

PETITIONER:
CHHI RAM

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
02/09/1966

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
RAMASWAMI, V.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 792 1967 SCR (1) 243
CITATOR INFO :
RF 1970 SC1330 (13)

ACT:
Indian Evidence Act, 1872 (1 of 1872), ss. 133 and 114 ill.
(b)--Evidence of approver-Tests for.

HEADNOTE:

The appellant was convicted of murder by the Sessions Judge mainly on the evidence of the approver. The High Court, in appeal did not consider it safe to rely on a part of the approver's evidence which related to an earlier incident but found that his main story was reliable as well as corroborated by other evidence. The conviction of the appellant was upheld. In appeal before this Court by special leave, the appellant contended that the double test for the approver's evidence laid down in Sarwan Singh's case had not been correctly applied by the courts below.

HELD : The first test laid down in Sarwan Singh's case is that the approver's evidence must show that he is a reliable witness, and that is a test which is common to all witnesses. The test obviously means that the court should find that there is nothing inherently improbable in the evidence given by the approver and that there is no finding that the approver had given false evidence. The second test which thereafter still remains to be applied in the case of an approver, and which is not always necessary when judging the evidence of other witnesses, is that his evidence must receive sufficient corroboration. [247 H]

In the present case the High Court had held that the evidence of The approver was reliable and was corroborated on material particulars by good prosecution witnesses who had been believed by the Court. There was therefore no error in the judgment of the High Court in upholding the conviction of the appellant. The fact that the High Court did not accept the evidence of the approver relating to the earlier incident did not mean that the Court hold the approver to be an unreliable or untruthful witness. What it did was to act on the principle of valuing the evidence of the approver with caution and not accepting it unless it was corroborated at least in some material particulars. [246 D]
Sarwan Singh v. State of Rajasthan (19571 S.C.R. 923

explained and applied.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 177 of 1964.

Appeal by special leave from the judgment and order dated March 30, 1964 of the Punjab High Court in Criminal Appeal No. 85 of 1963.

B. K. Bannerjee AND N. N. Keswani, for the appellant.

B. K. Khanna AND R. N. Sachthy, for the respondent.

The Judgment of the Court was delivered by Bhargava, J. The appellant, Lachhi Ram, has come up to this Court in this appeal by special leave against the judgment of the High Court, of Punjab upholding the conviction and sentence of

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imprisonment for life awarded to him under section 302 read with sections 109 and II 5 of the Indian Penal Code by the Additional Sessions Judge of Gurgaon. Both the courts below have, on the consideration of evidence, held that the appellant had enmity with the complainant, Devi Ram, even though they were collaterals in the third or fourth degree and their wives were sisters. There was a dispute between them about payment of compensation of some land, and on July 28, 1958, the appellant had sent a post-card to Devi Ram inquiring why he was delaying the payment of compensation, asking him to act intelligently and sensibly, and telling him that it was not good to forcibly usurp the share of others. Then, about six months before the occurrence, which was the subject-matter of the charge, the appellant and his brother Chet Ram visited Devi Ram in his village Tigaon and made a demand in respect of the property, adding a threat that otherwise he would have to pay heavily for the same. On January 27, 1962, when Devi Ram came back to his house in the evening, his wife told him that a friend of his from Rewari had sent some laddoos, peras and bananas through a person who had given his name as Partap Singh. She further told him that Partap Singh had informed her that the letter which he was asked to give with the sweets had been lost on the way. Devi Ram's wife described that youngster, Partap Singh. Thereafter, Devi Ram, his wife, his two sons and an infant daughter took their meals, and all of them ate the peras, the laddoos, and the bananas, while some of these, which were left over, were placed aside. At night, the infant daughter started vomiting and passing loose motions, and this was followed by vomiting and passing of loose motions by all the other members of the family. Devi Ram sent for the village Vaid, Mohinder Singh, who came at about 4 a.m. and gave some medicine with tea; but the condition of all the members of the family did not improve. The local doctor, Rajinder Singh, was then sent for, but by the time he arrived, the infant daughter, Padam Wati, died. The doctor removed all the persons to his dispensary and from there sent them to a hospital in Faridabad in an ambulance. Devi Ram's wife was removed from Faridabad to Irwin Hospital, Delhi, but she also died on the 29th January, 1962. Devi Ram himself, however, recovered. The matter was brought to the notice of the Police and on investigation, one Himmat Singh, who turned the approver, was arrested. Himmat Singh then related the story on the basis of which the appellant has been convicted.

According to Himmat Singh, after he passed his Matriculation Examination in 1955, he remained in the employment of some

wine ,contractors in Ludhiana and later he took to motor driving for which he obtained a licence in 1958. Then, he was looking for a job when he came to Gurgaon, where he used to take his meals in the hotel of One Arjan Singh. He got acquainted with the appe-

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llant in that hotel as the appellant had his shop opposite to it. The appellant was nice to him and arranged to get a house for him at a monthly rental of Rs. 9/-. The appellant also started paying his rent and expenses for the meals. Thereafter, the appellant took him in his confidence, told him that he wanted to get Devi Ram murdered, and offered money if the approver helped him in accomplishing his purpose.- The approver agreed. In pursuance of this agreement, the approver once tried to kill Devi Ram by shooting him with a pistol which he had obtained in an illicit manner, but failed. After this failure, the appellant worked out this plan of buying sweetmeats in which arsenic was to be mixed. On the 25th January, 1962, the appellant told the approver that he had made all arrangements and promised to pay him Rs. 800/- if the approver did the job assigned to him. On the morning of the 27th January, 1962, the appellant, accompanied by the approver, went and purchased one seer of Laddoos and half a seer of Khoa from the shop of Dal Chand, and sugar was purchased from the shop of one Jodha Ram. One dozen of bananas were also purchased from a rehriwala. The appellant had already procured white arsenic and he mixed it in the khoa and the sugar which he had purchased, and prepared peras with it. Thereafter, the appellant gave to the approver two bags containing the peras and the luddoos, and separately gave the bananas. He paid Rs. 150/- in cash and promised to pay the balance on conclusion of the errand. The approver then took a bus for Tigaon and delivered the sweets and the bananas to Devi Ram wife. Subsequently, when the approver asked for the balance of the money, it was not paid to him, because Devi Ram survived and the appellant went back on the contract on the ground that success had not been achieved in his objective which was to commit the murder of Devi Ram. On these facts disclosed by the approver and the prosecution evidence available, the appellant was prosecuted and has now been convicted and sentenced as mentioned above.

The only point urged in this appeal before us by learned counsel for the appellant was that the Sessions Judge as well as the High Court did not apply the correct principles of law applicable to appreciation of evidence of an approver. We find no force in this submission, as the judgment of the High Court makes it quite clear that there was full justification in this case for upholding the conviction of the appellant on the basis of the approver's evidence as corroborated by other prosecution evidence.

The High Court has held that the approver's statement with regard to the poisoning of Devi Ram and his family is reliable and does not suffer from any improbabilities at all. It is true that Court did not accept the version of the approver in respect of earlier attempt by him to commit the murder of Devi Ram by shooting him with a pistol. Dealing with this part of the case, the High Court

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held that it was not very much impressed with this story, and it was apparent that the only witness, Sri Ramdutt, Advocate, who appeared in respect of this incident, could not be expected to support the version of the approver that the appellant had caught hold of four cartridges from him and given them to the approver. It was also noticed that

Advocate was acting as counsel for the appellant in some criminal case which was pending against him for having caused miscarriage. In these circumstances, the Court came to the finding that the manner in which the pistol story had been related by the approver did not carry much conviction and, therefore, it would not be safe to rely on the evidence relating to this episode which should be left out of consideration. The High Court thus did not choose to act on this evidence given by the approver mainly on the ground that there was no corroboration and partly for the reason that it appeared to the Court that the story was not very convincing. The Court did not, however, come to any finding that the story put forward by the approver was incorrect or false. What the Court did was to act on the principle of valuing the evidence of an approver with caution and of not accepting it unless it is corroborated at least in some material particulars. The fact that the Court thus did not accept the evidence of the approver for this part of the story does not mean that the Court held that the approver was an unreliable or untruthful witness.

On the other hand, the view of that Court on appreciation of the approver's own evidence is that he has given his statement with regard to the entire manner in which the plot for poisoning was carried out in such a manner that it is reliable and convincing. Further, the Court found that his evidence was corroborated on very material particulars. First, there was corroboration provided by the entries in the register of the dealer from whom the appellant purchased arsenic. The entries in the register were proved by prosecution witness, Uday Bhan, and his evidence also showed that the register bore the signature of the appellant in token of having received the arsenic sold to him. The appellant initially denied that the signatures on the register were his, but, when later examined under s. 342, Criminal Procedure Code, he admitted that his signatures had been obtained on a register and that register was this very register produced by the prosecution. He, of course, added that when his signature was taken, the register was blank and no entries about sale of poison had been made. When he originally denied his signature, the question arose of providing corroboration of the evidence of Uday Bhan to strengthen the value of the entries in the register by obtaining evidence to prove that the signature on the register against the entry was really made by the appellant. But, after the admission of the appellant that the signature on that register had been obtained

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from him, it became unnecessary to bring further proof of the signature on the register. In these circumstances, it cannot be held that the High Court committed any error in holding that this register provided good evidence to prove that arsenic poison was purchased by the appellant from the dealer Uday Bhan.

The High Court found that two witnesses, Dal Chand and Jodha Ram corroborated the sale of laddoos and khoa to the appellant. Thereafter, Sher Singh witness corroborated the statement of the approver that he boarded the bus and that Devi Ram's house at the end of the bus journey was pointed out to him by Sher Singh himself. Karnail Singh and Giasi Ram, prosecution witnesses, also corroborated the approver's version of his journey by bus. All of them identified the approver. They happened to remember the approver's traveling by bus because the approver was a Sikh and yet he started smoking and had to be told by the driver Kamail Singh to throw away the cigarette. Thus, on very material

points of the version given by the approver there was corroboration by prosecution witnesses who were all found by the High Court to be reliable.

It is true that there were some portions of the story of the approver for which no corroborative evidence was available. Learned counsel for the appellant pointed out that there was no corroboration of the fact that it was the appellant who mixed arsenic poison in the khoa, nor was there any corroboration of the approver's statement that he himself handed over the sweets to Devi Ram's wife. This submission ignores the natural sequence of events. When the poison was mixed with the khoa, it could not be expected that the appellant would ensure presence of other persons to see him mixing the poison. Naturally, the poison was mixed at a time when there was no one else present, except the appellant himself and the approver who was his accomplice and whom the appellant had hired for the purpose of carrying out his scheme. At the later stage, when the approver gave the sweets to Devi Ram's wife, no corroborative evidence could be available, because Devi Ram's wife died of the poisoning; and again, there is nothing to show that any other person was present when the sweets were delivered by the approver.

It was held by this Court in *Sarwan Singh v. The State of Punjab* (1) that an approver's evidence to be accepted must satisfy two tests. The first test to be applied is that his evidence must show that he is a reliable witness, and that is a test which is common, to all witnesses. The test obviously means that the Court should find that there is nothing inherent or improbable in the evidence given by the approver, and that there is no finding that the approver has given false evidence. The second test which thereafter still

(1) [1957] S.C.R. 953.

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remains to be applied in the case of an approver, and which is not always necessary when judging the evidence of other witnesses, is that his evidence must receive sufficient corroboration. In the present case, as we have pointed out above, the High Court has held that the evidence of the approver was reliable and was corroborated on material particulars by good prosecution witnesses who have been believed by the Court. We are, therefore, unable to find any error in the judgment of the High Court in upholding the conviction of the appellant.

In the result, the appeal falls and is dismissed.

G. C.

Appeal dismissed

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