

State Vs. Bhola Singh

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Court : Rajasthan

Decided On : Nov-15-1968

Reported in : AIR1969Raj219; 1969CriLJ1002; 1968()WLN159

Judge : L.S. Mehta and; C.M. Lodha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 40 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367; [Evidence Act, 1872](#) - Sections 3, 8, 114 and 137

Appeal No. : Criminal Murder Ref. No. 5 of 1968, Criminal Appeal No. 507 of 1968 and Cri. (Jail) Appeal No. 486 o

Appellant : State

Respondent : Bhola Singh

Advocate for Def. : Than Chand Mehta,; N.C. Mehta and; Kusum Surana, Adv

Advocate for Pet/Ap. : G.M. Mehta, Deputy Government Adv.,; O.C. Chatterji,;
Re

Judgement :

Mehta, J.

1. There lived one Nand Singh Sikh in the village Uttamsinghwala. He had had six sons, namely (1) Bhola Singh, (2) Gurdev Singh, (3) Darshan Singh, (4) Makhan Singh, (5) Raja Singh and (6) Gurmej Singh. The accused Bhola Singh had been separated from the joint family. He was living in the northern portion of the family house, in the Chak Uttamsinghwala. The rest of the brothers were living with their parents in its southern part. The other accused Kor Singh is the son of the accused Bhola Singh's wife's sister.

It is alleged by the prosecution that on July 21, 1967, at about noon, when the deceased Makhan Singh and Raja Singh were irrigating their agricultural land, their brother Bhola Singh blocked the water course and diverted water towards his own land. Makhan Singh objected to it and turned water towards his land on the rear side, with the result that water stopped from flowing into Bhola Singh's field. This enraged Bhola Singh. He hurriedly went to his house and returned to his field with a 'Barcha'. His father Nand Singh, his mother Mst. Gurdayal Kaur, P. W. 2, and his uncle Hari Singh intervened. They stopped Bhola Singh from putting up fight with his brother.

Both Raja Singh and Makhan Singh returned home, at about 2.30 p. m. They after taking their evening meals, went to bed at about 8 p. m. Raja Singh, Gurmej Singh and their mother Mst. Gurdayal Kaur slept on three cots, placed near each other, towards the door of the house. The deceased Makhan Singh and Darshan Singh slept on their cots lying at a distance of nearly three 'paundas' (15 ft.) away from the cot of their mother. The other ladies of the family, including the wife of the deceased Makhan Singh, Smt. Ranjeet Kaur and Smt. Sarjeet Kaur wife of Darshan Singh, slept in the court-yard of the family house. Bhola Singh's family was sleeping at his own dwelling place.

During the night intervening 21st and 22nd July, 1967, Bhola Singh, along with Kor Singh, passed near the cot of Raja Singh and then reached the place where Makhan Singh and Darshan Singh were lying asleep. Bhola Singh fired his pistol at Darshan Singh, hitting him on his chest. Kor Singh inflicted a 'Barcha' blow to Makhan Singh's chest. Raja Singh, P. W. 1, and Mst. Gurdayal Kaur, P. W. 2, who were awoken, rushed up to the place where the murders were committed. Kor

Singh after piercing the spear in the chest of Makhan Singh took it out with force. In the course of this frenzied attempt Makhan Singh fell down from his cot. Raja Singh and Mst. Gurdayal Kaur wanted to catch hold of the accused persons, but they were warned with impending danger. Their attempt, therefore, remained abortive. Raja Singh, and Mst. Gurdayal Kaur lifted Makhan Singh and put him on his cot. Soon after they saw Bhola Singh on the roof of his apartment. He intimidated Raja Singh and others with dire consequences from his' roof. After a short while Bhola Singh removed all his family members from his house. Makhan Singh and Darshan Singh both died on the spot. On hearing an alarm Hari Singh, Amar Singh, Sajjan Singh, Jeet Singh and other villagers arrived at the place after half an hour of the occurrence.

Next day at about 6 or 7 a. m. Raja Singh went to the Police Station, Hanumangarh, which is at a distance of nearly 16 miles from Uttamsinghwala chak and lodged First information report Ex. P. 1 at 9 a.m. The Station House Officer Kishore Singh. P. W. 6, registered a case under Section 302, I.P.C. and then investigation followed. Soon after he reached the spot and found there the dead bodies of Darshan Singh and Makhan Singh. He got one twelve bore live cartridge at the place of the occurrence. It was duly sealed and seized by him. He prepared site plan Ex. P, 2, description memo of the site Ex. P. 2-A, inquest reports of the deceased Makhan Singh and Darshan Singh, Exs. P. 6 and P. 7 respectively, recovery memo of the live cartridge Ex. P. 10, recovery memo of 'Barcha' Ex. P. 16 and the recovery memo of the twelve bore country made pistol Ex. P. 17.

Information given by the accused Kor Singh regarding the place where he had hidden the 'Barcha' was reduced into writing and is marked Ex. P. 20. Information pertaining to the recovery of the pistol was furnished by Bhola Singh. It was reduced into writing and is marked Ex. P. 21. Autopsy of the dead body of Darshan Singh was conducted by Dr. Santlal, P. W. 3. He found the following injuries on his body:--

1. A gun shot wound 1' in diameter with charring all around, going deep into chest on left side 2 1/2' below left nipple,
2. Walls of thorax lacerated on left side by gun shot.

3. Pleurae: Lacerated badly by gun shot on left side,
4. Left lung charred and burnt completely with gun shot. Dots found in its substance.
5. Pericardium: Lacerated badly by gun shot.
6. Heart charred and lacerated badly by gun shot.

The cause of death, according to the Doctor, was shock and internal haemorrhage due to injuries caused to the vital organs with a firearm. Two gun shot bullets were found on the back of the deceased and they were handed over by the Medical Officer in a sealed cover to the police. All these injuries were ante-mortem and were sufficient in the ordinary course of nature to cause death.

2. Post-mortem examination of the dead body of Makhan Singh was also performed by the above Doctor. Following injuries were noticed on his person:--

1. An incised wound 2' X 2' X going deep X abdominal cavity on right side of abdomen on front 13' below tip of right shoulder.
2. An incised wound 1/2' X 1/2' X going deep X abdominal cavity on right side of back 10 1/2' below tip of right shoulder.

On opening the dead body the Doctor found the symptoms as under:--

1. Abdominal walls:-- Lacerated by two injuries described above.
2. Peritoneum:-- Lacerated badly by sharp and penetrating weapon.
3. Small intestines lacerated at many spots by sharp and penetrating weapon.'
4. Large intestines lacerated at many spots by sharp and penetrating weapon.
5. Liver:-- Lacerated right lobe wound of entry 2' X 2' and wound of exit 2' X 2' gall bladder.

G. Kidneys:-- Right kidney lacerated at upper part. Wound of entry 2' X 2' and wound of exit 2' X 2'.

According to the Doctor these injuries were ante-mortem and were caused by a sharp and penetrating weapon. They were sufficient in the ordinary course of nature to cause death. The cause of his death, was shock and internal haemorrhage due to the injuries caused to the vital organs of his body.

3. Accused Kor Singh was arrested by Kishore Singh, S. H. O. on July 25, 1967, at Dhani Sher Singhwali. The accused Rhola Singh surrendered himself to the Superintendent of Police, Ganganagar, on July 29, 1967. After the investigation was concluded, the police put up a charge-sheet against the two accused Bhola Singh and Kor Singh under Section 302, I. P. C., in the Court of Munsiff-Magistrate, Hanumangarh, who conducted committal proceedings in accordance with Section 207-A, Criminal P. C., and committed the two accused to the Court of Sessions Judge, Ganganagar, to take trial under Sections 302 and 302/34. I. P. C. Both the accused were charged, on February 5, 1968, under the said provisions of law, to which they pleaded not guilty and claimed to be tried.

In support of its case the prosecution examined 6 witnesses. In their statements, recorded under Section 342, Criminal P. C., they (accused) made total denial of the indictment. Accused Bhola Singh further stated that his mother and his brothers used to quarrel with his wife and, therefore, they became antagonistic to him. His father had had litigation with his uncle, who might have murdered his brother. His father and his father's brother falsely gave his name as they wanted to acquire his property. Kor Singh also made some additions in his statement. He said that Raja Singh and his wife had had enmity with his mother's sister and therefore, they told a lie. In their defence the two accused examined 3 witnesses, Jeet Singh, D. W. 1 Malu Ram, D. W. 2, and Ranbir Singh D. W. 3.

Eventually learned Sessions Judge, Ganganagar, disbelieved the defence evidence and relied upon three eye witnesses, P. W. 1, Raja Singh, P. W. 2, Mst Gurdoyal Kaur, and P. W, 4, Mst. Sarjeet Kaur. He convicted Bhola Singh for murdering Darshan Singh under Section 302. I. P. C. and sentenced him to death, and for murdering Makhan Singh, with common intention, under Section 302/34, I.

P. C., and sentenced him to imprisonment for life. The accused Kor Singh was convicted for murdering Makhan Singh under Section 302, I. P, C., and was sentenced to imprisonment for life. He was further convicted for murdering Darshan Singh, with common intention, under Section 302/34, I. P. C. and sentenced him to imprisonment for life. The sentences were directed to run concurrently.

4. Aggrieved against the above verdict, accused Bhola Singh has filed jail appeal (Bhola Singh v. State, D. B. Criminal Jail Appeal No. 486 of 1968). Bhola Singh and Kor Singh also filed a represented appeal (Bhola Singh and another v. State, D. B. Criminal. Appeal No. 507 of 1968). As Bhola Singh has been sentenced to death, learned Sessions Judge, Ganganagar, has submitted proceedings to this Court for confirmation in accordance with Section 374, Criminal P. C.

5. Learned counsel representing the two accused, Bhola Singh and Kor Singh, has argued that the case rests on the oral testimony of 3 witnesses, Raja Singh, P. W. 1, Mst. Gurdayal Kaur, P. W. 2 and Mst. Sarjeet Kaur, P. W. 4. Raja Singh, P. W. 1, had strained relations with the accused Bhola Singh as he had quarrelled with him prior to the occurrence. So also Mst. Gurdayal Kaur and Mst. Sarjeet Kaur could not be said to be independent witnesses. As the pistol alleged to have been recovered at the instance of Bhola Singh has not been examined by any ballistic expert, and as the 'Barcha' found at the instance of the accused Kor Singh, has also not been examined by the Chemical Examiner and the Serologist, their recoveries do not connect the accused with the crime. Learned counsel vehemently urged that it would be risky to maintain the conviction of the accused based on the eye witness accounts furnished by the three witnesses, as the same are not corroborated in material particulars by other independent testimony. Learned counsel has also mooted that the prosecution has not proved satisfactorily the motive for which the crime is alleged to have been committed and the absence of satisfactory proof relating to motive is an important factor which goes in favour of the accused. Learned counsel then pressed that the prosecution ought to have examined Amar Singh, Jeet Singh, Hari Singh and Sajjan Singh, who reached the spot soon after the occurrence and to whom the eyewitnesses narrated the whole incident. Their non-production raises a presumption against the

prosecution by virtue of illustration (g) to Section 114, Evidence Act. The case was argued on behalf of the State by Shri Than Chand Mehta, and Shri Govind Mal Mehta, Deputy Government Advocate. They supported in toto the judgment of the Court below.

6. We have heard at length the addresses of learned counsel, representing both the parties, and perused the record of the case with meticulous care. In so far as the evidence of the ballistic expert is concerned, we may point out that the Station House Officer, Kishore Singh. P. W. 6, recovered a live cartridge of 12 bore on the spot, on July 22, 1967, in the court-yard of the residential house of Nand Singh near the corpse of the deceased Darshan Singh and Makhan Singh. A memo was prepared and is marked Ex. P. 10. It was not necessary to send the live cartridge to the ballistic expert. Had an empty cartridge been recovered on the spot, the matter would have been different. It would have then been necessary for the prosecution to send the same to the ballistic expert, to test whether it had been actually fired from the pistol recovered. Similarly, it was not necessary for the prosecution to have sent the 'Barcha' to the Chemical Examiner and the Serologist for inspection as it was not found to have been stained with blood. At any rate, the recovery of the two weapons does not link the accused with the crime.

7. In so far as the motive is concerned, accused Bhola Singh stated before the committing Court that the prosecution witnesses bore grudge against him. Kor Singh also said that the witness Raja Singh and his wife had had animosity with his mother's sister. He also stated in his committing Court's statement, which was taken in evidence by the trial Court under Section 287, Cr. P. C., that the witnesses produced by the prosecution were on inimical terms with him. The accused thus admits that there was strained relation between them and the deceased's party.

8. After discussing the evidence of P. W. 1 and P. W. 2, the judgment proceeds. From this testimony it is evident that on the date of the occurrence trouble started between Bhola Singh, on the one hand, and Makhan Singh, on the other, about the turn of water. It is further clear that relations between Bhola Singh and Darshan Singh too were unhappy. Bhola Singh was bent upon taking vengeance

on his brothers. He rushed to his house and brought therefrom a 'Barcha.' Having suspected that Bhola Singh might retaliate, his parents and his uncle Hari Singh interfered and pacified him for the time being. But for the interruption of these people, a fight could have ensued during the day time. This fact gives an idea of the inkling of the mind of the accused Bhola Singh as to whether it was working. P. W. 2 Mst. Gurdayal Kaur is the real mother of Bhola Singh. Bhola Singh though lived separately from her, was a part of her blood and a part of her flesh. He was fed by her breasts and nursed in her lap. She was, therefore, naturally anxious to avert trouble between her sons. There is no reason why her evidence should not be believed in regard to the motive for which the crime is alleged to have been committed.

9. Bhola Singh would not have ventured to go to the spot all alone. It is in the prosecution evidence that Kor Singh, who was the son of Bhola Singh's wife's sister, used to frequent Bhola Singh's house. Raja Singh. P. W. 1, has stated that Kor Singh accused used to frequent Bhola Singh's house at intervals. As stated above, Bhola Singh would not expose himself to risky or dangerous undertaking all alone and face several person's, sleeping in the compound. He must have thought that some other person should accompany him in his hazard, lest he might be overpowered. Under the circumstances Kor Singh acted foolishly to accompany Bhola Singh to the spot of the occurrence and participated in the crime, though he had had no direct motive for what he had done.

10. Though motive is relevant and may furnish strong corroboration of the evidence of the eye witnesses, making their statements, other things being equal, readily acceptable, the mere fact that no motive has been proved is not a sufficient answer where direct evidence against the accused is overwhelming and otherwise credible. The correct decision of a case depends upon the view which we take regarding the trustworthiness of the prosecution witnesses, who have given evidence against the appellants. In this connection reference is made to *Atley v. State of Uttar Pradesh*, AIR 1955 SC 807 in which it has been observed that proof of motive, no doubt, lends additional support to the finding of the court that the accused was guilty, but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. Absence of proof of motive has this effect only that

the other evidence bearing on the guilt of the accused has to be carefully scrutinised. It has further been repeated by their Lordships of the Supreme Court that where the evidence against the accused is clear, positive and reliable, the question of motive is not of much significance; vide *Gurcharan Singh v. State of Punjab*, AIR 1956 SC 460. In this case so far as Bhola Singh is concerned, motive has been satisfactorily proved by the prosecution. Though the other accused Kor Singh had had no direct motive for the perpetration of the crime, yet the prosecution evidence suggests that he being a close relative of Bhola Singh accompanied him and actually participated in the foolish adventure. Therefore, the argument of learned counsel for the appellants that the case gets weakened for want of motive cannot be accepted as sound.

11. The prosecution in support of its case has examined 3 eye witnesses, namely, P. W. 1 Raja Singh, P. W. 2 Mst. Gurdayal Kaur, and P. W. 4 Mst. Sarjeet Kaur. (After discussing the evidence of these witnesses the judgment proceeds),

12. A careful scrutiny of the statements of the above 3 witnesses shows that they have not been shaken in any material particulars in the course of their cross-examinations. It cannot be too strongly emphasised that the system of administration of justice allows cross-examination of witnesses for the purpose of testing their veracity and it must be assumed that when the witnesses were not tested in that way, their evidence has to be accepted, unless, of course, there are inherent improbabilities. In other words, when the opponent declines to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believes that the testimony given could not be disputed at all. This is the rule of essential justice. Here cross-examination conducted on behalf of the accused in respect of the examinations-in-chief of these 3 eye witnesses does not indicate any material improbability and the statements of the witnesses remain unchallenged.

13. Learned counsel for the appellants has argued that these 3 witnesses are close relations of the deceased Darshan Singh and Makhan Singh and, therefore, their evidence should not be trusted. Here it should be borne in mind that the three witnesses are also very close relatives of the accused. A witness is normally

considered to be independent, unless he or she springs from sources which are likely to be tainted, and that usually means that unless the witness has cause, such as enmity against the accused to wish to implicate him falsely, ordinarily a near relative will be the last person to screen the real culprit and falsely implicate an innocent person. The mere fact of relationship is not enough to throw away the evidence of a witness if it is found to be true: vide *Dalip Singh v. The State of Punjab*, AIR 1963 SC 364. Relationship of the prosecution witnesses to the murdered persons is no ground for not acting upon their testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses, who could be expected to be near about the place of the occurrence and could have seen what had happened then It has been emphasized in *Mangal Singh v. State of Madhya Bharat*, AIR 1957 SC 199 that the proposition that when the eyewitnesses to the occurrence were interested persons, there should be corroboration of their evidence by independent witnesses cannot be of universal application.

In this case the occurrence took place at the dead of the night when no independent person was expected to be present in the house of Nand Singh. The three eyewitnesses were sleeping near the place where the deceased were lying asleep on their cots. These witnesses, therefore, were naturally expected to be available on the place of the occurrence and they could have naturally seen what had happened during the night. That apart, as has already been pointed out above, accused Bholu Singh was a part of his mother's blood and was a part of her flesh. She would, therefore, be the last person to foist a crime against her own son and Ms close relative.

14. Learned counsel for the appellants has further debated that in the circumstances of the case it would be appropriate for an appellate court not to depend upon the oral evidence of the eye-witnesses in a serious matter like this, unless there is some circumstantial evidence to lend assurance to its reliability. He has referred to *Lachhman Singh v. State*, AIR 1952 SC 167 and *Karnail Singh v. State of Punjab*, AIR 1954 SC 204.

In these authorities it has been observed that the corroboration required of a witness, who is a relation of the deceased in a murder case, is not that kind of

corroboration which would be necessary to support the evidence of an approver or an accomplice, but only such corroboration is needed as would be sufficient to lend assurance to the evidence before the court and satisfy the court that the particular persons were really concerned in the offence. The statement of the eye-witness Raja Singh, P. W. 1, is corroborated by the detailed first information report Ex. P. I. lodged by him soon after the occurrence. The testimony of the three eyewitnesses further gets support from the medical evidence given by Dr. Santlal. P. W. 3. According to the Doctor Darshan Singh died of the gun-shot injury on the vital part of his body and Makhan Singh expired of an injury caused by sharp and penetrating weapon. Bhola Singh admits in his statement recorded under Section 342, Cr. P. C., that Raja Singh, Gurmej Singh and Smt. Gurdayal Kaur slept near the main gate. Makhan Singh and Darshan Singh slept at a distance of about 5 to 10 'paundas' from them. The accused has further stated that he was sleeping on the roof of his house. Raja Singh, P. W. 1, has said that after the occurrence Bhola Singh took his family members with him and left the house. He saw Kor Singh also going with Bhola Singh and his family. Gurdayal Kaur has deposed that Bhola Singh went away with his wife and mother-in-law soon after the event.

Station House Officer Kishore Singh, P. W. 6, has categorically stated that the two accused could not be traced in the village. He arrested the accused Kor Singh on 25-7-1967 at Dhani Sher Singhwali and Bhola Singh accused surrendered himself before the Superintendent of Police, Ganganagar, On July 29, 1967. This fact further stands proved by the accused's own witness Jeet Singh, D. W. 1. He says that after the occurrence he reached the place and he remained there for the whole night and that Bhola Singh was not available at his house then. Had the accused not committed the crime, it was improbable that he would have left his house along with his family members, during the night, leaving behind his two murdered brothers. Both the accused ran away bag and baggage with a view to avert possible retaliation by the surviving family members of the deceased.

15. Learned counsel for the accused has further argued that it was hardly possible for the eye-witnesses to have identified the accused during the dead of the night. The occurrence took place during the night when there was full moon. In the first information report full details of the happening including the names of the two

accused have been inserted. The first information report was made soon after the occurrence.

(After narrating the evidence of P. Ws. 1 and 2 the judgment proceeds). Thus, there were several chances at the disposal of the witnesses for identifying the accused persons during the night of the happening. There is, therefore, no question of mistaken identification. The witnesses were not cross-examined on the point in issue. Their evidence on the point remains unassailed. This is another vital factor which lends assurance to the testimony of the eye witnesses.

16. Learned counsel for the appellants has drawn the attention of the court towards the fact that if the accused persons passed near Raja Singh before the occurrence and if Raja Singh was really awake at that time, he could have raised an alarm. Raja Singh, P. W. 1, has said that he was in fact awake when the accused passed near him. He has also said that he did not ask Bhola Singh what he was looking at, as he usually passed by that way. Again, Bhola Singh was a member of his family. Had he seen some strangers at the odd hours of the night, there was tangible reason for him to get suspicious and raise an alarm. But in this case as Bhola Singh was a member of his family and as the way he was going in the night was his usual way he kept quiet.

17. It is in the prosecution evidence that the accused Bhola Singh scaled over the wall after the occurrence. Raja Singh, P. W. 1, has said that when he and his mother were putting Makhan Singh on the cot, he saw accused Bhola Singh scaling the wall, which was nearly 3 to 4 ft. high and that the way leading to the roof of the house passed through this wall. The witness has further said that there is no staircase or roof leading to the house, but there is one foot-hold in the wall by which one could climb over the roof of the 'Kotha'. Similarly, Gurdayal Kaur has deposed that the accused Kor Singh after the event scaled over the wall and Bhola Singh climbed the roof after getting upon that wall. Mst. Sarjeet Kaur. P. W. 4, points out that Bhola Singh climbed the roof, while Kor Singh went out of the house and that Kor Singh alone had gone out of the compound and not Bhola Singh. In her police statement Ex. D. 2, portion marked C to D. Mst. Sarjeet Kaur has said that they both went outside through the backside compound.

It is true that this small discrepancy in the statement of Mst. Sarjeet Kaur is there, but this would not throw any doubt on the truthfulness of her statement as a whole. After the commission of the murders, Bhola Singh climbed the roof of his house, whereas Kor Singh went out of the compound. Later on Bhola Singh returned to his house. He went to take his family members from his residence with a view to ward off the possibility of a retaliation by his other brothers. This is another significant factor which lends assurance to the eye-witness account.

18. Thus, according to our reading of the entire evidence and the judgment of the trial court, we are of opinion that there exists substantial circumstantial evidence to support the oral testimony of these three eye-witnesses. The circumstances enumerated above lend guarantee to the testimony of the three eye witnesses and they satisfy us that the two accused were really concerned in the murder of the two deceased,

19. Learned counsel for the appellants vehemently urged that Amar Singh, Jeet Singh, Sajjan Singh and Hari Singh arrived on the spot after the occurrence. The two eye-witnesses Raja Singh and Gurdayal Kaur had had a talk with them in the matter of the murders of the two deceased. It was incumbent upon the prosecution to examine these persons, but they were withheld. An adverse inference in terms of illustration (g) to Section 114. Evidence Act, according to learned counsel, should be drawn against the prosecution for not examining them. In the course of the arguments he adverted to *Mahendrapal v. State*, AIR 1955 All 328.

It is a fact that Jeet Singh, Sajjan Singh, Amar Singh and Hari Singh reached the spot half an hour after the occurrence. Jeet Singh has been produced as a defence witness. When a number of other eye-witnesses have been produced, there is no charm in producing and multiplying a large number of witnesses to testify the same fact. Though as a general rule, all prosecution witnesses should be called to testify at the hearing of a prosecution, there is no obligation compelling a counsel for the prosecution to call all witnesses, who speak to the same facts, which the prosecution desires to prove. Ultimately it is a matter for the discretion of the counsel for the prosecution and though a court ought, and no doubt, will take into consideration the absence of witnesses whose testimony

would be accepted, it must judge the evidence as a whole and arrive at its conclusion accordingly, taking into consideration the persuasiveness of the testimony given in the light of such criticism, as may be levelled, in the absence of possible witnesses. These views are to be found in judgments of the Privy Council reported in *Adel Muhammed El Dabbah v. Attorney General of Palestine*, AIR 1945 PC 42 and *Malak Khan v. Emperor*. AIR 1946 PC 16. There is thus no obligation on the prosecution to tender all the witnesses who were not called to give evidence. The prosecutor has a discretion as to what witnesses should be called and the court will not interfere with the exercise of that discretion, unless it can be shown that the prosecution has been influenced by some oblique motive. No such suggestion has been made in the present case.

The Allahabad case, AIR 1955 All 328 referred to by learned counsel for the appellants does not help the prosecution (appellants?) In that case certain witnesses were examined by the Investigating Officer, but they were not produced in the course of the trial. The court held that the evidence of these witnesses was material not with a view to prove the actual fact of the murder, which was in issue, but to prove the relevant fact, namely, that just after the event the eye-witnesses disclosed the names of the culprits to those who came and that this relevant fact was connected with the fact in issue in view of Section 3 illustration (a) of the Evidence Act. In the Allahabad case the witnesses who were not examined at the trial were examined by the police in the course of the investigation. Here these witnesses were not examined by the police. They were simply interrogated by the police and when they did not disclose any useful information, their regular examinations were not conducted during the course of investigation, (After discussing the evidence their Lordships proceeded).

With this nature of evidence no useful purpose could have been served by producing these witnesses, and from their non-production no adverse inference can be drawn against the prosecution. A mere consideration that the witnesses might have given a further description of how things happened would not justify the conclusion that the omission to examine them was for oblique motive. Having regard to the fact that these witnesses, though present at the time of the investigation, did not disclose to the police as to what the eye-witnesses had told

them, it was not necessary for the prosecution to examine them before the trial court.

It may also be stated here *inter alia* that it has not appeared in the evidence anywhere that Mst. Sarjeet Kaur P. W. 4. who saw the two accused persons soon after the occurrence and who found Bhola Singh standing with a pistol near Darshan Singh and Kor Singh pulling out 'Barcha' from the body of Makhan Singh, had a talk about the perpetrators of the crime to any of the villagers who arrived at the spot after the occurrence. Her statement thus remains absolutely unchallenged and it alone satisfactorily connects the accused with the crime. It is not at all necessary to produce Amar Singh etc. in the prosecution evidence in support of her statement as she has nowhere said that she had had any talk with any one of them.

20. Learned counsel for the appellants, in the end, urged that P. W. 2 Mst. Gurdayal Kaur made an inconsistent statement as compared to her statement recorded by the police. Similar is the case with the statement of P. W. 1 Raja Singh. Gurdayal Kaur, P. W. 2, was confronted with her police statement Ex. D. 1 at portion marked A to B, wherein she deposed that when Kor Singh came and knocked the door, she was awakened. This statement does not in the least contradict the statement made by her before the trial court, in which she has categorically said that when the accused came, she was lying awake. P. W. 1 Raja Singh was also confronted with portion marked A to B in the first information report Ex. P. 1, in which he inserted that at the dead of the night his elder brother Bhola Singh and Kor Singh came and began to see the cots and he woke up. This statement is also not at all in conflict with the statement made by him in the trial court. Learned counsel for the accused cited *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat*, AIR 1964 SC 1563 in which there is an observation that the statements made in the depositions in court inconsistent with the earlier statements before the police are contradictions within the meaning of Section 162, Cr. P. C., and no reliance could be placed on the evidence of such witnesses. In this case, as we have already pointed above, there are no inconsistencies worth the name in the statements of the two witnesses made before the trial court and the police, as also in the first information report.

21. In the light of what we have discussed above, we accept it as true the evidence of the three eye-witnesses and reach the conclusion that the two accused Bhola Singh and Kor Singh committed these brutal and premeditated murders of Darshan Singh and Makhan Singh and they did so with the intention of causing their deaths.

22. Now the question is: whether in this case the sentence of death awarded to the accused Bhola Singh should be confirmed? It may be noted that the learned Sessions Judge, Ganganagar, has awarded life imprisonment to the appellant Kor Singh even though he committed the murder of Makhan Singh brutally. It has come in the evidence that the accused Bhola Singh had quarrelled with Makhan Singh on the day of the occurrence and not with Darshan Singh that day. It is thus not clear as to what was the immediate cause for Bhola Singh to murder Darshan Singh that night. Taking into consideration all the circumstances of the case and the fact that the lower court has awarded lesser penalty to Kor Singh, who was equally guilty for the murder, we consider it proper to impose the lesser penalty on Bhola Singh also.

23. Accordingly we reject the referencemade by the learned Sessions Judge, Ganganagar, under Section 374, Criminal Procedure Code for confirmation of death sentence. The appeal filed by the accused BholaSingh is partly allowed and the sentenceof death awarded to him by the trial courtis modified into the sentence of life imprisonment. With this modification theconvictions and sentences passed by thelearned Sessions Judge, Ganganagar aremaintained.