

Bachcha Babu and ors. Vs. Emperor

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Court : Allahabad

Decided On : Nov-26-1934

Reported in : 155Ind.Cas.369

Judge : Harris and ;Rachhpal Singh, JJ.

Appellant : Bachcha Babu and ors.

Respondent : Emperor

Judgement :

1. In this case which has been referred to as the Agra Conspiracy Case all six appellants were charged with conspiracy, the charge being that between February 1931 and August 1932 at Agra, they jointly and severally agreed and conspired together with one another and with Dau Dayal, who is absconding, and also with Uma Shankar, Ram Nath and Vishwa Nath, approvers, and with other persons known or unknown and not before the Court, to do or cause to be done jointly and severally illegal acts, the illegal acts being to collect and possess firearms and ammunition and explosive substances, to commit attempts to murder, to commit dacoities and extortion which are offences under the Arms Act, the Explosive Substances Act, and the Penal Code. In the charge it was further alleged that in pursuance of the aforesaid conspiracy: (a) a revolver and an automatic, pistol were stolen on February 19, 1931, and July 13, 1931, respectively; (b) a dacoity was committed in the godown of Manohar Bhagat Dhyani Ram on March 14, 1932, in which firearms were used and a man was hurt; (c) another dacoity was

committed on July 13, 1932, in the godown of one Jamna Das in which a man was killed; (d) an attempt was made on the life of S.O.I., Chatta, on April 1, 1932, by throwing a bomb behind his quarters; and (e) another attempt was made on the life of Anandi Lal on April 6, 1932, by placing a bomb at his house in Agra for the purposes of extorting money from him.

2. The appellant Bachcha Babu alias Kamta Prasad (hereinafter referred to as Bachcha Babu) was further charged: (1) That he abetted the commission of a dacoity before referred to at the house of Manohar Bhagat Dhyam Ram on March 14, 1932, in which one Gulzari Khan received a bullet injury, the abetment being supplying arms to the dacoits which were used in the dacoity and subsequently recovered from his house contrary to Section 395-397, Penal Code, read with Section 109, Penal Code (2) That he abetted the commission of a dacoity at the godown of Jamna Das on July 13, 1932, in which one Durga was killed by a revolver bullet, the abetment being supplying arms to the dacoits which were used in the dacoity and which were later recovered from his house contrary to Section 395-396, Penal Code, read with Section 109, Penal Code. (3) That on August 5, 1932, he was found in possession of a large number of weapons and arms which were recovered from a secret place in his house contrary to Section 20, Arms Act. (4). That on August 5, 1932, he was found in possession of two bottles containing picric acid and ammonia which are ingredients of a highly explosive nature under circumstances which raised a reasonable suspicion that they were not being kept for a lawful object contrary to Section 5, Explosive Substances Act. (5) That on August 5, 1932, he was found in possession of a pistol and a revolver which weapons had been stolen, well knowing that the same had been stolen or having reasonable grounds to believe that the same had been stolen contrary to Section 411, Penal Code.

3. The appellant Umrao Singh alias Nepali (hereinafter referred to as Nepali) was further charged: (1) That on April 1, 1932, at the Police Station, Chatta, in Agra City, he threw a bomb in a compound behind the said Police Station with intent to cause an explosion calculated to cause danger to human life or serious injury to property contrary to Section 4(a), Explosive Substances Act. (2) That on July 13, 1932, he committed a dacoity in the godown of Jamna Das in which one Durga

was killed by a shot fired by him.

4. The appellant, Rishi Nath was further charged that he on June 19, 1931, was found in possession of explosive substances in his shop in Kinar Bazar, Agra, which articles exploded and caused injury to his hand and that he was in possession of such articles under circumstances that raised a suspicion that they were not being kept for a lawful purpose contrary to Section 5, Explosive Substances Act. The appellant, Ram Singh was further charged that, on July 13, 1931, in the house of his uncle Hakim Gyan Singh he stole a revolver belonging to Duviye Singh who was staying there as a guest contrary to Section 380, Penal Code.

5. The appellant, Bengali Mal was further charged: (1) That on March 14, 1932, he committed dacoity in the godown of Manohar Bhagat Dhyan Ram during which deadly weapons were used and Gulzari Khan received a bullet injury contrary to Section 395-397. Penal Code. (2) That on April 1, 1932, at Police Station, Chatta, he threw a bomb in a compound at the rear of the said Police Station with intent to cause an explosion and thereby endanger human life and property contrary to Section 4(a), Explosive Substances Act. (3) That on April 6, 1932, he abetted the commission of an offence of extortion by supplying v. typewriter upon which a threatening letter was typed and which was placed along with a bomb at the house of one Anandi Lal contrary to Section 387, Penal Code read with Section 109, Penal Code.

6. The appellant, Jwala, was further charged that on March 14, 1932, he committed dacoity at the godown of Manohar Bhagat Dhyan Ram in which dacoity he was armed with deadly weapons and in which Gulzari Khan received a bullet wound. Before the learned Sessions Judge the appellants pleaded not guilty to all the charges. The appellant, Bachcha Babu was convicted on all the charges and sentenced to death under Section 120-B, Penal Code, read with Section 395-39K, Penal Code. On the charge under Section 20, Arms Act, he was sentenced to seven years' rigorous imprisonment, on the charge under Section 5, Explosive Substances Act, to five years' rigorous imprisonment and on the charge under Section 411, Penal Code, to three years' rigorous imprisonment; the sentences to

run concurrently. As he was convicted and sentenced for conspiracy, no separate sentences were imposed in respect of the charges of abetment of dacoities although he was found guilty and convicted in respect of each of the abetments.

7. The appellant, Nepali, was found guilty on all the charges and sentenced to death on the charge under Section 120-B, Penal Code, read with Section 395-396, Penal Code. He was also convicted and sentenced to death on the charge under Section 395-396, Penal Code. On the charge under Section 4(a), Explosive Substances Act, he was sentenced to seven years' rigorous imprisonment. The appellant, Rishi Nath was convicted on the charge of conspiracy contrary to Section 120-B, Penal Code, read with the other sections mentioned in the charge and sentenced to ten years' rigorous imprisonment. On the charge under Section 5, Explosive Substances Act, he was found not guilty and acquitted.

8. The appellant, Ram Singh, was convicted of conspiracy under Section 120-B, Penal Code, read with the other sections mentioned in the charge and sentenced to seven years' rigorous imprisonment. On the charge under Section 380, Penal Code, he was convicted and sentenced to one year's rigorous imprisonment; the sentences to run concurrently. The appellant, Bengali Mal, was convicted of conspiracy under Section 120-B, Penal Code, read with the other sections mentioned in the charge and sentenced to seven years' rigorous imprisonment. On the charge under Section 395-397, Penal Code, he was convicted and sentenced to seven years' rigorous imprisonment and on the charge under Section 4(a), Explosive Substances Act, he was convicted and sentenced to seven years' rigorous imprisonment; the sentences to run concurrently. On the charge under Section 387, Penal Code, read with Section 109, Penal Code, he was convicted, but no separate sentence was given. The appellant, Jwala, was convicted on the charge of conspiracy and sentenced to ten years' rigorous imprisonment and on the charge under Section 395-397, Penal Code, he was convicted and sentenced to ten years' rigorous imprisonment; these sentences to run concurrently. Against all these convictions the six appellants have preferred an appeal to this Court .

9. The case has proved to be a long and complicated one. In the Sessions Court 114 witnesses were called for the prosecution and the evidence of four other

witnesses admitted. For the defence no less than 85 witnesses were examined and the evidence and arguments lasted, so we are told, 48 days. 253 exhibits were produced and proved before the Court. Before us the case has been argued on both sides with great force and we should like to express our appreciation of the ability and exemplary fairness displayed by all Counsel concerned. The appeal was a long and difficult one, but throughout we have received the greatest possible assistance from all Counsel in the fullest and frankest manner. The case for the prosecution was that Bachcha Babu was a dangerous revolutionary and that he together with the appellants and others had formed a conspiracy to promote revolutionary ideas and to assist in overthrowing the Government by force. Funds, however, were lacking for these unlawful purposes and it is alleged that these persons subsequently conspired together to steal arms and ammunition and by means of them commit armed dacoities for the purposes of obtaining money to carry out the above-mentioned revolutionary objects. Another method employed to obtain money, it is suggested, was extortion and in carrying out these various methods it is alleged that firearms and explosive substances were freely used and that in one case a person was seriously injured and in the other case actually murdered.

10. The existence of such a conspiracy, it is stated, had been suspected for sometime and the Police acting on information in their possession, raided the house of Bachcha Babu on August 5, 1932. Two previous searches of this house had been made, but nothing incriminating had been found, but on this last occasion there was found cunningly concealed in a space between a false and the real ceiling of the latrine a pistol, four revolvers, four knives, ammunition in a packet, percussion caps, a hilt of a knife or dagger with a broken piece of blade attached and two bottles. In other parts of the premises were found an air pistol concealed in some bedding, a large bottle containing liquid, pieces of glass, two torches, a bullet and a picture pierced with holes alleged to have been caused by target practice with an air pistol. The bottles were subsequently found to contain picric acid and ammonia, substances which when mixed together form a highly explosive mixture and is frequently used for the purpose of making bombs.

11. On the premises Mere found Bachcha Babu, Vishwa Nath, who subsequently became an approved, and one Sarju Prasad. These persons were immediately arrested and taken to the Kotwali and, according to the prosecution Vishwa Nath evinced an immediate desire to confess and there and then made a statement to the Police. Presumably in consequence of that statement Rishi Nath, Ram Singh and Uma Shankar were arrested the same day and in the evening about 9 P.M. Uma Shankar also made a statement to the Police. On August 7, 1932, Bengali Mai was arrested and on August 19, 1932, Ram Nath, who later became an approved, was arrested in his own house at Agra and made a statement to the Police the moment he arrived at the Kotwali. On October 4, 1932, Nepali was arrested at Bhaian, his native village, and on November 16, 1932, Jwala was arrested at Bhind in Gwalior State. Sarju Prasad, though arrested in Bachcha Babu's house, was only detained three days and then released presumably for want of evidence. Uma Shankar, Yishwa Nath and Ram Nath having each expressed a desire to confess were placed before a Magistrate and their confessions were recorded on August 7, 8 and 27, respectively. It is to be noted, however, that Uma Shankar did not complete his confession on the August 7, owing, it is alleged, to the fact that he was too tired, but it was completed on the following day.

12. These confessions, it is suggested, made it clear that a conspiracy, as alleged, did in fact, exist. These confessing accused referred to a number of crimes which up to that time had never been satisfactorily cleared up and consequently investigation was continued with the greatest vigour. As stated previously, arrests were made and the facts relating to theses previous undetected crimes were thoroughly inquired into. These crimes Were: (1) The theft of a revolver from the house of Mr. Kehri Singh, Vakil at Agra, on February 19, 1931. Investigation showed that this revolver was amongst the weapons found at Bachcha Babu's house on the raid of August 5, 1932. (1) The theft of a revolver from the house of Hakim Gyan Singh on July 13, 1931. Investigation showed that this revolver was amongst the weapons recovered from Bachcha Babu's house. (3) On March 14, 1932, a dacoity had taken place in the godown of Manohar Bhagat Dhyan Ram in Gali Bara Bhai, Agra In this dacoity which was unsuccessful five or six dacoits participated and a number of shots were fired, one wounding Gulzari Khan

Chaukidar in the left thigh. Bullets and cartridges were recovered from the scene of this dacoity and it is alleged that later investigation showed that these bullets and cartridges were fired from one of the revolvers found in Bachcha Babu's house. (4) On April 1, 1932, a bomb was thrown at the rear of the Police Station, Chatta, in the city of Agra. Explosive materials found on the premises of Bachcha Babu, it was suggested, might well have been used to make such a bomb. (5) On April 6, 1932, a bomb together with a threatening letter was placed in the house of one Anandi Lal. According to the Police, investigation showed that the letter which was typed, had been typed upon a typewriter belonging to Bengali Mal's father and to which Bengali Mal had access. (6) On July 13, 1932, a serious dacoity had taken place at the godown of Jamna Das in Gali Bara Bhai, Agra, in which Durga Prasad was killed.

13. In this dacoity firearms were used and bullets and cartridges found on the scene afterwards. It is alleged by the Police that investigation showed that these bullets and cartridges had been fired from a revolver which was recovered from Bachcha Babu's house during the raid.

14. As a result of these investigations into these various crimes and the approver's statements, the Police were satisfied that these were not isolated crimes, but must have been committed in pursuance of an agreement or conspiracy and consequently a charge of conspiracy under Section 120-B, Penal Code, was launched against the appellants who, with others, had been implicated by the confessing accused who later became approvers. In the event of the failure to prove this charge of conspiracy, the charges' indicated previously were brought against the individual appellants in respect of the various crimes in which, it is alleged, they had participated. To establish a charge of criminal, conspiracy the prosecution must prove an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means provided that where the agreement is other than one to commit an offence, the prosecution must go further and prove that some act besides the agreement was done by one or more of the parties in pursuance of it. Where the agreement therefore is one to do or cause to be done an act which is itself an offence, no overt act, i.e., any act done by one of the parties to the agreement in pursuance of

it, need be proved; the crime of criminal conspiracy is established once such an agreement is proved.

15. In the present case the conspiracy alleged is one to commit a series of serious crimes and therefore mere proof of such an agreement between the appellants is sufficient to sustain a conviction. Proof of overt acts committed by the appellants or any of them is not strictly necessary on this charge, but needless to say proof that the appellants or some of them were concerned in the overt acts alleged would go far to establish that the agreement alleged was in fact made between them. Though proof of overt acts is not necessary in this case yet it may well be that if such acts are proved, the Court will be bound to infer that they are not unconnected and isolated acts, but acts which must have been committed in pursuance of an agreement made between the appellants such as that alleged.

16. To prove the case of conspiracy against the appellants the prosecution relied in the main upon the evidence of the three accomplices Vishwa Nath, P.W. No. 2, Ram Nath, P.W. No. 3 and Uma Shankar, P.W. No. 4, who became approvers in the case. There is no rule of law in India which prevents a Court convicting on the sole evidence of an approver, but adopting the practice which has for many years been followed in England no Court in this country will convict an accused person upon such evidence unless it is corroborated by some independent testimony. The reasons for this very salutary rule of English practice were given in the judgment of the Court in well known case of *Rex v. Baskerville* (1916) 2 K.B 658 : 86 L.J.K.B. 28 : 80 J. P416 : 60 S.J. 696 : 115 L.T. 453, and these reasons apply in our judgment with equal, if not greater, force to the conditions existing in India. The necessity for corroboration of the evidence of an approver has been emphasised time and again in recent Indian decisions and this rule of practice has now become in India, though possibly not in England, as binding upon the Courts as a rule of law. Such a rule is particularly necessary in cases of conspiracy to commit crimes where the crime of criminal conspiracy is established the moment an agreement between the accused persons to commit such crimes is proved. Evidence of a mere agreement can easily be concocted or manufactured, hence the need of independent testimony by way of corroboration is manifestly essential.

17. In *Rex v. Baskerville* (1916) 2 K.B 658 : 86 L.J.K.B. 28 : 80 J. P416 : 60 S.J. 696 : 115 L.T. 453, previously cited the Court of Criminal Appeal in England considered what evidence could and could not properly be regarded as corroboration. In that case which has been followed and approved many times by this and other Courts in India, it was laid down that evidence in corroboration must be independent testimony connecting or tending to connect the accused with the crime. To amount to corroboration the evidence must implicate the accused, i.e., it must confirm in some material particular not only the accomplice or approver's evidence that the crime has been committed, but also that the accused committed it. The corroborative evidence need not shew positively that the accused; committed the crime; it is sufficient if it is merely circumstantial connecting him with the crime. It must be evidence which shews or tends to shew that the approver's evidence implicating the accused is true; it must be independent testimony on a material particular or material particulars demonstrating to the Court the truth of the approver's evidence implicating the accused. Evidence to amount to corroboration must be independent testimony and therefore the evidence of one approver cannot amount to corroboration of the evidence of another. The fact that a witness is an approver creates a suspicion in the mind of the Court and that suspicion cannot be removed by merely calling another approver. To hold that one approver could corroborate another would result in wiping out the salutary rule that independent testimony is required by way of corroboration of such evidence and this indeed has been conceded by the Crown in this case. The Government Advocate with his customary frankness admitted that he could not ask us to convict the appellants unless the evidence of these three approvers was corroborated by other witnesses who were not themselves in the alleged conspiracy. In the present case, therefore, the Court cannot convict upon the charge of conspiracy or any of the other charges upon the evidence of the three approvers unless there is independent testimony on a material particular or material particulars which, in our judgment, shews that the approvers' evidence implicating the accused in the conspiracy or in the other crimes charged against them is true.

18. It was contended, however, by the prosecution that there was in this case ample independent testimony of the character previously indicated which clearly

shewed that the approvers were speaking the truth when implicating the accused in the various crimes with which they were charged. With these considerations in mind it will now be convenient to consider in some detail the various classes of evidence adduced by the prosecution to establish their case.

19. Before discussing the evidence of each individual approver it will be convenient at this stage to make some general observations upon the evidence of the three of them. All three showed a most extraordinary and immediate desire to confess, and it is difficult to believe that such a desire was genuine. Vishwa Nath, who was arrested at Bachcha Babu's house in the raid on August 5, 1932, made a statement that very evening to the Police, and although the terms of that statement were not before us, we can safely presume that it was in the nature of a confession because he was placed before a Magistrate on August 8, and his confession recorded. Uma Shankar was arrested later in the day on August 5, 1932, and likewise made a statement that very evening. His confession was recorded on August 7 and 8. So it will be seen that within three days of the raid which gave rise to this charge of conspiracy, two of the accused had actually confessed before a Magistrate.

20. Ram Nath was not arrested until August 19, but he admitted that he made a statement the moment he arrived at the Kotwali, and on August 24, his confession was recorded by a Magistrate. Further it is admitted that in the entry in the jail register these three persons were from the first described as approvers, and no satisfactory explanation has ever been forthcoming as to how this entry came to be made. It would appear that from the very outset these persons were to be regarded as approvers and therefore it has been suggested on behalf of the defence that these three persons were tools of the Police and were nothing more than Police spies. Again from the outset these three approvers were treated differently from the other co-accused. In evidence they admitted that they never wore fetters as the others did, and the learned Magistrate who committed the appellants, noted at the request of their Counsel that the approvers appeared in Court well dressed and well groomed and in a condition very different from the other appellants. According to the note, Uma Shankar was actually wearing a flower in his coat whilst the other accused were wearing fetters. This undoubted

preferential treatment causes grave suspicion in our minds, and though the defence have not satisfied us that these approvers were nothing more than spies or informers, the prosecution have themselves to blame for such a suggestion being made by Counsel on behalf of the appellants. We must express our disapproval of such conduct on the part of the prosecution.

21. Further it is on the record that the warrant for the arrest of Ram Nath was actually issued on August 11, 1932; whereas he was not arrested until August 19, when the arrest took place at his house in the outskirts of the city of Agra. Ram Nath explains this failure to execute the warrant by saying that he had after the raid fled from his home to Neemuch. In cross examination, however, he could not say with whom he had stayed or whether his alleged host was a relative of a friend of his or not. In short, he could give no explanation of his stay at Neemuch, and we cannot accept his statement that he ever stayed at Neemuch or in fact ever left his home. It follows therefore that the failure to execute the warrant and to arrest Ram Nath until August 19, is wholly unexplained, and this delay and the overwhelming desire to confess the moment he arrived at the Kotwali raises in our minds most serious doubts as to the voluntary nature and genuineness of this confession. If Ram Nath, who had been implicated by Uma Shankar, had not left Agra, the Police could have arrested him immediately. The fact that he was not arrested suggests that he was being used for some purpose.

22. Again all three approvers give the same reason for confessing, namely, a desire to speak the truth and to expiate their sins, an explanation which we find impossible to believe in the circumstances of this case. There is another extraordinary feature in these confessions which is obvious to any one on a most cursory reading of them. In each case the general scheme and order of the confession is the same. Each begins with the history of his childhood, boyhood and early education. Each then goes on to describe how he became interested in politics and how later he became involved in revolutionary politics. Then follows an account of his introduction to Bachcha Babu and then a full account of the part which he and others played in the conspiracy. How three young men with only very ordinary education came independently of each other to make detailed confessions in precisely the same manner following exactly the same order is

difficult to understand. The similarity in the general scheme and order of these confessions is amazing, and we cannot believe that it is a mere coincidence. In our view there was a mind guiding the minds of these three confessing accused and that the general scheme and order of facts adopted by each emanated from that guiding mind and not from the minds of the approvers. No suggestion has been made against the learned Magistrate who recorded all three confessions, and therefore in our view the inference is irresistible that the approvers were carefully coached by some one before they were taken before the Magistrate.

23. A comparison between the confession of Uma Shankar and that of Ram Nath discloses further disquieting features. The gaps left by Uma Shankar appear to have been carefully closed up by Ram Nath whose confession was recorded some three weeks later. But it will be more convenient to discuss these features when dealing with the evidence of each individual approver. (After dealing with their evidence in turn, his Lordship proceeded). From the foregoing summary of the evidence of the three approvers it will be seen that all three deposed to a conspiracy as alleged by the prosecution and that Bachcha Babu was the leader of it, Uma Shankar and Ram Nath further deposed that the appellants Nepali, Rishi Nath, Bengali Mal and Ram Singh were members of this conspiracy and Uma Shankar further stated that Jwala was also in the conspiracy. All three deposed to the fact that Bachcha Babu kept arms, ammunition and explosive substances on his premises and that such were kept for the purpose of dacoities and terrorism. Uma Shankar and Rishi Nath make it clear that it was Bachcha Babu who engineered and provided arms for these dacoities.

24. Uma Shankar and Ram Nath implicate Nepali, Rishi Nath Bengali Mal and Ram Singh in the dacoity of July 13, 1932, at the godown of Jamna Das. Both also implicate Nepali and Bengali Mal in the bomb incident at Chatta thana though neither were concerned in the affair. They deposed that they were told of the incident by Bachcha Babu and other members of the conspiracy. They also implicated Ram Singh in the theft of the pistol from the house of his uncle Hakim Gyan Singh whilst Uma Shankar deposed further to the fact that it was Bachcha Babu who arranged for the placing of the bomb at Anandi Lal's house and actually handed the bomb and the typewritten letter to Dau Dayal who placed it there. Uma

Shankar further stated that the letter had been typed by or with the assistance of Bengali Mal.

25. Objection was taken by Counsel for the appellants to the admissibility of the statements made to the approvers by one appellant implicating the others. In certain circumstances such statements might be admissible by reason of Section 10, Evidence Act. Having regard, however, to the view which we take of the evidence regarding the alleged conspiracy in this case it is unnecessary for us to decide whether such evidence is or is not admissible.

26. Apart from the evidence of the approvers, the prosecution called a large number of witnesses to establish either directly or by way of corroboration of the approvers' evidence, the guilt of the appellants. It was contended on behalf of the Crown that this evidence taken by itself or together with the approvers' testimony showed that there was a conspiracy as alleged and that the appellants were parties to it, and further that the individual appellants were guilty of the crimes specifically charged against them. The object of this evidence was to show that the various criminal acts alleged were not isolated acts independent, of each other but were so linked up one with the other as to give rise to an irresistible inference that they were committed by persons acting together in furtherance of a common intention and object. In short, that there were common factors in all these criminal acts and that such common factors proved the complicity of Bachcha Babu in each of them, and the other appellants in some, if not all of them.

27. It is, therefore, necessary to consider this evidence in some detail to ascertain when it establishes the guilt of the appellants independently of the approvers' evidence or, if it does not, whether it is sufficient corroboration of the approvers' testimony to warrant a Court acting upon the latter. (After examining the evidence of some of the witnesses his Lordship proceeded). Mr. Scott also gave evidence with a view to showing that the letter found with bomb at Anandi Lal's house on April 6, 1932, was typed on a typewriting machine proved to have been in the possession of Bengali Mal's father and to which Bengali Mal had access. Evidence of this kind cannot be regarded as expert evidence as it has been laid down in the well known Meerut Conspiracy case: *Jhabwala v. Emperor* : AIR1933 All690 , that

the opinion of an expert that one document has been type-written on the same machine as another document is not admissible under Section 45, Evidence Act.

28. The Court may ask the witness points in favour of the view whether the two documents have or have not been type written on the same machine, but must come to its own conclusion and not treat such assistance as an expert opinion a relevant fact in itself. We called for and saw the original letter placed with the bomb and letters admittedly typed on this type writing machine. Further we caused various letters of the alphabet to be typed in our presence on this machine and examined and compared them with the letter placed with the bomb. Again we found similarities and differences and we are not satisfied that the incriminating letter was typed on the type-writing machine proved to have been in possession of Bengali Mai's father. In any event even if the letter had been typed on this type-writer the prosecution would still have to prove that either Bengali Mal typed or caused it to be typed or permitted the use of the machine. There is no evidence of any kind before us suggesting either of these alternatives.

29. Mr. B.N. Pal, P.W. No. 98, an authority on explosives was called to prove that substances said to have been found near the Chatta Thana after the explosion were fragments of an explosive bomb and that picric acid and ammonia mixed together form a highly explosive substance. Even if this evidence is accepted, it proves nothing, for it in no way connects Bachcha Babu or any other of the appellants with the actual bomb which was thrown at the rear of the Chatta Thana. Bachcha Babu may have kept ammonia and picric acid for the purpose of making bombs, but it in no way proves that the actual bomb which exploded at the Chatta Thana was made by Bachcha Babu or out of materials in Bachcha Babu's possession.

30. Upon the evidence already discussed other than that of the approvers, we are satisfied that arms, ammunition and explosive substances were found at Bachcha Babu's house and that they had been secreted there by Bachcha Babu for some unlawful purpose. We are further satisfied that two of the weapons found on the premises were weapons which had been stolen from the houses of Kehri Singh and Hakim Gyan Singh and that Bachcha Babu either knew that they had been

stolen or had good grounds for believing that they had been stolen. We are not satisfied, however, that Bachcha Babu instigated the thefts of these revolvers or that they were stolen in pursuance of any conspiracy, Though the mode of concealment convinces us that these weapons, ammunition and explosives were intended for some unlawful purpose; the evidence does not satisfy us that there was any connection between these arms, ammunition and explosives and the two dacoities and the bomb incidents at the Chatta Thana and the house of Anandi Lal.

31. In short, the evidence already discussed other than that of (he approvers, does not; of itself prove a conspiracy in which Bachcha Babu was the central figure and further affords no corroboration of the approvers' evidence that such a conspiracy existed. This evidence does not establish, any common factors between the arms, ammunition and explosive substances found at Bachcha Babu's house and the various criminal offences which it is alleged are the overt acts of this conspiracy.

32. A large number of witnesses were also called with regard to the various overt or criminal acts alleged. These were called with a view to proving the factum of each particular overt or criminal act and to identify the persons concerned in the commission of such act. It was the submission of the prosecution that this evidence also showed that these acts were the result of a conspiracy, as a number of the appellants were identified as taking part in the various crimes and that in each crime a connection with Bachcha Babu was established. This according to the prosecution went beyond the realm of coincidence and permitted of only one inference, namely, that Bachcha Babu and the appellants were acting together with a common intention and object and that these crimes were committed in pursuance, of such common intention or object. Further this evidence was also tendered to prove the guilt of the individual appellants in respect of the specific crimes which were charged against them.

33. Again it is necessary to examine this evidence to ascertain whether it establishes a conspiracy and the participation of the various appellants in it and in the overt acts alleged to have been committed in pursuance of it, or if it does not, whether it amounts to sufficient corroboration of the approvers' evidence to sustain

a conviction for conspiracy or for any of the other crimes charged against the appellants. This class of evidence is concerned in the main with three incidents: (a) the unsuccessful dacoity at the house of Manorath Bhagat Dhyan Ram on March 11, 1932; (b) the bomb explosion at the Chatta Thana on April 1932; and (c) the dacoity attended with murder at the godown of Jumna Das on July 13, 1932. It will be convenient therefore to deal with the evidence with regard to each incident separately to ascertain whether the appellants or any one of them were concerned in each particular crime, (a) Dacoity at house of Manorath Bhagat Dhyan Ram on March 14, 1932.

34. That such a dacoity took place is beyond question and is not challenged by the appellants. The witnesses, Gulzar Khan, P.W. No. 2]. Deo Narain, P.W. No. 10, Schanpal, P.W. No. 20, Inderjit, P.W. No. 33 and Sukhdeo Prasad, P.W.No. 12, prove it beyond doubt. In this dacoity revolvers were fired and Gulzar Khan was hit in the left leg. This witness later identified Jawla as one of the dacoits at an identification parade in Bhind jail. Deo Narain also identified Jwala at Bhind jail and Bengali Mai at an identification parade in Agra jail. The witnesses Sohanlal, Inder Jit and Sukhdeo Prasad failed to identify any one.

35. The identification of Jwala by two witnesses and Bengali Mal by only one witness might, if the identification was satisfactory be sufficient to convict them of the dacoity particularly when they have been both implicated by approvers. An examination of the record, however, shows that these identifications were far from satisfactory. The identification proceedings at Agra were carried out in the presence of Mr, Triloki Nath, a Magistrate of the First Class, and in his report and evidence he stated that Deo Narain, though he identified Bengali Mai correctly, made one mistake identifying one non-suspect. In our judgment it would not be safe to convict Bengali Mai on this evidence alone or upon the approvers' statement corroborated only by such an identification. (After further examining the evidence, the judgment proceeded). There is, therefore, a very serious discrepancy between the statements of the approvers and the evidence of these witnesses which makes it impossible for us to act upon such evidence either by itself or as corroboration of the approvers' testimony.

36. Raghbar, P.W. No. 17, saw the party that night and in jail identified Uma Shankar. He, however, failed to identify him in Court and consequently his evidence is worthless. Sham Lal, P.W. No. 35, deposed to the fact that he spoke to Ram Nath and Rishi Nath late in the evening upon which the dacoity took place. The point at which he met them was a matter of a mile and a half or so from the scene of the dacoity. There appears to be no reason why this witness who knew Rishi Nath and Ram Nath well should have remembered this incident. But even if it took place, it does not in our view amount to corroboration of the approvers' statement. He might well have met these persons at the time he did but even if he did, it does not, in any way corroborate the approvers' statement that Rishi Nath and Ram Nath were present earlier in the evening at the scene of the dacoity a mile and a half away.

37. In our judgment the evidence of these eye-witnesses of the party proceeding to and from the dacoity at Jumna Das's godown is worthless and is neither direct proof that the appellants or any of them were concerned in the dacoity nor corroboration of the approvers' statement. It is evidence that could easily be procured after Ram Nath's confession, and we have no hesitation in rejecting it. In our judgment, therefore, it has not been proved by the prosecution that any of the appellants were concerned in the dacoity in which murder was committed at the godown of Jumna Das on July 13, 1932.

38. No eye-witnesses were produced to identify any persons connected with the placing of the bomb and letter at the house of Anandi Lal on April 6, 1932. That such a bomb and letter was placed there, is abundantly proved by Kastur Chand, P.W. No. 39, Constable Mahandra Singh, P.W. No. 27 and Sub-Inspector, Mohd. Ali Khan, P.W. No. 35. As we have stated previously, we are not satisfied that the letter was typed on to machine owned by Bengali Mal's father to which Bengali Mal had access. Previous letters demanding money by threats had been received by Anandi Lal who had reported the matter to the Police and in this case an attempt was made to connect Bachcha Babu with these letters. Anandi Lal, P.W. No. 37, deposed that after he had received two of the letters, a man stopped his car who he was told was one Tek Chand. The latter asked him if he had received any letters, and on being told that he had warned him that he had better pay as the

letters came from a very dangerous man whom he later named as Bachcha Babu. Anandi Lal never told the Police of this incident, although he had already reported to the Police the receipt of the letters and it is difficult, therefore to believe that this incident ever took place. The learned Sessions Judge accepted this evidence, but in our view even if it were true, it is inadmissible against Bachcha Babu or any of the appellants. It is not alleged by the prosecution that Tek Chand was a conspirator, and therefore we cannot see how anything he said could be evidence against Bachcha Babu or any of the other appellants. In our judgment the prosecution has wholly failed to prove any connection between the appellants and the placing of the bomb at Anandi Lal's house or the letters demanding money by menaces which preceded it.

39. A number of witnesses were called to show that the appellants were frequently seen together during the period it was alleged that the conspiracy existed.

40. Sharif-ud-Din, P.W. No. 101, Mohd. Husain P.W. No. 101 and Shujat Husain, P.W. No. 102, deposed to having seen Bachcha and various members of the alleged conspiracy from time to time in Hewett Park in deep conversation and later identified a number of the appellants in jail. Ladli Prasad already referred to, also, refer to association between Bachcha Babu and some of the other appellants and reference is made also to such association in the evidence of a number of other witnesses. It is unnecessary to consider this evidence in any detail, because in other view it cannot assist the prosecution. It is not denied that the appellants knew each other and they might well have met in the park or elsewhere in the cool evening to converse without being guilty of conspiracy or having any unlawful purpose. Evidence of association to be of any value should suggest something suspicious in such association and no inference one way or another can be drawn from a mere casual meeting or meetings or conversation between the parties in a public place or park where mere acquaintances frequently meet and talk. It is not suggested by any of these witnesses that there was anything suspicious or strange or secret in the way these persons met and spoke. It is true that some witnesses said that Bachcha Babu and his friends in the park stopped their conversation when the witnesses approached, but there is nothing strange in this. There might have been 101 reasons other than the existence of a conspiracy

which would induce Bachcha Babu and his companions to stop conversing whilst these witnesses were within earshot. In any event we find it difficult to believe that these witnesses could remember such incidents particularly when they attached no importance whatsoever to them when they occurred. Evidence of this kind is easily procurable and it is significant that none of these witnesses ever reported anything suspicious in the conduct of Bachcha Babu or any of the appellants until after the raid on August 5, and investigation into this alleged conspiracy had commenced.

41. In our view, therefore, the prosecution have wholly failed to establish the conspiracy alleged by them. The evidence called independent of the approvers proves nothing at all neither does it afford any corroboration of the statement of the approvers. Having regard to the circumstances in which these approvers first confessed and the obvious discrepancies between the confessions themselves and between the confessions and the subsequent evidence which they gave, we are not inclined to give any great weight to their evidence but whatever weight we give to it we cannot act upon it alone in the absence of corroboration. Having regard to the nature of the approvers' evidence it would require very strong and cogent corroboration before, we would regard it as safe to convict these appellants of conspiracy. There is no such strong and cogent evidence by way of corroboration; in fact there is no corroborative evidence worth the name at all. Further, in our view the prosecution have wholly failed to establish that any of the appellants were concerned in the criminal acts charged against them in this case excepting always the charges brought against Bachcha Babu in connection with the possession of arms, ammunition and explosive substances discovered at his house on August 5, 1932.

42. In conclusion, it is necessary for us briefly to consider the case against each appellant.

43. Bachcha Babu.--For the reasons already given the prosecution have failed to prove that Bachcha Babu was guilty of the conspiracy alleged. They have further failed to prove any connection between this appellant and the two dacoities of March 14, 1932, and July 13, 1932. The convictions, therefore, for conspiracy and

abetment of these two dacoities cannot stand. For the reasons already given we are satisfied that the appellant was in unlawful and secret possession of a large quantity of arms, ammunition and explosive substances in circumstances which created offences under Section 20, Arms Act, Section 5, Explosive Substances Act and Section 411, Penal Code. He was, therefore, in our view, properly convicted by the learned Sessions Judge on these charges.

44. In the result we set aside the conviction and sentence of death passed upon this appellant for conspiracy contrary to Section 120 B, Penal Code, read with the other sections mentioned in the charge. We further set aside the convictions on the two charges of abetment of dacoities for which no separate sentences were imposed upon him by the learned Sessions Judge. We, however, uphold the conviction and sentence of seven years' rigorous imprisonment under Section 20, Arms Act, and the conviction and sentence of five years' rigorous imprisonment under Section 5, Explosive Substances Act, and the conviction and sentence of three years' rigorous imprisonment under Section 411 Penal Code. The sentences will run concurrently as directed by the learned. Sessions Judge. To this extent the appeal of Bachcha Babu is allowed.

45. Nepali.--As we are not satisfied that the prosecution have proved the charge of conspiracy, the conviction and sentence of Nepali for conspiracy cannot stand. Further, in our view, it has not been proved that this appellant was concerned in the Chatta Thana bomb incident of April 1, 1932, or the dacoity at Jamna Das's godown on July 13, 1932, and the convictions and sentences in respect of these charges are, therefore, in our judgment not justified. We, therefore, allow the appeal of this appellant and set aside the convictions and sentences of death passed upon him for conspiracy contrary to Section 120-B, Penal Code, read with the other sections mentioned in the charge and for dacoity with murder under Section 395-396, Penal Code, and the conviction and sentence of seven years' rigorous imprisonment under Section 4(a), Explosive Substances Act. We direct that this appellant be set at liberty forthwith unless required by the authorities upon any other charge.

46. Rishi Nath.--As we are not satisfied of the existence of conspiracy, his conviction under Section 120-B, Penal Code, read with the other sections mentioned in the charge is not justified. In his case there is a further reason why he should be acquitted. A body of evidence was called on his behalf which proved beyond doubt that this appellant was not in Agra between about May 20, 1932 and June 20, 1932, yet Ram Nath approver spoke of meeting him on a number of occasions during this period and of introducing him about this time to Bachcha Babu. The learned Sessions Judge accepted this alibi evidence and rightly so, as it appears to us to be convincing, straight forward and truthful. This evidence makes it clear that Ram Nath is either most inaccurate in his testimony or deliberately untruthful. Rishi Nath further called evidence to show that he was away from Agra on the night of July 13, 1932, when the dacoity was committed at Jamna Das's godown. This evidence was rejected by the learned Sessions Judge and it is not necessary for us to discuss it in any detail. But it does raise in our minds very grave doubts about, the accuracy of the approvers' statement that Rishi Nath was connected with the dacoity of July 13, 1932. However it is for the prosecution to prove the case and as the case against Rishi Nath stands entirely upon the evidence of the approvers, his conviction cannot be sustained.

47. We have not discussed the evidence which was tendered to show that this appellant was in unlawful possession of explosives on June 19, 1931, and therefore guilty of an offence under Section 5, Explosive Substances Act. The learned Judge was not satisfied that the undoubted explosion which took place on that day on Rishi Nath's premises was due to explosives. In his view it might have been caused by petrol vapour as alleged by the accused. He, therefore, acquitted the accused upon this charge and, in our view rightly. In our judgment, evidence relating to this incident cannot therefore be need upon the charges of conspiracy. In the result we allow the appeal of this appellant and set aside the conviction and sentence of 10 years' rigorous imprisonment for conspiracy under Section 120-B, Penal Code, read with the other sections mentioned in the charge and direct that he be set at liberty forthwith unless he is required by the authorities upon any other charge.

48. Ram Singh.--This appellant told an obvious lie as to his movements on the night of the dacoity on Jamna Das's premises and a body of evidence was called to prove this. However the fact that an accused person tells a lie is not sufficient to convict him by itself, nor can it be corroboration of the approvers' statement. For the reasons we have already given we are not satisfied that the conspiracy is proved, nor are we satisfied that this appellant was the person who stole the revolver from the house of his uncle Hakim Gayan Singh on July 13, 1931, and therefore the convictions and sentences upon these charges cannot be sustained. We, therefore, allow the appeal of this appellant, set aside the conviction and sentence of seven years' rigorous imprisonment under Section 120-B, Penal Code, read with the other sections mentioned in the charges and the conviction and sentence of one year's imprisonment under Section 380, Penal Code, and direct that this appellant be set at liberty forthwith unless he is required by the authorities upon any other charge.

49. Bengali Mal.--For the reasons stated we are not satisfied that this appellant is guilty of the charge of conspiracy. Nor are we satisfied that he was present at the dacoity of March 14, 1932, at the house of Manohar Bhagat Dhyani Ram. Further, we are not satisfied that he threw or was concerned in the throwing of a bomb at the Chatta Thana on April 1, 1932. For the reasons we have already given we are also not satisfied that this appellant abetted the crime of extortion by providing a typewriter on which the letter to Anandi Lal accompanying the bomb was typed. In the result we allow the appeal of this appellant, set aside the conviction and sentence of seven years' rigorous imprisonment under Section 120-B, Penal Code, read with the other sections mentioned in the charge and the conviction and sentence of seven years' rigorous imprisonment under Section 395-397, Penal Code, and the conviction and sentence of seven years' rigorous imprisonment under Section 4(a), Explosive Substances Act, and the conviction under Section 387, Penal Code, read with Section 109, Penal Code, for which no separate sentence was given as the offence and punishment were merged with the conspiracy and direct that this appellant be set at liberty forthwith unless required by the authorities upon any other charge.

50. Jwala--As we are not satisfied that the prosecution have proved the charge of conspiracy, the conviction of this appellant under Section 120-B, Penal Code, read with the other sections mentioned in the charge cannot be sustained. Further we are not satisfied that this appellant was present at the dacoity which took place at the godown of Manohar Bhagat Dhyan Ram on March 14, 1932, and therefore his conviction for that offence is also not justified. In the result we allow the appeal of this appellant, set aside the conviction and sentence of seven years' rigorous imprisonment under Section 120-B, Penal Code, read with the other sections mentioned in the charge and the conviction and sentence, of seven years' rigorous imprisonment under Section 395-397, Penal Code, and direct that he be set at liberty forthwith unless he is required by the authorities upon any other charge.

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