M.O. Shamsudhin vs State Of Kerala on 21 March, 1995

Equivalent citations: 1995 SCC (3) 351, JT 1995 (3) 367, 1995 AIR SCW 2717, (1995) 2 SCR 900 (SC), 1995 (3) SCC 351, (1996) SC CR R 66, (1995) 2 CURCRIR 37, 1995 CRILR(SC&MP) 311, 1995 CRILR(SC MAH GUJ) 311, 1995 ALLAPPCAS (CRI) 122, (1996) 1 GUJ LH 371, (1995) 2 EASTCRIC 226, (1995) 2 RECCRIR 315, (1995) 3 CHANDCRIC 13, (1995) 2 CRIMES 282, (1995) 3 JT 367 (SC), 1995 SCC (CRI) 509

Author: M.M. Punchhi

Bench: M.M. Punchhi

PETITIONER:
M.O. SHAMSUDHIN

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT21/03/1995

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC (3) 351 JT 1995 (3) 367
1995 SCALE (2)298

ACT:

HEADNOTE:

JUDGMENT:

K. JAYACHANDRA REDDY, J.:

1. These appeals arise out of a common judgment of the High Court of Kerala in Criminal Appeal Nos. 195/90 and 245/90 filed by the appellants herein C.K.Karunakaran and M.O. Shamsudhin respectively.The two appellant; figured as accused nos. 1 and 2 in C.C. No. 7/89 on the file of the Enquiry Commissioner and Special Judge, Thrissour and they have been found guilty under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and under Sections 161 read with 120-B I.P.C. A-1 C.K. Karunakaran was sentenced to suffer rigorous imprisonment for two years and to pay a fine Rs. 1,000/- and in default to undergo simple imprisonment for a further period of two months for the offence under the Prevention of Corruption Act and to rigorous imprisonment for one year for the offence under Sections 161 read with 120-B 1.P.C. A-2 M.O, Shamsudhin was sentenced to rigorous imprisonment for one years and to pay a fine of Rs. 500/and in default to undergo simple impris-

ionment for a further period of one month for the offence under the prevention of Corruption Act and to rigorous imprisonment for one years for the offence under Sections 161 read with 12-B I.P.C. The substantive sentences of imprisonment were directed to run concurrently. The appeals filed by them were dismissed by the High Court. Since it was a common judgment of the High Court in two ap- peals, A-1 has chosen to file two appeals i.e. Criminal Appeals Nos. 451-52/91 and A-2 has chosen to file only one appeal i.e. Criminal Appeal No.553/91. Since, common questions arise in these appeals, they can be disposed of together by a common judgment.

2.At the relevant time A-1 was the Tehsildar and A-2 was village Assistant. One Kunjan, deceased father of P.W.1, Rajan applied for patta with regard to 55 cents of Sarkar Porambokhu land in Kalur Village. Kunjan had remitted the necessary amount on 25.1.1974 pursuant to a notice. The balance amount of Rs. 42/was also remitted some time in 1975. After satisfactory compliance of the required formalities, patta was directed to be issued in his favour by the Board of Revenue. Before the patta could be issued Kunjan died. The matter was not pursued till 1987. One 8.6. 1987 P.W. 1 sent P.W. 2, his cousin, to enquire about the issuance of patta. P.W. 2 met A-2 who told him that issuance of patta would entail some expenses and P.W. 2 conveyed the same to P.W. 1 who together with P.W. 2 met the accused at their office when a demand for bribe of Rs. 500/- was reportedly made. P. W. 1 thought it was improper to give the bribe. He therefore filed a complaint Ex. p.4 before P.W. 11, Dy.S.P. Vigilance in the presence of P.W. 3, Auditor, District Co-operative Bank and P.W.4, Inspector of Factories and Boilers. A case was registered, mahazarss were prepared and the currency notes were subjected to Phenolphatelin test and the tainted money was handed over to P. W. 1 to be given in turn to the accused on demand.P.Ws. 7 and 8, Vigilance Constables followed P.Ws. 1 and 2 to the office of A- 1. P.W. 11 and others were also on the move. According to P.W. 1, he entered the office of A-1 and told him that he had brought the amount asked for. A-1 asked him to give the amount to A-2 who was standing nearby. P.W. 1 gave the amount to A-2 who put Me same in his pant pocket. P.W. 2 also was there at that time. P W. 1 went out and gave signal. Then all of them including the mediators P.Ws. 3 and 4 went to the office of A- 1. P. W. 11 disclosed his identify and P.W. I told him that A-2 had received the money as per the instructions of A-1. On being questioned A-2 took out Rs. 500/- from his pant pocket and the numbers of die currency notes tallied. Corner parts of the currency notes and the pant worn by A-2 as well as his fingers were dipped in lime water

and the Phenolphatelin test proved positive. The necessary panchnama incorporating all the facts was drawn up. The investigation of the crime was partly conducted by P.W. 11 followed by P.W. 12 who succeeded P.W. 11 and after completion of the inves- tigation, the charge-sheet was laid.

3.When Questioned under Section 313 Cr.P.C., A-1 admitted that on 9.6.87 P.Ws. 1 and 2 met him in respect of issuance of patta. He however, denied that he demanded Rs. 500/- by way of bribe. He stated that when P.W. 1 met him A-2 was not there. He further stated that A-2 met him just five minutes before the trap party entered his room and he also denied that A-2 collected the money as directed by him.

4.A-2 stated that neither he conspired nor colluded with A-1 to obtain illegal gratification from P.W.1 and that he was not present in the office of A-1 on 9.6.1987. A-2, however, admitted that he received a sum of Rs. 500/- from P.W. 1 in the office room of A-1 on 10.6.87 as per the instructions of A-1 but added that the amount was accepted without knowing that it was bribe money. He further explained that on.9.5.87 he obtained a loan of Rs 1980/- from his provident fund account which was sanctioned by A-1 and from that amount Rs. 500/- was taken by A- 1 as a loan stating that the same was required to meet his urgent necessities and he promised to return the same within two days and the balance of Rs.1480/- alone was paid to him on 9.6.87. On 10.6.87 at about 4 P.M. while he was in the office of A-1 seeking permission to leave the office early, P.W.1 alongwith another person came to the office of A- 1 and P.W. 1 offered some amount to A- 1 who instructed A-2 to receive that amount from P.W. 1 telling him that the same was towards the amount of Rs. 500/- which he had taken as loan on the previous day. Therefore according to A-2 he was compelled to accept Rs.500/from P. W. 1 as per the instructions of A- 1 bonafide believing that it was repayment and without knowing that it was bribe money and therefore he is innocent. In support of his plea he examined D.W.1, an L.D.C. working in his office just to show that on the previous day a loan From provident fund was sanctioned to A-2.

5. Most of the basic facts are not in dispute. However, when examined in the court the evidence of P. Ws. 1 and 2 did not unfold a consistent case in ail respects. P.Ws. 1 gave evidence in such a way making an effort to exculpate A- 2 while P.W.2 gave evidence against A-2 in such a way exculpating A-1. The was however treated hostile. The trial court as well as the High Court after carefully scrutinising the evidence of P.W. 1 alongwith the evidence of P.Ws. 3 and 4, the independent witnesses held that the guilt of both the accused has been established beyond all reasonable doubt

6.Shri G. Ramaswamy, learned senior counsel appearing for A- 1 submitted that P.W.1, bribe-giver, is in the nature of an accomplice and that since P.W.2 has been treated hostile, there is no corroboration with regard to the alleged demand of bribe by A- 1 and since bribe money was recovered only from A-2, A-1's plea that he is innocent should be accepted and that A2's statement trying to throw the blame on A- 1 can not be used against A- 1 even assuming it to be a confession and that such a confession by a co-accused who has tried to exculpate himself and inculpate A-1 is of no evidentiary value at all. Shri U.R. Lalit, learned senior counsel appearing for A-2 submitted that explanation given by A-2 has to be accepted and that A-2 received the amount of Rs. 500/- from P. W. 1 as per the instructions of A- 1 bonafide believing it to be towards the loan that A-1 has taken on the previous day from the amount of provident fund of Rs. 1980/sanctioned and that plea of A-2 is

also supported by the evidence of D.W. 1.

7.Acceptance of Rs. 500/- from P. W. 1 is not disputed by A- 2 and that the recovery of the same from A-2 is also not in dispute. A-2, however, pleaded that he -was not a party to the alleged criminal conspiracy with A-1 in demanding the bribe. The evidence of D.W. 1 only shows that a loan from out of provident fund was sanctioned on the previous day. That by itself does not in any manner demolish the evidence of P.W. 1.

8.Now the question is whether the inconsistencies found in the evidence of P.Ws. 1 and 2 do in any manner affect the prosecution case as such? P.W.1 in his chief examination deposed that P.W.2 who is his close relation, went to the office of A1 and found out that the patta was ready and the same would be given on spending some money. On 8.6.87 P.W.2 told him that patta would be given on giving bribe to A-1. On 9.6.87 both of them went to the office of A-1 and discussed with him but A-1 demanded Rs.500/- and at that time A-2 was also present in the office Since P.W. 1 did not have the money with him on 9.6.87 he did not give the same. Then A-1 directed him to give the money the next day at the waiting shed near Swapna Theatre, Thrissoor in the morning of 10.6.87. P.W. 1 sent P.W.2 to the waiting shed who told A-1 that he (P.W.1) would bring the money after selling pep- per in the market. P.W. 1 further deposed that after realising the money he went to meet P.W.2 who told him that A-1 has asked P.W. 1 to go and meet him with the money at 4 P.M. At that stage P. W. 1 decided not to give bribe and decided to inform the vigilance department. Accordingly in the afternoon he and P.W.2 went to Dy.S.P. and gave the statement Ex.P.4. Then he gave the details of the trap pro- ceedings. P.W.1 further deposed that as directed by Dy.S.P. he went to the office of A-1 with the money and that at that time A-1 and A-2 were present in the office. P. W. 1 told A- 1 that he has brought the amount but A- 1 asked him to give the amount to A-2 who was standing nearby and accordingly he gave the money to A-2 and P.W.2 was with him at that time. Then he gave the necessary signal and thereafter the cap party came in and recovered the money from A-2. In the cross-examination this witness was confronted with his previous statement. It appears that he stated to the police that A-1 in the first instance demanded Rs. 1,000/-. He was also confronted with the contents in his complaint Ex.P.4. We have examined the contents of Ex.P.4. There no doubt P.W. 1 stated that A-2 came to them and stated that A- 1 was asking for bribe of Rs. 1000/ - for issuing the patta but it is specifically mentioned that a little later he and P.W.2 were called to the room of A- 1 and they went alongwith A-2. There A-2 told that atleast Rs. 500/- should be paid. In the further cross-examination P.W.1 gave some answers stating that A-2 was not present in the room when A- 1 demanded the bribe of Rs.500/- and he also denied having given statement earlier that A-2 came out and called them into the office of A- 1 but to another question P. W. 1, however, stated that A-2 was present when he went to give money to A-1 on 10.6.87. Now we, shall examine the evidence of P.W.2 who is no other than the nephew of P.W. 1. In the chief-examination he deposed that on 19.6.87 at about 11.30 A.M. he and P.W. 1 went to the office of A- 1 who after seeing the file told that since it is a forest land it is not possible to get patta and when they went out of the office they saw A-2 who told them that if Rs. 1000/- are given to him he will get it done. But they told him that they are poor people. A-2, however, told that atleast Rs.500/- should be given to Tehsildar. Then he gave further details as to how P. W. 1 gave the report to the Vigilance Department and how the trap party proceeded etc. the proceeded to state that when he and P. W. 1 entered the verandah of the office, A-2 came up and asked whether the amount has been brought to which they told that they will pay

directly to A-- 1 but A-2 told them that the money may be given to him and need not be paid directly to A-1. Accordingly P.W. 1 gave that tainted notes to A-2. Thereupon P.W. 1 gave the signal. He gave further details about the recovery of the money from A-2 and drawing of Mahazars etc. Towards tie end of the chief examination a specific question was put to him by the prosecutor asking whether it was not A-2 who demanded the money to which P.W.2 stated that it is only A-2 who demanded the money saying that it has to be given to A-1. Because of this answer, the witness was treated hostile and in the cross-examination he denied having mentioned certain facts in his earlier statement.

9. Learned counsel submitted that P.Ws. 1 and 2, the material witnesses are inconsistent in their versions regarding the demand of bribe and therefore it cannot be held that the prosecution has established that there was such a demand by A-1. Therefore he cannot be held guilty and that consequently A-2 who has received Rs. 500/- from P.W.1 cannot also be held to have conspired with A-1 in obtaining illegal gratification.

10. No doubt P. W. 2 has been treated hostile but we see no reason to reject the evidence of P. W. 1 who is the main witness regarding the demand of bribe and the acceptance of the same by A-2 on behalf of A-1 as directed by A-1.Learned counsel, however, submitted that there is no corroboration to the evidence of P.W.1 who is in the nature of an accomplice regarding the demand.

11. Since this is an argument which is frequently put forward in all cases of briefly, we would like to examine the scope, nature and extent of corroboration that is necessary in such cases. The word " accomplice" is not defined in the Evidence Act. However, it is accepted that the word is used in its ordinary sense, which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. Section 133 of me Act, however, declares that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The relation between Section 133 which is rule of law and Illustration (b) to Section 114 which is a rule. of prudence has been the subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for several reasons. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise of pardon and supports the prosecution with the hope of getting his own freedom.

12.Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the

same rigorous test which are generally applied to a case of an approver. Though bribe givers are generally treated to be in the nature of accomplices but among them there are various types and gradation. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be -a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving die trap cannot succeed. When there is such a demand by the public servant from person who is unwilling and if to do public good approaches the authorities and lodges complaint then in order that the trap succeeds he has to give the money. There could be another type of bribe giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a particeps criminis in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of "accomplices" by reason of their being bribe givers, in the first instance the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

13.The word "corroboration" means not mere evidence tending to confirm other evidence. In DDP v. Hester,(1972) 3 ALL ER 1056, Lord Morris said:

> "The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it itself is completely credible."

In DDP v. Kilbourne, (1973) 1 ALL ER 440 it was observed thus:

> "There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter the better it fits in, the more one is inclined to believe it. The doubted statement is corroborated to a greater or lessor extent by the other statements or circumstances with which it fits in."

In King v.Baskerville, (1916) 2 JOB. 658 which is a leading case on this aspect, Lord Reading said:

> "There is no doubt that the uncorroborated evidence of an accomplice is admissible in law But it has long been rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within

> their legal province to convict upon such unconfirmed evidence This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed If after the proper caution by the judge the jury nevertheless convict the prisoner, this Court will not quash the conviction merely upon the ground that die accomplice's testimony was uncorroborated."

In Rameshwar v. The State of Rajasthan 1952 SCR 377, Bose, J., after referring to the rule laid down in Baskerville's case (supra) with regard to the admissibility of the uncorroborated testimony of an accomplice, held thus:

> "That in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these casesit is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particula r case before him and show why he considers it safe to convict without corroboration in that particular case."

Justice Bose in the same judgment further observed thus:

> " I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in Baskerville's case (1916) 2. K.B. 658 at pages 664 to 669. It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should or would be regarded as corroboration. Its nature and extent. must necessary vary with circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.
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> First, it is not necessary that there should be independent confirmation of every material circumstances in the sense that teh independent witness in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says- "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."

All that is required is that these must be "some additional evidence rendering it probable hat the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it."

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. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that-

> "a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all .... It would not at all tend to show that the party accused participated in it."

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. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

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. Were it otherwise, "many crimes which are usually committed between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice."

(emphasis supplied)

14.We shall now refer to some of the judgments wherein the rule of corroboration has been considered in respect of the bribery cases. In Rao Shiv Bahadur Singh and another v. The Slate of Vindhya Pradesh, 1954 SCR 1098 there are obser- vations to the effect that the evidence of the trap witnesses cannot be taken on its face value thereby indicating that their evidence cannot be relied upon without independent corroboration. In The State of Bihar v. Basawan Singh, AIR 1958 SC 500, a Bench of five-Judges considered this "corroboration requirement" and after referring to the observations made in Rao Shiv Bahadur Singh's Case (supra) explained them in the following manner:

> "If the witnesses are not accomplices, what then is their position? In Shiv Bahadur Singh's case (A) it was observed, with regard to Nagindas and Pannalal, that they were partisan witnesses who were out to entrap the appellant in that case, and it was further observed: "A perusal of the evidence..... leaves in the mind the impression that they were not witnesses whose evidence could be taken at its face value. " We have taken the observations quoted above from a full report of the decision, as the authorised report does not contain the discussion with regard to evidence. It is thus clear that the decision did not lay down any universal or inflexible rule of rejection even with regard to the evidence of witnesses who may be called partisan or interested witnesses. It is plain and obvious that no such rule can be laid down; for

> the value of the testimony of a witness depends on diverse factors, such as, the character of the witness, to what extent and in what manner he is interested, how he has fared in cross-examination etc. There is no doubt that the the testimony of partisan or interested witnesses must be scrutinised with care and there may be cases, as in Shiv Bahadur Singh's case (A), where the Court will as a matter of prudence look for corroboration. It is wrong, however, to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available. "

(emphasis supplied) This Court in the above case concluded thus:

> "The correct rule is this : if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the some way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person."

(emphasis supplied) It was further concluded thus:

> "As was observed by Lord Reading in 1916-2 K B 658 (C) even in respect of the evidence of an accomplice, all that is required is that there must be "some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it." In 1952 SCR 377 at p.385 : (AIR 1952 SC 54 at p.57 (B), to which we have referred in an earlier paragraph, the nature and extent of corroboration required, when it is not considered safe to dispense with it, have been clearly explained and it is merely necessary to reiterate that corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime."

In a later case namely Major E.G. Barsay v. State of Bombay, AIR 1961 SC 1762 it was held by this Court that though a trap witness is not an approver he is certainly an interested witness in that he is interested to see that the trap laid down by him is succeeded and he could at the most be equated with the partisan witnesses which needs corroboration. Relying on the ratio laid down in Basawan Singh's case, a Bench of three-Judges in Bhanuprasad Hanprasad Dave and another. v. The State of Gujarat, AIR 1968 SC 1323 held thus:

> "Now coming back to the contention that the appellants could not have been convicted solely on the basis of the evidence of Ramanlal and the police witnesses, we are of opinion that it is an untenable contention. The utmost that can be said against Ramanlal, the Dy. S.P., Erulker and Santramji is that they are partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said and it

> was not said that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction. This position is placed beyond by the decision of this Court in The State of Bihar v. Basawan Singh, 1959 SCR 195 = (AIR 1958 SC 500) wherein this Court laid down, overruling the decision in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954 SCR 1098 = (AIR 1954 SC
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> 322) that where the witnesses are not accomplices but are merely partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as any other interested evidence is tested and in a proper case, the court may look for independent corroboration before convicting the accused person. We are unable to agree that any different rule was laid down in E.G. Barsay v. State of Bombay (1962) 2 SCR 195 = (AIR 1961 SC 1762). It must be remembered that the decision in Basawan Singh's case, 1959 SCR 195 = AIR (1958 SC 500) was given by a Bench of Five Judges and that decision was binding on the Bench that decided Barsay's case, (1962) 2 SCR 195 = (AIR SC 1762). Some of the observations in Barsay's case, (1962) 2 SCR 195 = (AIR 1961 SC 1762) no doubt support the contention of the appellants. But those observations must be confined to the peculiar facts of that case.

It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is cor- roborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the instant case, the trial court and the High Court have fully accepted the evidence of Ramanlal, the Dy. S.P. Erulker and Santramji. That being so, it was open to them to convict the appellants solely on the basis of their evidence. That apart, their evidence is substantially corroborated by evidence of Dahyabhai, Sanghvi and Sendhalal. In the case of partisan wit- nesses, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices."

(emphasis supplied).

In Dalpat Singh and another v. State of Rajasthan, AIR 1969 SC 17 this Court after referring to Basawan Singh's case (supra) observed thus:

> "We are unable to accept the contention of the learned counsel for the appellants that PWs 1, 2,3,4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though P.Ws. 1,2,4 and 17 can be considered as interested as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without

corroboration. See that the Bihar v. Basawan Singh, 1959 SCR 195 = (AIR 1958 SC

500)."

(emphasis supplied) In Maha Singh v. State (Delhi Administration) AIR 1976 SC 449 this Court held thus:

> "This also leads to the question whether all witnesses, who are called upon to assist detection of a bribery case by laying a trap, should be considered unreliable as accomplices or at any rate partisan witnesses. There is no rule of law that even if a witness is otherwise reliable and independent, his association in a pre-arranged raid about which he had become acquainted makes him an accomplice or a partisan witness. In absence of anything to warrant a contrary conclusion, conviction is not untenable merely because it is based on the testimony of such a witness. We are also not prepared to dub ev-
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> ery witness of a raiding party to be an accomplice per se or even as an interested witness in total absence of materials justifying such an inference. While PW 4 will be a highly partisan witness in this case in his own interest to oblige the police, nothing was shown against PW 3. PW 7, the Inspector, cannot be considered as an absolutely partisan witness because he is a Police Officer who took immediate action on the complaint. Noth- ing unusual is suggested against him. We have no hesitation in accepting the testimony of PWs 3 and 7 on their own. They do corroborate the complaint."

In Hazari Lal v. The State (Delhi Admn) AIR 1980 SC 873, Chinnappa Reddy, J. speaking for the Bench while repelling the contention that the evidence of trap witness namely the police officer should not be accepted unless corroborated observed thus:

> "We, however, wish to say that the evidence of P.W.8 is entirely trustworthy and there is no need to seek any corroboration. We are not prepared to accept the submission of Shri Frank Anthony that he is the very Police Officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there by any precedential guidance. We are forced to say this because of late we have come across several judgments of Courts of Session of sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decisions of pure question of fact."

15.From above resume of various decisions the following principles are deducible. Section 133 of the Evidence Act lays down that an accomplice is a competent witness against an accused person. The conviction based on such evidence is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, there is a rider in illustration (b) to Section 114 of the Act which provides that the court may presume that the accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption is In the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore the courts should be guarded before accepting the accomplice's evidence and look for corroborating evidence. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Normally the courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances. However, if on being so satisfied the court considers that the sole testimony of the accomplice is safe to be acted upon, the conviction can be based thereon. Even if corroboration as a matter of prudence is needed it is not for curing any defect in the testimony of the accom-

plice or to give validity to it but it is only in the nature of supporting evidence making the other evidence more probable to enable the court to satisfy itself to act upon it.

16.Now coming to the witnesses in trap cases, as held in Basawan Singh's case (supra) by a Bench of Five Judges, if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in +,he same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and cannot strictly be classified as an accomplice and at any rate be treated as being on the same footing. Where bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.

17.Now coming to the nature of corroborating evidence that is required, it is well settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as

a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature de- pends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances.

18.Learned counsel appearing for A-1, however, placed reliance on the judgment of this Court in Panalal Damodar Rathi v. State of Maharashtra, (1979) 4 SCC 526 wherein it was observed that the evidence of the complainant in such cases should be corroborated in material particulars and while acquitting the appellant it was held that on facts there was no corroboration to the testimony of the complainant regarding the demand of money by the appellant. This Court after extracting the evidence of a panch witness who was also present at the time of giving the bribe who however did not say anything regarding the demand by the accused, held that the version of the complainant regarding the demand was not corroborated and his evidence can not be relied upon. The facts in Panalal Damodar Rathi's case (supra) are distinguishable namely that the panch witness who was also present with the complainant who is alleged to have given the money, did not say a word about the alleged demand and in that view of the matter it was held that there was no corroboration. But it must be borne in mind that corroboration can be by way of circum- stantial evidence also. In the instant case P.W. 1 has no axe to grind against A- 1. It is not in dispute that he had to get a patta issued by A-1 and he categorically stated that A-1 made the demand. A-2 was his Assistant and the tainted money was recovered from A-2 while he was just going out of the office of A-1. Unless A-1 has demanded the money and has also directed him to hand over the same to A-2, there was no reason at all as to why P.W.1 should hand over the money to A-2. P.W. 1 has consistently stated that A-1 demanded the bribe and that A-2 received the amount as stated by him. Therefore it cannot be said that there is no corroboration regarding the demand. This is a case where each of the accused tried to throw the blame on the other but taking the overall circumstances into consideration in the light of the evidence of P.Ws. 3 and 4 alongwith the evidence of P.Ws. 1 and 2 both the courts below have consistently held that the evidence of these witnesses establish the guilt of the accused and we see no reason to come to a different conclusion. In this view of the matter it is not necessary to go into the question whether the statement made by A-2 which is in the nature of a confession by a co-accused be used against A- 1.

19. Coming to the sentence we find that there are good grounds to reduce the same. The offence itself is said to have been committed in the year 1987 and both the appellants have lost their jobs and have undergone the agony of facing the criminal proceedings all these years. We find that they have been in jail for quite some time and we think it is not a fit case where they should be sent back to jail. Therefore while confirming their convictions we reduce the sentence of imprisonment under, each count, which are directed to run concurrently, to the period already undergone. The sentences of fine with default clause are, however, confirmed. Subject to this modification of the sentence of imprisonment all these appeals arc dismissed.