

Privy Council Appeal No. 98 of 1945

Natha Singh and Another - - - - - *Appellants*

v.

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
18TH JUNE, 1946

Present at the Hearing :

LORD SIMONDS

MR. M. R. JAYAKAR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from two judgments and orders of the High Court of Judicature at Lahore dated the 7th June, 1945, which dismissed the appeals of the appellants, and confirmed the sentences of death passed on them, by the judgment, and order, dated the 9th February, 1945, of the Sessions Judge, Amritsar. Their Lordships have already announced that they will humbly advise His Majesty that the appeal be dismissed and they now give their reasons.

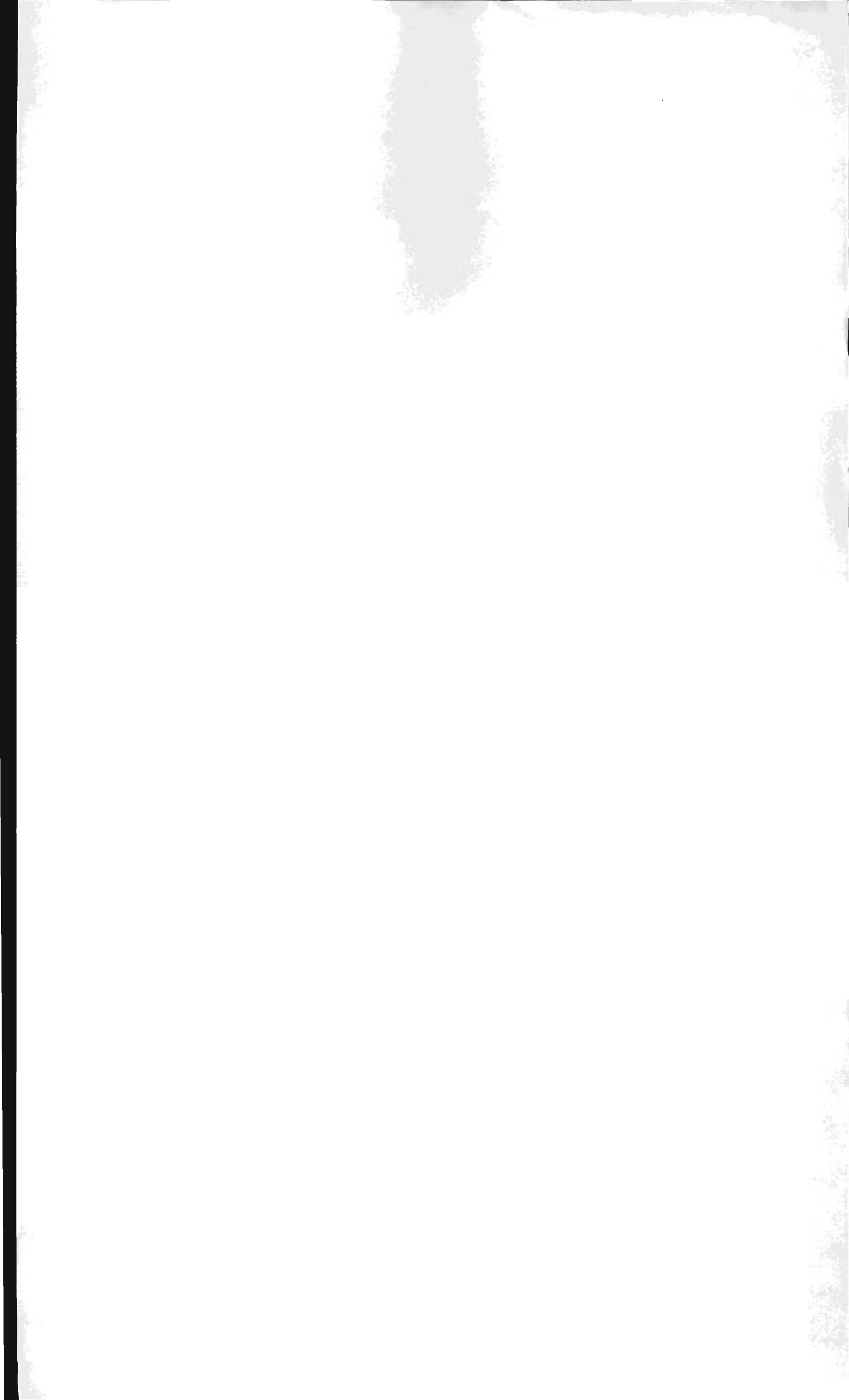
The ground upon which special leave to appeal was granted was the allegation that evidence that the appellants had committed a murder other than that with which they were charged was wrongly admitted, and this has been the principle point argued on their behalf.

The appellants were tried and convicted on a charge of having murdered one Karnail Singh on the 19th September, 1944. There were four alleged eye-witnesses of the murder, namely, the approver Qadir, who said that he had been with the appellants, Surain Singh, an uncle, Mt. Gurmej Kaur the wife, and Jita, a servant, of the murdered man. Karnail Singh had a brother, Bhan Singh, whose wife was said to have been in illicit intimacy with the appellant Natha Singh, and Karnail Singh is said to have objected to this intimacy. There seems no reason to doubt the existence of this intimacy, nor that it had occasioned ill-will between Karnail Singh and his brother on the one hand and Natha Singh on the other. The other appellant, Budha Singh, was a friend of Natha Singh.

On the 1st October, 1944 after the appellants had been arrested for the murder of Karnail Singh, a body without a head was found, and this was said to be the body of Bhan Singh. On the information of the approver, Qadir, the appellants were also charged with the murder of Bhan Singh. This charge was tried with different assessors immediately after the conclusion of the trial of the appellants for the murder of Karnail Singh, but before judgment in the latter trial had been delivered. Judgment in both cases was delivered on the same day. The appellants were acquitted of the murder of Bhan Singh, mainly on the ground that there was no corroboration of the evidence of the approver, and that there was no clear evidence of the identity of the body. They were convicted of the murder of Karnail Singh.

At the trial of the appellants for the murder of Karnail Singh the approver gave evidence that he and the appellants had murdered Bhan Singh a few days before the murder of Karnail Singh, and that they proposed to conceal the murder of Bhan Singh by causing injuries to Karnail Singh and getting themselves arrested for so doing. That is to say, the evidence of the approver was that the motive, or at any rate one of the motives, for the injuries caused to Karnail Singh was a desire to conceal the murder of Bhan Singh. The suggested motive is no doubt a singular one, but however improbable an alleged motive may be the prosecution is entitled to call evidence in support of it, and none the less so because such evidence may suggest that the accused has committed some crime other than that with which he is charged (see illustration (a) to section 8 of the Evidence Act). If evidence that the appellants had murdered Bhan Singh had been given with a view to showing that they were persons likely to have committed the murder of Karnail Singh, the evidence would have been inadmissible; but it was admissible to establish motive for the murder with which they were charged. It would have been better if the learned Sessions Judge had pointed out to the assessors the limited purpose for which evidence of the murder of Bhan Singh could be used, but in trials with the aid of assessors the decision rests with the judge, and not with the assessors, and when the Sessions Judge convicted the appellants of the murder of Karnail Singh, he knew that they had been, or were about to be, acquitted of the murder of Bhan Singh, and that the evidence as to the latter murder was of no consequence. In their Lordships' opinion the evidence objected to was properly admitted.

The only other point seriously argued on behalf of the appellants was that the evidence of the eye-witnesses should have been disbelieved since it was in conflict with the medical evidence. The story of the uncle, wife, and servant of Karnail Singh was that they saw the assault, rushed to the place as the assailants fled, and found Karnail already dead. The civil surgeon of Amritsar gave evidence in the court of the committing magistrate, and his evidence was brought on the record of the sessions court under section 509(1) of the Code of Criminal Procedure. After detailing the injuries which he found on the dead body of Karnail he stated that death occurred a few hours after receipt of injuries. This opinion no doubt conflicts with the story of the eye-witnesses, but it was open to the High Court, as well as to the Sessions Judge, to believe the witnesses in spite of the opinion of the doctor and they clearly did so. Moreover their Lordships observe that no reliance seems to have been placed in the courts in India on a conflict between the evidence of the eye-witnesses and of the doctor. The matter is not discussed in the judgments either in the Sessions Court or the High Court, nor was it included in the grounds of appeal to the High Court. Had any emphasis been placed on the opinion of the civil surgeon, it would have been open to the Sessions Judge under the powers contained in section 509(2) or to the High Court under the powers contained in section 429 to have summoned him as a witness, when the reasons for his opinion could have been investigated. It is too late to take the point now.



In the Privy Council

NATHA SINGH AND ANOTHER

v.

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DELIVERED BY SIR JOHN BEAUMONT