all the assailants.

The omission to mention a light in the first information report was, in our judgment, not a vital omission, nor do we consider it to be a vital omission in the statements of witnesses recorded under Section 512, Cr. P. C., for, in our view, when the witnesses stated that they saw and recognised the assailants, they in effect must be deemed to have stated that there was enough visibility to see and recognise.

73. Mr. Chaturvedi severely criticised the delay in making the first information report. We have already noticed that that delay had been explained satisfactorily by Khem Singh in his testimony. The contention that the explanation offered was

an after-thought cannot be accepted, for in the first information report itself Khem Singh had stated that due to fear of the accused persons he could not come to make a report in the night and that getting an opportunity he stealthily came and made the report. We are, therefore, of the opinion that there is no substance in this contention either.

74. It was next contended that there was conflict between the three eye-witnesses in regard to the number of assailants and also in regard to whether the assailants came in a single group or in two different groups. It was further urged that there was a deliberate attempt made at the trial to implicate more men than were alleged to have participated in the assault in the first information report. It is no doubt true that in the first information report only eight persons were nominated, while in the evidence it was generally stated that there were some 15 or 16 people who had come for the assault.

In the evidence, however, all these persons were not specifically mentioned to have participated in the assault. The evidence substantially confined the assault to only those eight persons who had been nominated in the first information report except possibly Ram Sarup whose statement, however, is not very definite one way or the other in regard to the actual beating by all the accused.

There are two possibilities on which this variation in the number of the accused can be explained : first, that the informant Khem Singh confined his naming to only those who participated in the assault, and, secondly, that the witnesses named the entire members of the party of Man Singh in the honest belief that they must have been in the background to render support to the assailants in case of need. This statement of the witnesses may have been true or may not have been true. The benefit of this state of affairs in regard to this matter must necessarily go to such of the accused who had not been named earlier, and we find that those accused had actually been given this benefit and were acquitted.

75. It was contended by Mr. Chaturvedi that the fact that the witnesses at the trial had named a larger number of accused than had been named in the first information report made the entire prosecution case false. The question that has to be determined is 'Could the naming of a larger number of accused in the evidence

than named in the first information report make, the entire case false?' In our opinion, no general rule can be formulated, for the answer in each case must depend upon not only all the circumstances of the case but also on all the probabilities of the matter.

The mere disparity in the names of the assailants given by one set of witnesses from another, or the mere addition of more names at a subsequent stage of the proceedings cannot, in our opinion, by itself make the evidence of either set of witnesses false or suspect. Though there may appear an irreconcilable contradiction on the face of the matter appearing in the evidence, yet there may really be no such contradiction, for witnesses, from different vantage points, may see different people participating in an assault : one may see a much larger number than another.

The powers of observation of individuals vary so that what one person may at a glance pick up may not be picked up by another, even though he were exactly in the same place where the other was. Lapse of time also is a factor which often plays curious tricks with the human memory. These being some of the well-recognised failings of human comprehension, there can be no unvarying answer to the question formulated above.

76. When a Court is faced with large variations in the naming of assailants by witnesses, then the Court has with great care to pick out those whose participation is rendered most probable on the circumstances of the case. A Court cannot shirk its responsibility in the matter by having resort to the cheap expedient of saying that due to the apparent contradictions the entire matter becomes doubtful and the only conclusion at which the Court could justly arrive was that none of the alleged participants could be found to have participated in the assault.

77. It was also hinted by Mr. Chaturvedi, though mildly, that the standard of proof required in criminal cases is different from the standard of proof required in civil matters. Undoubtedly in some cases such a point of view was expressed, but the consensus of modern judicial opinion is not in consonance with that view. Sir Alfred Wills has, in his Treatise on Evidence, stated that

'The rules of evidence, as founded on reason and consecrated in the judgments of the Courts, constituted the best means of discovering truth, and are an integral part of our legal system, essential alike for private and social security. Nevertheless, language of most dangerous tendency in regard to them has occasionally fallen from the learned Judges which implies that they may be modified, according to the enormity of the crime, or the weightiness of the consequences which attach to conviction.

These dicta are opposed to the principles of reason, and inconsistent with all established rules of law. No legal doctrine is more firmly settled than that there is no difference between the rules of evidence in civil and criminal cases; taut if under any circumstances they may be relaxed according to notions of supposed expediency, they cease to be, in any correct and intelligible sense, rules for the discovery of truth, and the most valued rights of civilized men become the sport of chance.

The logical consequence of any such power of relaxation would be that the rules of evidence are radically different in civil and criminal cases, and different even in criminal cases, as they are applied to particular classes of crime, according to some arbitrary and imaginary measure for estimating their relative enormity or penal consequences.'

78. We have, in the instant case, judged the evidence with great care and have given it all the searching scrutiny that we could in order to satisfy ourselves that the conclusion at which we were arriving on the evidence was a right one. We have constantly tested the oral evidence on the touch-stone of the probabilities of the case and when we found that the evidence was in perfect harmony with the probabilities also and there was nothing inherently improbable in the evidence then and then alone did we accept the evidence. The rule in India is not that if a part of a witness's evidence is found to be of a doubtful nature, then his entire testimony has to be thrown over-board. We have, therefore, picked out 'the grain from the chaff' and have come to the conclusion that the oral evidence given by the witnesses as against the appellant was thoroughly reliable.

79. The next argument of Mr. Chaturvedi was that there was a definite variation in the evidence about the manner in which Tahsildar Singh was armed from what had been stated in the first information report. This variation, Mr. Chaturvedi suggested, was due to the fact that the witnesses were not on the scene of occurrence and never saw the assault. We are unable to accept this argument. In the first information report, it is no doubt true, that Tahsildar Singh was said to have been armed with only a lathi, while in the evidence it is stated that Tahsildar Singh had both a lathi and a sword, but it is significant to note that in the evidence Tahsildar Singh was not stated to have used a sword.

If the witnesses were anxious to maximise the part played by Tahsildar Singh in the incident, then they would have ascribed to Tahsildar Singh the use of the sword. It may be noticed that these witnesses could with safety do it, because the number of incised wounds found on the persons of the two deceased and Ram Chandra Singh would not have made the evidence of the witnesses, in any way, inconsistent with the medical evidence, but the witnesses did not do so.

They ascribed to Tahsildar Singh the use of the lathi alone. As has already been pointed out by us earlier, the person, who made the first information report, namely, Khem Singh, was not available at the trial and hence no explanation could be had from him as to why he omitted to mention a sword also with Tahsildar Singh. It may be, as has already been pointed out, that Khem Singh omitted to mention a sword with Tahsildar Singh because Khem Singh did not see the sword hanging from Tahsildar Singh's person. We are of the opinion, therefore, that this argument too has no-substance and cannot render the prosecution case, in any manner, doubtful.

80. Mr. Chaturvedi contended, next, that since all the witnesses named in the first information report had not been examined at the trial, the Court had been deprived of having before it all the available evidence and thus was precluded from coming to a just conclusion. The witnesses, who were named in the first information report, were Mulu Singh, Sarwan Singh, Bhola Singh, Prahlad Singh and Sultan Singh. Of these, Bhola Singh and Prahlad Singh were examined before the Court : the other three were not.

81. The duty that is cast on the prosecution in a criminal case is to prove their case beyond reasonable doubt against the accused : the prosecution, therefore, is entitled to select the witnesses whom they wish to produce against any particular accused at any particular trial. If the evidence produced in the case falls short of the quantum and the quality required by the Court trying the case, then the prosecution takes the consequences thereof.

If the prosecution keeps back any evidence from some oblique motive, then obviously a Court is entitled to use that circumstance against the prosecution and in favour of the accused while judging the evidence which the prosecution chose to produce in the case. Where, however, the prosecution offers adequate explanation for the non-production of all the eye-witnesses named in the first information report and if that explanation is found satisfactory by the Court, then obviously the prosecution cannot, because of that circumstance alone, incur any disability.

In the instant case there is, in our view, adequate explanation offered by the prosecution for the non-production of Mulu Singh, Sarwan Singh and Sultan Singh. From the evidence of P. W. 29 Mansoor Ali, Station Officer of Police Station Bah, it is clear that Mulu Singh absconded from Khera Rathore eight or nine months prior to the trial and his whereabouts could not be known. From the evidence of P. W. 6 Raghbir Singh it is clear that Sultan Singh died two or three days after the murder of Sohanpal Singh and Ratan Singh.

From Mansoor Ali's evidence it is further clear that the prosecution wanted to produce all the witnesses named in the first information report but that they evaded giving evidence at the trial. This statement of Mansoor Ali does not strike us to be doubtful, for there is material on the record, at any rate in the circumstances, which clearly indicated that the accused and his associates had striken terror in the hearts of the residents of Khera Rathore and that people of that locality were afraid of coming forward to give evidence against the accused.

From the evidence of Mansoor Ali it is again clear that all the witnesses who were named in the first information report had been examined by the police either on 5th or 6th of July, 1940. So that, the prosecution in this case did all that they could do,

under the circumstances, to produce all those witnesses who had been named in the first information report and no just blame can attach to them for the non-production of any of the witnesses named in the first information report.

82. From all that we have said above, we are satisfied that the case against appellant Tahsiidar Singh has been proved beyond reasonable doubt. We hold, in agreement with the Court below, that Tahsiidar Singh was a member of an unlawful assembly, which was armed variously with swords and lathis, and made a murderous assault on Sohanpal Singh and Ratan Singh, who lost their lives as a result of that assault, and further that the members of the unlawful assembly assaulted Ram Chandra Singh also with a view to take his life and caused him serious sword and lathi injuries.

The appellant was, therefore, rightly convicted under Section 148 and under Section 302/149, I. P. C. for the murders of Sohanpal Singh and Ratan Singh. He was also rightly convicted under Section 307/149, I. P. C. for the attempted murder of Ram Chandra Singh. We are, however, not satisfied that the injury which Prahlad Singh is alleged to have received was received at the hands of any of the members of the unlawful assembly of which the accused was also a member. We, therefore, are of the opinion that the conviction of the appellant under Section 324/149, I. P. C. was wrongly made and must be set aside and we do hereby set it aside.

83. The appellant was awarded a sentence of death for the murders of Sohanpal Singh and Ratan Singh and was awarded a sentence of transportation for life for the attempted murder of Ram Chandra Singh. He was awarded a sentence of three years' rigorous imprisonment under Section 148, I. P. C., and for the injury alleged to have been caused to Prahlad Singh, for which he had been convicted under Section 324/ 149, I. P. C., he was awarded two years' rigorous imprisonment -- this sentence of two years' rigorous imprisonment must be set aside for we have set aside the conviction on this count.

Mr. Chaturvedi strenuously contended that the sentences of death awarded to the appellant for the murders of Sohanpal Singh and Ratan Singh were, under the circumstances of the case, unjustified, particularly when the other members of the

unlawful assembly, who stood their trial and were convicted in 1940, were awarded a sentence of transportation for life only. We are of the opinion that there is some substance in this contention of Mr. Chaturvedi.

The appellant had not participated in any of the earlier incidents and this was the first occasion when he appears to have been persuaded by the elders of his family to join in this assault. So that, in our view, he did not merit the extreme penalty of the law for his participation. Further, the evidence indicates that the appellant, although armed with a sword, did not use the sword but only used his lathi. Neither of the two deaths of Sohanpal Singhand Ratan Singh was brought about by lathi injuries.

In order to judge the appropriateness of the sentence we cannot take into account the subsequent notoriety which the appellant acquired. So that, we are of the opinion that the ends of justice, in this particular case, would be met by our reducing the sentence of death awarded to Tahsildar Singh to one of imprisonment for life for his convictions under Section 302/ 149, I. P. C. The other sentences awarded to the appellant under Section 307/149 and Section 148, I. P. C. need no interference and shall stand.

84. The appeal, therefore, falls in substance and is hereby dismissed subject to the modification in the sentences indicated above.

85. The reference for the confirmation of the sentences of death is accordingly rejected.

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