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Court : Kerala

Decided On : Aug-21-1951

Reported in : 1952CriLJ801

Judge : Kunhi Raman, C.J. and; Subramania Iyer, J.

Appellant : Chacko Thomas and ors.

Respondent : The State

Judgement :

Kunhi Raman, C.J.

1. These appeals are presented on behalf of the 1st, 3rd and 4th accused in Sessions Case No. 25 of 1950 on the file of the Sessions Court of Quilon. They were tried for offences under Sections 492(a) and (b) read with Sections 28 or 99 and 514 of the Travancore Penal Code. The learned Judge convicted the first accused under Section 492(a) read with Section 99 and sentenced him to rigorous imprisonment for five years and to pay m fine of Rs. 1000/-. In default of payment of fine he is to undergo rigorous imprisonment for a farther period of six months. Accused 3 and 4 were convicted under Section 492(a) of the Travancore Penal Code and sentenced to undergo rigorous imprisonment for five years. The second accused who was granted a conditional pardon was examined as an approver. The 5th accused was acquitted.

2. The case for the prosecution is briefly summarised in the judgment of the learned trial Judge who has also reviewed the evidence in a fair and impartial manner. He states in the beginning of his judgment that the counterfeiting of the currency notes is alleged to have taken place in a new house which was built by the flirt accused at Alencheri in Anchal Pakuthy, Pathanapuram Taluk. The 1st accused was also charred with having uttered some of these notes by circulating them at Permade, Ambalapuzha and Alleppey and trying to pass one of these notes also at Pathanapuram market in Chingom 1123 about the time of the Onam Festival. The offence of counterfeiting currency notes of the denomination of Rs. 10/- took place in 1122. The, delay in starting the prosecution was because for a long time the crime remained undetected, it was only when the third accused happened to be arrested in connection with another offence that the police succeeded in discovering the nefarious activities of these accused persons who were tried in the Court below. The third and 4th accused had made certain confessions. The 4th accused confesses soon after his arrest. The 3rd accused made a confession when he was arrested in connection with another crime. This confession has been marked as Ex. AB. In the course of the enquiry Bava Joseph, the 2nd accused was granted a conditional pardon by the District Magistrate on 24.4.1950 the condition being that he should make a true and full disclosure of all circumstances connected with the crime of which he was aware. He was examined as P.W. 17.

3. In paragraph 2 of his Judgment the learned trial judge gives a summary of the prosecution case. Towards the end of Mithunam 1122 the 1st accused accompanied by the 4th accused went to the house of the approver who has been examined as P.W. 17 at the trial and started negotiations for the purchase from F.W. 17 of a hand-press which has been marked as M.O. 1 and certain blocks which have been marked as M.O. 11 for the purpose of counterfeiting Rs. 10/- Ourrency Notes. The first accused paid part of the consideration to P.W. 17 and arranged with him that he should get ready all the necessary accessories for carrying out their scheme. After a week, the 1st accused came back accompanied by the 5th accused and took delivery of the hand press blocks and accessories. P.W. 17 went with these two people to Changanessery which they reached at about midnight. Prom there the 1st accused made P.W. 17 fetch the 4th accused

and all of them then proceeded to the 1st accused's house at Anchal. In one of the rooms in that house described as the southern room 500/- Currency Notes of Rs. 10/-each were then manufactured by the 4th accused., P.W. 17 the approver assisting him in the process. These persons were, however not satisfied with the appearance of these 500 Currency Notes. They thought that the resemblance of these notes to the genuine notes was not sufficiently good and, therefore they destroyed all these notes accept M.O. IX which P.W. 17 had retained and sent away the 4th accused who was found to be not quite a success in executing the work that they had in mind. The following day P.W. 17 went to Kottayam and saw the 3rd accused who was considered to be a better workman. The 3rd accused was persuaded to agree to do the job for the 1st accused and he was taken by P W. 17 to the house of the 1st accused at Anchal. On their way they Halted for the night at the house of the 5th accused at Kottakakara. The next morning P.W. 17 accompanied by the 3rd and 5th accused proceeded to the residence of the 1st accused at Anchal. They were met by the 1st accused at a Junction near his residence. He treated them to tea in the teashop of P.W. 4 and took them to his house. There the 3rd accused was made to manufacture 1000 counterfeit currency notes of the value of Rs. 10/- each. This was done at the instance of the 1st accused. This time the efforts of the gang were considered satisfactory, with the result that they put the counterfeit notes into circulation at Peermede, Ambalapuzha and certain other places. One was discovered at the Ambalapuzha Sub-Treasury. The Treasury Officer forwarded it to the Police Station for investigation. Another was uttered at Alleppey and this led to the starting of another criminal prosecution. 166 notes were delivered at Peermade Station by the Manager and also a clerk employed in one of the estate in that locality and also by the Agent of a Bank in Vandiperiyar. These formed the subject-matter of another prosecution. At about Onam day in 1123 the 1st accused is alleged to have tried to palm off one of these notes to P.W. 11 at Pathanamthitta Market but he did not succeed. At the trial all the accused pleaded that they were not guilty.

4. The learned Judge found at the trial that M.Os. 3 to 10 were all counterfeit notes which it was possible to manufacture by using M.Os. 1 and 2. The important points for determination framed in the judgment of the learned trial Judge were points 2, 3 and 4. Stated briefly these are whether the 4th accused counterfeited 500 ten

rupee notes or knowingly performed any part of the process of counterfeiting them in the house of the first accused at Anchal in Mithunam-Karkatakam 1123; whether the 3rd accused counterfeited 100 ten rupee currency notes or knowingly performed any part of the process of counterfeiting them in the house of the 1st and 5th accused abetted the 4th and 5th accused in doing these illegal acts. There is an additional point raised as to whether the 1st accused attempted to pass as genuine any of these counterfeit currency notes, knowing or having reason to believe the same to be, counterfeit. On this point, the learned trial Judge has not accepted the evidence adduced on behalf of the prosecution and has held that this charge has not been made out against the 1st accused. There is therefore no necessity to deal with this aspect of the case in the course of this judgment. Similarly with regard to the 5th accused the learned trial Judge was not prepared to believe that the case against him has been made out, because the only evidence against him was that he was found in a room in the house of the 1st accused in which counterfeiting was going on. There was no other evidence which would implicate him or which would show that he participated in the unlawful act in any manner. In these circumstances, the learned trial Judge has held that it would not be safe from the evidence against the 5th accused to hold that he abetted the 3rd accused in committing the offence which is the subject-matter of the charge against the accused persons. He has accordingly acquitted him.

There is no appeal brought on behalf of the State in this Count from this order of acquittal, and therefore, the case of the 5th accused also need not be considered in this judgment. On the other hand, accused 1, 3 and 4 have been held to be guilty of the main charges brought against them. Against the 1st accused the finding is that he abetted under Section 99 of the Travancore Penal Code the commission of the offence under Section 492(a). The finding against the 3rd and 4th accused is that they are guilty of the offence under Section 492(a) of the Travancore Penal Code of counterfeiting false currency notes. These findings have been attacked by the learned Counsel appearing for these three accused persons. The main argument addressed by Mr. K.T. Thomas, the learned Counsel for the 1st accused appellant, which has also been adopted by the learned Counsel appearing for the 2nd and 3rd accused, relates to the credibility of the evidence on which the conviction is based. The reason for the stress laid upon this

aspect of the case is because an important piece of evidence which supports the conviction la the evidence of the approver P.W. 17 who was jointly accused with the appellants. On a perusal of the judgment of the learned trial Judge it is clear that he has not misdirected himself as to the extent to which the evidence of an accomplice can be taken into consideration and as to the necessity for corroboration in material particulars in order that a conviction may be based on the evidence of an accomplice. He has started the discussion by referring to the provisions of Section 133 of the Indian Evidence Act according to which a conviction can be based upon the uncorroborated testimony of an accomplice. Coupled with this is illustration (B) to Section 144 according which the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. The extent and nature of corroboration have also been borne in mind as is evident from the discussion in the judgment of the learned trial Judge.

5. It is a well established rule both in England and in India that the evidence of an accomplice who from the very nature of things has participated in the crime, should not ordinarily be made the basis for convicting an accused person. This is often described as a rule of prudence. But it has in practice acquired the value of a rule of law. The scope of this rule has been clearly laid down in the judgment of the Court of Criminal Appeal1 in England in the case of Rex v. Baskerville reported in (1916) 2 KB 658. Certain portions of the judgment of Lord Reading, Chief Justice, may be quoted with advantage. In the early part of the judgment his Lordship says:

There is no doubt that the uncorroborated evidence of an accomplice is admissible in law; see Rex v. Atwood (1787) 1 Leach 464. But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the Judge, to advice them not to convict upon such evidence; but the Judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence; Reg. v. Stubbs, (Dears 555). In re Meunier (1894) 2 QB 415.

This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal Act came into operation this Court has held that, in the absence of such a warning by the Judge, the conviction must be quashed: Rex v. Tate (1908) 2KB 680.

The judgment goes on to state that even when the jury has been properly diretced in this manner by the presiding Judge, it would be open to the Court of Criminal Appeal to interfere with a verdict of guilty if upon reviewing all the facts and evidence in the case, the Court of appeal thinks that the verdict is unreasonable or that it cannot be supported having regard to the evidence. Such a power Is expressly conferred upon the Court of Criminal Appeal by the Court of Criminal Appeal Act, 1907, Section 4, Sub-section 1. The extent of the corroboration necessary is then dealt with in the judgment and it is pointed out that 'confirmation does not mean that there should be independent evidence of that which the accomplice relates, or his testimony would be unnecessary'. Per Moule J. in Reg. v. Mallins 3 Cox CC 326. The learned Chief Justice then goes on to observe that it is not necessary that the accomplice should be confirmed in every detail of the crime. If such a condition is insisted upon, then the evidence of the accomplice would not be essential to the case, but it would be only confirmatory of other and Independent testimony. It is also pointed out that the corroboration must be by some evidence other than that of an accomplice, and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice: Rex v. Noakes (1082) 9 C and P. 326. It is pointed out in the judgment that the rule of practice requiring corroboration has arisen

in consequence of the danger of convicting a person upon the unconfirmed testimony of one h who is admittedly a criminal. What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

After discussing the case law on the point in England His Lordship records his conclusion in the following words:

After examining these and other authorities to the present date, we have come to the conclusion that the better opinion of the law upon this point is that stated in

Reg. v. Stubbs by Parke B, namely, that the evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner.

It is made clear in this part of the judgment that it would not be reasonable to expect confirmation of all the circumstances of the crime, but that it would be sufficient if there is confirmation as to the material circumstances of the crime and to the identity of the accused in relation to the crime so that the Court may be satisfied that it is not unsafe to act upon the testimony of the accomplice. The view expressed by Baron Parke in Reg v. Stubbs, was adopted that view having prevailed till the passing of the Court of Criminal Appeal Act and also to the date on which the judgment in the case was delivered by the Court of Criminal Appeal. Without formulating the kind of evidence which should be regarded as corroboration. His Lordship stresses the fact that corroborative evidence

is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime was committed but that it was committed by the accused.

6. Passing to the nature of the evidence required for corroboration, it is pointed out that it need not necessarily be direct evidence. It may be circumstantial evidence connecting the accused with the crime and reliance is placed upon the decision in Reg. v. Barkett (8 C & P 732) and His Lordship points out:

Were the law otherwise many crimes which are usually committed between accomplices in secret, such as incest, offences with females, or the present case, could never be brought to justice.

7. In the Judicial pronouncements of the Privy Council a similar rule has been recognised. We have had occasion to refer to one of these cases In our judgment in 'Criminal Appeals Nos. 41 and 135 to 137 of 1124'. The view that we took in that case was that the evidence of the accomplice must be corroborated in material particulars by untainted evidence. Reference was made to the decision of the Privy Council reported in 1944-2 MLJ 194 Bhubent Sahu v. The King. The practice in India has followed the rule observed in England that the evidence of an

accomplice must be corroborated in material particulars. The degree or extent of the corroboration cannot be defined, but is a matter for the decision of the Court in each particular case. In the present case, the evidence of P.W. 5 corroborates the testimony of the accomplice. The learned trial Judge has carefully considered the reliability and dependability of his evidence and he has recorded his conclusion that he believes P.W. 5. If P. W. 5 la believed, then his evidence supplies the necessary corroboration to prove the crime against all three appellants. (His Lordship considered the evidence and proceeded.)

8. In the judgment of the learned trial Judge he has given in a tabular statement the manner in which the approver's evidence has been corroborated by untainted evidence in the case. It Is thus clear that the trial Court has not lost sight of the fundamental principle to be observed in appreciating the evidence of an approver or accomplice. The relevant evidence on which the learned Counsel on both sides rely has been read out to us and on considering the entire evidence we are satisfied that the conclusion reached by the learned trial Judge is fully warranted. The conviction of the three appellants must therefore be upheld. The sentences cannot be said to be too severe. In the circumstances, the conviction and sentences are confirmed and the appeals dismissed.

9. After this judgment was pronounced Mr. Thomas on behalf of the first accused and Mrs. M. John on behalf of accused 3 and 4 make an oral application for a. certificate for leave to appeal to the Supreme Court. We are not satisfied that this is a fit case for granting such a certificate and, therefore, the request cannot be granted.