

Mangal Singh - - - - - Appellant
v.
The King-Emperor - - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

REASONS FOR JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
19TH FEBRUARY, 1937

Present at the Hearing :

LORD ALNESS.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[Delivered by LORD ALNESS.]

This is an appeal by special leave from a judgment and order of the High Court of Judicature at Lahore, dated 27th April, 1936, which affirmed the conviction of the appellant and the sentence of death passed upon him by the Sessions Judge of Montgomery, dated 13th February, 1936.

The following is a summary of the relevant facts:—One Narain Singh married a widow, Musammat Harnam Kaur, who died in or about the year 1931. The appellant is her son by a previous marriage. By her marriage with Narain Singh she had four sons, the eldest being Kartar Singh. After the death of Musammat Harnam Kaur, Narain Singh indulged in a *liaison* with his widowed sister-in-law Musammat Basant Kaur.

In the early part of October, 1935, Narain Singh disappeared from his home. Following upon a *panchayat*, searchers, including the appellant, were despatched with a view to finding the missing man. On 13th October the searchers, other than the appellant, returned unsuccessfully from the search. The appellant was not seen again till he was arrested on 15th October. Another *panchayat* was meantime convened. Kartar Singh was questioned as to his father's whereabouts, and, in consequence of the disclosures made by him, information was lodged with the police. Kartar Singh took the police to a field which belonged to Narain Singh, and there, after digging four feet or thereby, the dead body of Narain Singh was found.

The appellant and his half-brother, Kartar Singh, were tried, on 11th February, 1936, by the Sessions Judge, with the aid of four assessors, on the following charge:—

“ That you, on or about the 2-3 night of October, 1935, at 139/9-L did commit murder by intentionally causing the death of Narain Singh and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within Sessions cognizance.”

Both the accused pleaded not guilty, but led no evidence. At the end of the trial the assessors held that the appellant was guilty of murder, but that Kartar Singh was not, though they were of opinion that, acting under the influence of the appellant, he helped to dispose of the dead body of Narain Singh. On 13th February, 1936, the learned Sessions Judge delivered judgment. He found the appellant guilty of murder, and sentenced him to death. He found Kartar Singh guilty of an offence under section 201 of the Indian Penal Code, and sentenced him to three years' rigorous imprisonment.

Both the accused appealed to the High Court at Lahore, who, after argument, dismissed the appeal, found the appellant guilty of the murder charged against him, and confirmed the sentence of death passed upon him by the learned Sessions Judge. The High Court, however, reduced the sentence on Kartar Singh to one year's rigorous imprisonment, and recommended that the Government should place him in a Borstal or other similar institution to serve his sentence.

The appellant thereupon presented a petition to His Majesty in Council, asking for special leave to appeal against his conviction and sentence. On 26th September, 1936, the special leave sought was granted. The appellant then preferred this appeal, praying that the judgment of the High Court should be set aside, and that his conviction should be quashed.

Counsel for the parties have been fully heard, and their Lordships have carefully considered the case in light of the argument submitted. Their Lordships have, in the result, already intimated that they would humbly advise His Majesty to refuse the appeal, and they stated that they would give their reasons for this course at a later stage. This they now propose to do.

The case for the prosecution is based on circumstantial evidence. The following are the principal incidents, the cumulative effect of which, it was contended and successfully contended, established the guilt of the appellant:—

It was proved that the appellant had conceived an enmity against the deceased because he was expending his income upon his paramour, Musammat Basant Kaur.

It was further proved that the appellant was seen by two witnesses, on the night of the alleged murder, digging in the rectangle of the field where the body of the deceased was subsequently discovered. Kartar Singh was standing by. To the two witnesses who observed them on this occasion the appellant explained that he was digging out the stump of a tree.

It was also proved that the appellant, reading from a postcard which he professed to have received, informed Musammat Basant Kaur that Narain Singh was lying ill at the Akali Hospital at Amritsar, and that she and Kartar Singh went there, upon receiving this information, only to find that Narain Singh had never been at the hospital.

Musammat Basant Kaur asked the appellant for the post-card, but he stated that he had lost it.

It was further proved that there was human blood upon the appellant's loin cloth when he was arrested, although it had apparently been washed.

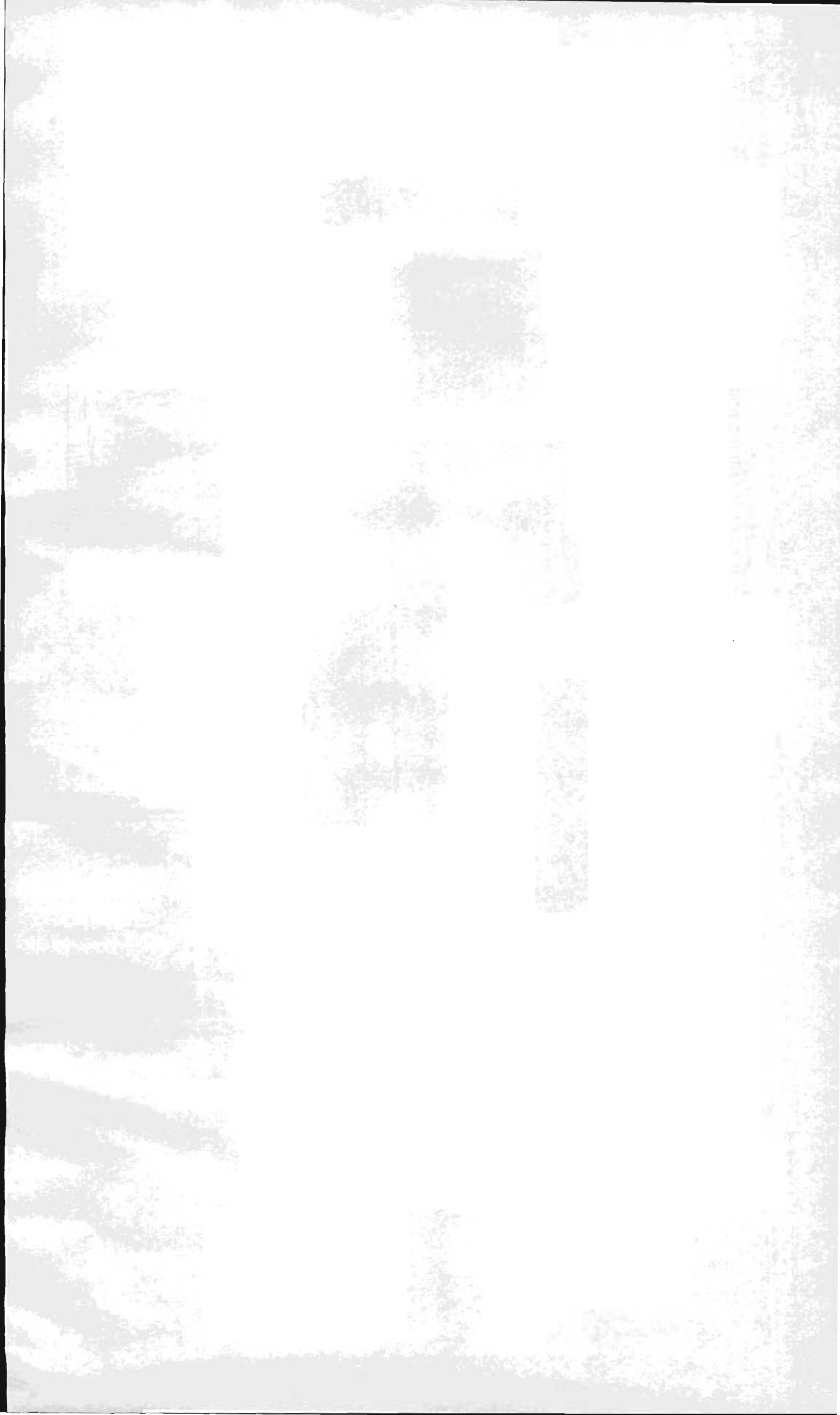
Their Lordships are satisfied, upon this evidence—unexplained, as it was—and, having regard to its cumulative effect, that the Courts in India were well entitled to convict the appellant of murder. As has frequently been stated by this Board, it is no part of their duty to sit in such a case as this as a Court of Criminal Appeal, but only to correct what they regard as a miscarriage of justice, if it has occurred. Reference may again be made, in that connection, to the observations of Viscount Haldane in the case of *Begu and others v. The King-Emperor*, 52 I.A. 191, at p. 195. Their Lordships are satisfied that there has been no miscarriage of justice in this case, and nothing which, in accordance with well settled principles, would warrant their interference with the judgment of the High Court at Lahore.

Two further matters fall to be mentioned. The learned Sessions Judge in his judgment proceeded in part upon a confession which was alleged to have been made by Kartar Singh, and which implicated the appellant in the murder. The High Court held that the alleged confession was inadmissible in evidence against the appellant, and arrived at their conclusion of his guilt independently of the confession. Their Lordships have followed the same course, and, being satisfied that the evidence, *dehors* the alleged confession, was sufficient to warrant the conviction of the appellant, find it unnecessary to pronounce on the admissibility or inadmissibility of the alleged confession, and they abstain from doing so.

The second matter is this. The High Court at Lahore appear to have thought that it had been held in India that it was not in law open to a Court or jury to convict the accused of murder in such circumstances as exist here. Their Lordships have had the advantage of examining the Indian cases which were supposed by the High Court to yield this inference, and they are clearly of opinion that it is based on a misapprehension. Having settled the legal criterion applicable to such a case as this—viz. whether the evidence led would satisfy the jury beyond reasonable doubt of the guilt of the accused—it is then for the jury, or for the Judge, if there be no jury, to say whether, applying that criterion to the facts proved, the verdict should or should not be one of guilty. (cf Wills' *Circumstantial Evidence*, sixth edition, p. 311, Rule 4.) That, their Lordships apprehend, is the law of England to-day, and they cannot find, upon examination, that the Courts in India have held or expressed a different view.

Their Lordships should perhaps add that they have reached the conclusion stated apart altogether from consideration of the terms of section 201 of the Indian Penal Code. It appears to them that the proper avenue of

approach in this case—particularly having regard to the structure of the charge—is, first and foremost, to consider whether the case under section 302 of the Indian Penal Code has been made out. If so, that is an end of the matter. If, on the other hand, their Lordships thought that the case under that section was not proved, then, and only then, would it be proper to consider whether an offence under section 201 of the Indian Penal Code had been established.



In the Privy Council

MANGAL SINGH

THE KING-EMPEROR

DELIVERED BY LORD ALNESS

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