

1959

May 8,

JNANENDRA NATH GHOSE

v.

THE STATE OF WEST BENGAL

(SYED JAFER IMAM AND J. L. KAPUR, JJ.)

Jury Trial—Misdirection—Approver—Reliability—Corroboration—Indian Evidence Act, 1872 (1 of 1872) s. 133.

The appellant was tried on a charge of murder by the Sessions Judge with the aid of a jury. The evidence against him consisted of the testimony of an approver and the proof of corroborative circumstances tending to connect him with the crime. The jury found the appellant guilty and the Sessions Judge accepting the verdict sentenced him to imprisonment for life. An appeal to the High Court was dismissed as that Court found no misdirections in the charge to the jury. The appellant contended that there was misdirection in the charge to the jury in that the jury was not told, as laid down in *Sarwan Singh v. The State of Punjab*, [1957] S.C.R. 953, that the approver's evidence had to satisfy a double test i.e., he must be a reliable witness and his evidence must receive sufficient corroboration and in that the corroborating evidence was not sufficient to connect the appellant with the crime.

Held, that there were no misdirections in the charge. The observations in *Sarwan Singh's* case that it must be shown that the approver was a reliable witness were made in the special circumstances of that case where the approver had definitely been found to be so thoroughly discrepant as to be wholly unreliable. In the present case there was nothing to show that the evidence of the approver was in any way unreliable.

Sarwan Singh v. The State of Punjab, [1957] S.C.R. 953, distinguished.

The Sessions Judge had correctly directed the jury that the corroboration of the evidence of the approver in material particulars must relate not only to the commission of the crime, but also to the evidence connecting or tending to connect the accused with the crime. The circumstances proved in the case corroborated the approver's evidence connecting the appellant with the crime. Once there was evidence of such circumstances it was for the jury to decide whether they were sufficient corroboration of the approver's evidence that the appellant murdered the deceased.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 101 of 1958.

Appeal by special leave from the judgment and Order dated the 12th September, 1956 of the Calcutta High Court in Criminal Appeal No. 19 of 1956, arising

out of the judgment and order dated the 8th December, 1955 of the Sessions Judge, Birbhum in Sessions Trial No. 1 of November 1955.

H. J. Umrigar and *D. N. Mukherjee*, for the appellant.

K. B. Bagchi, *P. K. Ghosh* for *P. K. Bose*, for the respondent.

1959. May 8. The Judgment of the Court was delivered by

IMAM J.—The appellant was sentenced to imprisonment for life under s. 302 by the Sessions Judge of Birbhum who agreed with the majority verdict of the jury that he was guilty. He appealed against his conviction to the Calcutta High Court. That Court being of the opinion that there was no misdirection in the Sessions Judge's charge to the jury dismissed the appeal. Two persons Jagdish Gorain and Sudhir Gorain were also tried along with the appellant but were acquitted by the jury whose verdict the Sessions Judge accepted. The appellant appealed to the High Court for a certificate to appeal to this Court which was refused. The present appeal is by special leave.

According to the prosecution Sibapada Hati was married to a girl by the name of Lila. About a month previous to the date of occurrence the appellant had made a proposal to her that she should live with him which was rejected. The appellant thought that the removal of Sibapada Hati would clear the way and improve his chance of gaining Lila's favour. Accordingly he murdered Sibapada Hati on the May 26, 1955. In that murder he was assisted by Jagdish Gorain, Sudhir Gorain and the approver Sastipada Ghose.

The conviction of the appellant depended on the evidence of the approver and the circumstantial evidence which corroborated him in connecting or tending or connect the appellant with the murder of the deceased Sibapada Hati. Unless there was a misdirection or non-direction amounting to a misdirection in the charge to the jury which, in fact, had occasioned a failure of justice the jury's verdict must prevail and

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it cannot be interfered with. The High Court was of the opinion that there was no misdirection in the Sessions Judge's charge to the jury and we are in agreement with the High Court.

We have examined the charge to the jury. The Sessions Judge in dealing with the evidence of the approver charged the jury as follows:—

“ Before doing so, some established legal principles as regards the approver's evidence and the confessions on which the prosecution has relied in the present case are required to be explained to you. The approver is a competent witness against an accused person and although his evidence is strictly admissible and a conviction is not illegal, merely because it is based on approver's evidence, it is a settled rule of practice not to convict a person on such evidence except under very rare and exceptional circumstances, and usually substantial corroboration is required. I, therefore, warn you, gentlemen, that it is highly dangerous to convict on approver's evidence alone. There can, no doubt be a legal conviction upon the uncorroborated evidence of an accomplice and, as already stated, the uncorroborated testimony of an accomplice is strictly admissible and a conviction based on it alone is not illegal, yet you should remember, gentlemen, that experience teaches us that an accomplice being always an infamous person, he having thrown to the wolves his associates and friends in order to save his own skin and, though criminal, has purchased his liberty by betrayal, his evidence must be received with very great caution and it is highly dangerous to act upon his evidence unless it is materially corroborated. I must also tell you that this rule as to corroboration has become a settled rule of practice of so universal an application that it has now almost the force and reverence of law. Corroboration must be as to the crime and the identity of each one of the accused and the corroboration required must be independent evidence, that is reliable evidence of another kind.

Evidence in corroboration must be independent testimony, which affects the accused by connecting or tending to connect the accused with the crime. In other words, it must be evidence which implicates him, that is, which conforms in some material particulars not only the evidence that the crime has been committed but also that the prisoner (accused) committed it. Corroborative evidence, you should bear in mind, is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true. The corroboration need not be direct evidence that the accused committed the crime. It would be sufficient if it is merely circumstantial evidence of his connection with the crime. The corroboration in material particulars must be such as to connect or indentify each of the accused with the offence. In the present case, a previous statement of an approver, viz., the confession has been made exhibit before you, but that previous statement, you are further to bear in mind, cannot corroborate his latter statement, viz., the statements that have been made by him before you in this Court.

In dealing with the question what amount of corroboration is required you, gentlemen, must exercise careful discrimination and look at all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the approver *Sastipada* are borne out by those circumstances."

Mr. Umrigar on behalf of the appellant urged that the aforesaid direction given by Sessions Judge to the jury was not sufficient. The jury should have been told (1) in accordance with the decision of this Court in the case of *Sarwan Singh v. The State of Punjab* ⁽¹⁾ that the approver's evidence has to satisfy a double test. It must show that he is a reliable witness and that his evidence receives sufficient corroboration, (2) that the evidence of an approver must be confirmed not only as to the circumstances of the crime but also as to the identity of the prisoner. The corroboration

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ought to consist in circumstances that affects the identity of the party accused. Reliance was placed on the case of *The King v. Baskerville* (1), (3) that the circumstantial evidence corroborating the approver was not sufficient to connect the appellant with the murder of the deceased and (4) that on similar corroboration of the approver's testimony the accused Jagdish Gorain had been acquitted. There was no real distinction between the case of Jagdish Gorain and the appellant.

It is true that in Sarwan Singh's case this Court had held, "The appreciation of an approver's evidence has to satisfy a double test. It must show that he is a reliable witness and that his evidence receives sufficient corroboration and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver." These observations were made in the special circumstances of the case which this Court was deciding when dealing with the case of Sarwan Singh. This Court went on to observe, "The argument that the character of the approver's evidence has not been considered by the High Court cannot be characterised as merely academic or theoretical in the present case because, as we shall presently point out, the evidence of the approver is so thoroughly discrepant that it would be difficult to resist the conclusion that the approver in the present case is a wholly unreliable witness. Indeed it may be legitimate to point out that the learned Judges of the High Court have themselves criticised the evidence of the approver in dealing with the prosecution case against Gurdial Singh and have ultimately found that the account given by the approver is unreliable and, though there was circumstantial evidence which raised an amount of suspicion against Gurdial Singh, that would not be enough to sustain his conviction. It seems to us that if it was found that the approver's account against one of the accused persons was wholly discrepant, this

(1) (1916) 2 K.B.D. 658.

finding itself should inevitably have led the court to scrutinise his evidence in respect of the other accused persons with greater caution." It is clear therefore that in the special circumstances of the case of Sarwan Singh the approver had been found to be a wholly unreliable witness. It is important to observe that this Court stated that the approver's evidence must show that he is a reliable witness and that is the test which is common to all witnesses. Nothing has been shown to us in this case, as was shown in Sarwan Singh's case that apart from the approver's testimony in the present case being regarded as tainted evidence his evidence as it stood was in any way unreliable. Indeed, the Sessions Judge went to the length of telling the jury that although an approver's evidence is strictly admissible and a conviction is not illegal merely because it is based on an approver's evidence, it was a settled rule of practice not to convict a person on such evidence except under very rare and exceptional circumstances and usually substantial corroboration was required. The jury could not have been more clearly warned about the danger of acting on an approver's evidence. In other words, the jury were told not to convict the appellant on the approver's evidence unless his evidence had been substantially corroborated. Apart from the question of corroboration of the approver's evidence nothing was suggested to us or to the High Court in what respect the approver's evidence was unreliable after testing his evidence in the same way as one would test the evidence of any witness for the prosecution in a criminal case. In our opinion, the decision in Sarwan Singh's case can be distinguished in the present case. Obviously, it was never suggested that the approver's evidence in this case was entirely unreliable, if his evidence was tested in the same way as the evidence of any prosecution witness in a criminal trial. We cannot accept the submission made on behalf of the appellant that the charge to the jury is vitiated because of the decision of this Court in Sarwan Singh's case.

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As to the second submission made by Mr. Umrigar it is to be remembered that in Baskerville's case the Court of Criminal Appeal in England after discussing various authorities on the subject came to the following conclusion :—

“ We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute. The language of the statute, implicates the accused,” compendiously incorporates the test applicable at common law in the rule of practice. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.

“ 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. ”

In the present case the jury had been clearly directed by the Sessions Judge that corroborative evidence must be evidence which implicates the accused, i.e., which confirms in some material particulars not only the evidence that the crime had been committed but also that the appellant had committed it. The Sessions Judge told the jury that “ Corroborative

evidence, you should bear in mind, is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true. 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. The corroboration in material particulars must be such as to connect or identify each of the accused with the offence." It seems to us that the Sessions Judge directed the jury in accordance with the principle laid down in Baskerville's case and no serious objection can be taken to the manner in which the Sessions Judge directed the jury in this respect. The moment there is corroborative evidence which connects or tends to connect an accused with the crime such corroborative evidence relates to the identity of the accused in connection with that crime. It is the approver's evidence which is the direct evidence of the crime. There should be corroboration in material particulars not only concerning the crime but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the Court or a jury that the approver's evidence that the accused committed the crime is true.

As to the 3rd submission made on behalf of the appellant the following circumstances were established by the evidence which were accepted by the jury :

1. There was a motive for the appellant to commit the crime, that is to say, his immoral proposal to Lila, wife of the deceased.

2. On the 25th of May, 1955, the appellant came to Lila's house and had a talk with the deceased.

3. On the 26th of May, 1955, in the morning the appellant also came to the house and talked with the deceased. Later on that very day a little after sunset the appellant came to the house and asked the deceased to go for a walk with him. The deceased did so.

4. Thereafter the appellant was seen going with Jagdish Gorain and the deceased by Brojeswari and

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Lila towards the north of the village after 5 p.m. while they were bathing in Talbona tank.

5. According to the approver at the time that the deceased was stabbed by the appellant he had sustained an injury on the dorsum of his left palm. The medical evidence established that the appellant had an almost healed up ulcer $\frac{1}{2}$ inch in length on the left side of the palm at its posterior surface one inch below the wrist joint and another healed up ulcer $\frac{1}{2}$ inch in length on the left thumb at the posterior surface and that these injuries could be caused by a sharp cutting weapon like a knife.

6. As it had become night and the deceased had not returned, Lila's mother Brojeswari and her uncle Radharaman Sadhu searched for him. They went to the club-house where the appellant and his two co-accused Jagdish Gorain and Sudhir Gorain and the approver used to associate with each other. When enquiries were made from the appellant by Brojeswari he first replied that the deceased had not gone with him and that he did not know anything about his whereabouts. When he was remanded that it was he who had taken the deceased for a walk which he was denying, the appellant replied that the deceased went with him upto the canal towards north of the village, but as he felt a headache he came away and it was not possible for the appellant to give any news about the deceased's whereabouts.

The above-mentioned circumstances either individually or collectively may fall short of proving that the appellant committed the murder of the deceased. Indeed, the High Court was of the opinion that these circumstances independent of the direct evidence of the approver would not be sufficient to induce any reasonable person to come to the conclusion that the appellant had committed the crime. As already stated, however, the approver's evidence is the direct evidence which establishes that the appellant had murdered the deceased. The jury had to decide for themselves whether the above-mentioned circumstances were sufficient corroborative evidence to satisfy

them that the approver's evidence that the appellant murdered the deceased was true. It is, however, urged by Mr. Umrigar that the circumstances mentioned were not circumstances corroborating the evidence of the approver in material particulars which would connect or tend to connect the appellant with the crime. In our opinion, at least in one circumstance the corroboration is in a very material particular connecting or tending to connect the appellant with the crime. The approver's evidence that while the appellant was murdering the deceased he had received an injury on the dorsum of his left palm is corroborated by the medical evidence. It was, however, pointed out that the medical evidence does not show that the injury was on the dorsum of the left palm. In our opinion, there is no substance in this submission because the first injury is described as one on the left side of the palm at its posterior surface 1 inch below the wrist joint, that is to say, the dorsum of the left palm. The second injury is clearly on the left thumb at its posterior surface which is also consistent with the evidence of the approver that the dorsum of the left palm was injured. The jury were entitled to accept this evidence as sufficient corroboration in a material particular connecting the appellant or tending to connect him with the crime. In addition, the circumstance that it was the appellant who had called for the deceased a little after sunset and had taken him away and thereafter was seen going along towards the north of the village with the deceased and that thereafter the deceased was not seen alive was one upon which the jury could rely in coming to the conclusion that it connected or tended to connect the appellant with the crime. The appellant's pretended ignorance of the whereabouts of the deceased that very night and his ultimate admission that he had taken the deceased towards the north of the village was also a circumstance upon which the jury could rely as inconsistent with his innocence. In our opinion, all the circumstances referred to above were sufficient corroboration of the approver's evidence connecting or tending to connect the appellant with

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the crime and accordingly the approver's evidence that the appellant did commit the crime was true.

As to the 4th submission that although there was similar corroboration of the approver's evidence against Jagdish Gorain but he had been acquitted by the jury although no real distinction between his case and the case of the appellant arose is unsound as, in our opinion, the two cases are not comparable. In the first place, there was no motive for Jagdish Gorain to commit the murder. In the second place, the injury which Jagdish received was while he caught the knife in the hand of the appellant saying "what have you done?" The approver's evidence therefore rather tended to show that he tried to prevent the appellant from further stabbing the deceased. These circumstances may have induced the jury to make a distinction between the case of Jagdish Gorain and the appellant. It was for the jury to say whether they regarded the circumstantial evidence as sufficient to connect or tending to connect Jagdish with the crime. It would seem that on the approver's evidence the jury may well have regarded the circumstances as insufficient corroboration to connect or tending to connect Jagdish Gorain with the crime.

In our opinion, it cannot be said with any good reason that there was any defect in the charge to the jury delivered by the Sessions Judge which would justify us in saying that the verdict of the jury was vitiated. The appeal is accordingly dismissed.

Appeal dismissed.
