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Court : Allahabad

Decided On : May-12-1926

Reported in : AIR1926All705

Appellant : Partab Singh and ors.

Respondent : Emperor

Judgement :

1. In substance this appeal succeeds upon a well-known rule of law, or perhaps it would be more accurate to say a rule of practice, from which we find ourselves unable to depart. We shall probably be doing no injustice to any of the appellants if we say with regard to those, who as the result of our judgment, will step out of the Court as free citizens, that they have had a narrow escape, and that probably some, if not all of them, were in the undoubted combination of the biradari which wreaked their vengance upon this woman, her lover and his son. In one sense the result may be regarded as a miscarriage of justice. In another sense it may be said to be the result of an immemorial tradition or custom, law-less but not unintelligible, in a village community where a husband and a son are disgraced by the conduct of a faithless and reckless woman, and it is possibly one of the fundamental difficulties in all such cases in India, and that is why there is not some independent evidence forthcoming, as there must undoubtedly be in existence in the village, in support of the story, or a portion of the story told by the approver. But we have as has so often been said by us sitting here in a Court of appeal, not merely to apply the law in the case with which we are called upon to deal but to

consider the example to be set and the implications arising from the law which we apply in future cases which may arise, of difficulty, which have to be dealt with by other Courts, and possibly by Courts of less experience than ourselves.

2. There is no doubt about the law. There is no statutory prohibition against accepting the evidence of an approver who has confessedly a shameless lawbreaker and who is prepared to purchase his own freedom by adding to his previous crimes one of the meanest acts a man can be capable of, and condemning to death another person upon his uncorroborated testimony. But for excellent reasons, which it would be wearisome to repeat, and from time immemorial both in India and in England upon which it would be idle to enlarge, Judges have warned themselves, and juries have been solemnly warned, that it is extremely dangerous, especially where such evidence, when examined, 'is obviously open to the criticism from the point of view of possible mistake, or intentional concealment, or misrepresentation. In another branch of the same subject, it has been recognized with the same consistency, that the confession of a criminal who has confessed his guilt, in so far as it implicates other persons besides himself, must be treated as very little, if at all, superior in value to that of an accomplice who has received a pardon, and therefore, where the Court has a witness belonging to each of these classes, the question necessarily arises, as a matter of logic, whether, unless both these witnesses survive, every test which can reasonably, and ought properly to be applied to witnesses, so that in the result one can say with confidence that neither of them has swerved in substance from the truth, the problem remains the same or whether as has been said in more than one decided case, tainted evidence is made better in quality by being doubled in quantity. That is the position here, and it cannot be denied, and really the Government advocate did not attempt to deny it, that whereas there is none except motive, which is not corroboration, which one can add from an independent source to the evidence of these two persons, on the other hand when their various statements are contrasted there are matters of substance as well as matters of detail upon which they vary and a Court scrupulously applying the rule, to which we have referred, and to which Courts are enjoined to apply in such cases, cannot fail to ask itself whether there is not the possibility, if one of the tainted witnesses has made a mistake about a substantial fact, he may not also have made a

mistake about the identity, or presence, of one of the accused. There are indications in the judgment that the learned Judge was conscious, more than once, of the pressure of this rule upon the mental process through which he passed before he arrived at his ultimate conclusion. The only explanation is that he shrank from the consequence of applying the rule in all its vigour. We feel no such compunction, and, therefore, we have no alternative, holding as we do, that with one exception there is no corroboration from an independent source outside these two witnesses with regard to any of the appellants, that is to say, all the appellants except Mohar Singh, and that we must, therefore, allow their appeal.

3. We ought to add that the Government Advocate agrees, as he was bound to do, that there was a special reason for applying the rule in the case. The first of the two men to whom we have referred, namely, Mohar Singh, who confessed and then retracted, made his confession after remaining in police custody for quite a substantial period, something like 48 hours, but obviously kept back a portion of the truth. No investigating officer could possibly be satisfied that confession disclosed the whole truth even though it was true to quote the learned Judge's expression as far as it went, and the fact that after an interval of another 48 hours or so, one of the persons, implicated by the unsatisfactory confession, followed it by a confession, which must have been regarded as far more satisfactory, and that this double process came from the said source namely the investigating officer, makes one feel a little sceptical about the inducements which had been held out to procure the second confession, and whether the details were entirely in accordance with the truth, and not, as Mr. Carleton said in his argument, to some extent the work of imagination or persuasion.

4. In regard to Mohar Singh, the case presents no difficulty. It is quite true that in detail his story does not correspond entirely with Bindraban. But so far as his own share in the crime is concerned, that is quite a subordinate consideration. Whether one looks at it from the point of view of common sense, and reasonable inferences from evidence which must be accepted as true or whether one looks at it from the point of view of the strict application of the rule to which we have referred, the result is the same. In Mohan Singh's case the evidence of the approver against him is certainly corroborated by something more, as Mr. Majid Ali agreed, than an

independent source, namely the source most unlikely to be provided unless guilt were there, and as regards Mohar Singh it is impossible to say that the evidence of the approver is not fully supported as required by Jaw. As a matter of fact, there is the weighty circumstance that in this case the motive likely to influence Mohar Singh was as strong as such a motive could be to anybody. The result is that we allow the appeals of Pratab Singh, Kidar Singh, Charan Singh, Karan Singh, Dal Singh, Dip Singh Jila Singh, Balwant Singh, Cheta alias Chunni and Shib Singh.

5. With regard to Mohar Singh, we dismiss his appeal, confirm the conviction and sentence and direct that the latter be carried out according to law.

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