

## **Mohan, Yashin, Duli Chand, Balbir Singh vs State Of Rajasthan on 15 January, 1997**

**Equivalent citations: AIR 1997 SUPREME COURT 1704, 1997 AIR SCW 847, (1997) 2 RAJ LW 247, 1997 CRILR(SC&MP) 352, (1997) 1 JT 491 (SC), 1997 UP CRIR 339, 1997 (1) SCALE 334, 1997 SCC(CRI) 972, 1997 (1) JT 491, 1997 CRILR(SC MAH GUJ) 352, (1997) 2 CRICJ 168, (1997) 2 CURCRIR 113, (1997) 1 BLJ 1102, (1997) 1 CHANDCRIC 110, (1997) 1 CRIMES 67, (1997) 1 ALLCRILR 538, (1997) 1 EASTCRIC 555, (1997) 1 RAJ LW 143, (1997) 1 RECCRIR 766, (1997) 1 SCALE 334, (1997) 1 SUPREME 398, (1997) 34 ALLCRIC 433, (1997) SC CR R 328**

**Author: G.N.Ray**

**Bench: G.N. Ray**

PETITIONER:

MOHAN, YASHIN, DULI CHAND, BALBIR SINGH

Vs.

RESPONDENT:

STATE OF RAJASTHAN

DATE OF JUDGMENT: 15/01/1997

BENCH:

G.N. RAY, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:

WITH CRIMINAL APPEAL NO. 191 OF 1987 WITH CRIMINAL APPEAL NO.192 OF 1987 WITH CRIMINAL APPEAL NO.450 OF 1982 J U D G M E N T G.N.RAY. J.

These appeals arise out of the common Judgment dated October 11, 1985 passed by the High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal No.788 of 1974. D.B. Criminal Appeal No.89 of 1973 assailing the Judgmental Sessions Judge. Court by which the appellant Balbir Singh, Yashin, Duli Chand and Mohan were convicted by the learned Additional Sessions Judge under Section 147. 302 read with Section 34 I.P.C. and each of the said accused was sentenced to suffer one year's rigorous imprisonment under Section 147 and imprisonment for life under Section 302. The accused Mohan was further convicted under Section 404 I.P.C. and sentenced to suffer two years rigorous imprisonment and also a fine of Rs.500/-. In default of payment of fine further rigorous imprisonment for six months. the learned Additional Sessions Judge directed that the sentences would run concurrently.

Against the said Judgment. there separate appeals were preferred by the convicted accused before the high Court being D.B. Criminal Appeal No.785 of 1974 D.B. Criminal Appeal No.64 of 1975 and D.B. Criminal Appeal No. 817 of 1975. all the said appeals were dismissed by the common Judgment since impugned in these appeals by dismissing the said appeals and maintaining the conviction and sentences passed by the learned Additional Sessions Judge.

On February 24, 1974, Pw. 1 Surja Ram the brother of the deceased Ram lodged F.I.R. with Police Station. Sardarsanar, to the effect that at about 10.00 A.M. on February 24, 1974 there was a rumor in the village Mitasar that a dead body was lying in the Tail located outside the village Mitasar. According to Surja Ram. P.W.S. Musmat Mali had identified the dead body as that of her husband Ramu. When Surja Ram caused annuity. one told that previous night at about 10 to 10.50 the accused Mohan and another person not known to her had come to her house. she had served tea to those persons and the said persons had told her husband that a truck of sugar was standing near the Tail and Ramu had taken money with him to purchase the sugar. Her husband Ramu went with the said persons after taking Rs.200/- with him. Thereafter. Ramu did not return to his house but was found to be dead in the Tail on February 24, 1974.

On the basis of the said F.I.R.. a case under Section 302 was registered by the police and on February 28, 1974. The police arrested the accused Balmukand. Mohan. Duli Chand. Yashin and Balbir Singh. It may be stated here that the accused Balmukand later on became the approver and deposed as PW.12. According to the prosecution case. on March 3, 1974. at the instance of accused Yashin. Police had recovered a lathe stated to have been used in the crime and on the very same day at the instance of other accused. Police had recovered a dagger (sharo edged weapon) alleged to have been used in committing the crime. On March 4, 1974. a test identification parade was held and Muscat Mali had identified the accused Balbir Singh. Balmukand Intended to become approver in the case and his statement was recorded under Section 161 Criminal Procedure Code and on March 13, 1974 the statement of Balmukand was recorded under Section 164 Criminal Procedure Code by the concerned Magistrate. Ultimately. on March 29, 1974 Balmukand was collared as approver in the case.

All the said four accused faced the trial before the learned Additional Sessions Judge under Section 147. 302/3. 404 I.P.C. PW.12 Balmukand. the approver. has deposed to the effect that in the month of January. 1974. about 20 to 25 days before 20th February, 1974. the said Balmukand. Mohan. Duli

Chand. Yashin along with three other persons. namely, Pranav Ranjan. Kamal Bhomik and Raju Soni. had assembled in the Nehru Park at Sarcarsanar for planning to commit dacoity. It was planned that initially petty acuity. In that meeting Mohan had mentioned about one of his relatives living in the village Miramar who had lot of silver and money. Mohan had suggested to collect the money from the said relative and to kill him put that than was not executed because the absorber Balmukand had backed out. Balmukand had further deposed that on February 20. 1974 which was a Shivratri day. the accused Mohan. Duli Chand and the said Balmukand and Balbir Singh pranad Ranjan. Kamal had assembled to celebrate the marriage of Raju Soni in the room of Kamal Bhomik which is located in the Johnson Bulb Factory, Bardarsanar. All of them had a lot of drinks and Raju Soni become tiosy and vomitted. At that time Mohan. Yashin. Duli Chand. the absorber Balmukand and Balbir Singh tame out of the room of Kamal Bhomik and they had decided to go the Miramar for committing the dactyl but as they were heavily drunk. the approver and Duli Chand made an unsuccessful attempt to start a car standing outside the Factory and all the said persons came to the Tail located outside the said factory where they made an attempt to rod one <??> but nothing was found from him. According to Balmukand. Mohan was armed with a Day. Yashin with a lath and Balbir Singh with a bestow. After an hour or so. Yashin and Balmukand went to their respective houses out Duli Chand and Balbir Singh had goner to the house of the because Ramu gritted in the village Miramar. It is said that Ramu and his wife had served the said persons with tea and so they did not decide to rod Ramu but the said persons had told Ramu that within a day of two. they would be getting one cruet of sugar and asked him to keep the money ready.

The approver further <??> that in February 23. 1974, at about 6.00 P.M. Balmukand. Yashin. Duli Chand and Balbir Singh assembled at the house of the other accused Mohan where they had drinks and meal. The approver Balmukand had brought two bicycles one belonging to him and other from Pranav Ranjan and he also brought one cost from him. According to Balmukand. Third curve was arcaded from Giranar. On the said bicycles they had gone to the village Miramar at about 10 to 10.30 P.M. the accused Mohan entreated them to commit dactyl on Ramu. Balmukand. Duli Chand and Yashin stayed pack at the tail of the village Miramar and the accosted Mohan and Balbir Singh went to the house of Ramu to bring Ramu there. At the house of Sam. Mohan and Balbir Singh were treated with tea Mohan their told Ramu that near the Tail of the Village Miramar. a truck load of sugar was standing and Ramu should take money to day sugar. thereafter, Ramu took a sum of Rs.200/- and went with then where the three persons were within. Duli Chand then told Ramu that a Deed had come and thereafter the tract had been sent away. The approver Balmukand had also deposed that approver encircled Ramu and on Mohan saying that work would be started immediately, Balbir Singh had caught hold of Ramu from benign and Duli Chand gave lathe blow to the deceased. The said approver had deposed to the effect that Mohan also started inflicting blows on Rampant Ramu fell down. The approver at that time had caught hold of the legs of Ramu and Duli Chand inflicted blows with Day. Mohan tried to cut the throat of Ramu out as he could not go so. Uashin had headed him in cutting the throat of Ramu. According to the approver. the accused Balmukand and the said approver did not inflict any injury to the deceased. The approver further deposed that after seeing that the throat of Ramu is cut. he felt uneasy and he raised a false alarm that some light was coming from the side of village Miramar. Thereafter. they left the side of village Miramar. Thereafter. they left the scene of occurrence in great nasty and came on the nearby road. The approver further deposed that Mohan had taken out Rs.200/- from the pocket of deceased

Ramu. The approver also deposed that after they reached the road side. they started moving towards Sarcarsanar and when they had covered the distance of about 2 1/2 miles from the Tal of village Mitasar. They saw a car coming from the village Mitasar. At that time. they come arcades two persons who were coming from the village Sawal. One of those two persons had aside Mohan as to wherefrom they had been coming and Mohan and replied that they were coming after doing some Banker work. All the five persons thereafter returned to Sarcarsanar in three separate groups on three bicycles.

Mr. Lalit. learned senior counsel appearing for the appellant Balbir Singh in Criminal Appeal No.65 of 1986. has submitted that the prosecution case was sought to be established on the basis of the deposition of one single witness. namely, the approver Balmukand PW.12. Mr.Lalit has submitted that where a case is sought to be established on the basis of a single witness. It must be ensured that such witness is wholly reliable. Mr.Lalit had contended that PW.12 Balmukand is an approver and his evidence is essentially tainted. PW.12 attempted to minimise his role as much as possible and made an attempt to ascribe the roles begging played by the other accused. Mr.Lalit had also submitted that the principal act of causing injury on the deceased has been ascribed to Mohan. Yashin and Duli Chand. It had been submitted by Mr.Lalit that PW.12 Balmukand has made an attempt to give an impression that he was an uniting participant and he had played a very minor role so as to make himself a conspirator. According to Mr.Lalit. it will be unsafe to rely on such evidence of the approver PW.12 The said PW.12 had also involved two others. namely. Pranad Ranjan and Raju Soni although they were not present at the time of commission of the offence. PW.12 had also deposed that he did not get money out of the dacoity and killing of Ramu. Such evidence cannot be accepted being contrary to the purpose of conspiracy and commission of the offence for collecting money from the deceased. Mr.Lalit has also submitted that there is contradiction about the weapon used to commit the murder of Ramu because both day and night were mentioned. So far as the appellant Balbir Singh is concerned. Mr. Lalit has submitted that Balbir Singh had no weapon and he had not inflicted any injury on the person of the deceased. Mr. Lalit has also submitted that it has come out in the evidence that golden ear rings on the person of the deceased had not been removed by the accused. Such fact raises serious doubts about whether Ramu was killed for looting the valuables possessed by him at the time of commission of the crime.

Mr. Lalit has also submitted that the identification of the appellant Balbir Singh by the widow of the deceased. namely, Pw.3 does not inspire confidence and the test identification parade was also not properly held. Mr Lalit has submitted that Pw.15 had concocted the test identification parade on March 4. 1974. The said Pw.19 had deposed that 11 persons were mixed with the under trial and Pw.3 Muscat Mall Identified the accused Balbir Singh after taking two rounds., the said Pw.19 did not record the ages of the persons who were mixed with the accused out he only stated that they were almost of the age of the accused. He also could not say any scar on the face and whether any of them was of the age of 5 6. Pw.3 has however. admitted that the persons who were mixed with the accused were all taller than the accused. Mr. Lalit has submitted that a scar on the face of a person is rarely noticed by a village rustic who did not know the person beforehand and only on an occasion to see just for sometime on the day of the occurrence. Moreover unless persons of similar age and similar height and more or less of similar stature and appearance are mixed up with the accused. no reliance should be placed on the identification made in the test identification parade. Therefore.

benefit of about should be given in favor of the appellant Balbir Singh. Mr.Lalit has also submitted that the deposition of Pw.12 is also falsified by the medical evidence. Although Pw.12 has deposed that a lalit injury was caused on the deceased out from the medical evidence. It transpires that all the injured noticed on the person of the deceased were incised wounds. Mr.Lalit has also submitted that there is contradiction in the depositions of the investigating Officer and Pw.12 the approver about the date when the approvers statement was recorded. In the aforesaid circumstances. It would not be proper the base conviction against the appellant and other accused on the basis of the testimony of the approver (Pw.12).

Mr. Goyal, the learned counsel appearing for the other appellants as animus curies. has also supported the submissions made by Mr.Lalit. Mr.Goyal has submitted that there are contradictions in the deposition of the approver Pw.12 with the statements previously made by him. Such fact was notices by the trial court. The learned counsel has also submitted that the approver Balmukand had made different submissions with regard to the weapons used by the appellants. Mr.Goyal has also submitted that the deposition of the approver Pw.12 about the injuries on the chest of the debased in false and the same is not supported by Dr.S.L.Bundala Pw.8. Mr.Goyal has also submitted that it is not unlikely that the approver had himself Ramu and made false statements Implicating the accused in order to save himself. Mr.Goyal has submitted that although the approver had surrendered before the police on February 28. 1974. his statement was receded on March 9 and March 12.1974. Balmukand has stated to the police that he was willing to become approver and he made confessional statement before the Magistrate on March 13. 1974. Mr.Goyal has submitted that there are discrepancies in his depositions and the statements made under Section 164 Criminal Procedure code. It has also been submitted by Mr.goyal that according to the prosecution case and also according to the deposition the approver the deceased was o friend of Mohan. Five persons including the approver made a conspiracy to kill the deceased to rod only Rs.200/- by that process to get Rs.40/- only in their respective share. It is unbelievable that Mohan should kill his friend only for a sum of Rs.40/- when he had gone to the house of the deceased and was noticed by the wife of the deceased. The learned counsel has submitted that the projection case could not have been established beyond reasonable doubt and the conviction and sentences passed against the appellants are liable to be set aside.

After giving our careful consideration to the facts and circumstances of the case and the Judgments passed by the courts below. It appears to us that the approver has not made statements to exculpate him out has clearly coerced that he was party to the conspiracy and on the date of the incident was waiting hear the Tall when Balbir Singh and Mohan had been sent to bring Ramu with money so that Ramu would be murdered and the money would be looted. he had also deposed that he himself did not inflict injury but he caught hold of the legs of the deceased when the deceased was done to death. So far as the identification of Balbir Singh by the widow of the deceased on concerted. We not think that such identification is to be discarded simply because the height of the accused was less than the persons with whom he was liked up or he had a scar mark. Fateh Lal (Pw.19) has deposed that the persons with whom the accused Balbir Singh was liked up were almost of the same age and after going two rounds, the widow had identified Balbir. The contention that no reliance shall be placed on the evidence of approver because the golden ear rings were not taken away by the accused even though they had committed the murder for gain cannot be accepted. It may be indicated here

that because Pw.12, the approver had raised an alarm that some lights were seen from the village side. The accused had hurriedly left place of occurrence and Mohan had only removed Rs.200/- from the pocket of the deceased. The deposition of the approver Balmukand that a car came from the side of Lookaransar and two persons also saw them and one of such persons enquired of Mohan as to wherefrom they had been coming. Stands fully corroborated from the testimony of Pw.4 Began Ram and Pw.5 Magoj Singh. Both the witnesses have stated that they alighted from the bus at village Bawai After covering some distance for coming to their village Mitasar, they saw five persons. At that time. not car came from the side of Loonkaransar. They had also deposed that the said persons had three bicycles with them. The said witnesses have also deposed that they could identify Mohan and Yashin but could not identify rest of three persons because the others were little away from them.

In our view. the deposition of the approver Pw.12 about the injuries caused on the person of the deceased is substantially corroborated from the medial evidence and absence of any injury caused by the plant weapon of be lathe on the person of the deceased cannot be held to be such a contradiction in the deposition of Pw.12 for which such deposition is liable to be discarded. We have already indicated that five persons were seen by Pas 4 and 5. Such evidence tallies with the deposition of Pw.12 that besides the approved. there were other four accused. The deposition of Pw 12 also stands corroborated that Pw 4 and 5 could identify Mohan and Yashin and had enquired of them as to from where they had been coming then. Such deposition fully lends support to the deposition given by Pw.12, The High Court has indicated cogent reasons for affirming the conviction and sentences passed against the appellants and we do not find any reason to interfere with the concurrent findings made by the courts below against the appellants. These appeals. therefore. fall and are dismissed. The appellants were released on pail during the pungency of the appeals. They are directed to be taken into custody to serve out the sentences passed against them. Their bail bonds stand canceled.