

Mamand and others - - - - - *Appellants*

The King-Emperor - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
30TH OCTOBER, 1945

Present at the Hearing :

LORD THANKERTON

LORD GODDARD

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal against a judgment of the High Court of Judicature at Lahore dismissing an appeal by the three appellants against a judgment of the Sessions Judge, Shahpur District, at Sargodha, convicting the appellants of the murder of one Naman and sentencing the first and third appellants to death and the second appellant to transportation for life. The High Court confirmed the said death sentences. At the conclusion of the arguments their Lordships announced that they would humbly advise His Majesty that the appeals should be dismissed, and they now give their reasons for such advice.

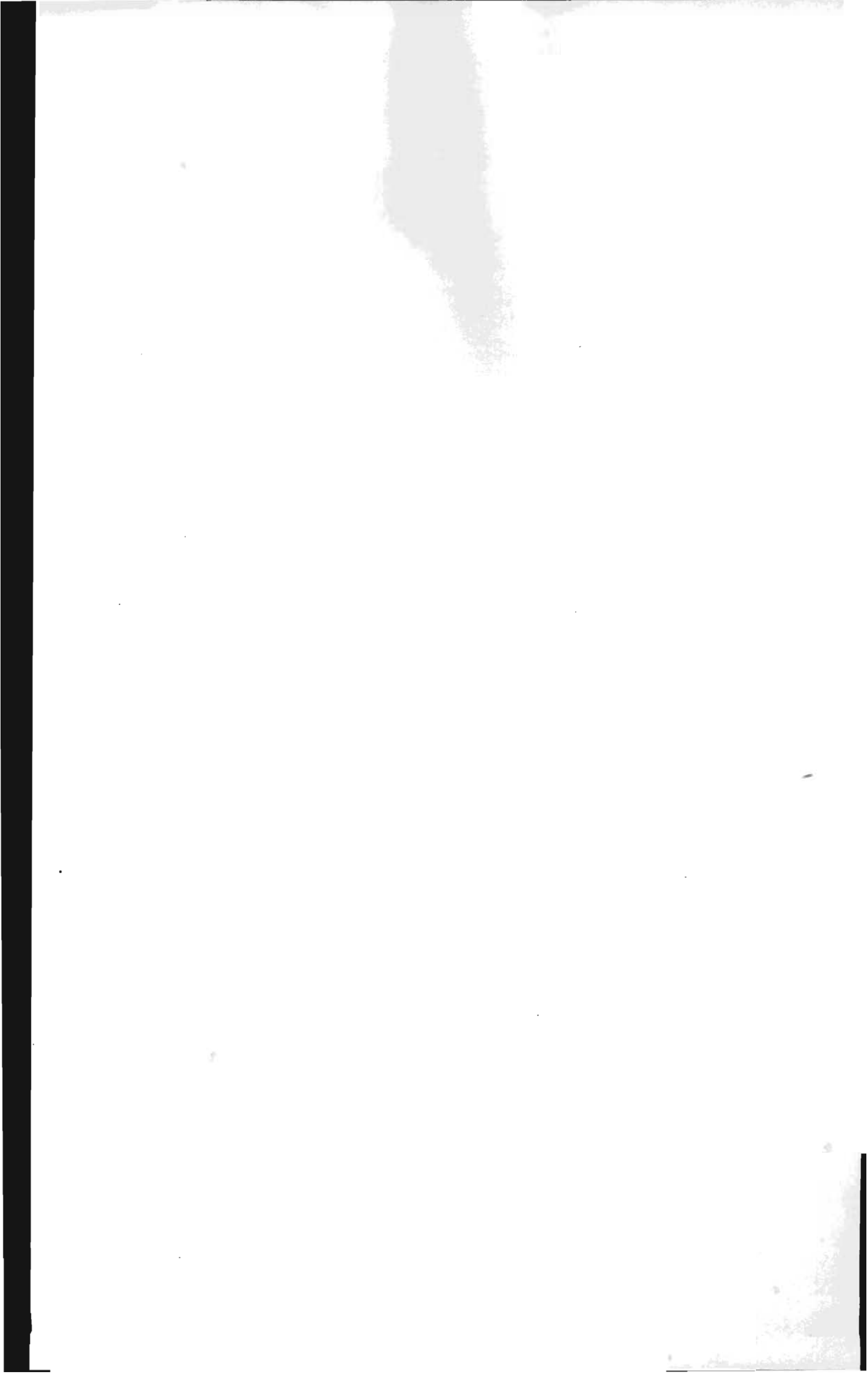
The learned Judges of the High Court accepted the evidence of three eye-witnesses Raja Sarwar Khan (P.W.11), Barkat (P.W.13), and Samand (P.W.15) as to the manner in which the murder was carried out. The story of these three witnesses, which was in substantial agreement, was that they heard a commotion at the dera of one Gahra, that they saw the second and third appellants beating with sticks Naman who was on the ground, and they saw the first appellant, Mamand, grappling with Gahra. The three witnesses ran towards the disturbance, Raja Sarwar Khan and Samand shouting that the assailants should be caught. Before the witnesses reached the spot the three appellants ran away and were chased for some distance by the witnesses and two other men who had come up. Barkat says that the second and third appellants got the first appellant released from Gahra. In the Sessions Court Gahra gave evidence that the murder was committed, not by the accused, but by five other men; but in a statement which he had made before a magistrate under section 164 of the Code of Criminal Procedure he had named the appellants as the assailants and attributed to the first appellant the first blow given to Naman. The learned Sessions Judge fell into an error, not uncommon in Criminal Courts in India, of treating the statement made under section 164 as substantive evidence of the facts stated. The statement could be used to discredit the evidence of Gahra given in Court, but not for any other purpose. In the High Court the learned Judges considered that, in view of the statement under section 164, Gahra had been won over by the defence, and that his evidence must be entirely ignored. This was the correct attitude. The evidence of the eye-witnesses, which was consistent with the medical

evidence as to the cause of death, justified the finding of the High Court that the second and third appellants were guilty of murder and the only point which really arises on this appeal is whether there was evidence to justify the conviction of the first appellant under section 302 read with section 34 of the Indian Penal Code.

Section 34 is in these terms:—

“ When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

If the evidence of the three eye-witnesses stood alone, it could not be said to establish that the first appellant, who was merely grappling with Gahra, had formed a common intention with the second and third appellants to murder Naman. But the evidence did not stand alone. There was evidence on the record, which the High Court accepted, that the first appellant had strong grounds for entertaining feelings of enmity against Naman, grounds based on the relations of the first appellant and Naman with a Muslim girl named Fatima or Phapho; that the second appellant, a boy of 15, was a younger brother of the first appellant, that the third appellant was their tenant, and that all three accused lived at the dera of the first appellant. There was also the fact deposed to by the eye-witnesses that after the assault the three accused ran away together; also there was no evidence of enmity between Gahra and Naman. In their Lordships' opinion the evidence afforded ample material upon which the learned Judges of the High Court could hold, as they did, that the first appellant was grappling with Gahra so that he might not rescue Naman from the clutches of the second and third appellants, and this justified the inference that the murder was committed in furtherance of the common intention of all the appellants. There is therefore no reason for interfering with the convictions.



In the Privy Council

MAMAND AND OTHERS

v.

THE KING-EMPEROR

[DELIVERED BY SIR JOHN BEAUMONT]

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