Balwant Kaur

Vs

Union Territory of Chandigarh

Criminal Appeal No. 742 of 1979

(A. P. Sen, M. N. Venkatachaliah JJ)

03.11.1987

JUDGMENT

VENKATACHALIAH, J. –

1. This appeal, by special leave, preferred against the judgment dated April 26, 1976 of the High Court of Punjab and Haryana affirming the judgment dated April 26, 1976 of the Sessions Judge in S.C. No. 5 of 1976 convicting appellant for offences under Sections 302 and 120-B of the Indian Penal Code and sentencing her to imprisonment for life, raises certain questions as to the nature and extent of corroboration of an accomplice's evidence; and as to the procedure for the trial of offences by a "child" under the East Punjab Children Act, 1949.

2. Appellant-Balwant Kaur was said to be 15 1/2 years of age at the time of the commission of the offence alleged against her.

3. From November 14, 1973 the whereabouts of appellant's husband Pritam Singh, a police constable, were not known. His mother Mukhtiar Kaur (PW 19) reported this fact and expressed her apprehensions in the matter to the Superintendent of Police. Appellant was arrested on May 8, 1975. Nand Singh and Ram Sarup were also arrested on May 8, 1975. Ram Sarup became an approver. Appellant's defence was one of total denial.

4. The judgment of the High Court under appeal is common to Criminal Appeal No. 676 of 1976 preferred by Nand Singh who was convicted under Sections 302, 364, 201 and 120-B of IPC and also sentenced to imprisonment for life.

5. Appellant's husband, Pritam Singh for whose murder appellant and the said Nand Singh had been arraigned, was, at the relevant time, a police constable at the Police Station West, Sector 11 Chandigarh. Nand Singh was another constable at the same police station. Nand Singh's brother Bhag Singh and Pritam Singh were neighbours, residing in adjacent government quarters in Sector 20-A, Chandigarh. Ram Sarup, who later turned approver, was another police constable on guard duty at the Punjab Raj Bhavan, Chandigarh.

6. The married life of appellant and Pritam Singh, according to the prosecution, lacked connubial felicity and was marked by constant bickerings and quarrels, the cause for this discord being the addiction of Pritam Singh to liquor. It is the prosecution case that Pritam Singh was a dipsomaniac and was constantly subjecting appellant to corporeal intransigence. It was further alleged that appellant had developed illicit intimacy with Nand Singh. Ram Sarup, in the course of his visits to Bhag Singh's house met, and became friendly with Nand Singh and the two became accustomed to

take liquor together. Ram Sarup also knew deceased Pritam Singh. It is alleged that on occasions Nand Singh, when he lost self-control under the influence of liquor, used to confide in Ram Sarup of his illicit sexual exploits with appellant. This appears to have tempted Ram Sarup to ask Nand Singh to introduce Ram Sarup also to appellant for a similar intrigue.

7. On November 13, 1973, in the afternoon when Ram Sarup was off-duty, Nand Singh took Ram Sarup to his own quarters in Sector 20-A - said to be at a short distance from the appellant's residence - and the two had liquor together. Thereafter, Nand Singh is stated to have taken Ram Sarup to the residence of, and introduced him to the appellant and persuaded her to gratify the desire of Ram Sarup also. Appellant and Ram Sarup are stated to have indulged in acts of illegal intimacy.

8. Later, the same afternoon, the three met again at appellant's home when, it would appear, appellant while narrating the privations and hardships endured by her at the hands of her husband broke down and implored Nand Singh and Ram Sarup to do away with Pritam Singh. She appears to have also offered that after Pritam Singh's death she would marry and live with Nand Singh, who was then unmarried. According to the prosecution, it was agreed amongst the three that the appellant should persuade her husband to reach Chandigarh bus stand the following day i.e. November 14, 1973 and that Nand Singh and Ram Sarup, who would be present there, would entice him away to Pinjore with the inducement of liquor and, do away with him there.

9. Pursuant to this design and conspiracy, appellant is stated to have persuaded her husband to go to the bus stand at Chandigarh at 9.30 a.m. on November 14, 1973 where Nand Singh and Ram Sarup who were waiting for him as pre-arranged took him to Pinjore by bus. There, all the three consumed liquor together. Nand Singh is also stated to have purchased "ghotna" on the pretext that his sister-in-law had asked for the purchase of one. Thereafter, all the three agreed to go back to Chandigarh on foot which took them along a 'dandi' passing by the side of Pinjore gardens. They reached the railway line near Surajpur Cement Factory and took the foot-path towards Chandigarh. When the three reached a distance of almost 2 miles from Surajpur, Nand Singh suggested that they should climb up a hill on the wayside to enjoy a panoramic view of Chandigarh. Accordingly, all the three started climbing. Ram Sarup (PW 2) was ahead; Pritam Sing was in the middle with Nand Singh following behind him. Nand Singh is stated to have suddenly administered 2-3 ghotna blows on the head of the unsuspecting Pritam Singh and told Ram Sarup (PW 2) to pin the tottering Pritam Singh down. Ram Sarup pulled Pritam Singh down whereupon Nand Singh gave 8 or 10 more blows with the ghotna on the person of Pritam Singh. Then Nand Singh threw away the ghotna and the two, namely, i.e. Nand Singh and Ram Sarup, hastened towards Chandigarh. However, after the two had gone 2 furlongs or so, Nand Singh urged Ram Sarup (PW 2) that they both go back to find out whether Pritam Singh was really dead or not. They, accordingly, returned and ensured that Pritam Singh had died. They removed the pants and bush-shirt of the deceased and concealed them in a bush. Then, the body of Pritam Singh was also concealed in the nearby bushes. The turban of Pritam Singh had fallen down at the spot.

10. Thereafter, the two returned to Chandigarh by nightfall. Next day, i.e. on November 15, 1973, Nand Singh came to Raj Bhavan where Ram Sarup was on duty and told the latter that he had, in turn, informed Balwant Kaur of the death of Pritam Singh. This, in substance is the prosecution case as unfolded in the evidence of Ram Sarup (PW 2) who turned approver.

11. On December 13, 1973, Mukhtiar Kaur (PW 19), the mother of deceased-Pritam lodged a complaint about her missing son in writing with the Senior Superintendent of Police, Chandigarh. In that, it was stated that she had learnt from Pandit Sita Ram that a certain Naik Singh and his two

sons of the village Lahor Khuda and Dev Singh, the Sarpanch of that village along with two other relatives of the Sarpanch had killed Pritam Singh, the alleged motive was that deceased Pritam Singh, when he was earlier serving in Lahor Khuda had developed illicit relations with Naik Singh's daughter, Prito. At the trial Mukhtiar Kaur was examined to establish that this complaint was engineered by the appellant and Nand Singh to put the investigation on a wrong scent.

12. Apparently, nothing was heard of the matter for a long time till April 3, 9175, when Nand Singh was arrested by ASI Gulzara Singh (PW 24). On his information Ex. P-8, a pair of shoes, a purse, 25 pieces of bones including an incomplete human skull were recovered. Dr. Inderjit Dewan (PW 1) examined the bones and was of the opinion that they were the remains of a well-built adult, but not old, male of a height of about 5'9". According to PW 1, the person had died more than 4 months (sic) previously. The death was ascribed in all probability to the injuries to the skull administered by a blunt weapon. PW 1 could not, however confirm whether the injuries were antemortem or not.

13. Appellant was arrested by ASI Subhash Chander (PW 23) on May 8, 1975 and Ram Sarup was also arrested the same day. After the completion of the investigation charges were brought against them for conspiracy and murder. The trial court on the basis of the approver's testimony as corroborated by other evidence, held both Nand Singh and the appellant guilty of the offences they were charged with and sentenced them to imprisonment for life. The High Court has dismissed their appeals and has confirmed the convictions and the sentences.

14. Shri A. S. Sohai, learned counsel appearing in support of the appeal urged that the evidence of the approver insofar as the complicity of appellant is concerned, lacked corroboration on material particulars and that no conviction could be sustained on such uncorroborated accomplice's testimony.

15. The development of the law touching the competency and credit of an accomplice as witness against others is not without its interesting antecedents.

16. Historically, in the background of the political trials since the time of Henry VIII where 'King's Evidence' was the main dependence of the crown in its prosecution, the question of the very admissibility of the evidence of the accomplice loomed large. In the 17th and the 18th centuries, it was ruled repeatedly by the English courts that an accomplice was a competent witness. His 'credit' or the sufficiency of his evidence as a quantitative conception, however, remained in the background. Those were days when 'form' pre-dominated over the 'substance' and the oath had a dead weight of its own. It was for this reason that struggle was made to keep out this evidence even at the threshold. On the further development in the law which slowly began to recognise the distinction between 'competency' and 'credit', Wigmore says : (Wigmore on Evidence, Third Edition, Vol. VII, para 2054)

As time went on, and the modern conception of testimony developed, the possibility of admitting a witness and yet discriminating as to the qualitative sufficiency of his testimony became more apparent; and the way was open for the consideration of this question. In a few instances, as the 1700s wore on, and even before then, judicial suggestions are found as to feasibility of such a discrimination. But not until the end of that century does any court seem to have acted upon such a suggestion in its directions to the jury. About that time there comes into acceptance a general practice to discourage a conviction founded solely upon the testimony of an accomplice uncorroborated.

But was this practice founded on a rule of law ? Never, in England, - until modern times. It was recognised constantly that the judge's instruction upon this point was a mere exercise of his common law function of advising the jury upon the weight of the evidence, and was not a statement of a rule of law binding upon the jury.

17. An accomplice, by long legal tradition, is a notoriously infamous witness, one who being particeps criminis, purchases his immunity by accepting to accuse others. Section 114 illustration (b) of the Evidence Act envisages the presumptive uncreditworthiness of an accomplice. But then, Section 133 provides that a conviction is not illegal merely because it rests upon an accomplice's uncorroborated testimony.

18. In indictments, particularly of serious crimes, the counsel of caution and the rule of prudence enjoin that it is unsafe to rest a conviction on the evidence of a guilty partner in a crime without independent corroboration on the material particulars. Judicial independent corroboration on the material particulars. Judicial experience was, thus, elavated to a rule of law. "It is a practice" it is said, "which deserves all the reverence of law".

19. The nature and extent of the corroboration must necessarily vary with the nature and circumstances of each case. Enunciation of any general rule, valid for all occasions is, at once, unwise and impractical. The aspect as to the extent and content of independent corroboration is, again, an interesting area of study. One view was that independent evidence tending to verify any part of the testimony of the accomplice should suffice. The other view required that the corroborative evidence should not only show that part of the accomplice testimony is true; but should go further and also implicate the other accused. In R. v. Baskerville, ((1916) 2 KB 658), the Court of Criminal appeal in England favoured and adopted the second view.

20. Thirty-five years ago, Bose, J. referring with approval to the principles in Baskerville ((1916) 2 KB 658) said that this branch of the law in India is the same as in England and that the lucid exposition of it given by Lord Reading, cannot be bettered.

21. The felicitous formulation of the law on the matter by that great master of phrase, Bose, J., which has now become classical, may be recalled :

> But to this extent the rules are clear.

First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction ....

> > Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence ....

Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another ....

> > Fourthly, the corroboration need not be direct evidence that the accused committed

> the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

(See Rameshwar v. State of Rajasthan (AIR 1952 SC 54 : 1952 Cri LJ 547).)

22. In R. v. Baskerville, ((1916) 2 KB 658) Lord Reading, C.J., noticed the different views as to the extent and scope of reasonable corroboration :

> The difference of opinion has arisen in the main in reference to the question whether the corroborative evidence must connect the evidence has arisen in consequence of the danger of convicting a person upon the unconfirmed testimony of one one who is admittedly a criminal.

Resolving the difference of opinion it was held :

> We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute.

23. In Halsbury's Laws of England (Fourth Edition, Vol. 11, para 454) the following passage obtains :

> Corroboration of a witness's testimony must be afforded by independent evidence which affects the defendant by connecting or tending to connect him with the offence charged. It must be evidence which implicates him, that is which tends to confirm in some material particular not only that the offence was committed, but also that the defendant committed it.

24. As to independent nature of the corroboration learned Chief Justice observed in Baskerville case : ((1916) 2 KB 658)

Again, the corroboration must be by some evidence other than that of an accomplice, and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice : Rex v. Noakes ((1832) 5 C&P 326).

25. As to the extent of the requisite reassurance by way of corroboration, learned Chief Justice said :

> It is sufficient if there is confirmation as to a material circumstance of the crime and of the identity of the accused in relation to the crime. Parke, B. gave this opinion as a result of twenty-five years' practice; it was accepted by the other judges; and has been much relied upon in later cases .... (pp. 665-66)

Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony .... (page 664 in R. v. Baskerville ((1916) 2 KB 658).)

26. In Halsbury's Laws of England - Fourth Edition, Vol. 11, page 268, para 454 - this proposition is stated thus :

> The word 'corroboration' is not a technical term of art; it means by itself no more than evidence tending to confirm, support or strengthen, other evidence ....

The corroboration need not consist of direct evidence that the defendant committed the offence, nor need it amount to confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respects material to the charge under consideration. It is sufficient if it is circumstantial evidence of the defendant's connection with the offence; but it must be independent evidence, and must not be vague.

27. However there were some observations in Director of Public Prosecutions v. Kilbourne (1973 AC 729 : (1973) 1 All ER 440) which tended towards a departure from the rule in R. v. Baskerville ((1916) 2 KB 658). In Kilbourne case (1973 AC 729 : (1973) 1 All ER 440) Lord Hailsham said - and this is also the statement of the law in Halsbury (fourth Edition, Vol. 11, page 268, para 454) :

> Evidence which is admissible, relevant to the evidence requiring corroboration and (if believed) confirmatory of that evidence in a material particular, is capable of being corroborative and, when believed, is corroboration.

28. The above passage was not wholly in consonance with what Lord Reading had earlier said :

> For example, "confirmation does not mean that there should be independent evidence of that which the accomplice relates or his testimony would be unnecessary" : R. v. Mullins (3 Cox. c.e. 526, 531) per Maule, J .....

29. But, in R. v. Beck ((1982) 1 All ER 807 (CA)), it was reiterated by way of clarification that corroborating evidence need not relate to the particular evidence spoken to by a suspect witness, and that it was merely independent testimony which confirmed in some material particular not only the person had committed it. Referring to the statement of Lord Hailsham in Kilbourne case (1973 AC 729 : (1973) 1 All ER 440) it was observed : (All ER 815 (g))

The learned editors of Archbold para 1416, after, in our judgment correctly, stating that 'the corroborative evidence need not relate to the particular incident or incidents spoken to by the "suspect" witness', express the view that 'Lord Hailsham's dictum that the corroborative evidence must be "relevant to the evidence requiring corroboration" may be misleading'. We agree. We do not think that Lord Hailsham, L.C. was expressing any support for the proposition of counsel for the appellant.

The position of law in R. v. Baskerville ((1916) 2 KB 658) was, thus restored.

30. However, a marked tendency in England towards arresting the formation in regard to the specific words to be used to caution the jury against the danger of accepting the testimony of the uncorroborated accomplice is now discernible. In R. v. Spencer ((1986) 2 All ER 928) the grievance of the convicted person was that the trial judge, in cautioning the jury, failed to use the word 'dangerous' in describing the risks of injustice involved in convicting a person on the testimony of an uncorroborated accomplice. The Court Appeal and the House of Lords declined to set aside the verdict and said that the summing up did not involve some legalistic ritual to be incanted in the summing up.

31. However, in regard to the quality and extent of corroboration, in R. v. Donat ((1986) 2 Cri App R 1973), it was reiterated that to count as corroboration, it is not enough that a piece of evidence merely supports the accomplice's credibility, however, convincingly and independently; but it must go a little further and implicate the accused. (See All England Reports : Annual Review 1986 page 158)

32. In Saravanabhavan v. State of Madras (AIR 1966 SC 1273 : 1966 Cri LJ 949) the corroboration was held to be of two kinds : the first belonging to the area of reassurance of the credit of the approver himself as a trustworthy witness; and the second - which arises for conclusion after the court is satisfied about the credibility of the approver - as to the corroboration in material particulars not only of the commission of the crime but also of the complicity of other accused persons in the crime. If on the first area the court is not satisfied the second stage does not arise. The position is attractively presented in Halsbury (Fourth Edition, Vol. II, page 268, para 454) :

> Corroboration is required or afforded only if the witness requiring or giving it is otherwise credible; if a witness's testimony falls of its own inanition the question of his needing, or being capable of giving, corroboration does not arise.

33. However, the two areas of corroboration are not two separate, watertight compartments. The evidence as a whole will have to be examined to reach conclusions on both aspects.

34. In Attorney General of Hong Kong v. Wong Muko Ping ((1987) 2 WLR 1033) Lord Bridge of Harwich speaking for the Judicial Committee of the Privy Council said :

> ..... It is said that this two stage approach is implicity indicated by passages from speeches in the House of Lords in two of the leading authorities.

The presence or absence of corroborated evidence may assist a jury to resolve, one way or the other, their doubts as to whether or not to believe the evidence of a suspect witness; it must, in their Lordship's judgment, be wrong to direct them to approach the question of credibility in two stages as suggested in the submission made on behalf of the defendant.

35. The controversy in the present case in the ultimate analysis, belongs to the second area, whether the approver's testimony as to appellant's complicity in the conspiracy could safely be held to have been corroborated by independent evidence on the material particulars.

36. The facts that require sequentially to be established are that appellant's married life was in a serious disarray; that she and Nand Singh were on terms of illicit intimacy; that she also submitted herself to Ram Sarup (PW 2) in an extra-marital relation; that on November 13, 1973 she implored Nand Singh and Ram Sarup to free her from a cruel husband by doing away with him; that she agreed that she would, thereafter, live with Nand Singh as his wife and that after coming to know of Pritam Singh's death she deliberately misled her mother-in-law, Mukhtiar Kaur (PW 19) into making a report to the police containing false and misleading information in an attempt to draw a red herring across the trail.

37. The evidence of PWs 17 and 18 on the first two points has been discarded by the Sessions Court. It is not also suggested that after the murder of Pritam Singh, appellant began to live with Nand Sigh. There was a considerable lapse of time between the death of Pritam Singh and their arrest. There is no evidence to show that, in the interregnum, there was any liaison between the two.

38. There is yet another impediment in accepting the evidence on an important area of the alleged conspiracy. The incriminating circumstances in the evidence of the approver appearing against the appellant had had to be put to the appellant in her examination under Section 313 CrPC. The incriminating testimony of the approver pertaining to the case that on November 13, 1973 appellant wept and implored Nand Singh and Ram Sarup to do away with Pritam Singh and that appellant also agreed that she would, thereafter, live with Nand Singh has not been put to the appellant in the course of her examination under Section 313 CrPC. Appellant was not afforded an opportunity to submit an explanation to it. That part of the evidence must for that reason, be excluded from consideration (see Harijan Magha (Harijan Magha Jesha v. State of Gujarat, (1979) 3 SCC 474 : 1979 SCC (Cri) 652).

39. On a consideration of the entire matter, it appears to us that the approver's evidence in regard to the complicity of the appellant in the conspiracy lacks corroboration on certain material particulars necessary to connect the appellant. A little more reassurance than is afforded by the state of evidence in the case is perhaps, necessary to convict appellant. Appellant, in the circumstances would be entitled to the benefit of doubt.

40. At the time of the commission of the offence, the appellant, even on the basis of the observations, made by the sessions court, was about 15 1/2 years of age and was a "child" within the meaning of East Punjab Children Act, 1949. The relevant date is the date of the commission of the offence. Section 27 of the Act provides :

> 27. Sentences that may not be passed on child. - Notwithstanding anything to the contrary contained in any law, no person who was a child at the date of the commission of the offence shall be sentenced to death or transported or committed to prison for any offence or in default of payment of fine, damages or costs :

Provided that a child who is fourteen years of age or upwards may be committed to prison where the court certifies that he is of so unruly or of so depraved a character that he is not a fit person to be sent to a certified school and that none of the other methods in which the case may legally be dealt with is suitable.

41. The sessions court has invoked the proviso and has held that appellant was of so depraved a character that none of the other methods in which the case could legally be dealt with is suitable in her case. An examination of the legality or propriety of the procedure adopted in the case in the matter of the trial of a 'child' under the East Punjab Children Act, 1949 and as to the correctness of the view of the sessions court in appealing to the proviso to Section 27 and in sentencing appellant to imprisonment for life may not be necessary in this case, in view of our finding that appellant is entitled to the benefit of doubt.

42. In the result, this appeal is allowed and while the conviction and sentence of the other non-appealing accused is left undisturbed, the conviction and sentence of the appellant is set aside and appellant is directed to be set at liberty forthwith.

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