Chandan & Om Prakash vs State Of Rajasthan on 12 January, 1988

Equivalent citations: 1988 AIR 599, 1988 SCR (2) 599, AIR 1988 SUPREME COURT 599, 1988 (1) SCC 696, 1988 (15) IJR (SC) 425, (1988) 1 SCJ 472, (1988) ALLCRIR 218, (1988) ALLCRIC 98, (1988) 1 ALLCRILR 401, (1988) 1 JT 141 (SC)

Author: G.L. Oza

Bench: G.L. Oza, L.M. Sharma

PETITIONER:
CHANDAN & OM PRAKASH

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT12/01/1988

BENCH:
OZA, G.L. (J)
BENCH:
OZA, G.L. (J)
SHARMA, L.M. (J)

CITATION:
1988 AIR 599 1988 SCR (2) 599
1988 SCC (1) 696 JT 1988 (1) 141
1988 SCALE (1)29

ACT:
Indian Evidence Act, 1872: Ss. 114(6) and 133-Evidence of accomplice-Corroboration by independent evidence-Necessity for.

HEADNOTE:
%
Five persons were tried for the murder of a widow, out of which one turned approver. There was no direct evidence in the case. The only evidence was the evidence of the approver and the other evidence regarding recovery of articles by three witnesses.
The trial court discarded the testimony of two

witnesses who had identified some articles. The third witness, the son of the deceased and who had identified the articles was not examined at the trial. The court, however, convicted all the accused persons under s. 302 read with s. 34 lPC.

The High Court maintained the conviction of three persons on the finding that the evidence of identification was sufficient to corroborate the testimony of the approver.

In the appeals by special leave by two of the accused, it was contended for the State that although the son of the deceased had not been examined at the trial, he had identified articles at the test identification and, therefore, that evidence was sufficient to corroborate the testimony of the accomplice.

Allowing the appeals,

^

HELD: It is established as a rule of prudence that the testimony of an accomplice if it is thought reliable as a whole conviction could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime. [603A-B]

Haroon Haji Abdulla v. State of Maharashtra, [1968] 2 SCR 641 and Ravinder Singh v. State of Haryana, [1975] 3 SCR 453. referred to.

In the instant case, the evidence of the son of the deceased could

600

not be looked into because (i) what he identified and stated to the Magistrate, who conducted the identification parade, was only a hearsay evidence and that evidence could only be used to corroborate his testimony if he was examined at the trial, and (ii) what he stated to the Magistrate was not subjected to cross-examination and was at the back of the accused. Further, there is nothing about identification or anything to connect the articles with the crime and in such a situation the evidence of recovery is not at all relevant as it is not connected with the crime. It could not, therefore, be used as evidence against the accused. [604C-D]

The only evidence against the accused was that of the approver. He has claimed to be a spectator at every moment but has not participated at any stage. Apart from it, the initial story appears also to be absolutely unnatural, as according to him he did not know anyone of the accused persons but a month before the incident they took him into confidence and told him to join them. The evidence of the witnesses as a whole does not appear to be natural version and is not such which inspires confidence. Moreover, there was no corroboration at all from another independent circumstance or source of evidence. The conviction of the appellant, therefore, could not be maintained. [604F-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 106- 107 of 1986.

WITH (Criminal Appeal Nos. 166-67/1986).

From the Judgment and order dated 5.9.1985 of the High Court of Rajasthan in D.B. Appeal No. 126/77 and Criminal Appeal Nos. 98 and 99 of 1977.

R.L. Kohli, Uma Dutt and R.C. Kohli for the Appellant. B.D. Sharma and M.I. Khan Additional Advocate General for the Respondent.

The Judgment of the Court was delivered by OZA, J. These two appeals arise out of the conviction of these two appellants alongwith one another under Section 302 read with Section 34 and sentenced to imprisonment for life and fine of Rs. 100 each in Sessions Case No. 39/75 by Sessions Judge, Jhunjhunu dated 29th January 1977. Alongwith these two appellants Chandan and Om Prakash one Babulal son of Onkar Mal was also convicted but we have no appeal before us on behalf of Babulal.

The prosecution case was that Smt. Dhaka widow of Shri Hanuman Prasad and mother of Shri Gyarsi Lal was living all alone in her house (Haveli) at Ward No. 1, Khetadi. In the morning of 23rd August, 1975 a person engaged for grazing the goats in jungle went to Smt. Dhaka's house for taking her goats for grazing and called Smt. Dhaka but he did not get any response. P.W. 2 Smt. Banarsi who was living in the vicinity came on the spot and alongwith the Goatmen went inside the Haveli. They found goods scattered here and there and even when they loudly called Smt. Dhaka they did not hear any reply. P.W. 1 Matadeen who was feeding pigeons nearby was informed by Smt. Banarsi that Smt. Dhaka normally used to get up early but it appears that she had not woken up by that time and therefore expressed surprise. On this Matadeen went inside the house, reached the upper floor and found all the rooms opened and plenty of goods of Smt. Dhaka lying scattered. There he saw Smt. Dhaka Iying on a cot and found that she was wounded and bleeding at number of places. Shri Matadeen, then went to the Police Station, Khetadi and submitted his report Ex. P. 1. The Station House officer Surindra Singh reached the spot, prepared a memo and carried out the investigation. On 3rd September, 1975 one Mam Chand was arrested as an accused. Another accused Babulal was arrested on 5th September and the acquitted accused Laxmikant was arrested on 7th September and the two appellants in this appeal Om Prakash and Chandan were arrested on 11th September, 1975. Mam Chand later was granted pardon and has been examined as an approver in this case. On trial the learned Sessions Judge convicted all the accused persons and on appeal the High Court acquitted the accused Laxmikant but maintained the conviction against the three and aggrieved by the judgment of the High Court the present appeal on special leave has been filed before us by the two appellants mentioned above.

It is not in dispute that there is no direct evidence in this case. The only evidence is the evidence of the approver Mam Chand and other evidence regarding recovery of articles. Learned counsel for the appellant contended that certain articles were recovered at the instance of Om Prakash and were put up for test identification and according to the evidence of the test identification these articles that

were put up for identification, four witnesses were supposed to identify. Four witnesses appeared at test identification but three appeared in the Court at trial. Out of these four witnesses, the first witness did not identify any article. The two witnesses Rameshwar and Phool Chand, P.Ws 13 and 14 did identify some articles. Their evidence after consideration has been rejected by the trial court and the other witness who identified the articles was Gyarsi Lal who happens to be the son of deceased, for the reasons best known, has not been examined at the trial at all and it was therefore contended by the learned counsel that so far as the recovery and identification of articles are concerned no article recovered has been identified to be that of the deceased and therefore this evidence of recovery in absence of identification is not at all relevant for the prosecution. He therefore contended that as it is settled law that accomplice's evidence if it inspires confidence could be used to convict the accused person only if there is independent corroboration which could connect the accused with the crime and it was contended that this evidence of recovery and identification was supposed to be the evidence connecting the accused with the crime and corroborating the testimony of the approver but the learned Judges of the High Court did not consider this aspect of the matter that the two witnesses who had identified some articles their testimony has been discarded by the trial court and the High Court has not come to the conclusion that the trial court was not right in rejecting their testimony but superficially held that the evidence of identification is sufficient to corroborate the testimony of the approver. It was also contended that even the reading of the testimony of the approver shows that he has tried to keep himself away and the manner in which he has described the whole incident and the way in which he was taken into confidence by the other accused persons make his testimony unnatural and therefore could not be accepted. Learned counsel also placed reliance on certain decisions of this Court where the rule of prudence about the testimony of the accomplice has been repeatedly stated.

Learned counsel appearing for the State of Rajasthan admitted that so far as the identification evidence is concerned, the most important witness Gyarsi Lal has not been examined at the trial and the other two who were examined, their testimony has been rejected but he attempted to contend that although Gyarsi Lal has not been examined in evidence at the trial but in test identification he had identified articles and therefore that evidence is sufficient to corroborate the testimony of the accomplice. He however did not challenge the proposition that the conviction could not be maintained on the sole testimony of the accomplice unless it is corroborated by some independent evidence connecting the accused with the crime.

So far as the question about the conviction based on the testimony of the accomplice is concerned the law is settled and it is established as a rule of prudence that the testimony of accomplice if it is thought reliable as a whole conviction could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime. In Haroon Haji Abdulla v. State of Maharashtra, [1968] 2 SCR 641 it was observed as under:

> "An accomplice is a competent witness and his evidence could be accepted and a conviction based on it if there is nothing significant to reject it as false. But the rule of prudence, ingrained in the consideration of accomplice evidence, requires independent corroborative evidence first of the offence and next connecting the accused against whom the accomplice evidence is used, with the crime".

Similarly in Ravinder Singh v. State of Haryana, [1975] 3 SCR 453 it was observed as under:

> "An approver is a most unworthy friend, if at all, and he. having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected brevi manu. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based. "

In this decision the first test indicated is that if the story given out by the accomplice appears intrinsically to be natural and probable, then alone that evidence could be of some value and then it is further observed that ordinarily an approver's statement has to be corroborated. In this view of the settled legal position which was not disputed before us, it was contended that the evidence about recovery is of no consequence as there is no evidence of identification but as it was contended by the learned counsel for the respondent State that Gyarsi Lal who is the son of the deceased is not examined at the trial but he had identified articles at the identification parade and the learned counsel attempted to contend that this evidence could be used as a piece of corroboration. Unfortunately this evidence could not be looked into because: i) what he identified and stated to the Magistrate who conducted the identification parade is only a hearsay evidence as that evidence could only be used to corroborate his testimony if he was examined at the trial; and ii) what he stated to the Magistrate at the time of the test identification parade is not subjected to cross examination and was at the back of the accused could not be used as evidence against the accused. These are matters so settled and therefore it is sufficient to say that this contention is without any substance. Except this even the learned counsel for the State of Rajasthan had to concede that there is nothing about identification or anything to connect these articles with the crime and in such a situation the evidence of recovery is not at all relevant as it is not connected with the crime.

It is not disputed that except this we are left with the only evidence of the approver Mam Chand. His evidence has been read by the counsel for the parties before us and his evidence clearly indicates that he has attempted to suggest that he did nothing. Neither he stated that he participated in looting nor in injuring or attacking the deceased. Reading through his evidence clearly indicates that he has claimed to be a spectator at every moment but has not participated at any stage. Apart from it the initial story appears also to be absolutely unnatural as according to him, he did not know anyone of these accused persons but a month before the incident they took him into confidence and told

him to join them. After reading the evidence of the witnesses as a whole apparently the impression created is that the version does not appear to be natural version. In this view of the matter, in our opinion, the testimony is not such which inspires confidence. Apart from it as there is no corroboration at all from any other independent circumstance or source of evidence therefore the conviction of the appellants could not be maintained. It is rather unfortunate that the appeal has come up for hearing after a long time and ultimately it is found that there is no evidence to sustain the conviction. The appeals are there- A fore allowed. The sentence and conviction passed against both the accused are set aside. The appellants shall be set at liberty forthwith. P.S.S. P.S.S. Appeals allowed.