

Rampal Pithwa Rahidas and Others

Vs

State of Maharashtra

With

State of Maharashtra

Vs

Basawan and Others

Criminal Appeal Nos. 201 of 1989 and 466 of 1989

(Dr. A. S. Anand, Faizanuddin JJ)

01.03.1994

JUDGMENT

DR. A. S. ANAND, J. -

1. These two appeals, by special leave, arise out of a common judgment of the High Court of Judicature, Appellate Side, at Bombay (Nagpur Bench) dated 27th, 28th and 31st October, 1988 confirming the death sentence passed by the Addl. Sessions Judge, Chandrapur for an offence under Section 302 IPC on five appellants in Criminal Appeal No. 201 of 1989. Three convicts were acquitted by the High Court and Criminal Appeal No. 466 of 1989 has been filed by the State of Maharashtra against their acquittal. This judgment will dispose of both the appeals.

2. Nine accused persons, namely, Rampal, Fulchand, Babulal, Sheoprasad alias Dhunda Chunbaliya, Basawan, Shamlal, Pratap, Ramkishore and Ramcharan, were sent up for trial for committing the murder of Tanba Gedam, Baldeosingh, Raman Chandra, Prakash Vehadkar and Raju Deshmukh and for causing injuries to Surendra PW 31, Mahendrasingh PW 33 and Doma PW 5 on July 3, 1984 between 7.30 p.m. and 10 p.m. on the Highway Chandrapur Ballarshah Road while committing dacoity. (One other accused who had also been arrayed by the police died before the trial in police custody). They were tried for offences under Sections 302, 307, 342 read with Section 149 and Sections 395 and 396 of IPC. Accused 1 Ramcharan Rahidas turned an approver and was examined as such. The learned Addl. Sessions Judge accepting the testimony of the approver and the other prosecution evidence, convicted all the eight accused mentioned above and awarded the sentence of death to all the eight accused for the offence under Sections 302/149 IPC, and for the offences under Sections 307 and 395, the accused were sentenced to suffer rigorous imprisonment for two months and to pay a fine of Rs. 50 each and in default they were directed to suffer rigorous imprisonment for seven days. The learned Addl. Sessions Judge submitted the proceedings to the High Court for confirmation of the sentence of death and the convicted eight accused also filed a criminal appeal challenging their conviction and sentence in the High Court. While the appeal of appellants Basawan Rahidas, Pratap Rahidas and Ramkishore Rahidas was accepted and they were acquitted of all the charges, the appeal filed by Rampal and four others was dismissed and their conviction under

Section 302 IPC was maintained. The High Court also confirmed the sentence of death on Rampal and the other four appellants, who have filed Criminal Appeal No. 201 of 1989. The State of Maharashtra has filed Criminal Appeal No. 466 of 1989 against the acquittal of Basawan and two others.

3. The prosecution case is that on July 3, 1984, near K.M. No. 9 on Chandrapur-Ballarshah Road which is a part of Highway No. 84, construction of two buildings of a seed centre was in progress. Doma and Tanba were acting as watchman at the construction site. At about 7.30 p.m., while Tanba and Doma were present at the site, they heard the approaching movement of some persons. One of those persons on reaching near Doma and Tanba picked up a bamboo stick. Four other persons surrounded Doma while two others started assaulting Tanba with bricks, as a result whereof Tanba fell down. The miscreants assaulted Doma and Tanba with bricks, stones and rafters and tied them by removing the dhoti which Tanba was wearing and dragged them both to a distance of about 25 ft. and ultimately threw them in a ditch, which was at some distance away from the main road. The assailants on hearing the sound of a two-wheeler approaching, went up to the main road and assaulted the rider of the two-wheeler Raman Chandra. After giving beating to him, he was dragged and thrown near the road. Mahendrasingh and Baldeosingh were coming on a scooter from the Ballarshah side and they were also assaulted by the assailants with rafters and sticks. A bag containing Rs. 7040 and some documents was snatched from them. As a result of the beating, Mahendrasingh and Baldeosingh became unconscious. Baldeosingh died on the spot. The assailants threw away his body and the scooter on one side of the road. Mahendrasingh who had also become unconscious was later on removed to a hospital at Nagpur where he regained consciousness after four days. Prakash Vehadkar was also passing on the road on his cycle at about the same time. He was stopped, beaten and killed by the assailants. Raju Deshmukh was driving a scooter with Surendra Chopra and was passing through on that road, when his scooter was stopped. Both of them were assaulted by the miscreants as a result whereof Raju Deshmukh fell off his scooter and was trapped under it. The miscreants then caused some injuries to Surendra and removed his gold ring, wrist-watch and Rs. 250 and left him on hearing the sound of another scooter approaching that side. Surendra escaped and ran over some distance and requested one Mumtaz Ahmed, who was passing by the road on his scooter, for a lift. Mumtaz Ahmed took Surendra, to the house of his brother at Ballarshah. After rendering some medical aid to Surendra, his brother and others went in search of Raju Deshmukh but could not locate him or his scooter. While going to the site, where Raju and Surendra had been belaboured, the assistance of the police sub-inspector Chandrapur was also taken and he accompanied them to the spot and on reaching the place of occurrence they came to know about the killing of 4-5 persons. They later on found the dead body of Raju Deshmukh. The dead body of Tanba was also found there.

4. PSI Gadekar of the Traffic Branch at Chandrapur was on the Highway at about 2210 hrs. on July 3, 1984 when on learning that some dead bodies were lying by the side of the road, he along with Constable Ram Das reached the place of occurrence. He found the dead bodies lying on the two sides of the road. Leaving Head Constable Ram Das to guard the spot, PSI Gadekar went and apprised PI Thakur of Chandrapur Police Station, who rushed to the scene of occurrence, and found three dead bodies and injured person asking for water. Near about the same place, two more dead bodies and injured Mahendrasingh were also found. Both the injured persons were sent to the General Hospital, Chandrapur in a trakker belonging to the Maharashtra State Electricity Board. Sub-Inspector Bante of Chandrapur City Police Station went to the General Hospital Chandrapur and recorded the statement of injured PW Doma, which forms the basis of the first information report. A case was registered and investigation taken in hand. During the investigation, the inquest report of Prakash Vehadkar, whose name could be gathered from a tobacco box which was lying

near him as well as from the cycle which bore his name was prepared and a Panchnama drawn up. Inquest reports of the other dead bodies were also prepared. The bloodstained clothes of the injured were seized vide separate panchnamas. Some more articles were seized from different places in the neighbourhood of the scene of crime vide separate panchnama in the morning of 4th July, 1984. The dead bodies of Raman, Raju, Prakash, Baldeosingh and Tanba were sent for post-mortem examination to the General Hospital Chandrapur where Dr. Murkey conducted the post-mortem examination on the dead bodies and submitted the post-mortem reports.

5. We do not consider it necessary or expedient to reproduce the injuries noticed on each of the deceased, as the same have been given in detail both by the learned Addl. Sessions Judge and the High Court in the judgment and no controversy surrounds them. Suffice it to notice that the injuries found on each of the dead bodies were, according to Dr. Murkey, sufficient in the ordinary course of nature to cause the death of the deceased.

6. Dr Lohare PW examined injured Mahendrasingh PW on 4th July, 1984 and found swelling on his right forearm lower part, and after an X-ray examination it was discovered that Mahendrasingh had suffered fracture of the right ulna. Doma PW was also examined by Dr. Lohare who found two lacerations on his right occipital region and one laceration on the central occipital region with swelling on the right hand also. Surendra PW was examined by Dr Lohare and it was found that he had swelling on both the hands, lower part of the right forearm, left knee, right postcuricular of scalp, lacerations on the left and right forehead, contusion on the right lower thoracic region, tenderness on the left shoulder and an abrasion on the right shoulder. There was no clue as to the culprits in the case. Right from the start of the investigation on July 3, 1984, till July 7, 1984 no arrest was made. None of the injured prosecution witnesses could throw any light on the identity of their assailants or those who had committed the murders on July 3, 1984 as according to them assault had been committed by some men wearing masks in the darkness of the night. It appears that since the investigation did not yield any results with regard to the crime committed on the Highway, demonstrations against police inaction were held at Chandrapur and a complete bandh was also observed for one day. Unprecedented tension prevailed in Chandrapur on account of ineffective and slipshod investigation by the police. Both the public and the press continued to blame the police for their inaction and the police authorities were naturally concerned.

7. On July 7, 1984 accused 1 Ramcharan, who later on turned an approver in this case, was sighted by one Manohar Thikare PW near the metre-gauge line which passes from Chandrapur and goes towards Gondia. He was arrested in Village Rajoli within the jurisdiction of Police Station Mul in connection with some other case. We shall, in the latter part of the judgment, deal with the story of his arrest in some detail. According to the prosecution case, Ramcharan accused is alleged to have disclosed, during interrogation, at Police Station Mul that he had taken part in a case of dacoity on Ballarshah Road. On getting this information the police officer of Police Station Mul informed the Superintendent of Police, Chandrapur and on his direction Ramcharan accused was transferred from Police Station Mul to Chandrapur Police Station. It is then alleged that after his transfer to Chandrapur Police Station at 2 a.m. his statement came to be recorded by the Police at Chandrapur Police Station and as a sequence of the information given by him, all other accused persons along with one Murari Deshmukh were arrested. Murari, however, died within three days of his arrest while in police custody. According to the prosecution, Ramcharan accused made a voluntary statement under Section 164 before the Judicial Magistrate Ist Class on July 21, 1984 giving details of the crime. Armed with that statement of Ramcharan accused, the investigating agency allegedly effected some recoveries after arresting the other accused persons as well as at the instance of the approver himself. Ramcharan accused, subsequently turned an approver and the accused were put

on trial.

8. The prosecution with a view to connect the accused with the crime, relied primarily upon the testimony of the approver, besides the statements of the injured witnesses and certain recoveries, alleged to be of the articles belonging to various deceased and the injured persons effected under Section 27 of the Evidence Act. The defence of the accused was one of denial and false implication. Rampal and Basawan, the acquitted accused, also pleaded alibi. Before dealing with the statements of the eyewitnesses and the alleged recoveries, we shall first deal with the statement of the approver Ramcharan PW, an accomplice of the accused, who turned an approver on grant of pardon.

Legal Position :

9. Section 133 of the Evidence Act expressly provides that an accomplice is a competent witness against his co-accused and it renders admissible the testimony of an accomplice against his co-accused. It has, however, been a long settled practice of law that Section 133 of the Evidence Act must be read along with the provisions of Illustration (b) to Section 114 of the Evidence Act. Section 114 of the Evidence Act empowers the court to presume the existence of certain facts and Illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars. Thus, it follows, that whereas law permits the conviction of an accused person on the basis of the uncorroborated testimony of an accomplice by virtue of the provisions of Section 133 who is treated as a competent witness, the rule of prudence which has rightly been always accepted by the courts, embodied in Illustration (b) of Section 114 of the Evidence Act, strikes a note of warning/caution to the courts that an accomplice does not generally deserve to be relied upon, unless his testimony is corroborated in material particulars. Thus, as a matter of practice and prudence the courts have held that the testimony of an approver may be accepted in evidence for recording conviction of an accused person provided it receives corroboration from direct or circumstantial evidence in material particulars. The courts have generally looked upon with suspicion the statement of an approver because he is considered to be a person of low morals and not a wholly trustworthy person who for the sake of earning pardon for himself is willing to let down his erstwhile accomplices and therefore before recording conviction courts insist upon independent corroboration of his testimony. In *Ram Narain v. State of Rajasthan* ((1973) 3 SCC 805, 811 : 1973 SCC (Cri) 545) Dua, J. while speaking for the Court dealt with the subject and observed : (SCC p. 811, para 8)

"An approver who is admittedly guilty of the crime is an accomplice who has betrayed his associates and has apparently sought pardon for saving his own skin. In other words he has purchased complete immunity for his associates by agreeing to give evidence against them for the prosecution. He is, therefore, presumed not to be a man of high character or a fair witness. His pardon being conditional, to please the prosecution he may well weave some false detail into the true details of the prosecution story and may also falsely involve some innocent person. There is thus a real danger of his telling a story true in general outline but containing some untruth which he can easily work into the story. It is for this reason that the courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience that the approver's testimony which is clearly admissible is also worthy of belief credit. One can of course visualise an accomplice who is genuinely repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence. But even in such cases the court has to judicially determine the extent to which his uncorroborated testimony can be considered as

trustworthy by looking to the other relevant material and the attending circumstances on the basis of which the accused can be safely convicted. The rule which seems to emerge from the foregoing discussion and judicial decisions is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the judge."

Arrest of Ramcharan and Grant of Pardon to him :

10. The above principle has stood the test of time and it is with this background present in our minds that we shall examine the testimony of Ramcharan approver PW 49. How he came to be arrested ? How did he become a participant in the crime ? What role did he play in the crime ? When and how he decided to be an approver ? These are some of the questions which we shall have to consider to determine the creditworthiness of his testimony and the nature and the extent of corroboration which is required before his testimony can be relied upon in support of the prosecution case.

11. The approver appeared as PW 49 at the trial. He was arrested on July 7, 1984 in some other connection and till his arrest as already noticed, the investigation had drawn a blank in this case and was being criticised both by the media and the public alike for not solving the crime and appears to have been under tremendous pressure. How did the approver come to be arrested ?

12. One Manohar Thikare PW 1, according to the prosecution case, was collecting leaves by the side of Rajoli Railway Station and had climbed on a tree for that purpose leaving his cycle by the side of the road. He found approver Ramcharan coming that side and touching his cycle. Manohar PW 1 shouted at Ramcharan PW 49 and got down from the tree. The approver started running away. Manohar got down from the tree and riding on his bicycle, instead of chasing the approver, who had 'touched' his bicycle went home to inform his brother, Sudhakar PW 2 about what he had seen near the tree. Both Manohar PW 1 and Sudhakar PW 2 then came back to the spot and started looking for the approver and found him standing on the water tank near the railway line. They caught hold of him and took him to the house of Tulsiram, Police Patil PW 3, who sent Sudhakar PW 2 with Ramcharan approver to Police Station at Mul with his report Ex. 29, which makes an interesting reading and reads thus :

#To, The Police Station Officer, Police Station, Mul.##

Subject : In respect of catching thief on account of suspicion.

Sir,

It is submitted as under -

This day July 7, 1984, Saturday, when Manohar Kessari Thikare, resident of Rajoli, had gone for plucking leaves, on a bicycle.

Ramcharan started going away taking his bicycle. At that time, he (Manohar) shouted and with the help of his brother Sudhakar Thikare, he (Manohar) caught Ramcharan and brought him. He (Ramcharan) told his name to be Ramcharan Ramasheth Chamber, resident of Gondia. Hence you are requested to hold enquiry into the said matter. Finish, dated July 7, 1984.

Seen, Sd/ (Sd/) x Illegible x T. K. Thikare, S.D.P.O. Police Patil Rajoli Dt. 8.7.84
Police Station, Mul Tehsil & Distt. Chandrapur.##

13. However, it is neither the case of Manohar PW 1 nor of Sudhakar PW 2, that approver Ramcharan made any attempt to steal the bicycle of Manohar PW 1 let alone that he "started going away by taking his bicycle". The testimony of Manohar PW 1, which is also supported by panchnama of the spot dated July 7, 1984 Ex. 31 is only to the effect that while he was plucking the leaves and had kept his cycle on the road, an unknown person touched his cycle and when Manohar PW 1 shouted, the unknown person ran away. Since, the cycle had not been stolen, we are at a loss to understand as to why in the first place Manohar PW 1 and his brother Sudhakar PW 2 should have, come back on the cycle to the spot and why did they chase Ramcharan approver, who had done practically nothing, and finding him on the railway water tank took him to PW 3 Tulsiram. What was the basis for Tulsiram PW 3 to say in his report Ex. 29 that Ramcharan "started going away by taking his bicycle" is not at all intelligible ? Why Tulsiram PW 3 wrote it has been explained even by him while appearing as a witness at the trial. But then unless the Police Patil Tulsiram PW 3 had concocted a story of 'stealing' there was perhaps no occasion for Tulsiram Police Patil to send the approver to the Police Station Mul with his report Ex. 29 and that appears to be the reason for incorporating the story of alleged theft of the bicycle by the approver by Tulsiram PW 3 in his report Ex. 29. What happened subsequently at Mul Police Station is even more curious.

14. When a Kotwal and Sudhakar PW 2 produced Ramcharan at Police Station Mul along with report Ex. 29 from Tulsiram PW 3, PSI Chandel PW 41, of Police Station Mul, made an entry in the station diary regarding the 'incident' and arrested Ramcharan under Section 109 of the CrPC (not under Section 379 or Sections 379/511 IPC) and interrogated him, during the course of which, according to the prosecution case, Ramcharan disclosed of having taken part in a dacoity on the Highway. In the entry, in the station diary book Ex. P-7, however, there is no mention that PW 41 PSI Chandel had arrested accused Ramcharan under Section 41/109 CrPC. When asked during the cross examination as to whether he had prepared the arrest panchnama of accused Ramcharan, PW 41 Chandel replied in the negative. When questioned as to why the approver was arrested under Section 109 CrPC when that was not the purport of Ex. 29 sent by Tulsiram PW 3, the witness stated that "if any person is found pickpocketing at bus stand, we arrest him under Sections 41/109 CrPC" but could not explain as to the basis on which accused Ramcharan was arrested under Section 41/109 CrPC. It was suggested to Chandel PW 41 during the cross-examination that since in the area, public discontent had been increasing daily, therefore, a false story was concocted and Ramcharan accused was planted as an accused. He denied the suggestion. The prosecution has attempted to show that Manohar PW 1 and Sudhakar PW 2 were independent witnesses, who had made a complaint to Police Patil Tulsiram PW 3 in a routine manner and that Tulsiram Patil PW 3 sent Ramcharan to Police Patil Mul also in a routine manner along with his report in the official routine. The truth however, appears to be otherwise. During his deposition PW 1 Manohar, after stating that Ramcharan was sent to the Police Station by the Police Patil Tulsiram Pw 3 along with his brother Sudhakar PW 2 and Vilas Kilake Police Kotwal at about 10. a.m., admitted in his cross-examination that "Police Patil Tulsiram is my cousin brother". He, therefore, proverbially speaking let the cat out of the bag !

15. It appears to us that Tulsiram Patil PW 3 utilized the services of his cousins Manohar PW 1 and Sudhakar PW 2 to plant Ramcharan and have him arrested under Section 109 IPC at Police Station Mul with the assistance of PW 41 Chandel. The entire story regarding arrest of Ramcharan appears to be a police concoction and padding with a view to silence the large discontent against the police on account of its inaction to apprehend culprits, who were responsible for committing five murders

on the Highway, besides causing injuries to three witnesses.

16. At this stage it would also be relevant to take notice of the report sent by PW 41 Chandel while transferring Ramcharan to Police Station Chandrapur City. Ex. 197 is that report and it also makes an interesting reading. It reads as follows :

Police Station Mul, Date : 8.7.1984.##

To,

The Police Inspector, Police Station, Chandrapur City.

Sub : Regarding transfer of Ramcharan son of Ramashray Rahidas, the accused arrested under Section 41(2)/109 of CrPC at Police Station Mul and his relevant documents.

Sir,

Report is submitted as under :

On July 7, 1984, Police Patil of Village Rajoli sent a person named Ramcharan Ramashray Rahidas and written report to the Police Station Mul, through Sudhakar Shivram Thikre. It was stated in the said report that the person named Ramcharan Rahidas was caught while he was trying to take away the bicycle of Manohar Shivram Thikare. On the basis of the said report I personally went to village Rajoli and made an inquiry about the said incident. During the course of inquiry the following facts were came to be known :

At about 7 a.m. Manohar Shivram Thikare went on a bicycle to pluck the leaves of Palas tree. He kept the bicycle on foot track and climbed up the Palas tree. When he was plucking the leaves of Palas tree, the aforesaid person named Ramcharan Rahidas was going by the road. At that time he (Ramcharan Rahidas) touched the said bicycle, as a result of which Manohar Thikare shouted. On that Ramcharan ran away from there. Thereafter Manohar Thikare went to the village by the said bicycle and brought his brother Sudhakar Thikre on the said bicycle. At that time Ramcharan Rahidas was on the cistern. Then the said two brothers caught Ramcharan Rahidas and brought him to Police Patil of Rajoli.

On the basis of the said inquiry since it reveals that, the said incident was not theft, there was no intention of committing theft of a bicycle, the accused Ramcharan Rahidas has no place of residence, he has been arrested at 1935 hrs. of July 7, 1984 under Sections 41(2)/109 CrPC.

On making minute inquiry to the accused Ramcharan Rahidas regarding other crimes, he disclosed that he was related to Crime No. 135 of 1984 under Sections 396 and 397 of IPC registered at Police Station Chandrapur City. Since accused Ramcharan Rahidas is related to the said crime, he has been transferred to the crime registered at Police Station, Chandrapur. Relevant documents have been also submitted along with the report for taking proper action.

17. PW 56 Jamdar Singh who at the relevant time was attached as Police Inspector at Police Station Chandrapur, while deposing about the transfer of accused Ramcharan, stated that on July 8, 1984 the DSP Chandrapur informed him on telephone that one person in connection with the dacoity-cum-murder which took place on July 3, 1984 on Chandrapur-Ballarshah Road was arrested at Mul and his name is Ramcharan, and on getting that information PW 56 sent a jeep to Mul to bring Ramcharan approver to the City Police Station. PSO Chandel of Police Station Mul came along with the accused to police station and handed over the papers regarding the arrest of Ramcharan at about 2 a.m. On what basis Crime No. 135 of 1984 under Section 396 and 347 IPC Police Station Chandrapur City came to be incorporated in the transfer note Ex. 197 by PW 41 Chandel of Police Station Mul has not been explained by the prosecution ?

18. After interrogation Ramcharan, PW 56 Jamdar Singh placed him under arrest and went on to depose that "he gave me information about the persons involved in the commission of offence of dacoity-cum-murder which took place on Chandrapur-Ballarshah Road. On his information, I caught all the accused persons and deceased Murari". While Ramcharan was in police custody on July 8, 1984, he allegedly disclosed in presence of panchas, Fakru and Patel, that he had kept a bag at the house of accused Babu Lal and that he was willing to produce the same. His statement Ex. 105 was reduced into writing. Accused Ramcharan then went with the police party, in a police jeep, to the house of Babulal and after going inside the house, brought out one black bag Ex. 144 which was seized vide seizure memo Ex. 103. The bag was empty. PW 56 then deposed that there were some bloodstains present on the loongi which Ramcharan was wearing and therefore, Ramcharan was asked to change the loongi and his bloodstained loongi was seized vide Ex. 102. In the transfer memo Ex. 197 there is no mention of the presence of bloodstains on the loongi of accused Ramcharan while he was in custody of PW 41 Chandel at Police Station Mul and the prosecution has not been able to explain as to when and how his loongi got bloodstained more particularly when on Ramcharan's own showing he had taken no part whatsoever in the assault made on the deceased or the injured persons.

19. Deposing about the recovery of the black bag Ex. 144, at the instance of accused Ramcharan, one of the panch witnesses Fakruddin PW 27, stated that one of the accused whose name or face he did not remember took the police party to "his house and from his house produced one bag". He went on to say that before producing the bag no talk had taken place with the said accused but added that "there were clothes in the bag. Police had removed the clothes from the bag and had shown us. There were clothes stained with blood in the said bag. The bloodstained clothes contained one baniyan and other clothes which I do not remember. The said clothes were tied in a bundle and were sealed. We then returned to Police Station Ballarshah."

20. The evidence of Fakruddin PW 27 with regard to the alleged disclosure statement made by Ramcharan coupled with the testimony of PW 56 Police Inspector Thakur goes to show that the story regarding recovery of the black bag Ex. 144 at the instance of Ramcharan accused is not free from doubt because whereas according to the disclosure statement the approver had kept in his house an empty black bag, but what was produced by Ramcharan from the house of Babulal was a bag containing bloodstained clothes. These discrepancies render the so-called recovery doubtful.

21. We shall now deal with the manner in which the confessional statement of Ramcharan under Section 164 CrPC came to be recorded on July 21, 1984 and its contents as also the manner of grant of pardon to him more than two years later. As already noticed, accused Ramcharan was arrested on

July 7, 1984 at Police Station Mul and then transferred to Chandrapur Police Station on July 8, 1984 at 2 a.m. and thereafter arrested in the dacoity case. While he was in custody at Chandrapur he is alleged to have made a statement before the Judicial Magistrate Ist Class on July 21, 1984. He appeared before the Judicial Magistrate Ist Class Shri Bhola on July 19, 1984 and offered to make a confessional statement. He was given 24 hours' time to think and reflect whether he wanted to make any voluntary confession. The learned Magistrate Chandrapur Shri V. K. Bhola after cautioning accused Ramcharan that he was not bound to make any confession and that if he did so, any confession that he may make, can be used as evidence against him, recorded his confessional statement Ex. 225 under Section 164 CrPC in which Ramcharan, inter alia, stated that he is an inhabitant of Banda District and that his father was working as a labourer at Gondia. He came to Gondia from Banda and stayed with his father for two days, when one person by the name of Kewat who was a resident of Ballarshah met him at Gondia. He told Kewat that he wished to do some work, on which he was asked to come to Ballarshah where Kewat would get him engaged for work on daily wages of Rs. 14-Rs 15 per day. That on Saturday he came to Ballarshah along with Kewat and on Sunday he worked on a truck. He was paid Rs. 7 towards labour and he told Kewat that he was not willing to work on Rs. 7 per day and then went away from the house of Kewat. The full name of the Kewat as disclosed by Ramcharan is Inderpal Kewat but no such witness has been produced or examined at the trial. After leaving Kewat's house, Ramcharan, a stranger in the locality, went in search of some persons belonging to his district and found Shamlal, Babulal, Fulchand and Sheoprasad and requested them to get him engaged somewhere for labour work and they told him that whenever they could find some work for him they would get him engaged. He went to the house of Babulal and remained in the house of Babulal on Monday for the whole day. On Tuesday Babulal told him that he could not get him any work at that place. In the noon of Tuesday, Fulchand, Shamlal, Sheoprasad and five other persons gathered at the house of Babulal and Ramcharan heard them say "that they are in need of money and hence they wish to commit robbery". Ramcharan told them not to do any such things as they may land up in jail and that he would not be a party to it. All of them assured him that they would give him money for going back to his native place and he reluctantly agreed. On that very day in the noon, five persons went to the forest at a place where a new house was being constructed. In the evening, he along with Babulal, Shamlal, Fulchand and Sheoprasad went to the bus stand and from there went towards Chandrapur. All of them got down at a petrol pump and went towards the place where the house was under construction. The five persons who had earlier gone to the forest also came there. Babulal, Shamlal, Fulchand and Sheoprasad took their clothes and handed them over to him. Sheoprasad and Fulchand took the knives which were given to them by Babulal after taking them out from an attache case which Babulal had brought with him. They gave one small stick to him (Ramcharan) and got him seated near the road at a distance of 15-20 feet from the bridge. He was directed that if any vehicle arrives then he should give a signal by making a sound with the stick. That was all job assigned to him. Fulchand, Babulal and Sheoprasad went to the watchmen of the new house to take sticks. He then narrated how Fulchand, Babulal and Sheoprasad had gone to the site of construction and he had seen them cause injuries to both the watchmen as well as the manner in which the motorcyclist, scooterists and cyclewala were stopped and assaulted and added that his co-accused had robbed the money from the persons who were assaulted by them. Ramcharan then stated that while returning, they all stayed at one place in the forest. The money was with Fulchand and that he was shown a bundle of currency notes of the denomination of Rs. 100 by Babulal. They reached Ballarshah at about 12/1 o'clock in the midnight and while Ramcharan remained sitting on a cot outside the house, the rest, all the nine persons, went in and remained inside the house of Babulal. After about half an hour, they all came out of the house of Babulal and went to their respective houses. Thereafter, he went to take meals with Babulal and then went to bed. In the morning, Sheoprasad prepared tea and

all the nine persons again gathered at the house of Babulal and they told him to return to his native place but since he had no money he demanded money from them for going back to his native place. "However they did not give me money". "They asked me to take oath in the name of my 'son' and further asked me not to disclose the night incident to anyone. I told them that if police asks me, then I would disclose everything. I took the meals and came to Chandrapur Railway Station on foot" and remained at the Railway Station for the whole day and boarded a narrow-gauge train for going to Gondia without ticket. On the way, the TT asked him to get down from the train since he was travelling without ticket, and went to the Basti where he begged for meals and again went to the station and slept there for the night. In the morning, he inquired from someone as to at what distance the next station was and on being told that it was at a distance of about 3 kos, he started to go there on foot by the railway line. Ramcharan went on to state about the manner in which he was thereafter arrested. He stated :

"On the way, I saw that one boy had kept his bicycle aside and he was plucking the leaves. I went to him and asked him as to what distance the next station is ? On it, that boy feared and ran away, and then he called and brought his elder brother. They then apprehended me and took me to their village. From there, I was taken to Police station, Mul. The Daroga (Police Station Officer) of Mul Police Station made enquiries with me. I told each and every fact to him. From there, I was brought to Chandrapur. I disclosed each and every true fact to the Police."

22. The above version given by accused Ramcharan about the manner in which he was arrested is quite different from the version given by PW 1 Manohar, PW 2 Sudhakar, PW 3 Tulsiram, PW 41 Chandel and PW 56 Inspector Thakur. There is no mention of the existence of or touching of the cycle in the statement of the approver recorded under Section 164 CrPC. According to the approver he was not told by the police to make a statement under Section 164 CrPC and that he had voluntarily appeared before the Magistrate and requested for his confessional statement to be recorded and that he was not even produced by the police before the Magistrate for the purpose of getting his statement recorded.

23. After waiting for more than two years after his arrest and the statement made by him under Section 164 CrPC, while Ramcharan was in the judicial lock-up, he submitted an application to the District and Sessions Judge, Chandrapur on January 17, 1987 seeking bail and in that application he said that he was being forced to become an eyewitness in the case although he knew nothing about the crime. That application Ex. 20 dated January 17, 1987 makes an interesting reading. It reads :

IN THE COURT OF DISTRICT AND SESSIONS JUDGE, CHANDRAPUR.

Subject : For grant of bail or for final hearing of the case.

Applicant : Ramcharan s/o Ram Asre.

Offence under Sections 396 and 397 of IPC.

Sir,

The applicant submits as under :

That the above applicant is undergoing imprisonment in the sentence of 2 years, 6 months, under Sections 396 and 397 of IPC, in the District Prison Chandrapur. The

Chandrapur District City Police (Crime Branch), in order to avoid their troubles produced the above applicant in the Court as eyewitness; and thereafter sent him in the Jail. In fact, the applicant does not know anything about this crime. The applicant being a respectable person and because of family worries, he cannot keep mental balance. The applicant is the karta (manager) of his family. This Hon'ble Session Court has not heard this case for its final disposal as yet, though many recent matters have been decided.

It is, therefore, prayed that this Hon'ble Court may be pleased to grant the application for bail or it is further prayed that this Hon'ble Court may be kind enough to decide, the case finally and oblige the applicant.

The applicant hopes that this Hon'ble Court would look into the matter and consider this application.

#Dt. 17.1.1987

Yours faithfully

Place : Lock-up of District Court, Thumb Impression of Chandrapur

Ramcharan s/o Ram Asre"

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24. Bail was, however, declined and he continued to remain in custody. According to the prosecution case, on April 1, 1987, Ramcharan accused suddenly and of his decided to become an approver and to make a disclosure of all facts, about which he had said in his application dated January 17, 1987 that he knew nothing. His application dated April 1, 1987 reads :

"To,

The District and Sessions Judge, Chandrapur.

Sub : Case under Sections 396 and 397 of IPC.

Through : The Superintendent, District Prison, Chandrapur.

Sir,

I, Ramcharan s/o Ram Asre, prisoner No. 1803 state as under :

That on July 19, 1984 the police imprisoned me in this jail under Sections 396 and 397 of IPC. The statement given by me in the lower court in respect of my case is true. The persons against whom the case for dacoity and murder is filed, are all responsible for the murder. I was only looking after their clothes. I had seen the accused persons committing the murders of the persons. I may be given pardon in this case. I want to be an approver. My statement, as given above is true. It has been read over to me.

#Before me,

Yours faithfully,

Sd/- Illegible (T.I.)

Jailor, District Prison, Left hand thumb impression

Chandrapur. of Ramcharan s/o Ram Asre No. Jud/433/87 Chandrapur District Prison
Chandrapur Dt. 1.4.1987Submitted to the Sessions Judge, Sessions Court,
Chandrapur fornecessary further disposal. Sd/- Illegible Jailor, District Prison,
Chandrapur."##

25. The District Judge forwarded the application to the Addl. Sessions Judge, Chandrapur and the Public Prosecutor was directed on April 23, 1987 to file reply to the application of Ramcharan. The Public Prosecutor in the reply stated :

"The application can be allowed after some preliminary questions provided he gives evidence on oath sticking up to the previous statements under Sections 162 and 164 CrPC."

Thereafter, an order granting pardon, which reads as follows, was made on April 24, 1987 :

"Accused No. 1 Ramcharan son of Ramashray Rahidas is one of the accused persons in a dacoity-cum-murder case which took place on Chandrapur-Ballarshah Road on July 3, 1984. He has made a confession statement before the learned Judicial Magistrate, Ist Class, Chandrapur admitting that he and other accused are involved in the said offence. He has now asked to pardon him. The incident has taken place in the jungle at night. Proof of guilt of all accused persons is not forthcoming satisfactorily. It is necessary to bring the rest of the offenders to justice. There is prima facie evidence that the present accused was present on the spot. He is not a principal offender. He has agreed to make a true and complete disclosure of all the facts within his knowledge. I therefore, feel that the said accused should be granted pardon on condition that he will make true and complete disclosure of all the facts within his knowledge which he as agreed. I, therefore, pass the following order :

ORDER

Accused No. 1, Ramcharan son of Ramashray Rahidas is tendered pardon under Section 307 of CrPC on condition of his making a true and complete disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof.

#Dt. 24-4-87 Sd/- F. N. Velati Addl. Sessions Judge Chandrapur."##

26. Considering what Ramcharan approver wrote in his application seeking bail, dated January 17, 1987, one is left to wonder as to what made him to write his application on April 1, 1987 seeking pardon and to be made an approver. In his application seeking pardon and for being made an approver, he inter alia stated that persons against whom the case for dacoity and murder had been

filed were responsible for the murder and that "I was only looking after their clothes". In his application dated January 17, 1987 Ramcharan had categorically asserted that he had no knowledge of the crime. The statements in the two applications are irreconcilable.

27. Indeed Ramcharan was not confronted at the trial with the statement contained in his bail application but nonetheless the fact remains that while considering the credibility of the approver and the weight to be attached to his statement, the statement made in the bail application (which is part of the judicial record) can be looked into by the courts. The High Court, in our opinion, did not consider the significance of this variation in the statement when it observed that :

"We do not, therefore, think that the statement in the bail application in any way, detracts from the credibility of the evidence which he gave in the court".

We cannot subscribe to the view of the High Court. What made the approver all of a sudden on April 1, 1987 decide to address a letter to the Sessions Judge that he be granted pardon and be made an approver ? The prosecution as well as Ramcharan are totally silent on this aspect. Was the approver being harassed or lured? In this connection it may be relevant to note that soon after Ramcharan approver had been shifted to Chandrapur Police Station on July 8, 1984 within 2/3 days the police had got his photograph taken. This has been admitted by Ramcharan approver in his cross-examination while appearing as PW 49. It is also borne out from the record that while Ramcharan approver was in police custody at Chandrapur Police Station, Murari accused who had also been arrested and lodged in Chandrapur Police Station, as an accused in this case, died while in police custody on July 10, 1984. It was within a few days after the death of Murari, that Ramcharan appears to have made his confessional statement under Section 164 before the learned Judicial Magistrate but through his application dated January 17, 1987, he reported to the Sessions Judge that he was being asked to become an eyewitness in the dacoity case, when he knew nothing about that crime. This should have put the court at its guard, when it was considering his application for tender for pardon dated April 1, 1987, but it seems that the Sessions Court did not apply its mind to that aspect at all. Having already made the so-called voluntary statement under Section 164 CrPC on July 21, 1984, why did he complain in his application dated January 17, 1987, that he was being forced to become an eyewitness though he did not know anything about the crime ? The prosecution has offered no explanation. That the statement under Section 164 CrPC was made in 1984 and, therefore, the approver may have forgotten what he wrote earlier is too feeble an explanation to be accepted. It appears to us that Ramcharan approver was throughout under pressure to become an approver in the case because the investigation had drawn a blank and admittedly the District Police of Chandrapur was under constant attack from the media and the public. The police, with a view to escape public wrath appears to have planted Ramcharan as an approver, may be on the promise that he would escape punishment and to us even the first confessional statement does not appear to be voluntary one.

28. The approver on his own showing did not know any of the appellants other than A-3, A-4, A-5, and A-7. According to the testimony of the injured prosecution witnesses PW 9, PW 31 and PW 33 the assault was made when it was dark and the assailants were wearing masks. No identification parade at all was conducted by the prosecution to have any of the appellants identified at a test identification parade either by the approver Ramcharan or even by the three injured prosecution witnesses PW 5, PW 31 and PW 33. No test identification parade was even held to have the approver identified as a party present at the time of assault from the tree injured witnesses. The identification of all the appellants in the court only, in the absence of any earlier test identification parade, when at the time of assault accused are alleged to be wearing masks and were unknown to

the victims or the injured witnesses, is hardly of any significance, in the facts and circumstances of this case, to positively connect the appellants with the crime.

29. We have already made a reference to the statement of Ramcharan approver recorded under Section 164 CrPC before he made an application for being tendered pardon. After the tender of pardon, Ramcharan was examined at the trial not as a first witness on behalf of the prosecution, which he ordinarily should have been, but as PW 49, almost at the fag end of the trial after he had the occasion to know the other evidence led in the case, so that he could depose accordingly in support of the prosecution. The statement of Ramcharan as PW 49 is a detailed one and gives in graphic details not only the manner in which he was arrested; the circumstances under which he came into contact with the appellants and others before his arrest but also the manner in which murders and dacoities were committed by his co-accused and the part played by him during the commission of the crime. He also deposed about the recoveries made pursuant to disclosure statements made by different appellants from different places of different articles on different dates. The minute details given by Ramcharan approver at the trial 3 years after the occurrence, are too good to be believed and exhibit a remarkable feat of memory ! His statement as the trial as PW 49 is much more detailed than the one contained in his confessional statement recorded under Section 164 CrPC within a few days of his arrest. Some of the statements made as PW 49 find no mention in his earlier confessional statement as for example, that Babulal told him to accompany them and offered to pay him Rs. 200 which he declined and that at that point of time accused Fulchand slapped him and thereupon he agreed to accompany them and do whatever they would tell him to do. That apart, he ascribed no part to himself at all during the entire occurrence except to take care of an empty bag and clothes of some of the co-accused. Ramcharan also deposed at the trial that after dacoity had been committed, accused persons advised him to run towards Ballarshah side but he declined to do so and told them that he will not go anywhere alone and will only accompany them or sit by the side of the road. The accused persons then caught hold of him by his hands and took him towards Ballarshah side by the side of the road through jungle. The approver then stated :

"from the spot of incident we went at a distance of about one mile and sat. Accused Babulal lighted a match stick and I saw accused Fulchand counting the money. I had seen Rs. 100 denomination note in his hand at that time. Six accused persons thereafter went towards Ballarshah Power House side. Myself, accused Rampal, accused Ramkishore and deceased accused Murari went from paper mill side to Ballarshah city. We went to the house of accused Babulal. We reached the house of accused Babulal at midnight 12.00 o'clock or 1.00 a.m. At about 2.00 to 2.30 a.m. the rest of six accused persons also came to the house of accused Babulal."

According to the approver, on the next day in the morning accused Babulal advised him to go to his home town and told him -

"...that they had committed dacoity and murder, Police were enquiring in the matter. I am a new person, they would therefore suspect and interrogate me. I told accused Babulal that I had no money to go to my home town. The accused Babulal told me that he had no money and he cannot give me any money. At about 10 a.m. I started going. Accused Babulal told me not to tell anybody about the incidence. I told accused Babulal that if anybody asks me I will narrate the incident... I came to Chandrapur on foot. I went to B.N.R. railway station and went to the platform."

They gave him no money.

30. From the statement of the approver appearing as PW 49 at the trial, it emerges that even though Babulal accused had told him that he shall be given 200 rupees, for joining the other accused in the commission of the crime, but after commission of the crime, he was not given any money and was told by accused Babulal to go back to his home town and in spite of his telling Babulal that he had no money, none was given to him. If as deposed to by the approver, Babulal and others wanted the approver to go away to his home town because the police was already making enquiries in the matter and he being a new person could be suspected and interrogated, but surprisingly they took no steps by giving him at least the railway fare to go back to his home town or put him on the train so that he would be out of the village and thus out of the reach of the investigating agency. Would the accused persons, who had joined a complete stranger for the commission of the crime, not even take the elementary steps to see that he is out of the village and left him and dry? We find it difficult to accept. The approver, has only tried to remain clear either while committing or for sharing the fruits of the dacoity. The conduct of the approver going away without a penny and the co-accused letting him go like that belies logic and common sense.

31. The statement of the approver at the trial recorded more than three years after the occurrence, is so detailed that it is difficult to believe its authenticity particularly when it also travels far beyond what was stated by the approver in his confessional statement recorded under Section 164 CrPC only a few days after the occurrence. It is humanly not possible for an illiterate rustic person to remember all such minute details as have been given by the approver detailing even the sequence of events during the alleged occurrence.

32. The sequence of events at Ballarshah Road as detailed by the approver in his statement in the court is quite different than the sequence of events as deposed to by the three injured eyewitnesses. The High Court noticed that there was variations in the version given by the Ramcharan approver and the three eyewitnesses as regards the sequence of events and the manner of assault but chose to ignore this by observing :

"But having regard to the nature of the incident, the fact that the life of the eyewitnesses was in peril and the horrendous conditions under which they had to make their escape, we do not think that the discrepancies regarding the order in which the vehicles came and the directions in which they went can be reflecting upon the credibility of the eyewitnesses. All this eventually had been occurring in darkness, and even Ramcharan's recollection in this respect cannot but be too hazy because of the gruesome nature of the incidence. We, therefore, attach no value to the discrepancies."

This approach of the High Court does not appeal to us. The importance of the discrepancies had to be considered to test the credibility and trustworthiness of the approver and the High Court failed to do so.

33. A careful analysis of the statement of the approver given at the trial coupled with the circumstances under which he came to be arrested, the averments in his application for grant of bail and other circumstances has created an impression on our minds that the approver is a planted witness and his testimony is not at all worthy of reliance and credence. The investigating agency appears to have created false evidence and fabricated false clues insofar as the testimony of the approver is concerned. From all the attendant circumstances, we are satisfied that the approver Ramcharan is not a reliable witness; his arrest was intrinsically unnatural and his self-confessed participation in the crime without taking any active part in it not acceptable. The approver has

claimed to be a spectator of every fact and of every moment but asserted that he did not participate in the assault at any stage and remained standing at a distance taking care of the clothes of some of the co-accused. His statement is almost of an exculpatory nature. His statement as a whole does not inspire confidence. His story is not worthy of credence. We find ourselves unable to place any reliance on his untrustworthy and unreliable evidence and in that view of the matter, we refrain even from expressing any opinion about the effect of the alleged non-compliance with the provisions of Section 306(4) CrPC read with Section 307 CrPC, as admittedly after the grant of pardon that the order dated April 24, 1987, no statement of Ramcharan approver was recorded till he appeared at the trial as PW 49. It is only after the grant of pardon that the status of an accused is changed into that of a witness and the law enjoins upon the courts to record the statement of the approver immediately after pardon is granted to him so that he may consider himself bound by that statement and failure to do so at the trial would render him liable for prosecution. That exercise was not performed in this case.

34. Once, we have found that the approver is a planted witness and his testimony is not worthy of credence and is uninspiring and unacceptable justifying its rejection outright, it will be futile and wholly unnecessary to look for corroboration of his testimony. It is only when the approver's evidence is considered otherwise acceptable that the court applies its mind to the rule that his testimony needs corroboration in material particulars connecting or tending to connect each one of the accused with the crime charged. We need not therefore detain ourselves to consider the other evidence led by the prosecution to corroborate the testimony of the approver. Suffice it to say that even the corroborating evidence of identification of the appellants in court by the three injured witnesses, in the absence of any earlier test identification parade, or the recoveries made by the associating convenient panch witnesses for all the recoveries conducted from different places on different dates at the instance of different accused but in the presence of the same panch witness PW 27 is not trustworthy or reliable.

35. From the discussion above, we find that the prosecution has not been able to prove the case against any of the appellants beyond a reasonable doubt and both the trial court and the High Court fell in error in convicting and sentencing the appellants for various offences as noticed in the earlier part of the judgment. Their convictions cannot be sustained.

36. We are conscious that five persons have died unnatural deaths on the Highway and the crime is going unpunished. But the courts have to decide the cases on the evidence led and not on what ought to have been led. The manner in which the approver has been introduced in the case coupled with the alleged faked recoveries has created an impression on our minds that the investigating agency failed to apprehend the real criminals and created false evidence and fabricated false clues in the present case to somehow or the other secure the conviction of the appellants and save its image in the face of the severe attack about its incapacity to apprehend the real culprits by the public and the media. It is unfortunate that the investigating agency should have resorted to fabricating of evidence and act in the manner in which it did in this case.

37. "The quality of a nation's civilisation," it is said "can be largely measured by the methods it uses in the enforcement of criminal law" and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilised society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis

in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means ! The courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means - otherwise it would be an invitation to anarchy.

38. In the result, the Criminal Appeal No. 201 of 1989 is allowed and the conviction and sentences of the appellants are set aside and they are acquitted and directed to be set at liberty forthwith, if not required in any other case. Criminal Appeal No. 466 of 1989 filed by the State against acquittal shall also stand dismissed. The respondents in Criminal Appeal No. 466 are discharged of their bail bonds.

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