

REVISIONAL CRIMINAL.

Before Bhide J.

HARI RAM (CONVICT) Petitioner

versus

THE CROWN—Respondent.

1933

Dec. 16.

Criminal Revision No. 906 of 1933.

Accomplice—testimony of—what corroboration required.

Held, that the established rule of practice as to necessity of corroboration of the statement of an accomplice is practically tantamount to a rule of law, and the evidence in corroboration must be independent and must affect the accused by connecting or tending to connect him with the crime. It need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connection with the crime, and it need not relate to the actual participation of the accused in the crime with which he was charged; what is necessary is corroboration in some material particulars which will satisfy the Court of the truth of the accomplice's story, in so far as it implicates the accused.

Case law discussed.

Petition for revision of the order of Mr. C. M. Ormerod, Additional Sessions Judge, Amritsar, dated 2nd June, 1933, affirming that of R. S. Lala Izzat Rai, Magistrate, 1st Class, with Section 30 powers, Amritsar, dated 1st May, 1933, convicting the petitioner.

BHAGAT RAM PURI, for Petitioner.

D. C. RALLI, for Government Advocate, for Respondent.

BHIDE J.—Criminal Revisions Nos. 906, 1383 and 1384 of 1933 arise out of cases in which the facts are connected and the points for decision are of a similar character and it will be convenient to dispose of them together.

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One Prem Kumar was undergoing a sentence of imprisonment for five years under section 20 of the Arms Act in the Borstal Jail. He was transferred to the Mayo Hospital for treatment and on the 11th April, 1932, managed to escape from the hospital with the help of two persons named Ram Nath and Indar Nath (petitioner in Criminal Revision No. 1384 of 1933). He was taken to the printing press of Sotindar Nath (petitioner in Criminal Revision No. 1383 of 1933) and was kept there for three or four days. He then left Lahore and wandered from place to place for some time. He reached Amritsar about the middle of November and was kept concealed on the top floor of a house, with the help of Hari Ram (petitioner in Criminal Revision No. 906 of 1933), who also used to supply him food etc., till the Police got a clue about Prem Kumar's whereabouts and arrested him on the 28th December, 1932. On the basis of these facts, Hari Ram and Sotindar Nath have been separately tried and convicted under section 216, Indian Penal Code. Hari Ram has been sentenced to rigorous imprisonment for 18 months while Sotindar Nath has been sentenced to rigorous imprisonment for one year and nine months and a fine of Rs. 100. Indar Nath has been found guilty under section 224/109, Indian Penal Code, in a separate trial and has been sentenced to rigorous imprisonment for two years.

The principal witness in all these cases was Prem Kumar himself, and it is not disputed that his evidence does implicate the petitioners and support their convictions. It is, however, urged that the evidence of Prem Kumar is in the nature of the testimony of an

accomplice and there is little or no evidence in corroboration of it to sustain the convictions of the petitioners.

In the case of Hari Ram, there is ample evidence in corroboration of the statement of Prem Kumar as regards Hari Ram supplying food etc., and this was not challenged, but it was urged that there was no evidence in support of Prem Kumar's statement that Hari Ram was aware of the fact that he had escaped from lawful custody and that in the absence of corroboration as regards Hari Ram's knowledge of this fact, his conviction cannot be sustained. I do not think this argument is sound. It is true that it is a well established rule of practice to require corroboration of the statement of an accomplice connecting the accused person with the crime; but corroboration is not required in all details. As pointed out by a Division Bench in a recent case *Sher Singh v. Emperor* (1), even slight corroboration is sufficient for the purposes of this rule, if the Court is satisfied thereby about the genuineness of the accomplice's story, so far as it implicates the accused person. To insist on corroboration of the story in every detail, would practically mean requiring independent proof which will do away with the necessity of relying on the testimony of the accomplice at all. In the present instance, therefore, there being sufficient corroborative evidence in other respects, it was not necessary even according to the established rule of practice referred to above to require independent corroborative evidence of the statement of the approver as regards the knowledge of Hari Ram about Prem Kumar being

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an absconder. It may, however, be pointed out that the circumstances in which Prem Kumar was secretly kept on the top floor of the house and supplied with food, etc., the discovery of the key of Hari Ram's office with Prem Kumar etc. are facts which indicate that Hari Ram must have been aware of the fact that Prem Kumar was an absconder and go to support Prem Kumar's statement in this respect.

The above remarks also apply to the case of Sotindar Nath. Sotindar Nath has admitted that he allowed Prem Kumar to stay in a room of the printing press for two or three days, but it is urged on his behalf that he did so innocently and was not aware of the fact that Prem Kumar had escaped from lawful custody. Prem Kumar of course states that he was informed of the fact, but it is urged that there is no corroboration of Prem Kumar's statement in this respect. But Prem Kumar's statement is corroborated in several other material particulars and it was not essential that it should have been corroborated in this particular. Prem Kumar is a resident of the United Provinces and his location in a room in the press after his sudden arrival for two or three days instead of his being lodged in the residential house as an ordinary guest goes to indicate guilty knowledge. It was urged that the employees in the press and customers used to see Prem Kumar, but the latter was a stranger in Lahore and there was little risk involved in his being kept there for 2 or 3 days only. It was further argued that Sotindar Nath used to be sent away, when Prem Kumar's friends came to talk with him. But this very fact was sufficient to arouse Sotindar Nath's suspicions. Prem Kumar and his

friends may not have cared to take Sotindar Nath into confidence as regards all their plans, but this would not show that Sotindar Nath was acting innocently. There is no allegation of any enmity on the part of Prem Kumar and the corroboration of his statement in other particulars together with the manner in which he was kept in the Press, are in my opinion sufficient to justify his conviction.

As regards Indar Nath (a boy aged about 16 or 17) the learned Sessions Judge has held that there was no corroboration of the accomplice's statement implicating Indar Nath, but he was of opinion that the conviction of an accused person on the uncorroborated testimony of an approver is not absolutely illegal and in the special circumstances of this case, the sole testimony of the accomplice could be safely taken as a basis for conviction. The learned counsel for the petitioner has urged that the learned Sessions Judge has erred in law in taking this view as the established rule of practice as to necessity of corroboration of the statement of an accomplice is practically tantamount to a rule of law [*cf. Balmokand v. Crown* (1), *Barkati v. Emperor* (2), *Hakam Singh v. Emperor* (3) and *Ranbir Singh v. Emperor* (4)]. In any case the accomplice Prem Kumar whose testimony has been relied upon is not a man of such character or antecedents or of such undoubted veracity that his word could be safely relied on without any corroboration. It was further pointed out that Prem Kumar had in fact told lies on certain points.

I am somewhat doubtful whether it would be justifiable to interfere in revision when a Court being

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(1) 17 P. R. (Cr.) 1915.

(3) 1929 A. I. R. (Lah.) 850.

(2) 1927 A. I. R. (Lah.) 531.

(4) 1932 A. I. R. (Lah.) 204.

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aware of the rule of practice referred to above and being alive to the risk involved in convicting a person on the uncorroborated testimony of an accomplice proceeds to base a conviction on the same, giving its reasons for doing so. But leaving aside this aspect of the question, it seems to me that the learned Sessions Judge was not right in holding that the testimony of Prem Kumar in this case was not corroborated. The learned Magistrate who had tried the case had relied upon the testimony of Muhammad Hussain, P. W. 8, who deposed that Indar Nath, petitioner, was with Prem Kumar when the latter arrived at the press of Sotindar Nath to seek shelter after his escape from the hospital. The learned Sessions Judge has not disbelieved this evidence but has held it to be insufficient as a piece of corroborative evidence, as this evidence did not establish that Indar Nath had abetted the offence of escaping from lawful custody, which had been already completed by then. I do not think this view of the learned Sessions Judge as regards the nature of the corroborative evidence required in such cases is correct. An authoritative exposition of the law on this subject is to be found in *Reg. v. Baskerville* (1), in which after a review of previous authorities the rule laid down was as follows:—"We hold that evidence in corroboration must be independent which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him that is which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it..... The nature of the

(1) (1916) 2 K. B. 658.

corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration except to say that corroborative evidence is evidence which shows or tends to show, that the story of the accomplice that the accused committed the offence is true, not merely that the crime has been committed, but it was committed by the accused. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. A good instance of this indirect evidence is to be found in *Reg. v. Birkett* (1).²

The above rule has been followed in several recent cases by this Court [see, *inter alia*, *Barkati v. Emperor* (2), *Hukam Singh v. Emperor* (3) and *Sher Singh v. Emperor* (4)].

It would appear from the above that it is not necessary that corroboration should relate to the actual commission of the crime; for to require such evidence would be (as pointed out already) tantamount to requiring independent proof of the offence, and this would practically do away with the necessity of the testimony of the accomplice. What is necessary is, corroboration in some material particulars which will satisfy the Court of the truth of the accomplice's story in so far as it implicates the accused. In *Reg. v. Baskerville* (5) the accused was charged with having committed acts of gross indecency with two boys. There was no direct corroborative evidence as to

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(1) 8 C. and P. 732.

(3) 1929 A. I. R. (Lah.) 850.

(2) 1927 A. I. R. (Lah.) 581.

(4) (1932) I. L. R. 14 Lah. 111.

(5) (1916) 2 K. B. 658.

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the actual commission of the offence, but a letter written by the prisoner to one of the boys and his previous conduct were considered to be sufficient corroboration of the testimony of the boys—who on their own statement were accomplices in the crime. In *Reg v. Birkett* (1), which was cited with approval in *Reg. v. Baskerville* (2), the prisoner was charged with theft of sheep and the only evidence available in corroboration of the testimony of an accomplice was the discovery of a quantity of mutton in the house of the prisoner, corresponding with the size of the sheep. In *Barkati v. Emperor* (3), the prisoner was charged with murder and the only corroborative evidence available related to the association of the prisoner with the accomplice immediately before the commission of the offence. There was a difference of opinion between Broadway J. and Agha Haidar J. and on a reference being made to a third Judge (Fforde J.) it was held after a consideration of the authorities on the subject that the corroborative evidence referred to above was legally sufficient to justify the conviction of the prisoner. A similar view was taken in *Sher Singh v. Emperor* (4), wherein the corroborative evidence consisted of recovery of certain ornaments belonging to the deceased and this evidence was considered to be sufficient to support the conviction under sections 396 and 302, Indian Penal Code, on the basis of the testimony of the approver. It would thus appear that the corroborative evidence in none of these cases related to the actual participation of the accused in the crime with which he was charged; but still it was held to be

(1) 8 C. and P. 732.

(3) 1927 A. I. R. (Lah.) 581.

(2) (1916) 2 K. B. 658.

(4) (1932) I. L. R. 14 Lah. 111.

sufficient to establish the truth of the accomplice's evidence implicating the accused persons. In the present instance the evidence of Muhammad Hussain as regards the petitioner accompanying Prem Kumar when he went to the house of Sotindar Nath soon after his escape stands on a similar footing. It corroborates Prem Kumar's story in a material particular and "connects or tends to connect him with the crime." In view of the fact that even the uncorroborated testimony of Prem Kumar appeared to the learned Sessions Judge to be sufficient for a conviction, this additional piece of evidence in corroboration should have been held to be quite sufficient to satisfy the requirements of the rule of practice. It may be pointed out here that there is also some further corroboration of the accomplice's statement to be found in the written statement of the petitioner Indar Nath and his defence witnesses in so far as they admit that it was Indar Nath who supplied Prem Kumar with the address of Sotindar Nath.

In my judgment the corroborative evidence on the record was sufficient to support the conviction of Indar Nath and in the circumstances there is no valid ground for interference with it in revision.

As regards the sentences, Hari Ram seems to have taken a very prominent part in harbouring Prem Kumar at Amritsar, and I do not think there are any extenuating circumstances to justify reduction of his sentence. Sotindar Nath seems to have played a much less prominent part. It appears that Prem Kumar was not taken to his house with his consent by any previous arrangement and he kept him in the press only for a few days. The maxi-

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mum sentence of imprisonment passed on him was in my opinion uncalled for. I reduce his sentence to rigorous imprisonment for nine months. The fine and the imprisonment in default will stand. Indar Nath is a youth aged 17 only. He is not in any way connected with Prem Kumar and appears to have been used as a tool by the principal culprit Ram Nath and possibly by others who kept themselves in the background. In view of the fact that Prem Kumar himself was sentenced to rigorous imprisonment for two years only for the main offence of escaping from lawful custody, the sentence passed on him seems to be clearly excessive. Considering all the circumstances it seems to me that the period of imprisonment already undergone by him will be sufficient to meet the ends of justice and I accept the petition only to the extent of reducing the sentence to this period.

P. S.

Revisions accepted in part.
