

PETITIONER:
RAVINDER SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 07/02/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 856 1975 SCR (3) 453
1975 SCC (3) 742
CITATOR INFO :
R 1977 SC1579 (25)
RF 1988 SC 599 (5)

ACT:
Criminal Trial--Statement of the approver--Approver's evidence to be tested by the touchstone of independent credible evidence.
Criminal Trial--Issue-Estoppel--Parties and facts-in-issue to be the same in both trials--Approver's statement not materially corroborated by other evidence against an accused in another trial--Conviction, if could be based on the testimony of the same approver against another accused in a different trial.

HEADNOTE:

The case of the prosecution is that the appellant who was married to Bimla was employed in the Air Force Department at Sirsa. During his stay at Sirsa, when his wife was not there, he developed intimacy with a girl, Balbir Kaur, who was insisting on marriage, 'which however, the appellant posing to be a bachelor was putting off holding out hopes to her. The appellant and the Jasbir Inder Singh (approver) who was his friend, went on two months' leave. When the appellant and the approver went to bring Bimla back from her father's house at Komal, the appellant asked his wife that she should agree to a divorce, but she would not. The appellant used to say that he would finish his wife one day. On July, 29, 1968, Bhanu Prakash, cousin of the appellant went to the house of the appellant. On the same day the approver also returned from Lucknow. On July 30, the accused told the approver in the presence of Bhanu Prakash Singh that he would kill his wife that day. He replied that he had brought acid with him and it would help in expediting her death. On July 30, 1969, the appellant, his wife Bimla, his brother Satinder Kumar, the approver and Bhanu Prakash Singh left for Sirsa by train from Sasni Railway Station which is at a distance of four or five miles from Komari. After leaving Sasni at 12 Noon, they arrived at Delhi Railway Station at 6.30 P.M. and changed for Bhatinda Railway Station. They reached Rewari Railway Station at about 10.30 P.M. At Rewari their bogie was attached to the

train bound for Sirsa-Bhatinda. When the train left Rewari at 2.15 A.M. on July 31, 1968, there was no other passenger in the compartment except the above five persons. The train stopped for some time at the next Railway Station. When it again started, the accused threw his wife Bimla on the floor, of the compartment by catching hold of her by the neck. When she fell down in the compartment the approver caught hold of her by the feet and Bhanu Prakash Singh "threw acid in her mouth". Satinder Kumar did not take any part. The accused removed the pazebs from her feet and gold jumkas from her ,cars. The accused threw Bimla from the running train in between the first and the second railway stations beyond Rewari. Some acid drops fell on the hands of the accused and Bhanu Prakash Singh and on their pants and on the accused's shirt. When the train reached Bhiwani the accused got down for purchasing two tickets for Bhanu Prakash Singh and Satinder Kumar, but the Ticket Collector. Raghbir Singh (PW 29) detained him and he missed the train. Three of the aforesaid company reached Sirsa at 9.00 A.M. on July 31, 1968. When asked about the accused, the approver told Bansilal (PW 25) and Yudhishter Kumar (P26) that the accused had missed the train at Bhiwani and would be coming the next train. The accused arrived at Sirsa at 1.30 P.M. on July 31 Bhanu Parkash Singh left for Aligarh in the evening of August 1. The accused and the approver resumed their duties at the Air Force Station on August 2, 1968.

Bimla who had been thrown from the running train was picked up, semi conscious, by Udmi (PW 10) and another person from a railway track between Jatusana and Kosli Railway Stations, and taken to Railway Hospital, Rewari, where Doctor (Miss) K. Dass (PW 3) and Miss V. K. Sharma, Nurse (PW 2) 454

attended upon her. She could speak out a little before Miss Sharma, gave her name as Bimla wife of the accused and daughter of Narain Singh, and indicated that she was traveling with her husband by train. She was later sent to the Civil Hospital, Rewari, where she was received by Dr. Manocha (PW 1). She was not in a position to make a statement at the Civil Hospital and she expired at 8.45 P.M. on July 31, 1968.

The appellant husband being charged under section 302/34, I.P.C. along with some others obtained an acquittal from the Trial Judge. On the State's appeal, the High Court entered his conviction under section 302, I.P.C. and was given life sentence. Under section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, this appeal has been preferred.

It was contended for the appellant that (i) the approver was not a reliable witness; (ii) the approver's statement was not corroborated in material particulars by other evidence connecting the accused with the crime; and that, in as much as the High Court has, in the appeal by Bhanu Prakash Singh, acquitted him, on the ground that the approver's evidence was not corroborated in material particulars, the rule of issue-Estoppel should be applied in appellant's favour. Rejecting the contentions.

HELD : (i) and (ii)

An approver is a most unworthy friend, if at all and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears instinctively to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to

save it from being rejected brevi manu. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based. [459B-H]

Judged by these principles the evidence of the approver, while revealing the story, stands amply corroborated by the facts deposed to by the independent witnesses in certain material and clinching aspects and connecting the accused with the crime. [460D]

(iii) in order to invoke the rule of issue-estoppel not only the parties in the two trials must be the same but also the fact-in-issue proved or not in the earlier trial must be identical with what is sought to be re-agitated in the subsequent trial. [461D-E]

Lalta and Ors. v. State of Uttar Pradesh, [1969] 2 S.C.R. 526 and The King v. Wilkes, 77 S.L.R. 511 at 518 referred to.

Manipur Administration v. Thakchom Bira Singh [1964] 7 S.C.R. 123 at p. 133, relied on.

In the present case, the parties are the State and the appellant. In the other case relied upon, the parties were the State and the accused Bhanu Prakash Singh. There is no inconsistency between the finding that the approver's statement there was not materially corroborated by other evidence against Bhanu Prakash and the contrary finding in the affirmative in the present case against the appellant. [461E--F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 156 of 1974.

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From the Judgment and Order dated 12th February, 1974 of the the Punjab & Haryana High court in Criminal Appeal No. 1055 of 1969.

R. K. Garg, S. C. Agarwal and V; J. Francis for the appellant.

H. S. Marwah and R. N., Sachthey, for the respondent.

The Judgment of the Court was delivered by

Goswami, J. On July 30, 1968, Bimla, a hale and hearty young girl (19), indeed, by her right, legitimate wife of the accused, Ravinder Singh (23), accompanied on a rail journey her husband, who, after enjoying two months' furlough at home, returned to his Air Force Station at Sirsa without her and without the least concern. She was found next morning nearby a wayside distant railway station with acid burns on her face and on other parts of the body with multiple injuries, incapacitated by the shock and affliction, to tell her gruesome story to the few persons who came by her. The only unchallenged thing was that she was pronounced dead in

a hospital on July 31 1968, at 8.45 P.M.

Did the husband cause the murder of his wife is for a final judicial solution before us. The accused husband being charged under section 302/24 I.P.C., along with son others obtained an acquittal from the Trial Judge. Government's conscience was roused and the High Court on the State's appeal entered his conviction under section 302 I.P.C., Shrinking, however, from administering the extreme penalty under the law. That is how the liter is before us in this appeal as a matter of right under section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970.

The entire story as given below is revealed by friend of the accused, approver Jasbir Inder Singh (21) (PW 5), who was arrested along with the accused on August 13, 1968. Accused Ravinder Singh and the approver were employed in the Air force department at Sirsa and were good friends. Bhanu Parkash Singh since acquitted is the cousin of the accused. Satinder Kumar (11) is the accused's brother. During his stay at Sirsa, when his wife Bimla Kaur who was insisting on developed his stay at Sirsa, when his wife Bimla was not there, the accused marriage which, however, the accused posing to be a bachelor was putting off holding out hopes to her. Both the accused and the approver took two months leave, the former to construct his house at village Komri. The accused and the approver with Satinder Kumar reached Komri on June 3, 1968, when Bimla was in her parents' house. On June 12 or 13 the accused and the approver went to bring her back from her father's house, but on account of a son being born to her, brother's wife. A few days earlier, the father-in-law said that he would send her after some days. This led to some exchange of hot words. However after 7 or 8 days, Bimla returned to her husband's home with her father and brother, Lekh Raj Singh (PW 18). The accused went in entry July to see Bhanu Parkash Singh, his cousin, who was employed as Health Visitor at Arnod Dispensary and returned after 8 456

or 10 days. The approver was in the accused's house during the period. The accused asked his wife that she should agree to a divorce, but she would not. The accused used to say that he would finish his wife one day. On July 29, 1968, Bhanu Parkash Singh came to the accused's house. On the same day the approver also returned from Lucknow where he had gone 7 or 8 days back. On July 30, the accused told the approver in the presence of Bhanu Parkash Singh that he would kill his wife that day. Bhanu Parkash Singh replied that he had brought acid with him and it would help in expediting her death. On July 30, 1968, the accused, his wife Bimla, the approver, Bhanu Parkash Singh and Satinder Kumar left for Sirsa by train from Sasni Railway Station which is at a distance of four or five miles from Komri. The father of the accused came to see them off at the Railway Station. The accused booked a cycle at Sasni Railway Station and purchased two tickets for his wife and Bhanu Parkash Singh, but did not purchase any ticket for Satinder Kumar. Both the accused and the approver had Military Railway Warrants for travel.

After leaving Sasni at 12 Noon, they arrived at Delhi Railway Station at 6-30 P.M. and changed for Bhatinda Railway Station. They reached Rewari Railway Station at about 10.30 P.M. At Rewari their bogie was attached to the train bound for Sirsa-Bhatinda. When the train left Rewari at 2.15 A.M. on July 31, 1968, there was no other passenger in the compartment except the above five persons. The train

stopped for some time at the next Railway Station. When it again started, the accused threw his wife Bimla on the floor of the compartment by catching hold of her by the neck. When she fell down in the compartment the approver caught hold of her by the feet and Bhanu Parkash Singh "threw acid in her mouth". Satinder Kumar did not take any Part- The accused removed the pazebs from her feet and gold jhumkas from her ears. The accused threw Bimla from the running train in between the first and the second railway stations beyond Rewari. Some acid drops fell on the hands of the accused and Bhanu Parkash Singh and on their pants and on the accused's shirt. When the train reached Bhiwani the accused got down for purchasing two tickets-for Bhanu Parkash Singh and Satinder Kumar, but the Ticket Collector, Ragbir Singh (PW 29) detained him and he missed the train. Three of the aforesaid company reached Sirsa at 9.00 A.M. on July 31, 1968. When asked about the accused the approver told Bansilal (PW 25) and Yudhishter Kumar (PW 26) that the accused had missed the train at Bhiwani and would be coming by the next train. The accused arrived at Sirsa at 1.30 P.M. on July 31. Bhanu Parkash Singh left for Aligarh in the evening of August 1. The accused and the approver resumed their duties at the Air Force Station on August 2, 1968.

On August 3, 1968, the mother of the accused and her nephew, Malkhan Singh, came to Sirsa and she told that Bimla had been admitted in the Civil Hospital, Rewari, and suggested that they should register their- presence in the Air Force Station at Sirsa in order to save themselves. On August 4, the accused and the approver went to the

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Medical Assistant at the Air Force Station and the accused showed the urns on his hands and the Medical Assistant (PW 50) made a note in his register. They decided to leave their house at Now Mandi and again started living in the barracks of the Air Force from August 8. Both of them were arrested from the Air Force barracks on August 13, 1968. This is as disclosed by the approver (PW 5).

Let us now turn to the fate of Bimla thrown from the running train. She was picked up, Semi conscious, by Udmi (PW 10) and another person from a railway track between Jatusana and Kosli Railway stations and taken to Railway Hospital, Rewari, where Doctor (Miss) K.Dass (PW 3) and Miss V. K. Sharma, Nurse (PW 2) attended upon her. She could speak a little before Miss Sharma, gave her name as Bimla, wife of the accused and daughter of Narain Singh, and indicated that she was traveling with her husband by train. She was later sent to the Civil Hospital, Rewari, where she was received by Dr Manocha (PW 1). She was not in a position to make a statement at the Civil Hospital and she expired at 8.45 P.M. on July 31, 1968.

Postmortem examination of Bimla disclosed lacerated wounds on the head and multiple abrasions on different parts of the body. Face was disfigured by acid burns caused by sulphuric acid. There were other stains on the body which, according to the Doctor, were of sulphuric acid. Cause of death, in his opinion, was due to shock on account of burning caused by sulphuric acid. Sulphuric acid was also found by the Chemical Examiner on jumper, dopatta, and petticoat in the wearing of the deceased.

The Additional Sessions Judge disbelieved the approver and also held that his statement was not corroborated in material particulars. He held that motive was not established nor was the dying declaration proved. The High Court, however, found that the approver, who was admittedly

a friend of the accused, was a reliable witness and his statement did not suffer from any defect whatsoever. The High Court further held that the approver's statement was corroborated in material particulars by other evidence connecting the accused with the crime.

Since the accused has come in appeal against the judgment of the High Court as a matter of right, we have heard his learned counsel at length and also examined the evidence with care. We are unable to hold that the High Court committed any error or injustice in interfering with the acquittal in this case.

The most important material aspect in the case is with regard to the accused accompanying the deceased in the train on July 30, 1968. This is not only disclosed by the statement of the approver but is corroborated by evidence aliunde. The very fact that she was found away from, her home at a distant place by a wayside railway track is consistent with her traveling in the train on the fateful day. The defence of the accused that he left for Delhi on July 29, 1968 and "my

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wife followed me with large gold and silver ornaments on her person and she was robbed and killed on the way is most unnatural and improbable and can safely be characterized as false. The accused was anxious to bring his wife home from her father's house. He was returning to a distant place by train after enjoying his leave and there was no earthly reason to leave this young wife behind to travel alone in the train with "gold and silver ornaments" with attendant risks. Then again there is the evidence of Miss V. K. Sharma (PW 2) to the effect that she "also understood from tier (deceased's) talks, that she was proceeding to Sirsa with her husband". She is an absolutely independent witness and there is no reason to disbelieve her statement. She has no animus against the accused nor can it be accepted that she had been tutored by the police to give evidence in this case against the accused. The fact that this information was not recorded in the note Ext. PA/2 would not affect the veracity of the witness since her comprehension of the deceased's talk was not otherwise challenged. Nothing has been pointed out to show that this witness either had not mentioned about this fact to the Investigating Officer earlier or had stated something inconsistent with the same. Then we have the evidence of Raghubir Singh (PW 29). Ticket Collector, Bhiwani. It appears from his evidence that the accused was detained on July 31, 1968, by him at the Station when he returned from the Booking Office after purchasing 3 1/2 tickets which according to the accused were necessary for some passengers travelling in the train. From his evidence it also appears that the accused had return-journey Railway Warrant. Besides, when money was 'demanded from the accused for travelling without tickets' of those 3 1/2 persons from Sasni of Bhiwani he gave writing Ext. PL dated 31-7-68 to him. This witness is also an independent witness and has no enmity against the accused. We have no reason to think that he will falsely implicate the accused after being tutored by the police, Kumar as suggested. Further we have the evidence of Yudishter (PW 26) who states About the, approver, Satinder Kumar and Bhanu Parkash Singh to him at Sirsa on July 31 at about 10.30 A.M. without the accused. He also stated that the accused came there at about 1.30 P.M. the same day. His evidence, which is not even challenged, establishes the story about the three persons arriving at Sirsa without the accused who had already used the train at Bhiwani. The evidence of Shakti Parshaki Ghosh (PW 17),

A.S.M., Sasni Railwaily Station. mines that the accused booked his cycle No. RK- 162872 Make Road king from Sasni to Sirsa on July 30, 1968, as per the forwarding noe. Ext-PW 16/A (original Ext. 17/A) which fact is also proved by PW 16, Surinder Kumar, A.S.M. PW 17 categorically states that the accused came to him for booking the cycle and filled in the forwarding note. It is pointed out that PW 17 did not see the accused at the Railway Station at the arrival of the train as he went to the brake-van direct. it was not at all natural for the witness to follow the movements of the accused after he had booked the cycle. There is, therefore, nothing unusual in his not noticing the accused later on the arrival of the train.

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We also find from the approver's evidence that the accused went to the Doctor of the Air Force on August 4 to show the burns on his hands. This fact is deposed to by PW 50, sergeant R.N Singh, who worked as a Medical Assistant in the Unit of the First Aid Post at the Air Force Unit. According to him the accused came to him on August 4, 1968, at about 7.00 A.M. and reported that both his hands, had acid burns. He also proved the endorsement to that effect in the register (Ext. pT) maintained in the First Aid Post. This fact is not denied by the accused and according to him, he had these burns as he, being a storeman, had to deal with batteries and some acid fell on his hands, and that is why he went to PW 50 for treatment. In his statement in the court recorded on April 25, 1969) after admitting the above facts the accused also asserted that "there are no marks of acid burns on my hands now". In cross-examination of Dr. Manocha (PW 1) it was elicited that "the sulfur' acid bums if superficial and not infected and treated immediately in due course may not leave a mark. otherwise it should leave a mark". In view of this medical evidence there is no significance attached to the accused not having marks of the injuries on his hands after about nine months. The injuries due to a few accidental drops may even be superficial. It is Significant that PW 50 was not even cross-examined with regard to the burns being caused by acid from batteries. The accused's explanation that the acid from the battery caused these bums on his hands is absolutely an after-thought.

An approver is a most unworthy friend if at all and he having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. If the story is given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particular bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a con-

viction may be based.

The approver here was a constant companion of the accused. He was arrested along with the accused on August 13. He was in police custody till August 27 when he was sent to the jail thereafter. He wrote through the Jail Superintendent to the Magistrate on August 29

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expressing willingness to give evidence as "sultani gawa" originally (King's witness). He was then granted conditional pardon on September 6 and was examined thereafter as a prosecution witness. Every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the court by time-worn judicial practice.

Ignoring for a moment that PW 5 is an approver, there is nothing in his evidence to show that his statement otherwise is unreliable, unnatural or improbable. There is nothing to show that he had on any earlier occasion made any contradictory statement on any material point. It is true that an approver is a person of low morals for the reason that he being a co-participator in the crime has let down his companion. As pointed out above it is for this reason that a rule of caution has grown whereby the court has to see if his evidence is corroborated in material particulars connecting the accused with the crime.

Judged by the principles mention above, the evidence of the approver, as already set out, while revealing the story stands amply corroborated by the facts deposed to by the above independent witnesses in certain material and clinching aspects connecting the accused with the crime..

To mention a few, the fact that the accused was accompanied by the deceased wife is proved by the statement of PW 2, Miss Sharma. That the accused got down at Bhiwani Railway Station, missed the train and therefore, had to arrive Sirsa later in the afternoon is corroborated by PW 26. That the accused came by train on July 30, 1968 and not on July 29, 1968, is also established by the evidence of PWs 16 and 17. The accused booked his cycle at Sasni Railway Station on July 30, 1968 (vide PWs 16 and 17) and took delivery of the same at Sirsa Railway Station of August 1 (vide PW 20). Then again the accused reported to PW 50 about his acid burns on both the hands on August 4, 1968. These are some material aspects in the case having great relevance to the crime committed by the accused and are disclosed by independent and reliable witnesses. It was not possible for the approver if he had not actually accompanied the accused to make such a detailed statement as he has done, some material parts of which find support from the evidence of the aforesaid witnesses. We are, therefore, clearly of opinion that the approver's evidence is not only reliable but the same stands corroborated in several material parts by other reliable evidence from an independent source. We are also prepared to believe that the motive for the crime was the illegitimate intimacy with Balbir Kaur.

It was then submitted by the appellant that in a separate trial Bhanu Parkash Singh was acquitted by the High Court. He also produced the judgment of that case which was pronounced on the same day as in the present case. The learned counsel for the appellant, however frankly stated that the High Court acquitted the accused. Bhanu Parkash Singh, since the approver's evidence was not found to be corroborated in material particulars. That acquittal, therefore cannot

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at all influence the decision against the present accused when the approver's evidence is amply corroborated in material particulars against him.

The learned counsel for the appellant relied upon the decision, of this Court in *Lalta and Ors. vs. State of Uttar Pradesh* (1) to support his submission that on the principle of issue-estoppel conviction of the appellant cannot be sustained because of the acquittal of Bhanu Parkash Singh, a co-accused, although in a separate trial. The crux of the principle of issue-estoppel may be stated in the words of Dixon, J. in *The King vs. Wilkes*, (2) as follows

"Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner..... There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner".

In order to invoke the rule of issue-estoppel not only the parties in the two trials must be the same but also the fact-in-issue proved or not in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial.

In the present case the parties are the State, and the accused, Ravinder Singh. In the other case relied upon, the parties were the State and the accused Bhanu Parkash Singh. Besides, as even admitted by counsel, the approver was not held to be unreliable in that case while deciding the case of Bhanu Parkash Singh. There is no inconsistency between the finding that the approver's statement there was not materially corroborated by other evidence against Bhanu Parkash Singh and the contrary finding in the affirmative in the present case against Ravinder Singh. As has been observed by this Court in *Manipur Administration vs. Thokchom, Bira Singh*, (3) "issue-estoppel does not prevent the trial of an offence as does autre fois acquit but only preclude, evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction". There is, therefore, no substance in the submission of the learned counsel on the basis of issue-estoppel in this case.

The Trial Court's reasons for disbelieving the approver did not find favour with the High Court and rightly so. If the incident described by the approver had taken place, as stated, there is nothing improbable or impossible about it, if, judged by the standard of a cool person, the crime could not have been perpetrated in the manner disclosed. It is evident there was some hatching for the crime and that the opportunity

(1) [1969] 2 S.C.R. 526.

(2) 77 C.L.R. 511 at 518.

(3) [1964]-7 S.C.R.123 at 133

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to perpetrate it was availed of in the manner done, cannot be, dismissed as a fib. The Trial Court disbelieved the evidence of Sampat (PW 8) with regard to the dying

declaration of Bimla implicating her husband. The Trial Court also observed that "there is no doubt in my mind that the story of dying declaration is not genuine". Even so the Trial Court relying upon the statement of Sampat (PW 8) with regard to the dying declaration observed that "the statement of the approver, in my opinion, does not seem to be true". Once the evidence of Sampat has been rejected by the court it should not be made a basis for judging the veracity of other evidence by the yardstick of that unreliable evidence. The Trial Court fell into that error. Again the reason given by the Trial Court for the rejection of the evidence of the Ticket Collector is also tenuous. There is no reason why the Ticket Collector would spin a story of his own if not given by the accused, particularly so when, even according to the Trial Court, it does not fit in with the number of tickets actually needed for the journey. This absence of any attempt at padding of the evidence goes rather to establish the truth of the testimony of the Ticket Collector. The Ticket Collector only established the presence of the accused at Bhiwani Railway Station coming by the connecting train for Sirsa-Bhatinda. Because of these patent infirmities in the approach of the case and appreciation of the evidence, the High Court was right in interfering with the order of acquittal passed by the Trial Court.

It is true that in an appeal against acquittal the High Court will be slow in interfering with the findings of the Trial Court which has the opportunity to watch the witnesses while giving evidence before it. That may be largely true where the Trial Court records remarks about the demeanor of the witnesses. Where, however, the prima facie appreciation of the recorded evidence is opposed to even a reasonable appraisal of the same bearing in mind the relevant point or points sought to be established by the evidence, there will be no option to the High Court in the interest of justice to step in to do justice in the case. This is exactly what the High Court has done in the appeal.

We have considered the case from both the stand-points-whether the High Court was right in interfering with the acquittal and also whether we would be justified to take the same view as the High Court after examination of the evidence afresh. In addition to what we have found above if the accused came in the train with his wife on the date in question, about which we have not the 'slightest doubt, his subsequent conduct is a true tell-tale of his guilty mind. We are absolutely satisfied that the accused has been rightly convicted by the High Court. In the result the appeal fails and is dismissed.

V.M.K.

Appeal dismissed.

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