APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Dixit.

1952
Nov. 6

L. S. RAJU *v.* STATE OF MYSORE.*

Indian Evidence Act (I of 1872), ss. 133, 114, 111 (b), 30—Evidence of accomplice—Necessity of independent corroboration—Nature of corroboration required—Confession of co-accused—Evidentiary value.

Although under s. 133 of the Evidence Act, 1872, an accomplice is a competent witness against a co-participator in the crime, the Courts have themselves laid down a rule of prudence, which rule has almost acquired the sanctity of a rule of law, that it would not be safe to act on the testimony of an approver unless that testimony is corroborated in material particulars. The corroboration that is required in law is not corroboration of every particular in respect of which the accomplice or approver gives his evidence, but it must be such as would lead the Court to believe that the evidence that the accomplice has given is truthful evidence. The Court requires that corroboration for its own guidance and mental satisfaction, and in order to arrive at the conclusion that it would not be unsafe to act on the testimony of one who is unworthy of credit.

According to the principles laid down by the Supreme Court in *Rameshwar* v. *The State of Rajasthan*,[1] an accomplice need not be corroborated with regard to every material circumstance in his evidence; further it is not sufficient that there should be corroboration of the accomplice evidence that a crime was committed; there should be corroboration of his testimony that the accused was in some way connected with that crime; finally, the corroboration need not be by direct evidence; it may also be by circumstantial evidence.

A confession by one accused is by itself a weak piece of evidence as against a co-accused, as it is not evidence in the legal sense of the term. The person who makes the confession does not step into the witness-box, his testimony is not subjected to cross-examination, and it is really in a sense *ex parte* evidence against the other accused. Therefore, there must be sufficient evidence independently of the confession which would warrant a conviction of the accused. It is only when there is such evidence that the Court may proceed further and look at the confession of the co-accused and consider it as additional evidence that would further weigh the balance against the accused.

Bhuboni Sahu v. *The King*,[1] *Kashmira Singh* v. *State of Madhya Pradesh*,[2] and *Rameshwar* v. *The State of Rajasthan*,[3] followed.

The King v. *Baskerville*,[4] referred to.

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* Criminal Appeal No. 957 of 1952 (with Cr. Appeals Nos. 958 and 959 of 1952).

[1] (1949) L. R. 76 I. A. 147, s. c. 51 Bom. L. R. 955.

[2] (1952) 3 S. C. R. 526.

[3] [1952] 3 S. C. R. 377.

[4] [1916] 2 K. B. 658.

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CRIMINAL APPEAL against the order of conviction and sentence passed by M. B. Honavar, Additional Sessions Judge, Bangalore.

Raju (accused No. 1) was a leading lawyer of Bangalore. He was also the Deputy Leader of the Congress Party in Mysore Legislature and the president of the Civil Liberties Union. Jayaram (accused No. 2) was his son. Dasappa (accused No. 3) was a business man, a client of accused No. 1, and also a close associate of his. Agnes (accused No. 4) was a domestic servant who for some time served in the house of the Chief Justice of Mysore at Bangalore, but her services were dispensed with as she was suspected of having stolen some clothes.

The prosecution alleged that accused No. 1 and the Chief Justice of Mysore, Medapa, were on very strained terms and accused No. 1 attempted to encompass the death of the Chief Justice by various means. He tried in the first instance spiritual means to bring about the death of the Chief Justice and employed one Narayan Prasad for that purpose. Narayan Prasad, who was practising as a quack doctor of Indian Medicine and who also indulged in various dubious practices by looking into the Shastras, forecasting the future of his clients, performing Pujas in order to destroy the enemies of his clients, knew accused No. 4 as she had dealings with him as her doctor, and it was through his instrumentality that accused No. 1 and accused No. 4 were brought together. Having failed to achieve his purpose through Narayan Prasad, accused No. 1 decided to engage the services of accused No. 4, and a suggestion was made to her that she should get herself re-employed by the Chief Justice. She made an attempt in that direction in the Christmus of 1950, and succeeded in getting herself re-employed not as a regular domestic servant but as a casual worker who would come and mend clothes whenever occasion arose.

On January 25, 1951, accused Nos. 1, 2 and 3 met in the evening at the shop of Narayan Prasad. Narayan Prasad had also asked accused No. 4 to come to his shop. Accused No. 1 had brought with him a bottle containing powder mercuric chloride. He gave the bottle to Narayan Prasad and asked him to prepare a packet putting sufficient powder in it. Narayan Prasad prepared the packet and when accused No. 4 came to the shop the packet was given to her. She was told by accused Nos. 1 and 3 that she should put that powder in the food or drink of the Chief Justice so that he should die.

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She was promised a good reward if she did what she was asked to do. According to the prosecution accused No. 4 got an opportunity of doing this four days later.

On January 29, 1951, a servant of the Chief Justice was preparing tea for his master and for that purpose he put some hot water into a brass vessel. While he had gone out to get some eatables, the accused No. 4 managed to put the powder in the hot water without being noticed by any one. When the servant returned he prepared tea in a kettle with that water and was about to serve it. Before serving he lifted the lid of the kettle to see whether the tea was sufficiently strong and noticed that there was something whitish in the decoction. He also found that there was a white precipitate in the water in the vessel. He thereupon threw away the decoction and the water and prepared tea in another vessel. The incident had excited the curiosity of the servants of the Chief Justice and ultimately the matter was reported to him. Accused No. 4 was seated on the steps of the pantry room mending clothes throughout the material time, and she, when asked whether she could explain the cause of the deposit, could not do so. The matter was then reported to the Police and they took up the investigation. The brass vessel was sent to the Chemical Analyser who analysed the deposit on it and found that it was mercury. Accused No. 4 who ceased to attend the house of the Chief Justice after that day was arrested on February 16, 1951. Following her arrest the other accused were also arrested and after various witnesses had been examined by the police, a case was put up against the four accused. Narayan Prasad, who was given a pardon, gave evidence as an approver both before the committing Magistrate and the Sessions Judge.

By several orders of remand accused No. 4 was committed to police custody until February 26, 1951, and on that day the Magistrate made an order of remand committing her to jail custody. On the next day at 5-15 p.m. she was produced before the District Magistrate for recording her confession. The District Magistrate immediately proceeded to record the confession which took him two and half hours. Accused No. 4 adhered to her story also in the statement which she made before the committing Magistrate under s. 342 of the Criminal Procedure Code.

On these facts the prosecution alleged that accused No. 4 was guilty of attempting to murder the Chief Justice, and

accused Nos. 1 to 3 were guilty of having instigated her to commit the offence. The trial was held by the Additional Sessions Judge, Bangalore, with the aid of assessors.

The Additional Sessoins Judge convicted accused Nos. 1 and 3 for an offence under s. 302 read with s. 115 of the Indian Penal Code and sentenced accused No. 1 to two years' simple imprisonment and a fine of Rs. 2,000 in default simple imprisonment for one year. He sentenced accused No. 3 to rigorous imprisonment for two years. He convicted accused No. 4 for an offence under s. 307 Indian Penal Code and sentensed her to two years' rigorous imprisonment. He acquitted and discharged accused No. 2.

Accused Nos. 1, 3 and 4 filed separate appeals from the order of conviction and sentence to the High Court of Mysore at Bangalore. On May 29, 1952, the appeals were transferred to the Bombay High Court by an order of the Supreme Court.

Shiva Prasad Sinha, with *N. R. Raghavachar* and *N. C. N. Acharya,* for accused No. 1.

S. R. Mirajkar, for accused No. 3.

A. A. Mandgi, for accused No. 4.

M. P. Amin, Advocate General, with *K. A. Somjee,* for the State of Mysore.

CHAGLA C. J. [After holding that the coviction of the accused No. 4 for an offence under s. 307 was justified His Lordship turned to the case of accused No. 1 and found that he had a motive to bring about the death of the Chief Justice. The judgement then proceeded:]

Therefore, in the case of accused No. 1 we start with this very important consideration that he had the most powerful motive to bring about the death of the Chief Justice. He was suffering from a grievance, he felt that the Chief Justice had used his high judicial position in order to prosecute him, and he felt that the only way that this prosecution could end would be by the death of the Chief Justice. It is very rare to find in a case overt acts proved which are pursuant to the motive of the accused. In this case the prosecution have not satisfied themselves merely by establishing the motive of accused No. 1 for the commission of the offence. They have gone further and proved that accused No. 1 took various steps, indulged in various activities, and met various people in order

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to carry out his motive. But Mr. Sinha is right that notwithstanding the proof of the motive, notwithstanding the proof of the clear intention of accused No. 1 to bring about the death of Medapa, notwithstanding the clear proof of various agencies employed by him to bring about that death, it would still be necessary for the prosecution to establish that on the 25th January accused No. 1 instigated accused No. 4 to commit the murder of Medapa. Accused No. 1 is not charged with what he did previous to the 25th January. The charge is clear and specific and it must be proved as laid and, therefore, the question that we have to consider is whether it has been legally established by the prosecution that on the 25th January accused No. 1, by giving to accused No. 4 poison in the shape of mercuric chloride, instigated her to murder Medapa.

Briefly, the case for the prosecution on this aspect of the case is that accused No. 3 went to the approver at 10 a.m. on the 25th January and told him that accused No. 4 should come in the evening to the approver's shop and accused No. 1 and others would come there at that time. The approver then went to the house of accused No. 4 and asked her to come in the evening at 8 p.m. Accused Nos. 1 to 3 went in a car to the shop of the approver, accused No. 4 came afterwards, and accused No. 1, as already pointed out, asked the approver to take a spoonful of the powder which he had brought in a bottle with him and make a packet and that that packet should be given to accused No. 4 to be administered to Medapa, and when accused No. 4 turned up the packet was duly given. There is no direct evidence of what transpired at the shop of the approver except the evidence of the approver himself. The only other evidence is the confession of accused No. 4, and the question of law that we have to consider in this appeal is to what extent is it necesary that the evidence of an approver should be corroborated before a Court could act upon it and to what extent is the Court entitled to rely upon the confession of a co-accused as evidence against another accused.

Before we turn to the authorities, it is necessary to bear certain principles in mind. The law makes an approver's evidence admissible for certain very good reasons. The law is conscious of the fact that a participator in a crime is not a person who is worthy of credit. He is a tainted witness and he comes into the witness-box with that taint upon him. But the law realises that there are certain offences which could never be proved unless the evidence of an approver was made

available. It is unnecessary to point out that there are many offences, the commission of which could only be proved by the evidence of one of the participators in that offence. In this very case, if five people met in the shop of the approver and decided to murder Medapa and decided to instigate accused No. 4 to commit that offence, obviously the only evidence of what happened in that shop could only come from one of these five persons, and if the law insisted that that offence could only be established by evidence of a person other than a participator in the crime, that offence could never be proved. Therefore there is very good policy underlying the provisions of the law that an accomplice is a competent witness against a co-participator in the crime. But the law has also realized and appreciated the danger and the risk which a Court may take in acting solely on the testimony of an approver and, therefore, the Courts have themselves laid down a rule of prudence that it would not be safe to act on the uncorroborated testimony of an approver. Both the principles to which we were adverting find statutory recognition in the Evidence Act. Section 133 provides that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Therefore, as far as the strict language of s. 133 is concerned, even if a conviction is based upon the testimony of an accomplice which has not been corroborated, that conviction is not illegal. But a rule of prudence has been engrafted upon this provision of the law by s. 114 Illustration B and that Illustration is that an accomplice is unworthy of credit unless he is corroborated in material particulars, and so important is this rule of prudence and so much emphasis has been placed upon this rule by various Judges that this rule of prudence has almost acquired the sanctity of a rule of law. Therefore, the rule that has been accepted by this Court and by other Courts is that it would not be safe to act on the testimony of an approver unless that testimony is corroborated in material particulars. Naturally, the Courts have not insisted upon the corroboration of the testimony of an approver in all particulars. If that had been the rule, then there would have been no necessity for the evidence of the accomplice at all because the case of the prosecution in that event could have been proved by independent evidence. It is precisely because the case of the prosecution cannot be proved wholly and fully by independent evidence

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that the law permits the evidence of an accomplice. Therefore, the corroboration that is required in law is not a corroboration of every particular in respect of which the accomplice or approver gives his evidence, but the corroboration must be such as would lead the Court to believe that the evidence that the accomplice is giving is truthful evidence and that it would be safe to act upon that evidence. The corroboration that the Court requires is for its own guidance, for its own mental satisfaction, in order to arrive at the conclusion that it would not be unsafe to act on the testimony of one who is unworthy of credit. Therefore, corroboration must be sought by the Courts from this point of view.

Turning to the question of confessions, s. 30 of the Evidence Act empowers the Court to take into consideration a confession made by one of the accused against the others when they are being jointly tried. The confession of an accused is undoubtedly a very strong piece of evidence against the accused himself provided it is voluntary and the Court is satisfied that it is true. But it is a weak piece of evidence as against the co-accused and the reasons for it are obvious. It is not evidence in the legal sense of the term. The person who makes the confession does not step into the witness-box, his testimony is not subjected to cross-examination, and it is really in a sense *ex-parte* evidence against the other accused. Therefore, Courts have always hesitated in convicting an accused person solely on the strength of a confession made by a co-accused. The Courts have gone so far, as we shall presently point out, as to lay down that there must be sufficient evidence independently of the confession which would warrant a conviction of the accused. It is only when there is such evidence that the Court may proceed further and look at the confession of the co-accused and consider it as additional evidence that would further weigh the balance against the accused. Therefore, the mental approach which has been emphasised by the Court should be to ignore the confession of the co-accused in the first instance, marshall the evidence led against the accused independently of the confession, make up its mind whether that evidence is sufficient in law to warrant a conviction, and after it has made up its mind then to consider the confession of the co-accused.

Now these principles and these propositions of law are to be found in three leading cases to which our attention has been drawn. The first is the judgment of the Privy Council in

Bhuboni Sahu v. *The King*,[1] which corresponds to 51 Bom. L. R. 955. The Privy Council in this case emphasized the fact that whilst it is not illegal to act upon the uncorroborated evidence of an accomplice, it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material particulars so as to implicate the accused. With regard to the confession of a co-accused, their Lordships point out that it is obviously evidence of a very weak kind as it is not required to be given on oath nor in the presense of the accused and it cannot be tested by cross-examination. They further point out that a confession of a co-accused is evidence of a much weaker type than the evidence of an approver which is not subject to any of these infirmities; and referring to s. 30 their Lordships point out that all that it provides is that the Court may take the confession into consideration and thereby make it evidence on which it may act, but the section does not say that a confession amounts to proof, and, therefore, their Lordships of the Privy Council took the view that there must clearly be other evidence as to the guilt of the accused and that the confession was only one element in the consideration of all the facts proved in the case and which can be put into the scale and weighed with the other evidence. Further, they emphasized the fact that a confession of a co-accused could only be used in support of other evidence and cannot be made the foundation of a conviction. They further point out the danger of acting upon the evidence of an accomplice and they say that the real danger is that he may be telling a story which in its general outline is true and it would be easy for him to work into that story matter which is untrue, and they give an instance that he may implicate ten people in the offence and the story may be true in all its details as to eight of them, but untrue as to the other two, whose names have been introduced because they are enemies of the approver; and, therefore, according to the Privy Council the only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused.

The next case is the decision of the Supreme Court in *Kashmira Singh* v. *State of Madhya Pradesh*.[2] The Supreme Court was considering there the question of a confession made

[1] (1949) L. R. 76 I. A. 147. [2] [1952] 3 S. C. R. 526.

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by a co-accused, and Mr. Justice Bose delivering the judgment of the Court has adopted the same line of reasoning as the Privy Council, although the learned Judge has expressed the view in a different language, and what Mr. Justice Bose emphasizes is that (p. 530):

> "the proper way to approach a case where there is a confession of a co-accused is first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

With regard to the evidence of an accomplice, Mr. Justice Bose has taken the view that a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. Therefore, according to the Supreme Court a conviction based on uncorroborated testimony of an accomplice would only be bad if the Judge deciding that case had not in mind the rule of prudence laid down in Illustration (*b*) to s. 114 or that having the rule in mind he does not give proper reasons why he departed from that rule in that particular case. With respect to the Supreme Court, it seems to us that in this view of the matter the rule of prudence would not acquire that sanctity which the Privy Council says it has acquired by becoming today an invariable rule of law.

The other case is also a case decided by the Supreme Court and which is reported in *Rameshwar* v. *The State of Rajasthan*.[1] The Supreme Court there was considering what was the nature and extent of the corroboration that is required in order that the evidence of an accomplice could be acted upon by the Court, and Mr. Justice Bose at p. 386 points out that the rule of prudence, which has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of coroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. Then Mr. Justice

[1] [1952] 3 S. C. R. 377.

Bose relies on the judgment of Lord Reading in *Rex* v. *Baskerville,*[1] in order to determine the nature and extent of the corroboration. It is true that in this particular case the Supreme Court was considering whether a complainant in a rape case had been sufficiently corroborated, but the principles that the Supreme Court have enunciated, judging by the language used by their Lordships, seem to apply to all cases where the law requires the evidence of an accomplice to be corroborated. Turning to the judgment of Lord Reading, which is approved of by the Supreme Court, the learned Chief Justice there laid down four principles with regard to the nature and extent of corroboration, and these are very important principles to which attention might be drawn. The first principle is that it is not necessary that there should be independent confirmation of every material circumstance. The second principle is that independent evidence must not only make if safe to believe that the crime was committed, but 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. The third principle is that the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. Finally, 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. Therefore, it is clear from this decision of the Supreme Court that an accomplice need not be corroborated with regard to every material circumstance in his evidence. Further, it is not sufficient that there should be corroboration of the accomplice evidence that a crime was committed, but there should be corroboration of his testimony that the accused was in some way connected with that crime. Finally, the corroboration need not be direct evidence; it can also be by circumstantial evidence.

[The orders of conviction and sentence were ultimately confirmed and all the three appeals were dismissed.]

Appeals dismissed.

M. W. P.

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[1] [1916] 2 K. B. 658.