

possession of the property sold" and where the property sold is a right of redemption of a house situate in a town, subsection (3) of section 30 of the Act can have no application for "the urban immovable property" sold does not admit of "physical possession". The opinion I have expressed above receives full support from what was said in *Gaffar Khan v. Sattar Khan and others* (1), and it is significant to note that the Legislature in enacting section 30 of the Act in 1913 should be deemed to have accepted the law laid down in *Gaffar Khan v. Sattar Khan and others* (1), to be correct.

Kharati Ram  
v.  
Ram Lal and  
others  
—  
Harnam Singh  
J.

For the foregoing reasons, my answer to the question referred to us for decision is in the negative.

### APPELLATE CRIMINAL

Before Bhandari and Soni, JJ.

CHHATAR, SON OF SITA, (2) BADLU, SON OF SITA,—  
Convicts-Appellants,

versus

THE STATE,—Respondent

Criminal Appeal No. 398 of 1950.

1950

Dec. 29th

*Criminal Trial—Certain witnesses named by prosecution but not produced on the ground that they had been won over and were not likely to state the truth—Whether prosecution bound to produce all witnesses—Discretion of Counsel for prosecutor as to what witnesses should be called for prosecution—Court not to interfere with the exercise of that discretion unless it could be shown that prosecution had been influenced by some oblique motive.*

*Held* that the prosecution is not bound to produce witnesses, who according to it are not witnesses of truth. The prosecutor has a discretion as to what witnesses should be called for the prosecution and the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecutor has been influenced by some oblique motive. It is, however, consistent with the discretion of the counsel for the prosecutor that it should be a

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v.  
The State

general practice of prosecuting counsel if they find no sufficient reason to the contrary, to tender such witnesses for cross-examination by the defence; and this practice has probably become even more general in recent years, and rightly so but it remains the matter for the discretion of the prosecutor.

With reference to the remark by Hewart C.J. in *R. v. Dora Harris* (1), that in criminal cases the prosecution is bound to call all the material witnesses before the court even though they give inconsistent accounts in order that the whole of the facts may be before the Jury, it was held by their Lordships of the Privy Council that in their view the learned Judge could not have intended to negative the long established right of the prosecutor to exercise his discretion to determine who the material witnesses were.

*Adel Muhammed v. A. E. of Palestine* (2), *Malak Khan v. Emperor* (3), referred to.

*Appeal from the order of S. Harbans Singh II Additional Sessions Judge, Delhi, dated the 9th August 1950, convicting the appellants.*

Jai GOPAL SETHI and R. L. KOHLI, for Appellants.

KARTAR SINGH, Assistant, Advocate-General and GURDEV SINGH, for Respondents.

AFTER DISCUSSING THE EVIDENCE HIS LORDSHIP CONCLUDED HIS JUDGMENT AS FOLLOWS :

Soni J.

SONI J. Before I close I must refer to an argument of the learned counsel for the defence. He said that the record in this case was not complete and that it was the duty of the prosecution to have produced Mauji who gave information to the Sarpanch Dev Raj and to produce Dharma who informed the Police at the Police Post Alipur. He also said that the witnesses who were present at the time when Kirpa went and informed Dev Raj and others at the place of the occurrence that he was an eye-witness should also have been produced. The Public Prosecutor in this case made a statement that Dharma and

(1) (1927) 2 K. B. 587.

(2) 1945 A. I. R. (P. C.) 42.

(3) I. L. R. 1947 Lah. I (P. C.).

Lal Chand had been won over and that was the reason why he was giving them up. It is in evidence that these two and Kuli Ram, Lambardar, were favouring the accused. Regarding Mauji matters could not have been improved even if he had been produced. According to Dev Raj, Mauji informed him that the three persons had been killed. His information could only have been hearsay from somebody who may have heard about it from somebody else or his information may have been the information of a person who may have been going about in the fields and having come across the dead bodies he came back to the village and informed his uncle Dev Raj. It must also be remembered that the prosecution is not bound to produce witnesses who according to them are not witnesses of truth. In the case of *Adel Muhammad El Dabbah v. Attorney General of Palestine* (1) their Lordships of the Privy Council said that the prosecutor has a discretion as to what witnesses should be called for the prosecution, and the Court will not interfere with the exercise of that discretion, unless perhaps, it can be shown that the prosecutor has been influenced by some oblique motive. Their Lordships referred to a number of cases in England and said :

“It is consistent with the discretion of counsel for the prosecutor, which is thus recognised, that it should be a general practice of prosecuting counsel if they find no sufficient reason to the contrary, to tender such witnesses for cross-examination by the defence ; and this practice has probably become even more general in recent years, and rightly so—but it remains a matter for the discretion of the prosecutor.”

Their Lordships were referred to a decision of Hewart, C. J., in *R. v. Dora Harris* (2), in which the learned

Chhatar etc.  
v.  
The State  
Soni J.

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(1) 1945 A. I. R. (P. C.) 42.

(2) (1927) 2 K. B. 587.

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v.  
The State  
Soni J.

Chief Justice remarked that in criminal cases the prosecution is bound to call all the material witnesses before the Court, even though they give inconsistent accounts, in order that the whole of the facts may be before the jury. Their Lordships of the Privy Council said that in their view the learned Judge could not have intended to negative the long-established right of the prosecutor to exercise his discretion to determine who the material witnesses are. In the present case nothing has been brought out to show that the Public Prosecutor was influenced by some oblique motive when he made a statement before the trial Judge on the 9th of May 1950, that he was giving up Dharam Singh and Lal Chand as having been won over by the accused. It must be remembered that the trial was adjourned on the 9th of May and was taken up again on the 22nd of June and if the counsel for the defence had reasons to think that the witnesses whom the Public Prosecutor was giving up had been given up with what the Privy Council called some oblique motive, they could have cross-examined the other witnesses who were later produced by the prosecution or could have led evidence in defence. In my opinion the witnesses who have been produced in this case are witnesses on whom reliance can be placed and even if Dharam Singh, Lal Chand and Mauji are not produced I do not doubt that their non-production is due to any ulterior motive. The judgment of their Lordships of the Privy Council in *Adel Muhammad El Dabbah v. A. G. F. Palestine* (1), was followed by their Lordships in another case which came up before them from Lahore, the case of *Malak Khan v. Emperor* (2), where the board was constituted of Lords Thankerton, Portar and Goddard, Sir Madhavan Nair and Sir John Beaumont.

Bhandari J.

BHANDARI J.—I concur in the order proposed.

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(1) 1945 A. I. R. (P. C.) 42.  
(2) I. L. R. 1947 Lah. 1 (P. C.).