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Mr. Pathak faintly attempted to argue in the alternative that even if the appellant was acting on behalf of the disclosed principal it would be entitled to sue because from the subsequent conduct of the parties a contract to the contrary could be reasonably inferred. We have, however, not allowed Mr. Pathak to argue this point. It was conceded by the appellant before the Appellate Court that if it was held that the plaintiff firm was acting as agent for Khaitan & Sons Ltd., the suit was not maintainable. This concession was made in view of the provisions of s. 236 of the Contract Act. Besides, the alternative plea which Mr. Pathak wanted to raise does not appear to have been expressly pleaded or considered in the trial court.

In the result the appeal fails and is dismissed. In the circumstances of this case we direct that the parties should bear their own costs in this Court.

Appeal dismissed.

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October 16.

HARBANS SINGH AND ANOTHER
v.
STATE OF PUNJAB

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Appeal against acquittal—Interference by appellate court, when permissible—Dying declaration—Corroboration, if necessary.

The High Court set aside the Trial Court's order of acquittal of the appellants and convicted them on a charge of murder under s. 302 of the Indian Penal Code. On appeal by the appellants by special leave.

Held, that this Court in its earlier decisions emphasised that interference with an order of acquittal should be based only on "compelling and substantial reasons" and held that unless such reasons were present an Appeal Court should not interfere with an order of acquittal, but this Court did not try to curtail the powers of the appellate court under s. 423 of the Code of Criminal Procedure. Though in its more recent pronouncements this Court laid less emphasis on

"compelling reasons" the principle has remained the same. That principle is that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care and must also examine the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting judge was clearly unreasonable. Once the Court came to the conclusion that the view of the lower court was unreasonable that itself was a "compelling reason" for interference.

Once it was found that the High Court applied the correct principles in setting aside the order of acquittal this Court will not ordinarily interfere with the High Court's order of conviction in appeal against acquittal or enter into the evidence to ascertain whether the High Court was right in its view of the evidence. Only such examination of the evidence would ordinarily be necessary as is needed to see that the High Court approached the question properly and applied the principle correctly.

If the judgment of the High Court did not disclose a careful examination of the evidence in coming to the conclusion that the view of the acquitting court was unreasonable or if it appeared that the High Court erred on questions of law or misread the evidence or the judgment of the trial court, this Court would, unless the case was sent back to the High Court for re-hearing, appraise the evidence for itself to examine the reasons on which the lower court based its order of acquittal and then decide whether the High Courts view that the conclusions of the lower court was unreasonable, was correct. If on such examination it appeared to this Court that the view of the acquitting court was unreasonable the acquittal would be set aside and if on the other hand it appeared that the view was not unreasonable the order of acquittal would be restored.

Suraj Pal Singh v. *State,* [1952] S.C.R. 194, *Ajmer Singh* v. *State of Punjab*, [1953] S.C.R. 418, *Puran* v. *State of Punjab* A.I.R. 1953 S.C. 459, *Chinta* v. *State of M. P.*, Cr. A. No. 178 of 59 and *Ashrafkha Haibatkha Pathan* v. *State of Bombay*, Cr. A. No. 38 of 1960, referred to.

It was neither a rule of law nor of prudence that a dying declaration should be corroborated by other evidence before a conviction could be based thereon.

Ram Nath v. *State of M. P.* A.I.R. 1953 S.C. 420, referred to.

Khushal Ram v. *State of Bombay,* [1958] S.C.R. 552, followed.

A dying declaration did not become less credible if a number of persons were names as culprits.

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Khurshaid Hussain. v. *Emperor*, (1941) 43 Cr.L.J. 59, held erroneous.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 115 of 1959.

Appeal by special leave from the judgment and order dated May 23, 1958, of the Punjab High Court in Criminal Appeal No. 414 of 1957.

N.C. Chatterjee. I.M. Lal, C.L. Sareen and *Mohan Lal Agarwal*, for the appellants.

N. S. Bindra and *P. D. Menon*, for the respondent.

1961. October 16. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—Six persons including the present appellants were tried by the Additional Sessions Judge Ferozpur on several charges in connection with the death by homicidal injuries of two brothers Munshi Singh and Hazura Singh. Of these six, Bhag Singh was the father of the other five accused persons. All the six accused persons were acquitted by the Additional Sessions Judge; on appeal by the State, the High Court of Punjab set aside the orders of acquittal in respect of Harbans Singh and Major Singh and convicted them under section 302 of the Indian Penal Code. The appeal was dismissed in respect of the other four, *viz.*, Bhag Singh, Gursi, Bant Singh and Gian Singh. It is against this order of conviction that Harbans Singh and Major Singh have filed the present appeal after obtaining special leave from this Court.

The prosecution case is that at about 8 or 9 P. M. on July 23, 1956, shortly after Munshi Singh had returned home and complained to his father Hira Singh about the conduct of Harbans Singh and Bant Singh in abusing him. Munshi Singh ran out of his house on hearing some cries ; but when he reached the Dharamshala not far from his house

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these two appellants, along with their father Bhag Singh and their brothers Bant Singh, Gian Singh and Gursi fell upon him and caused numerous injuries with the weapons which they carried. Harbans Singh, it is said, struck Munshi Singh on the abdomen with a Sela in his hand. Munshi Singh's brother Hazura Singh and his father Hira Singh also had followed Munshi Singh when he ran out of the house. On seeing this attack on Munshi Singh, Hazura Singh tried to intervene, but he too was attacked and received several injuries. Harbans Singh, it is said, gave him a Sela thrust in the abdomen. Munshi Singh died on the spot; Hazura Singh was brought to the hospital at Gidderbha the following morning and received some treatment but he also died of his injuries the following day, that is, the 24th July.

All the accused pleaded not guilty, the defence being that they had been falsely implicated out of enmity.

To prove its case the prosecution relied on the evidence of two persons, the deceased's father Hira Singh and their uncle Bhag Singh and the dying declaration alleged to have been made by Hazura Singh, once in the village before Devendra Singh, the Sub-Inspector of Police who had come to the village that night in connection with some other investigation and for the second time at Gidderbha hospital before a Magistrate.

On a consideration of the evidence the Trial Judge came to the conclusion that the prosecution case had not been proved against any of the accused person. Being of opinion that the First Information Report had been recorded as late as 4-30 P.M. on the 24th July he thought that "the complainant party was not able to say who the assailants were and the police was making time to find out the culprits after investigation and the First Information Report was delayed on that account." He was doubtful also about the truth of the Sub-Inspector's

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story that he actually reached the village of occurrence on that very night and consequently doubtful about any statement having been made by Hazura Singh to him on that night. In any case, he thought Hazura Singh's dying declaration had little probative value because as many as six persons had been named and that it could not be relied upon without corroboration. The learned Judge was also not satisfied that Bhag Singh (Prosecution Witness) "was present in the village or at his house at the time of the occurrence" since "his statement was not recorded in the Inquest Report prepared by the police at midnight". The learned Judge also thought it unsatisfactory that nobody other than these two near relatives, that is, the father and uncle of the deceased persons had been examined as witnesses of the occurrence. These were the main reasons for which he came to the conclusion that the case had not been proved against any of the accused beyond reasonable doubt and accordingly acquitted the accused.

The High Court was of opinion that the learned Judge was wholly "wrong in holding that Bhag Singh was not mentioned in the Inquest Report"; that he had misread the time of the first Information Report as 4-30 P. M. for 4-30 A. M. and that he was again in error in concluding that "the statement made by Hazura Singh to the police on their arrival at 1-15 A. M. was inadmissible". After pointing out these "errors" in the reasoning of the learned Trial Judge the High Court said:—

> "We have no hesitation in concluding that for the said reasons the judgment of the learned Additional Sessions Judge is wholly erroneous resulting in complete miscarriage of justice.
>
> After having gone through the testimony of both of the eye-witnesses and examining the other material, particularly the two dying

declarations, we are of the view that the prosecution case was substantially true and have been proved.

As regards complicity of Harbans Singh and Major Singh, there appears to be no doubt. Both of them had been assigned participation and were responsible for the fatal blow on each of the deceased. In this respect the testimony of both of the witnesses and the dying declarations are consistent. They are accordingly held guilty under section 302, Indian Penal Code."

The main contention raised by Mr. Chatterjee on behalf of the appellants is that the High Court had no sufficient reasons for interfering with the order of acquittal made by the Additional Sessions Judge and that the High Court itself had been guilty of "errors", especially as the High Court has misread the judgment of the learned Additional Sessions Judge and had attributed to him statements which are not to be found in his judgment.

The question as regards the correct principles to be applied by a Court hearing an appeal against acquittal of a person has engaged the attention of this Court from the very beginning. In many cases, especially the earlier ones, the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on "compelling and substantial reasons" and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal. (Vide *Suraj Pal Singh* v. *The State* (1); *Ajmer Singh* v. *State of Punjab* (2); *Puran* v. *State of Punjab* (3). The use of the words "compelling reasons" embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the

(1) [1952] S. C. R. 194. (2) [1953] S. C. R. 418.
(3) A. I. R. (1953) S. C. 459.

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words "compelling reasons". In later years the Court has often avoided emphasis on "compelling reasons" but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide *Chinta* v. *The State of Madhya Pradesh*(1); *Ashrafkha Haibatkha Pathan* v. *The State of Bombay* (2).

It is clear that in emphasising in many cases the necessity of "compelling reasons" to justify an interference with an order of acquittal the Court did not in any way try to curtail the power bestowed on appellate courts under s. 423 of the Code of Criminal Procedure when hearing appeals against acquittal; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the facts that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the Court was anxious to impress on the appellate courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on "compelling reasons". But, on close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine

(1) Criminal Appeal No. 178 of 1959 decided on 1?-11-60.

(2) Criminal Appeal No. 38 of 1960 decided on 14-12-60.

the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established.

When the High Court's judgment shows clearly that the matter has been approached in the proper manner and the correct principles have been applied, there is very little scope for this Court to interfere with an order made by the High Court convicting an accused person in an appeal against acquittal. Once it is found that the principles laid down by this Court have been correctly applied this Court will not ordinarily embark upon a re-appraisal of the evidence to ascertain whether the High Court was right in its view of the evidence. The only examination of the evidence that this Court may find itself called upon to undertake will ordinarily be just so much as is necessary to see whether the High Court has approached the question properly and applied the principles correctly.

The position may however be different if the judgment of the High Court while indicating its conclusion that in its opinion the view taken by the lower court is unreasonable does not disclose a careful examination of the evidence for coming to such conclusion. Or it may appear from the High Court's judgment that the High Court has erred on questions of law or has obviously misread the evidence on the record or the judgment of the Trial Court. What is this Court to do in such cases? We are unable to agree

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with Mr. Chatterjee that the only proper course for this Court to take is to set aside the order made by the High Court and restore the order of acquittal. For, even where the High Court's judgment suffers from any of these defects it may very well be that the High Court's conclusion that the view of the lower court is unreasonable is correct. So, unless this Court thinks fit to send the case back to the High Court for re-hearing of the appeal and its disposal in accordance with law, it becomes the duty of this Court in cases like these which fortunately are likely to be few in number—to appraise the evidence for itself, to examine the reasons on which the lower court based the order of acquittal and then decide whether the High Court's conclusion that the view taken by the lower Court on the question of the guilt of the accused is clearly unreasonable, is correct. If satisfied that the view was clearly unreasonable, this Court is bound to dismiss the appeal and to maintain the order of conviction made by the High Court; if on the contrary, this Court is not satisfied on such examination that the conclusion reached by the lower court that the guilt of the accused has not been proved was clearly unreasonable, the order of acquittal would be restored.

The judgment of the High Court in the present case does not contain much discussion of the evidence in the case. All the discussion of the evidence is confined to the few sentences which we have quoted earlier in this judgment. We also notice that the learned judges of the High Court were under some misapprehension in thinking that the Additional Sessions Judge had held that Bhag Singh was not mentioned as a witness in the Inquest Report. What the Additional Sessions Judge had pointed out was that Bhag Singh's statement had not been recorded in the Inquest Report. The Additional Sessions Judge was certainly right in this. While the High Court might have well thought that no doubt against

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the credibility of Bhag Singh should be based on this fact that his statement was not recorded, the High Court was not justified in attributing to the Trial Judge something which he did not say.

It is also not quite clear how the learned Judges said about the appellant Major Singh that he had been assigned participation and was responsible for the fatal blow on each of the deceased. In fact,, neither of the two who claim to be the eye-witnesses of the occurrence has said that Major Singh dealt a fatal blow on either Hazura Singh or Munshi Singh. While it is true that a general statement is made by both the witnesses as regards all the six accused having attacked both Munshi Singh and Hazura Singh neither of them has spoken of any particular injury having been caused by Major Singh. Hazura Singh himself in his dying declaration did say that Major Singh gave him a Sela blow on his left wrist but does not speak of any other injury having been caused by Major Singh either to him or to Munshi Singh except that he also said generally that all the accused gave blows on the person of Munshi Singh. The High Court has therefore clearly misdirected itself in thinking that Major Singh was responsible for any of the fatal injuries.

In view of all this we consider it necessary to examine the judgment of the Trial Court and also the evidence on record ourselves for a proper decision of this appeal.

Turning to the judgment of the Trial Court we find that the main circumstance which weighed with him for doubting the truth of the prosecution story is what he considered the considerable delay in recording the First Information Report. From the printed record before us we find that Narendar Nath Moharrir Head Constable, who actually entered the formal First Information Report, stated in his evidence that he made the entry at "4.30 P.M." on the 24th July 1956. It is apparently this

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fact taken with the fact that the report did not reach the Magistrate Shri Pasricha before 8.45 P.M. on the 24th July that made the learned Judge think that the First Information was made at the Police Station at 4.30 P.M. He has unfortunately not noticed that the record of the First Information Report Ex. PP1 shows the time of record as 4.30 A.M. He also overlooked Narendranath's own evidence in cross-examination in these words: "I have perused the Roznamcha entries and find that this special report was despatched by me through Chanan Singh Foot Constable at 5.15 A.M. I cannot say why he did not deliver it to the Magistrate till 8.45 P.M." It is quite clear that 5.15 A.M. as recorded in the printed record in Narender Nath's cross-examination is not a mistake for 5.15 P.M. If that had been so there would have been no point in his saying that he could not say why the Constable did not deliver it to the Magistrate till 8.45 P.M. When this statement in cross-examination is considered along with the recording of the time in Ex. PP1 itself there is no escape from the conclusion that 4.30 P.M. as stated in Narender Nath's Examination-in-Chief was a slip of tongue and the correct time of the record was 4.30 A.M. and that the fact that it reached the Magistrate at 8.45 P.M. that day may well be due to the fact that the Constable was negligent and took his own time about going to the Magistrate or to some other reason not clear from the record. The reasoning of the Trial Judge based on his wrong view about the time of recording of the formal First Information Report that the complainant party was not able to say who the assailants were and so delay was made, therefore falls to the ground.

The learned Judge has also misdirected himself in thinking that the dying declaration had very little probative value because as many as six accused persons had been named and that no conviction could in law be based on such dying declaration without corroboration. The law does not make any

distinction between a dying declaration in which one person is named and a dying declaration in which several persons are named as culprits. A dying declaration implicating one person may well be false while a dying declaration implicating several persons may be true. Just as when a number of persons are mentioned as culprits by a person claiming to be an eye-witness in his evidence in court the court has to take care in deciding whether he has lied or made a mistake about any of them, so also when a number of persons appear to have been mentioned as culprits in a dying declaration the court has to scrutinise the evidence in respect of each of the accused. But it is wrong to think that a dying declaration becomes less credible if a number of persons are named as culprits. The contrary view taken in the Lahore High Court in *Khurshaid Hussain* v. *Emperor* (1) on which apparently the Trial Judge has relied is clearly erroneous.

The learned Judge appears to have relied also on what was said by this Court in *Ram Nath* v. *State of Madhya Pradesh*(2) on the need of corroboration for a dying declaration. Speaking for the Court Mahajan J. (as he then was) observed in that case:—

> "It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration."

The question was however considered again by this Court in *Khushal Rao* v. *State of Bombay*(3). After pointing out that in Ram Nath's Case (Supra) the

(1) (1941) 43 Criminal L.J. 59. (2) A.I.R. 1953 S.C. 420, 423.
(3) [1958] S.C.R. 552, 568.

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Court after a careful examination of the facts of that case distinctly came to the conclusion that the dying declaration was not true and could not be relied upon this Court stated in the later case that the observations of the Court in Ram Nath's case were in the nature of obiter dicta. The Court then proceeded to review the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court and stated the law in these words: —

> "that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general position that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence ; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he

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was making the statement by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

"Hence, in order to pass the test of reliability a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court, after examining the dying declaration in all its aspects and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from other infirmities as may be disclosed in evidence in that case."

In view of this latest pronouncement of this Court—which it should be stated in fairness to the Trial Judge was made long after he gave his judgment—it must be held that it is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. The evidence furnished by the dying declaration must be considered by the Judge, just as the evidence of any

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witness, though undoubtedly some special considerations arise in the assessment of dying declarations which do not arise in the case of assessing the value of a statement made in Court by a person claiming to be a witness of the occurrence. In the first place, the Court has to make sure as to what the statement of the dead man actually was. This itself is often a difficult task, specially where the statement had not been put into writing. In the second place, the court has to be certain about the identity of the persons named in the dying declaration—a difficulty which does not arise where a person gives his depositions in Court and identifies the person who is present in court as the person whom he has named. Other special considerations which arise in assessing the value of dying declarations have been mentioned by this Court in *Khushal Rao* v. *State of Bombay*(1) and need not be repeated here.

In view of this latest pronouncement of this Court on the question of need of corroboration of a dying declaration by other evidence, it must be held that the Trial Judge was wrong in thinking that he could not act on the dying declaration of Hazura Singh unless it was corroborated by other evidence.

In view of the several defects in the reasoning of the Trial Judge, it is necessary for us to examine the evidence on the record to see whether the High Court was right in thinking that the view taken by the learned Judge was clearly unreasonable. The most important evidence in the case is furnished by the dying declaration made by Hazura Singh. The Investigating Officer, Devender Singh has said that on July 22, 1956 he had gone to the village Rikhala on an excise raid and from there he went to Mallan at about 2 P.M. on July 23, to investigate a case under section 392 of the Indian Penal Code. His further evidence is that it was on the same night at about midnight that he started for Dhurkot from Mallan. We see

(1) [1958] S.C.R. 552, 568.

no reason to doubt the truth of his statement that he did reach Dhurkot shortly after midnight of the 23rd July and that when on hearing that a murder had taken place near the Dharamshala he came to the Dharamshala. Hazura Singh who was lying injured on a cot there made a statement to him, he recorded the statement correctly. That statement has been marked Ex. PP. The substance of this statement is that at about 9 P.M. on the night of the occurrence his brother Munshi Singh came and complained about the conduct of Bant Singh, Harbans Singh and other sons of Bhag Singh and that shortly after this on hearing shouts of Bant Singh and others near the Dharamshala, Munshi Singh went towards that place followed by Hazura Singh and his father Hira Singh and that when they reached the place they found Harbans Singh and the other accused persons all armed with weapons raising uproar and when Munshi Singh reached the place and returned the abuse Harbans Singh gave the first blow to Munshi Singh with a Sela in his hand hitting him on the front of the chest after which others of the party also gave blows and when Hazura Singh stepped forward to rescue his brother, Harbans Singh gave him a blow with a Sela in his hand which hit him on the abdomen and the other accused also gave him blows. The blow given by Major Singh hit him on his left wrist.

It is clear that this statement was made by Hazura Singh shortly after midnight i.e., within about four hours after the occurrence. It has to be remembered that Hazura Singh had one single serious injury viz., the penetrating wound on his abdomen. We are satisfied from the evidence of the witnesses that there was sufficient moonlight that to enable Hazura Singh to recognize clearly the assailant who struck the blow which caused this injury. He could have therefore made no mistake about the indentity of his assailant. Nor is it likely that he

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would within a few hours of the occurrence ascribe this fatal blow on him to somebody other than the real assailant. The several injuries on Hazura Singh and the numerous injuries on Munshi Singh justify the conclusion that there was more than one assailant in the attacking party. Whether or not Hazura Singh could have made a mistake about the identity of the other assailants or could have implicated some of them at least falsely, it will be unreasonable to think that he would substitute another person for the one assailant who gave him the fatal blow. On a consideration of these circumstances we are therefore satisfied that it would be unreasonable to doubt or disbelieve the truth of Hazura Singh's statement when he said that Harbans Singh struck him with the Sela in his hand which hit him on the abdomen. Even if there was no other evidence on the records as regards the part taken by the appellant Harbans Singh this dying declaration of Hazura Singh is so clearly true that the only reasonable view for a judge of facts to take is that Harbans Singh caused the death of Hazura Singh by striking him with a Sela.

As has already been noticed Hazura Singh in this statement mentioned Harbans Singh as the person who gave the first blow to Munshi Singh, the blow which caused one of the injuries on his chest. We can think of no reason why this main part should be ascribed falsely to Harbans Singh; we think, considering the circumstances in which the statement was made, that this part of Hazura Singh's statement is also clearly the truth and could reasonably be accepted even without any corroboration.

A second statement of Hazura Singh was recorded at the Hospital where he was removed. This statement appears to have been recorded at about midnight of the 24th July. In this statement also he mentioned Harbans Singh and the other accused persons as having taken part in the attack. It appears that when this statement was made

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Hazura Singh's condition was very bad. Indeed, after he had made a part of the statement the Magistrate recorded that he had started giving indifferent answers and asked the Doctor to give him the necessary treatment. After the treatment was given the statement was concluded. We would not attach much weight to this statement on the 24th July. But, it will be noticed that there is nothing in this latter statement which detracts from the truth of the earlier statement made shortly after the occurrence to the police sub-Inspector.

There is apart from this the testimony in Court of Hira Singh the father of the two deceased persons and his uncle Bhag Singh. As regards Bhag Singh the learned Trial Judge has pointed out that Bhag Singh's statement was not recorded by the Sub-Inspector in the Inquest Report. While there is nothing in law which requires the statement of witnesses to be recorded in the Inquest Report, it appears to be a common practice in Punjab for police officers to record statements of witnesses in the Inquest Reports. In the present case the Sub-Inspector appears to have recorded a fairly full statement of Hira Singh as also short statements of Arjan Singh, Matha Singh and Lakal Singh in the Inquest Report itself. It is somewhat curious therefore that the Sub-Inspector did not record the statement of Bhag Singh also in this report even though it is found that Bhag Singh was named as a witness of the occurrence in Hazura Singh's dying declaration itself. It is also difficult to understand Bhag Singh's statement that he left the place as soon as some neighbours came up after the occurrence and did not go back to the spot till he was called by the police. He has offered no explanation for this rather unusual conduct. In view of all this, we are not prepared to say that the Trial Judge acted unreasonably in doubting his testimony.

We are unable however to discover any valid reason for doubting the presence of Hira Singh at

the place of occurrence. It seems to us that the main reason for the Trial Judge to doubt the truth of Hira Singh's evidence was what he considered the great delay in lodging the formal First Information Report. That reason, as we have already pointed out, does not exist.

On an examination, it seems to us quite likely that Hira Singh also accompanied Hazura Singh when the latter followed Munshi Singh towards the Dharamshala and it also seems to us improbable that he would give the main part in the assault falsely to Harbans Singh if somebody else was responsible for the blow which caused Hazura Singh's death. In our view the learned Trial Judge acted unreasonably in doubting the truth of Hira Singh's evidence against Harbans Singh.

On a consideration of the evidence we are therefore satisfied that the conclusion reached by the High Court that the view taken by the Trial Court as regards Harbans Singh's guilt was clearly unreasonable is correct and that the only reasonable view on the evidence can be that Harbans Singh committed murder by causing the death of Hazura Singh and also committed murder by causing the death of Munshi Singh.

The position is however different as regards Major Singh. As has already been pointed out the High Court is wrong in thinking that the evidence shows that Major Singh gave any of the fatal blows. Hazura Singh in his first dying declaration mentioned Major Singh as having given a below on him on his left wrist. Apart from Bhag Singh only Hira Singh has ascribed any specific part to Major Singh in addition to saying generally that he took part in the attack. The evidence therefore leaves scope for thinking that Hazura Singh has made a mistake about Major Singh or has wrongly implicated him. We are not therefore prepared to say that the view taken by the Trial Judge as regards Major Singh is clearly unreasonable.

We therefore allow the appeal of Major Singh set aside the order of conviction and sentence made against him by the High Court and restore the order of acquittal made by the Trial Court. The appeal of Harbans Singh is dismissed. Major Singh should be set at liberty at once.

Appeal of appellant 2 allowed.
Appeal of appellant 1 dismissed.

1961

October 16.

HAJI Sk. SUBHAN

v.

MADHORAO

(K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and RAGHUBAR DAYAL, JJ.)

Execution Proceedings—Objections to executability—Decree for possession—Enactment providing for vesting in the State of all proprietary rights—Enactment coming into force during pendency of appeal in High Court—Effect on decree of High Court—Executability of decree—Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M. P. 1 of 1951), ss. 2(g), 2(k), 3, 4, 41—Code of Civil Procedure, 1908 (Act 5 of 1908), s. 47.

The respondent purchased at a revenue auction sale eight anna share of G and obtained formal possession of that share on September 23, 1938. G relinquished his share in *Khudkasht* lands and they were recorded as the occupancy lands of his wife and sons. In 1940 the appellant got a lease of those fields. The respondent instituted a suit for possession of the lands against the appellant basing his claim on his proprietary right to recover possession, and obtained a decree on July 12, 1944. The trial court's decree was confirmed on April 20, 1951, by the High Court which held that the respondent was entitled to the lands as they were originally *Khudkasht* fields as part and parcel of the eight anna share purchased by him. In the meantime on March 31, 1951, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, had come into force but the High Court did not consider the effect of the Act on the appeal before it. Under s. 3 of the Act the proprietory rights in an estate specified in the notification passed from the proprietor and became vasted in the State free from all encumbrances, and by s. 4, after the issue of the notification under s. 3