Sunil Batra, Vs. State

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Court : Delhi

Decided On : Feb-23-1978

Reported in : 1979RLR176

Judge : S. Rangarajan and; R.N. Aggarwal, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 120B; Evidence Act - Sections 27 and 114

Appeal No. : Miscellaneous Reference No. 1 of 1977

Appellant : Sunil Batra, ;vipIn Jaggi, ;ravinder Kapur and ;shahwar Khan

Respondent : State

Advocate for Pet/Ap. : B.L. Kalra,; Ram Jethmalani,; R.K. Gerg,;

Judgement :

S. Rangarajan, J.

(1) On 28.9.70, a Van of Union Bank was carrying cash. It was intercepted by a car allegedly carrying the 4 appellants and H.S. Ahlawalia who later on turned approver. The Van was forced to a nearby secluded place by the occupants of the car. Driver of the Van and gunman of the Bank resisted and were shot. The other 2 occupants of the Van under threats were compelled to transfer 2 cash boxes containing Rs 6 lakhs to the car which which then sped away carrying the loot. The

dacoity was witnessed by a young boy of 17,18 years. The prosecution recovered a substantial part of the loot from the appellants except from Vipin Jaggi. One of the participant in the dacoity turned approver. Trial Court convicted Sunil Batra for causing the deaths of gunman and the driver and for dacoity and senterced him to death. Other 3 appellants were sentenced to imprisonments for life. Appellants appealed to High Court. As facts were in great detail, very long judgment was written. Relevant pantions are :- On the question of identification, it was held on consideration of Yashwant Vs State 1972. U.J. 923 (Sc).; Ramzon V. Emperor AIR 1929 Sind. 149; R. v. Dwyer (1925) 2.K.B.799; Arthurs Vs A.G. (1971) 55 Cr. A.R. 161; Robert William Long (1973) 57 Cr.A.R. 871; Rex Vs Turnbull (1976) 3 All ER. 549; Delhi Adm. V. Balakrishan : 1972 CriLJ1 ; Rameshwar Singh Vs State : 1972 CriLJ15 ; Hasib Vs State : 1972 CriLJ233 ; Mulkh Raj Vs Delhi Adm. : 1974 CriLJ1171 ; In re Sangiah AIR. 1948. Mad. 113, Satya Narain Vs State : AIR1953 All385 , that unjustified refusal to participate in an identification parade may visit the persons who so refused with adverse consequences. Even in cases of poor identification on which it is unsafe to act upon by itself, it can be acted upon Safely when there is supporting evidence. A delicate balance has been reconciling the public interest in social defense and the need to avoid that danger of innocent men being convicted. Correct identification is of utmost importance in Criminal trials. It serves to remind us of the dangers involved and yet, at the same time of the danger of adopting any rigid and pre-conceived approach Value of evidence of witnesses who identify persons previously unknown to them would depend on many factors. Identification is a complex proces whose appreciation needs careful consideration because a sincere witness is also liable to make a genuine mistake. Every witness identified the accused to the extent he could giving some of the physical features about particular culprits and this made their evidence natural.

(2) Public Witness . 35 who had stated during investigation that he had seen accused doing target practice by pistol did not say so in the Court and was declared hostile and appellants claimed him to be untrustworthy. It was held that Sat Pal Vs Delhi Adm. AIR. 1976. S.C. 296 ; Bhagwan Singh Vs State : 1976 CriLJ203 , lay down that there was no legal bar to testimony of a hostile witness being considered if corroborated and hence Shivaji Vs State : 1973 CriLJ1783 did not apply. The witness was not an accessary after-the-fact, He was not a participis

Criminis and was not an accomplice (R. K. Dalmea Vs Delhi Admn. : [1963]1SCR253 . A person who does not disclose knowledge of Commission of an offence does not became accessary after-the-fact per Mahadeo v. King AIR. 1936. P.C. 242 ; State Vs Sri Lal : AIR1960 Pat459 .

(3) That the accused persons during investigation had made various disclosure Statements about discovery of currency notes, the pistol, the car used in the Crime etc. It was held on consideration of Pulukuri Vs Emperor AIR. 1947. P.C. 67; Prabhu Vs State AIR. 1963 S.C. 113; State Vs Deoman AIR. 1960. SC. 125; Deconandon Vs State : 1955 CriLJ1647 ; Wasim Khan Vs State : 1956 CriLJ790 ; Ram Krishan Vs State : 1955 CriLJ196 ; Jaffer Hussain Vs State : 1970 CriLJ1659 ; Balbhir Singh Vs State : 1957 CriLJ481 ; Md. Snayatullah Vs State : 1976 CriLJ481 ; Him. Pra. Adm. Vs Stat : 1972 CriLJ606 Aher Raja Vs State : 1956 CriLJ426 that any.

(4) P.B. Mukharji, J. (as he then was) observed in Bisseswar Poddar v. Nabadwip : AIR1961 Cal300 that 'judicial blindness' has not been imposed in this respect; the court is not 'prevented by law to use its own eyes either in addition to handwriting expert's evidence on the point or even in the absence of such evidence on the point'. When the work of such comparison is described as a 'hazardous and inconclusive' exercise, to be used with 'great care and caution' it is not to be understood as the having been 'forbidden'. Mukherji, J., is only protesting against the requirement of caution being converted into a rule of law, imposing judicial blindness, as it were. The weight to be attached will depend on the skil of the expert. (Halsbury's Laws)

(5) The Judicial Committee was strongly impressed by such comparisons in Mahindra Chandra v. Mahaiuxmi Bank ; it stressed the danger of such comparisons in Kessarbai v. Jethabhai A.I.R. 1928 PC. 277. Hidayatullah, J. (as he then was) compared the writings for the court to reach a conclusion of guilt (vide Fakhruddin v. The State AI.R. 1927 SC 1326.

(6) Mr. Garg, learned counsel for Shahwar, placed reliance on the observations of Bhagwati, J. in Magan Bihari Lal v. The State of Punjab : 1977 CriLJ711 . They only emphasise the need for caution in the matter of acting on opinion evidence

given by a handwriting expert; substantial has been insisted upon; it can rarely, if ever, take the place of substantive evidence.

(7) The proper approach to the appreciation of expert testimony was indidicated by Raghubar Dayal, J. in State v. Vinaya Chandra A.I.R. 1967 S.C. 778 as follows : 'It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that he handwriting expert must be examined in a case to prove or disprove the disputed.

(8) Evidence of this kind may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view of expert. The evidence of an approver on any particular may derive support from the testimony of a handwriting expert-as in this case-when P W. 1 says that he saw some one, among the appellants, write something, the handwriting expert says, with words to support it, that the said writing is in the handwriting of the person to whom the writing is attributed by the approver and the court on comparison of the said writing with the sample or proved writing confirms it; in other words this would be substantial corroboration concerning the persons whom the approver implicates. This is a guarantee which the court will look for, for there is likelihood of the approver implicating even an innocent person adopting the broad frame work of the prosecution case ; the kind of corroboration concerning the persons whom he implicates will, however, depend upon the facts and circumstances of each case ; an aspect which we will discuss later. It is not, as if, contended by Mr. Garg, the evidence could be useless in this respect because we have also the evidence of Public Witness . 1's version of the concerned appellants occupying the rooms in three Hotels; Bright, Prabhat and Jeevan Lodge. Public Witness . 1 himself swore that he saw Ravi making certain entires in Hotel Bright and had himself spoken to the effect that he had made the entry in Hotel Prabhat register. Regarding such facts the evidence of the expert where it support his evidence could be taken into consideration and may, indeed, be invaluable. The evidence of the expert adduced by the defense where they contradicted Public Witness . 1's statement that he did not sign Ex. D.W. 34/A, which is a deed executed at Bombay on September 28, 1973, (the date of the present occurrence) would be of the weakest description

when, as the later discussion would show, the evidence of the Magistrate and the Lawyer from Bombay is seen to be unacceptable. The evidence of Public Witness . 97 who gave cogent reasons in support of his view that the admitted and proved signature of Public Witness . 1 did not tally with those founded in Ex P. W. 34/A would, in fact, support Public Witness . 1's denial that he did not sign Ex. D.W. 34/A either in the presence of the laweyer or of the Magistrate.

(9) It is well known that when specimen writings/hand-writings are obtained there is likelihood of simulation or alteration. But even when specimens are taken, there is care usually exercised to give random dictation of the letters, figures in question and they are repeated several times. The care to be taken in getting volunteered specimen writing has explained in 'Questioned Docements Problems' by Albert S. Osborn and Albert D. Osborn. The specimen writings taken in this case seem to have been taken in this case seem to have been taken with such care.

(10) Usually regard is paid to the presence of personal characteristics, mannerisms, peculiarities in spelling, formation of loops, in some letters fixed pen habits, embellishments etc. and other characteristics which enter into the handwriting as personality and leave their unconscious impress on. a person's handwriting. But nature and habit, individuals contract a system of forming letters which give a character to their writing as distinct as that the human face. Scientific advances in this sphere have proved an invaluable help ; we are on the threshold of even making clinching computer-comparisons-not yet in our country. It has been said that although a person's handwriting varies as to its precise detail, yet there are fundamental characteristics, despite 52 letters of the English alphabte (large and small) permitting almost infinite possibilities of the positions in which they may be placed. That is why in spite of a clever forger trying to give forged signatures as much resemblance as possible to a genuine signature (the model to (the model (s) available to him) the personal characteristics of the writings or signatures are often an unfailing guide ; it is often difficult work for a forger or a stranger to produce faithfully all such characteristics in the writing (Bisseswar). This aspect of the mater has been neatly and compendiously summed up in 'SUSPECT DOCUMENTS-their scientific examination' by Wilson R. Harrison. '...it may fairly be assumed that a developed handwriting, being the product of a long period of

modification and adaptation to the needs and abilities of the writer, will be peculiar to the individual; in view of its complexity the probability of any two persons having handwritings which are so similar that the presence of one or more consistent dissimilarities cannot be demonstrated, is extremely small.

(11) Although this is so, it does not follow that the comparison of various specimens of handwriting to determine whether or not they have been written by same person is necessarily simple and straightforward, even when there is no possibility of disguise having been introduced. The comparison of handwritings can never be accomplished mechanically as though pieces of a jig-saw puzzle were being compared with the spaces which remain to be filled, Human beings never function with the regularity and precision of machines, which is why natural variation will be a characteristic of every specimen of handwriting which is the natural variation will be a characteristic of every specimen of handwriting which is the subject of examination and comparison. The influence on handwriting of this natural variation has already been considered in some detail, but it must be repeated that because of it, one is unlikely to encounter passages of handwriting or even when they have been written under similar conditions by a practice penman.

(12) It follows from this that because two specimens of handwriting even when written by the same person, can never be replicas, a measure of judgment is called for on the part of the examiner when he has to decide whether : (1) the differences in the handwritings being compared can be regarded as being due to variation, or if they are indicative of different authorship: (2) in the absence of any consistent differences which cannot reasonably be attributed to natural variation, the sum total of resemblances in letter design and the details of structure uncovered by the examination can be explained only on the grounds that the writings are of common authorship, and that the possibility of the resemblances occurring by chance can be discounted'.

(13) The rule is simple-whatever features two specimens of handwriting may have in common they cannot be considered to be common authorship if the display but a single consistent dissimilarity in any feature which is fundamental to the structure

of the handwriting. and whose presence is not capable of reasonable Explanationn.

(14) This rule must not be applied blindly. for example, the dissimilarity must be present in some feature which is known to the examiner to be fundamental to the structure of the handwriting. The presence of initial strokes to some of the letters of one specimen of handwriting and their absence in the other is not fatal to an expression of opinion that they are of common authorship, for the experienced examiner is aware that many writers vary their habits with respect to the initial strokes to certain letters. On occasion, a handwriting will be liberally garnished with such, strokes, whilst in a specimen written by the same person under different circumstances, initial strokes may be sought for in vain.

(15) Again, the dissimilarity must be truly consistent; the presence of a few accidents should never be interpreted as denoting the existence of a consistent dissimilarity not capable of reasonable Explanationn. The dissimilarity must clearly be shown to be a natural feature of the writing.

(16) The consistent dissimilarity need not be such an obvious feature of the handwriting that its presence obtrudes itself on the eye. Too obvious a feature of a handwriting is invariably regarded with some suspicion by the careful document examiner, because there is always the possibility that it has been deliberately introduced to confuse the issue. The type of dissimilarity which is regarded as most significant is that which has to be sought for in the structure of the handwriting and whose presence may well be overlooked by those inexperienced in the critical examination of handwriting. There is little chance of such inconspicuous dissimilarities having been deliberately introduced as disguise'.

(17) When two passages of handwriting are to be compared, a certain amount of preliminary work as two be undertaken before any detailed comparison of their characteristics is embarked upon. The writing should be read, re-read and studied until the examiner is so familiar with its appearance that he is able to interpret any world at a glance. Great care should be exercised in the interpretation of doubtful letter formations, and the possibility of their being examples of misspelling or of the inclusion of unfamiliar proper names should be borne in mind, otherwise the

examiner may be confused by some of the letter designs.'

(18) There are more suspicious circumstances. Both D. W. 33 and D. W. 34 were summoned for 13th July. But summons had been effected on D. W. 33 alone on 9th July. He did not turn up, but made an endorsement on the back of the summons requesting that he be examined on commission since he had taken over as a Judge, Cooperative Court, after retirement, Service of summons had been effected on D. W. 34 on 10th July. Without turning up he requested that he be examined on July 16 on the ground that he was held up on account of urgent court work. D. W. 33 was telegraphically informed that his request could not be granted and that he must appear on 16th July, and, falling with, on 19th July; D. W. 34 was informed that he could appear on 16th July as requested by him. Neither of them appeared on 16th July. While information from D. W. 34 was telegraphically informed to appear on 19th July on pain of coercive steps being taken. Two telegrams were received by the trial court on 17th July, one from each of them, at 4.35 P. M. stating that they would be attending on 23rd July. This coincidence regarding the date on which they had agreed to appear, their telegrams reaching the court at the same time after they had been telegraphically informed by the trial court as above, could not be purely colncidental. Both the telegrams received by the trial court from D. W. 33 and D. W. 34 were express telegrams dispatched with Nos. Ad 137 Bombay 17.26 and No. 138 Bombay 17.27 with receipt number Ln 101 Ad 137 and Ln 102 Ad 138. Both the telegrams were addressed to 'HON Vohra SAHIB'. The learned trial Judge referred to the observations of the Supreme Court in Vidhya Singh v. State of Madhya Pradesh : 1971 CriLJ1296 that the courts had to rely more on human probabilities than on assertions of probative value to be attached to their evidence.

(19) It is in the above background that one has to evaluate the evidence of the Handwriting Expert S. K. Gupta, Assistant Director (Documents), C. F. S. D., who was examined as a court witness, to see whether the signatures appearing on Ex. D.W. 34/A could have been of the same person (P. W. 1) who had submitted his specimen writings to court. After a thorough Sterionzoom microscopic examination C. W. 1 had submitted his report (Ex. C.W. 1/J).

(20) Of the scholarship and experience of C.W. 1 there can hardly be any doubt. He was trained in the office of Examiner of Questioned Documents at Simla in Home Office Forensic Laboratory, Government of U.K. and in the Interpol Headquarters at Paris, Though technically he is under the administrative control of the C.B.I. the real control vested with the Director who was a scientist. There is absolutely no reason to doubt his impartiality. He had carried on his investigation with the help of scientific aids. More than all his view is fully supported by the probabilities and human conduct such as referred to above.

(21) On this point D.W. 41 was examined on behalf of Ravi; he only endorsed most of the observations in regard to fraudulent retouching, poor line quality, hestitation of strokes etc. explained by C.W. 1.

(22) SUNIL'S Counsel made a request for cross-examining D.W.41 which was also allowed; but, as observed by the learned trial Judge, nothing could be brought out regarding the points were C.W. 1 and D.W. 41 were in agreement. But not content with crossexamining D. W. 41 Sunil also examined a private handwriting expert R. R. Mahant (D.W. 40). He made a report (Ex. D.W. 40/B). After examining the originals for about 45 minutes and the photographs for a day or two he claimed that the disputed signatures were free from fraudulent retouching, hesitation and futile pen stops and pen lifts at unusual places. On the other hand, he claimed that the movement was of the wrist; the line quality is perfect and speed rapid and personal characteristics like alignment, slant, pen, pressure and shading were similar in the questioned and sample signatures. But he was perforce obliged to admit various details during his cross-examination which were put to him on the basis of the observations made by C.W. 1. He had to agree with some of them.

(23) As opposed to the status of C.W. 1 D.W. 41 does not even contributhe any article to any journal. He knew when he has called to give evidence that the Government Examiner of Questioned Documents had expressed the view that it was a case of false simulation. D.W. 41 completed the report on 16th and appeared in court on 16th for giving evidence. He claimed that he was not contacted by any of the parties before coming to the witness box. He was not even paid by the party for his opinion of preparation of photographs, it being merely

agreed that the expenses would be paid. The learned trial Judge was rightly of the view that these circumstances divest the witness of impartial character and undermine the value of his evidence considerably. The learned trial Judge himself compared the disputed specimen of signatures of Public Witness . 1. We have also done so. We have no difficulty at all in upholding that Ex. D.W. 34/A did not contain signature of Public Witness . 1 and that the same had been fraudulenly manipulated in order to buttress the defense that Public Witness . 1 was away at Bombay at about the time of the occurrence at Delhi.

(24) On the view taken by the learned trial Judge himself, and the view we also take of the evidence of D. Ws, 33 and Ex. D.W. 34/A, we feel that it was expedient in the public interest to have ordered prosecutions against both of them. It is so shocking that members of this noble profession, one of them a Presidency Magistrate to boot, should have been guilty of such ignoble conduct. Our view is that Ex. D.W. 34/A was subsequently conducted for the purpose of providing a false alibi. But for the labour involved all round- even on our part-it would have been not only difficult to expose Ex. D.W. 34/A as a forgery the true character of D. Ws. 33 and 34 but avoid the damaging impact of the same on this case. If, aswe pointed out earlier, P. W. 1 was at Bombay on September 27/28, 1973, he could not have been present at Delhi on September 28, 1973 during this occurrence. P. W. 1's evidence would have then to be discarded on the ground that he was a 'wholly unreliable' witness. The offence of perjury especially, is perpterated in our country sometimes even by the guardians of the law ; when this happens it undoubtedly shocks the conscience of all sensitive and right thinking men. When such persons, who have a duty to protect society from such offence, themselves indulge in them, the motivation, often times is to make some filthy lucre ; mere social condemnation does not seem sufficient in their case : the only other remedy is to make them realise that crime does not pay. This purpose may be served to some extent at least by ordering prosecution for prejury (and for commission of forgery too) against such persons. Unfortunatey, in this respect, our hands seem tied by the language of section 340(c) of the Cr. P. C. 1973. An appeal could have been filed, however, under section 341 of the same Code, we could then have given effect to our true intention in this matter. But we are handicapped because of no such ahpeal having been filed ; we regret that no

appeal has been filed.

(25) The so-called experts produced by the defense in this case only serve to highlights the dis-service that such experts do not only themselves but also to the cause of forensic science itself. The fact that some experts are willing to forswear themselves cannot, however, be a reason for paying the weight that is due to the testimony of those who are found to be sufficiently knowledgable in this field and reliable. The ultimate reposibility in this respect, however, lies with the court, which will not hesitate to discard testimony of no value and pay regard to that which it considers sufficiently weighty and acceptable-a weighty opinion, in this sense, is the one which is scientific, backed by expertise and given with the aid of tools which modern science and technology have made available. In all these cases, which we have examined with minute care and labour, we have no doubt that the opinions pertaining to them given by Public Witness . 97 and C.W. 1 are entitled to great weight, while those of D.Ws. 36, 37, 38 & 41 (P.R. Mahant getting two D.W. numbers 38 and 40, and 37 being examined once over again as D.W. 39) have only to be discarded. The expert witnesses examined for the defense, have, without any exception, tried to confuse and confound by making much of even these features which can be reasonably attributed to 'natural variation' (in the case of Exts. Public Witness . 97/B and Public Witness . 1/M) and not paying regard to 'dissimilarities' which are consistent with and are 'fundamental to the structure' of the signatures (in the case of Ex's D.Ws. 34/A 23/A, 38 G and G/l to 3, and Ex. Public Witness . 2/ S.M. (a) while C.W. 1 and Public Witness . 97 have paid adequate attention to all relevant aspects. The evidence of experts who do not 'read and re-read' the concerned writings and 'study'' it until the examiners became 'familar' with their appearance 'asto become able to interpret any word at a glanee' is practically worthless ; none of the experts examined for the defense even claims to have taken such efforts ; on the contrary, their evidence leaves one with the impression that they had not done so. The defense evidence in this respect does not even seem to advert to the feature of 'inconspicuous dissimilarities' being 'deliberately introduced as disguise'- a feature which is only conspicuous in the sample writing written after dictation in Court. The quality of the evidence of Public Witness . 97 and C.W. 1 is doubtless high, they are supported by the substantive evidence in the case and other attendant circumstances ; in sheer contrast to the

defense in this respect.

(26) The two provisions in the Evidence Act bearing on the evidence of approvers are contained in Ss. 133 and illustration (b) of S. 114 ; the former makes an accomplice a competent witness rendering a conviction based on the testimony of an approver alone not illegal ; the latter enables the court to presume that an accomplice is not worthy of credit unless he is corroborated in material partiaculars. The latter represents the rule of prudence ; the former is a rule of law. Courts have interpreted the above two provisions to mean the rule of prudence as practically amounting to a rule of law. A discussion of this aspect would be academic because, as the subsequent discussion will show, there is corroboration in material particulars available in respect of Public Witness . 1's evidence. The corroboration which is required is, however, not concerning details of what the approver speaks ; if this were so, it would tantamount to saying that the evidence of an approver is particulary superfluous or unnecessary the reason for taking an accused as approver is only to overcome the difficulty of not having direct or sufficient evidence. The requirement of corroboration, thereforee, has necessarily to be understood as 'corroborating or tending to corroborate' the fact of every one of the accused in a case being a participant in the crime. In other words. the courts would have to keep in mind the danger of an approver introducing even innocent persons into a framework available to the prosecution. A distinction has also to be made in this respect between confessions which run into rich details and an approver's testimony ; the mere richness of details of a confession, when it is retracted from, would not be sufficient to give assurance, because the details can emanate purely from the rich imagination of an accused person, who free to say anything he wishes-even concerning other co-accused -but an approver is circumscribed not only by the framework of the prosecution but also being tested by cross-examination ; the requirement of prudence is that the approver is corroborated in material particulars.

(27) The testimoney of Public Witness . 1 in the present case running into so many details and recorded in two spells and on following dates seem to be of some significance ; the greater would be the value to be attached to the testimony of Public Witness . 1 since on so many particulars he seems to be corroborated,

including several minor details-some of them though minor are very significant and provide 'odd coincidences' which are capable of giving us the needed assurance to safely act upon his evidence, which would, without them, be regarded as infirm. (vide Lord Widgery, C.J. in R. v. Turnbull 1976 (3) All E.R. 549.

(28) The classical observations of Lord Reading, C.J. in The King v. Baskerville 1916 (2) K.B. 658 which have been either repeated or the substance of which has been embodied in the subsequent decided cases both in England and in India have doubtless highlighted the duty of care in receiving the testimony of an accomplice. It was further pointed out by Gajendragadkar J. in Sarwan Singh v. State : 1957 CriLJ1014 that the evidence of an approver has to satisfy a 'double test'. The first is that his evidence might reveal that he is a reliable witness-a test common to all witness. If this test were to be satisfied the second test, which would still remain to be applied, is whether his evidence receives 'sufficient corroboration'-a test which is special to cases of weak or tained evidence like that of an approver. The caution was also sounded that it should not be acted upon merely because it is corroborated in minor particulars or incidental details for by themselves they may not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true-hence the requirement of of corroboration in material particulars. It seems well worth adding that 'corroboration in material particulars', against each of the culprits, would include telling or significant old coincidences' in the language of Lord Widgery, C.J. in Turnbull ; they may also be described as "joint coincidence' or 'mutual corroboration'.

(29) The 'double test' was explained by the Supreme Court in Saravanabhavan v. State : 1966 CriLJ949 ; the approver's testimony is not to be dealt with in two watertight compartments but must be considered as a whole and along with other evidence. The test, in other words Is whether his evidence is credible by itself; if it is not credible by itself then there is no need for the Court to trouble itself with such evidence. While considering whether the evidence of an approver is credible by itself all facts bearing on whether the evidence given by him is inherently improbable are important; as already noticed, it would be unreliable if It is shown, for instance, that at the time and place where something is alleged to have

happened in his presence, he was somewhere else and could not have been present there or then. Shorn of such a feature and when his evidence can be true, reference may be made to corroborative pieces of evidence which are meaningful and lend assurance about the truth of his evidence. Chandrachud, J., speaking for the Supreme Court in a very recent case (vide Dagdu v. State : 1977 CriLJ1206) has shown how the rule of law is subject to the rule of prudence. The proposition, that it is not illegal to act on his testimony alone would only apply to cases where in a given situation or having regard to peculiar circumstances it would be found safe to dispense with corroboration, was reiterated ; the further observation that if he did not pass the test of reliability there will be no need to consider his evidence further was made in the above context.

(30) In SheshannaYadav : 1970 CriLJ1158 corroborative evidence was explained as being confirmatory evidence of witness or even of circumstances ; corroboration must connect and tend to connect the accused with the crime. After a witness was taken as an approver it may not be accurate to regard it any longer as an extra judicial confession, it does not fall within section 30 of the Evidence Act. Whatever he is alleged to have told another witness would only be a piece of corroboration concerning his evidence and nothing more ; and that the same could not be regarded as a statement U/S 30 of the Evidence Act, It is not proper to attach any undue weight to a mere omission in a statement made under section 164 Criminal Procedure Code . it is not made after detail questioning as unless it is so important when a person is, during his examination-in-chief in Court that he would not have failed to mention it of his own accord and even in that being examined by counsel.

(31) The phrase 'exceptional circumstances' to describe situations in which the risk of mistaken identification is reduced. The use of such a phrase is likely to result in the build-up of case law as to what circumstances and properly be described as exceptional and what circumstances and properly be described as exceptional and what cannot Case law of this kind is likely to be a fetter on the administrative of justice when so much depends on the quality of the evidence in each case. Quality is what matters in the end. In many cases the exceptional circumstances to which the report refers will provide evidence of good quality, but the converse is also

true. Whether a witness can depose before the Court that he had identified a certain witness before the police at any particular place during investigation. There is judicial dicta in support of the view that the same not being a statement to the police the the bar of section 162 Cr. P.C. does not apply ; the said bar would apply if the police officer told the court that the witness identified a certain culprit because that would be a statement (may be of mental act even by merely pointing out a finger or some thing like that) which the witness made to the police officer that would be a statement by the witness to the police officer. That when an accused (as distinct from witness) is being intrrogated especially at the commencement of the investigation, it may not be necessary to record 'all' that the accused says except to the extent to which it may help further the investigation, Disclosure statements section 27 of the Evidence Act have necessarily to be recorded ; the recoveries made In pursuance thereof have also to be noted.