

CASE NO.:
Appeal (crl.) 1528 of 2007

PETITIONER:
Sitaram Sao @ Mungeri

RESPONDENT:
State of Jharkhand

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1528 OF 2007
(Arising out of SLP (Crl.) No. 4942 of 2005)
(With Crl. Appeal No. 1531 of 2007 (Arising out of SLP (Crl.) No.6265 of 2005))

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the judgment of a Division Bench of the Jharkhand High Court dismissing the appeals filed by the appellants and upholding the conviction for offences punishable under Sections 364 and 396 read with Section 120B of the Indian Penal Code, 1860 (in short the 'IPC'). In fact, the High Court disposed of two appeals both directed against the judgment of conviction dated 16th July, 2002 and 23rd July, 2002 passed in Sessions Trial No.156/1997. As noted above, the trial Court found both the accused appellants guilty and awarded the sentence of imprisonment for life for the offences punishable under Sections 364 and 396 IPC. However, no separate sentence under section 120B was awarded, while the co-accused Laxmi Prasad was further sentenced to the period already undergone for offence punishable under Section 412 IPC.

3. The High Court did not find any substance in the appeals and dismissed the same as noted above.

4. Background facts in a nutshell are as follows:
On 8.1.1992, Gayatri Devi, wife of the informant, had gone to Pandra Agricultural Market by her Ambassador car bearing registration No. AAY 7375 and from there she left for her residence at about 8 PM after collecting the sale proceeds of the day of shop Nos.244 to 251. The driver of the car, Laxmi Paswan, who was one of the accused, was driving the car. Gayatri Devi after collecting a sum of Rs.1,84,405/- did not return to her house, the informant informed Sukhdeo Nagar P.S. regarding the missing of his wife and the driver of the car, Laxmi Paswan. Laxmi Paswan was employed by the informant as the driver of his car on the recommendation of the previous driver, namely, Rajendra Choudhary. When the wife of the informant as well as the driver did not return till night, the informant, on the next morning i.e. on 9.1.1992, submitted a written report alleging therein that Laxmi Paswan, driver of the car, in collusion with anti-social elements,

abducted his wife and car in order to kill her and snatch the money. It was alleged that informant came to know from reliable sources that his car was seen in the night on Ranch Ramgarh road.

On the basis of the aforesaid information, Sukhdeo Nagar P.S. registered a case under Section 364 IPC against Laxmi Paswan only and in course of investigation the dead body of the wife of the informant, namely, Gayatri Devi, was found on Giddi National road under Ramgarh P.S. After preparing the inquest report, in the presence of the witnesses, the I.O. of the case sent the dead body to RMCH for post-mortem. Subsequently, the car of the informant bearing registration No. AAY 7375 was found lying abandoned near Kujju town outpost. Subsequently the officer incharge of Sukhdeo Nagar P.S. took the said car from the Kujju TOP in his possession and a search was made in the presence of the witnesses and in the course of search, certain articles were seized. The seizure list was prepared and in the course of investigation, accused Laxmi Paswan was arrested on 14.1.1992 from his village Mungrahi within the district of Aurangabad and a part of the money stolen from Gayatri Devi amounting to Rs.30,695/- was also recovered from his house on the basis of his confessional statement. Laxmi Paswan disclosed the name of his associates to the police and subsequently, the other accused persons were also arrested. In course of investigation, on the basis of confessional statement, a sum of Rs.27,220/- was also recovered from the house of Girja Singh. Later, one of the accused, namely, Lalit Sanga was also arrested, who confessed his guilt before the police and expressed his desire to give statement with regard to the occurrence. His statement was recorded by Chief Judicial Magistrate under Section 306 of the Code of Criminal Procedure, 1973 (in short 'Cr. P.C.') and was granted pardon. The case was committed to the Court of Sessions, which was registered as ST No.319/92 and thereafter the accused persons faced trial in the court of learned VIth Additional Judicial Commissioner, Ranchi and the learned Additional Judicial Commissioner, on consideration of evidence on record, found them guilty; but acquitted two accused persons, namely, Girja Singh and Dinesh Kumar Singh by his judgment dated 1.10.1992. One of the accused, namely, Laxmi Paswan was sentenced to death, while other accused persons were sentenced to undergo RI for life. Thereafter, both the State and the accused persons preferred appeal against the impugned judgment and the High Court, by its judgment dated 28th July, 1993, set aside the judgment of conviction passed by the VIth Additional Judicial Commissioner, Ranchi and the case was remanded to the Court of Learned Chief Judicial Magistrate, Ranchi for fresh commitment proceeding and learned C.J.M. was directed to examine Lalit Sanga, the approver, (PW6), as prosecution witness in accordance with law and procedure. After remand of the case, the learned C.J.M. examined approver Lalit Sanga under Section 306 Cr.P.C. and thereafter committed the case to the Court of Sessions by order dated 19.2.1997 and after remand of the case, the case was registered as Sessions Trial No.156/97. The Learned Judicial Commissioner, Ranchi transferred the case to another Court for holding the trial of the accused persons. On receipt of the record, charges were framed against the accused persons for offences punishable under Sections 396, 412 and 120 (B) IPC.

5. Trial proceeded and in the course of trial the trial court recorded evidence of twenty-three witnesses, besides

documentary evidence and material exhibits and ultimately came to a finding that the appellants are guilty and accordingly convicted them. After recording of the statement, accused Girja Singh fled away and, therefore, his trial was separated from the trial of other accused.

6. The trial court recorded evidence of 23 witnesses and scrutinized their evidence and found the accused-appellants guilty. In this case, all necessary witnesses such as I.O., doctor and informant were examined. In appeal the High Court held that the prosecution has not left any latches on its part in examining the witnesses connected with this case.

7. The basic contention of the appellants, as contended before the High Court, was that there was no eye witness in the occurrence and simply on the basis of evidence of Lalit Sanga, the approver, the accused persons have been found to be guilty. It is submitted that the manner in which Lalit Sanga was granted pardon is illegal. Reference was made to the judgment passed by the High Court in Criminal Appeal No.202/1992. It is pointed out that the evidence recorded in the first sessions case where Sessions trial No.319/1992 was set aside and when the judgment in question was set aside, the procedure should have been started afresh. By the judgment, the case was remanded to the Court of C.J.M. who was directed to examine Lalit Sanga as a witness. It is the grievance of the accused appellants that the procedure laid down under Section 306 Cr.P.C. was not followed after the direction of the High Court in the first judgment. Lalit Sanga was examined in the presence of the accused persons and he was cross-examined and thereafter case was committed to the Court of Sessions but Lalit Sanga was not granted pardon and he was examined again by the order of the High Court. Therefore, it is submitted that there was non-compliance of the requirements of Section 306 Cr.P.C. It was submitted that he should have been granted pardon and thereafter as per the provisions of Section 306 Cr.P.C. he should have been examined as a witness in the presence of accused and he should have been cross examined. But only one part has been complied with and thereafter case was committed to the Court of Sessions but the first part that he was to be granted pardon has not been complied with. It is also submitted that the alleged confession of this witness does not satisfy the requirements of Section 133 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Accused Lalit Sanga had not confessed to his active participation in the occurrence. His evidence is also not fully truthful.

8. Learned counsel for the State on the other hand supported the impugned judgment.

9. The High Court noted that the order of CJM was not set aside. What was set aside partly was that Lalit Sanga was examined but not cross examined and his statement was not recorded in the presence of the accused. That part of the order has been complied with and Lalit Sanga was examined in the presence of the accused and he was also cross examined and thereafter case was committed to the Court of Sessions.

10. We shall deal with this part of the appeal later. It is to be noted that learned counsel for the respondent-State submitted that the procedure mandated under Section 306 Cr.P.C. has been fully complied with.

11. Learned counsel for the State has submitted that not only has there been compliance with the requirements of

Section 306 Cr.P.C. but also Section 133 read with Section 114 (b) of the Evidence Act.

12. Sections 133 and 114 (b) of the Evidence Act read as follows:

"133. Accomplice- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

114(b)- The Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

13. Section 133 of the Evidence Act is of significance. It relates to the evidence of an accomplice. In positive terms it provides that the conviction based on the evidence of an accomplice is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, because the accomplice is a competent witness.

14. In *Bhubon Sahu v. The King* (AIR 1949 PC 257), it was observed that the rule requiring corroboration for acting upon the evidence of an accomplice is a rule of prudence. But the rule of prudence assumes great significance when its reliability on the touchstone of credibility is examined. If it is found credible and cogent, the Court can record a conviction even on the uncorroborated testimony of an accomplice. On the subject of the credibility of the testimony of an accomplice, the proposition that an accomplice must be corroborated does not mean that there must be cumulative or independent testimony to the same facts to which he has testified. At the same time, the presumption available under Section 114 of the Evidence Act is of significance. It says that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in "material particulars".

15. Section 133 of the Evidence Act expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this Section has to be read along with Section 114, illustration (b). The latter section empowers the Court to presume the existence of certain facts and the illustration elucidates what the Court may presume and make clear by means of examples as to what facts the Court shall have regard in considering whether or not maxims illustrated apply to a given case. Illustration (b) in express terms says that accomplice is unworthy of credit unless he is corroborated in material particulars. The Statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) to Section 114 of the Evidence Act strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration must be clearly present in the mind of the Judge. [See *Suresh Chandra Bahri v. State of Bihar* (AIR 1994 SC 2420)].

16. Although Section 114 illustration (b) provides that the Court may presume that the evidence of an accomplice is

unworthy of credit unless corroborated, "may" is not must and no decision of Court can make it must. The Court is not obliged to hold that he is unworthy of credit. It ultimately depends upon the Court's view as to the credibility of evidence tendered by an accomplice.

17. In *Rex v. Baskerville* (1916 (2) KB 658), it was observed that the corroboration need not be direct evidence that the accused committed the crime; it is sufficient if there is merely a circumstantial evidence of his connection with a crime.

18. *G.S. Bakshi v. State* (Delhi Administration) (AIR 1979 SC 569) was dealing with a converse case that if the evidence of an accomplice is inherently improbable then it cannot get strength from corroboration.

19. Taylor, in his treatise has observed that "accomplice who are usually interested and always infamous witnesses, and whose testimony is admitted from necessity, it being often impossible, without having recourse to such evidence, to bring the principal offenders to justice". (Taylor in "A Treatise on the Law of Evidence" (1931) Vol. 1 para 967).

20. The evidence of the approver must, however, be shown to be of a reliable witness.

21. In *Jnanendra Nath Ghose v. State of West Bengal* [(1960) 1 SCR 126] this Court observed that there should be corroboration in material particulars of the approver's statement, as he is considered as a self-confessed traitor. This Court in *Bhiva Doulu Patil v. State of Maharashtra*, [AIR 1963 SC 599] held that the combined effect of Sections 133 and 114 illustration (b) of the Evidence Act was that an accomplice is competent to give evidence but it would be unsafe to convict the accused upon his testimony alone. Though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. In this regard the Court in *Bhiva Doulu Patil's* case observed as under:

"In coming to the above conclusion we have not been unmindful of the provisions of S. 133 of the Evidence Act which reads:

Sec.133. "An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

It cannot be doubted that under that section a conviction based merely on the uncorroborated testimony of an accomplice may not be illegal, the Courts nevertheless cannot lose sight of the rule of prudence and practice which in the words of Martin B. in *R. v. Boyes*, (1861) 9 Cox CC 32 "has become so hallowed as to be deserving of respect and the words of Lord Abinger "It deserves to have all the reverence of the law:." This rule of guidance is to be found in illustration (b) to S. 114 of the Evidence Act which is as follows:

"The Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars."

22. The word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP 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"

23. In D.P.P. 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 lesser extent by the other statements or circumstances with which it fits in."

24. In R. V. Baskerville(supra), 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 a 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 Act, 1907, 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 convicts the prisoner, this Court will not quash the conviction merely upon the ground that the testimony of the accomplice was uncorroborated."

25. In Rameshwar v. State of Rajasthan (AIR 1952 SC 54), Bose, J., after referring to the rule laid down in Baskerville case 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 cases it 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 particular 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 case 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 necessarily vary with circumstances of each case and also according to the particular the offence charged. But to this extent the rules are clear.

26. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Readings 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.'

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

28. 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 identify must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there would 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."

29. 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.

30. 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". [See: M.O. Shamsudhin v. State of Kerala (1995 (3) SCC 351)]

31. The above position was highlighted in K. Hashim v. State of Tamil Nadu [2005(1) SCC 237].

32. Accused Lalit Sanga in his evidence has given the sequence of events which led to the murder of Gayatri Devi and he has also deposed as to how a conspiracy was hatched up and how the conspiracy was executed with the help of other accused persons and how Gayatri Devi was stabbed by Laxmi Paswan on the instigation and active participation of accused Lalu Ram. It has been stated on behalf of the accused-appellant that this witness did not give the name of the boy, who came to call him nor he gave the number of auto rickshaw and the place, where other associates were standing. Though all these points are not material but the evidence of PW-6 stands corroborated when doctor found injury on the body of Gayatri Devi and further that abrasions were also found on the cheek and neck when accused-appellant pressed the mouth of Gayatri Devi so that she may not raise alarm and further that money was looted and part of looted money was recovered from the possession of Laxmi Paswan on the basis of his confessional statement. Although this fact has occurred prior to arrest of PW-6, but with the evidence of PW-6 all these facts corroborate the evidence of PW-6 because he was not knowing all these facts and with his evidence all these facts stand corroborated and, therefore, there is complete corroboration of the evidence of PW-6 and there is no ground for disbelieving the evidence of PW-6 and therefore on the basis of the evidence of PW-6 accused-appellant and co-accused Lalu Ram were found guilty and they were involved in the abduction as well as in the occurrence under Section 396 IPC.

33. We shall now deal with the question relating to the pardon.

34. So far as pardon portion of the order of CJM is concerned, that has not been set aside and the proceeding relating to other portion has been set aside by which Lalit Sanga was examined but he was not cross examined nor his statement was recorded in presence of the accused and so the trial court below, after remand of the case completed this part of the order and Lalit Sanga was examined in presence of the

accused and he was also cross examined and thereafter case was committed to the Court of Sessions, and therefore, there was complete compliance of Section 306 Cr.P.C. The stage of examining the approver comes only after he has been granted pardon and after pardon he was examined as a witness in presence of the accused and also he was cross examined. So there is no illegality in the order and in the procedure adopted by the learned CJM after remand of the case.

35. In view of the factual position and the legal principles set out above the inevitable conclusion is that the appeals are sans merit and deserve to be dismissed which we direct.