
(1995) 05 DEL CK 0058
In the Delhi High Court
Case No : Criminal Appeal No. 17 of 1987

Ram Lal Narang

APPELLANT

Vs

The State (CBI)

RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1995) 2 AD 656 : (1995) 34 DRJ 151

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : D.C. Mathur, Harjinder Singh, Paramjit Benipal and S. Lal, for the Appellant;

Judgement

Vijender Jain, J.

(1) This appeal is filed by the appellant for setting aside the order of conviction and sentence passed by Additional Sessions Judge, Delhi.

(2) Briefly the facts of the case are that two stone pillars which were lying in Surajkund were stolen some time in March in the intervening night of 31st March and 1st April, 1967. On 1.4.67 Fir No.72/67 u/s 380 Indian Penal Code was registered with local Police Station Bhutana, Distt. Karnal. The two pillars were found lying in a tank situated in Jandiala in the area of Faridabad. on 2.5.67 these pillars were recovered. On 3.10.67 challan was filed in the court of Shri R.K.Sain, Ilaqa Magistrate, P.S. Bhutana against Baliram Sharma and two others. On 1.3.68 application was filed by N.N.Malik who became approver (now dead) for taking on superdari these pillars. On 1,3.68 pillars were given on superdari to N.N.Malik by Shri R.K.Sain, Ilaqa Magistrate at the instance of H.L.Mehra, the then Chief Judicial Magistrate, Karnal approver in this case. On 16.7.68 Baliram Sharma and others were acquitted in Fir 72/67 and the pillars were ordered to be delivered back to village Lambardar, and they were kept in village Amin.

(3) The facts further as seen from the record are that some time in January 1967

Customs Officers at Bombay intercepted a consignment booked by Merchant Corporation of Bombay which was being exported to Usa and alleged two fake pillars of Bhutana were detained by them. R.C.8/69 was registered for false declaration. It is under this R.C. that the first statement of H.L.Mehra was recorded. Pursuant to this, search was effected on the appellant and his two brothers and they were interrogated and the investigation was carried out for this very offence however no charge sheet was filed against the appellant and his two brothers as nothing was found against them.

(4) Subsequently, Rc 2/71 was registered on 19.2.71 in which State made N.N.Malik and H.L.Mehra accused for offences under Sec.120B read with Ss. 406 and 420 Ipc and the charge sheet was filed in the court of Special Magistrate at Ambala against these two afore said persons and challan was filed in the year 1972 and till 17.5.76 various dates of hearing were fixed. Special Judicial Magistrate, Ambala Cantt. passed orders for framing of charges against N.N.Malik and H.L.Mehra on 17.5.76.

(5) In September 1974 an order of preventive detention was passed against the appellant. He was detained in MISA. A Habeas Corpus petition was made before High Court of Delhi and he was released. Again on imposition of Internal Emergency he was redetained on 1.7.75 and had to remain in jail till revocation of emergency when he was released in March 1977. The present case was registered by the Cbi, i.e. Rc 4/76 on 13.5.76 under Sec. 411 read with Sec.120B Indian Penal Code, it was not initially under Sec.420 Indian Penal Code On 26.6.76 N.N.Malik made an application under Sec. 306 Criminal Procedure Code .for grant of pardon in Rc 4/76 and on 3.7.76 pardon was granted to N.N.Malik. On 19.7.76 a charge sheet was Filed" being Rc 4/76 in the court of Chief Judicial Magistrate, Delhi under Ss. 420/411/406 read with S.120B Indian Penal Code and Sec. 25 of the Antiquity & Arts Treasure Act against appellant and his two brothers. It is important to note that the charge sheet in Rc 2/71 was still pending in the court of Special Magistrate, Ambala where N.N.Malik and H.L.Mehra were accused and were being tried. In Rc 4/76 N.N.Malik was not shown as accused. N.N.Malik died in 1977. On 17.4.77 the State withdrew the case pending against N.N.Malik and H.L.Mehra in the court at Ambala. On 16.7.76 the charge sheet in Rc 4/76 was filed in the court of Chief Judicial Magistrate, Delhi against the appellant and his two brothers. H.L.Mehra was not shown as accused in Rc 4/76. After the death of N.N.Malik, H.L.Mehra made an application for grant of pardon on 17.3.78. Pardon was granted to H.L.Mehra on making full and true disclosures.

(6) MR.DINESH Mathur, learned counsel for the appellant has argued that the charge as framed against the appellant was itself bad in law as charge framed for the consideration of this Court was that the appellant induced the Sub Judge at Karnal in making an order, Mr.Mathur has contended that inducing a judicial officer to make some order by making a false statement would either amount to contempt or perjury but not cheating. Mr.Mathur vehemently contended that the

sole basis of the finding of the learned trial court was based on misconception of law. Finding of the trial court that the court of Shri R.K.Sain, Sub Judge was induced to deliver property within the meaning of Sec. 420 Indian Penal Code was wrong in the facts of the case. He has further contended that at worst without admitting the allegation as made in the charge the allegation was that the appellant induced the Sub Judge to pass a judicial order directing the police to deliver some property to one N.N.Malik. Learned counsel for the appellant has further contended that even if it is assumed that the appellant was interested in acquiring the possession of the pillars there was no evidence whatsoever that the appellant agreed to participate with H.L.Mehra to obtain such property. According to him from the evidence of H.L.Mehra (Public Witness I) it has not been brought on record that contents of the application which were made by N.N.Malik to the court of Shri R.K.Sain at Karnal for obtaining superdari of two pillars were settled by the appellant or appellant had any knowledge of the same. Therefore, the finding of conspiracy to cheat is based upon no evidence and the judgment and order of the learned Additional Sessions Judge convicting the appellant under Ss.120-B/114 read with Sec. 420 Indian Penal Code is unsustainable.

(7) Mr. Mathur has vehemently contended that in the statement which was given by Mr.H.L.Mehra on 17.4.70 before Dasu Mal Ahuja Deputy S.P. he had not implicated the appellant. The statement of Shri H.L.Mehra is relevant. What is stated in that statement to police on 17.4.70 is as follows:-

"WHEN I was posted in Karnal as Chief Judicial Magistrate Shri N.N. Malik, one day, on his way back from Punjab probably Jullundur, came to me in my retiring room in the court compound and told me that there were one or two sculptures concerning a theft case pending in the court of either Mr.Sain (or Mr.Saini) who was judicial Magistrate, having court jurisdiction of Police Station Bhutana etc. and according to him those sculptures carried some spiritual value that if any woman takes "Charan Arnrit" the woman would get pregnant. According to him his sister was not having any child since her marriage and he did like to take those sculptures on "Superdari" so as to take them home for serving that purpose of his sister."

(8) He has further stated in his statement that:-

"I did not know if Mr.Malik was in any way connected with the theft case of the sculptures which formed the subject matter of the case."

(9) Statement of the said H.L.Mehra was also recorded on 29.4.72 in case R.C.2/71 and in the said statement he had reiterated the statement as reproduced above.

(10) On the basis of two statements of H.L.Mehra, Mr.Mathur has contended that the statement given by H.L.Mehra to the police in 1976 implicating the appellant ought not to have been relied upon by the trial court and no credibility can be given to such a disgraceful person who had lied before the Supreme Court and High Court. Mr.Mehra had filed petition before Supreme Court and High Court

challenging inter alia the making of H.L.Mehra as an accused on the basis of supplementary charge sheet in Rc 4/76 wherein his name appeared in Column 2, inter alia, slating the same story as has been reproduced above and changing the version only first time in March 1976 at the behest of the police. Counsel has argued that it would be gross miscarriage of justice to sustain the conviction of appellant on the evidence of such untrustworthy witness.

(11) Learned counsel for the petitioner has also contended that the trial court ought not to have convicted the appellant on the basis of uncorroborated testimony of H.L.Mehra which was contradicted by documentary, oral and circumstantial evidence led by the appellant.

(12) Learned counsel has also contended that the trial court gravely erred while appreciating the evidence of Mr.Sabharwal (DW7), a practicing advocate of the Supreme Court because his evidence showed that H.L.Mehra lied in Court on a very vital point because in the cross-examination of H.L.Mehra he maintained that his petition in the Supreme Court during the course of which he swore contrary affidavit was being financed by the appellant, which stand was totally negated by DW7 Mr.Sabharwal. The learned counsel for the appellant has also argued that the evidence of Ravi Dutt (Public Witness 7) who was working in the court of Shri R.K.Sain as Naib Court was completely ignored by the trial court in which he has specifically mentioned that Baliram Sharma was present in Court when application for superdari was moved by N.N.Malik at Karnal. It completely falsifies the testimony of H.L.Mehra that the appellant was at Karnal with him outside the Court of Shri R.K.Sain, Sub Judge, it was Baliram Sharma who was present in the court of Shri R.K.Sain though it was not a regular date of hearing and appellant was falsely implicated. It has been alleged that Baliram Sharma had a political clout and it was so found by the Shah Commission Report and he "could manage to transfer the guilt from himself to the appellant. Mr.Mathur has also contended that fact that Bal Kishan (Public Witness 45) was known to Baliram Sharma who himself was a notorious person and had dealings in antiques has been completely ignored by the trial court. Counsel has contended that there was no corroboration to the statement of the approver that Ram Lal Narang appellant was present in Karnal on 1.3.68 except from the statement of approver H.L.Mehra. Material witnesses who could have corroborated the statement of H.L.Mehra like Gopal (driver), S.I.Ram Parshad and peon of the court were not examined purposefully. Only one witness from the court Staff Ravi Dutt (Public Witness 7) was examined who did not support the version of prosecution that appellant was present on 1.3.68 but categorically stated that Baliram Sharma was present in the court along with H.L. Mehra. Mr.Mathur has contended that on this score alone the trial court ought to have taken adverse presumption against the prosecution.

(13) In any event of the matter the learned counsel for the appellant has argued that the fact that the alleged offence was committed in 1967 and after investigation case was filed against Baliram Sharma who was acquitted, again

after 4 years a charge sheet was filed against two other persons the appellant was not made an accused. Trial against H.L.Mehra and N.N.Malik pursuant to Rc 2/68 proceeded for 5 years and nothing tangible discovered during the proceedings of the said trial.

(14) MR.MATHUR has contended that on 16.7.68 that case against Baliram Sharma and another after their acquittal came to an end and the pillars ceased to be the case property of any case. No appeal was filed by the State against the acquittal of Baliram Sharma.

(15) MR.MATHUR while elaborating the chequered history of this case contended that as a matter of fact a trick was practiced upon judicial process in the U.K. as well on British Government by the respondent by misleading them, the appellant's two brothers were attempted to be brought from England during emergency and they were extradited after emergency came to an end. It was for the first time that the complicity of appellant and his two brothers was suspected in 1976 though the main witnesses PW45 and Public Witness 46 had already been examined in the year 1970-71 and none of them even remotely named the appellant. Even the appellant had been interrogated and documents taken charge of from some of the firms with which he was associated in the year 1970. Yet appellant was not involved in the case, though investigation started as alleged in 1967. Learned counsel for the appellant has contended that the two other brothers had been acquitted by the learned Judge on the ground that there is no evidence against them. He has further contended that there was no evidence to prove the conspiracy and the trial court gravely erred in convicting the appellant under Sec. 120B/114/420IPC.

(16) Mr. Lal learned counsel for the respondent has argued that taking into consideration the whole evidence court has not to simply ignore the testimony of H.L.Mehra on the ground that he was an approver and no corroboration was made.

(17) MR.LAL has contended that there was other evidence which linked the evidence of H.L.Mehra proving the guilt of the appellant. In his support he has relied upon Dagdu and Others Vs. State of Maharashtra, , Ram Narain Vs. State of Rajasthan, , Rampal Pithwa Rahidas and Others Vs. State of Maharashtra, and Sarwan Singh Vs. The State of Punjab, .

(18) Mr. Lal has further contended that non-production of driver and Si Ram Parshad may be lacuna in the investigation hut does not reflect on the credibility of the statement of H.L.Mehra. Mr.Lal has further argued that no corroboration was required to the testimony of H.L.Mehra as he was a former Chief Judicial Magistrate and there was no reason to disbelieve the testimony of Public Witness 1.

(19) MR.LAL has further cited before me Ranjeet Singh and Another Vs. State of Rajasthan, . Mr.Lal has also contended that H.L.Mehra was made an approver on 17.3.78 whereas Rc 4/76 was Filed on 13.5.76 and on 19.7.76 the charge sheet

was filed and the supplementary charge sheet in which H.L.Mehra was mentioned in column no.2 was filed in January 1977.

(20) After hearing the arguments of the learned counsel for the parties at the outset I must observe that there is no rule of law or practice that there must in every case be corroboration before a conviction can be allowed to stand. A conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has a rule of caution in mind. This is applicable in India that the Judge should give indication in his judgment that he has had the rule of caution in his mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case. However, it is a rule of prudence and practice that the evidence of an appellant ought not to be acted upon unless it is corroborated as against the particular accused in material respects. Corroborative evidence is which shows or tends to show that the story of the accomplice that the accused committed the crime is provided not merely that the crime has been committed, but that it was committed by the accused.

(21) On the basis of above facts I fail to understand as to when a case was pending in Ambala and H.L.Mehra was an accused, the case was pending for orders to frame charge, the order for making charge was in "existence how the application of. N.N.Malik was entertained at Delhi to make him an approver, and how H.L. Mehra was granted pardon in Rc 4/76 when he was not even an accused in Rc 4/76, inter alia, as he was an accused in Rc 2/71 pending before the Special Court at Ambala. Though a supplementary charge sheet was filed by the prosecution to make H.L.Mehra as co-accused in the present case and even in the supplementary charge sheet he was shown in the second column. It is important to reproduce the charge framed against the appellant which is as follows:-

"THAT you, accused nos. 1 to 3 between February 1968 and May 1976 at Delhi, Karnal and other places, were parties to a criminal conspiracy by agreeing amongst yourselves and with others including Narinder Nath Malik deceased and Hira Lal Malik, approver, to do or cause to be done illegal acts, to wit:-

(22) Firstly, to cheat Shri R.K.Sain, Judicial Magistrate, Karnal and thereby to dishonestly induce him to make an order causing delivery of two antique pillars (stone statues) belonging to the Panchayat of village Amin and lying in the Malkhana of Police Station at Bhutana as case properly of the theft case pending trial in the court of said Shri R.K.Sain, to the said Narender Nath Malik;

(23) Secondly, to cause the said Shri Narinder Nath Malik to commit the offence of criminal breach of trust by dishonestly and fraudulently misappropriating the said two antique pillars which had been entrusted to him on Superdari by the said Shri R.K.Sain and by dishonestly disposing of the said two antique pillars in violation of the contract which the said Narinder Nath Malik had made touching

the discharge of such trust;

(24) Thirdly, to commit the illegal acts of dishonestly receiving and/or retaining the said antique pillars knowing or having reasons to believe the same to be stolen property and that the said illegal acts were done in pursuance of the said agreement.

(25) And That you have thereby committed an offence punishable u/s 120B of the Indian Penal Code and within my cognizance."

(26) The trial court has acquitted the appellant and his two brothers for the offence committed under Sec. 406/411 Indian Penal Code, i.e. for second and third charge aforesaid, but convicted the appellant for an offence under Ss.114/420 read with Scc.120B Indian Penal Code The appellant was also acquitted of the charges under Ss. 406, 109 and 411 Indian Penal Code The finding of the conviction under Sec. 114 and 420 Indian Penal Code is to the following effect:-

"IT is established that accused Ram Lal Narang along with N.N.Malik had come to Karnal in pursuance of their criminal conspiracy and joined H.L.Mehra - approver as a co-conspirator. A false representation was made to the Judicial Magistrate at Karnal that the pillars were required for Archeological purposes by N.N.Malik who posed himself as an eminent Archeologist. In this process, Ram Lal Narang abetted N.N.Malik to cheat the Judicial Magistrate, at Karnal who passed the order of allowing the pillars to be taken on Superdari. H.L.Mehra in this regard has been believed to be telling the truth in court. This fact is proved by the subsequent evidence that replicas were prepared at the instance of accused Ram Lal Narang by Bal Kishan and thereafter N.N. Malik has even been going to the Hotels owned by the concern in which the said accused Ram Lal Narang is a Director."

(27) I have reproduced the charge above as framed. The trial court has held in para 192 of the impugned judgment that:-

"THE conclusions showed that the appellant came along with N.N.Malik to Karnal and taken the statues in connivance with H.L.Mchra in order to get them exported out of India."

(28) The impugned order further held that:-

"IT was totally immaterial whether original statues were sent out of India or not. Criminal conspiracy by itself is an offence. This is proved, Therefore, that Ram Lal Narang along with N.N.Malik and Hira Lal Mehra were parties to the criminal conspiracy in inducing Shri R.K.Sain, Judicial Magistrate, Karnal to make an order causing delivery of the pillars lying in the Malkhana at Police Station Butana and it is also as a result of the above further proved that the said accused committed an offence under Sec. 114 read with Section 420 of the Indian Penal Code by abetting to cheat Shri R.K.Sain, Judicial Magistrate at Karnal."

(29) As I have noted earlier that the charge against the appellant was dishonestly inducing Shri R.K. Sain, Judicial Magistrate to make an order causing delivery. This particular conviction by the trial court is on the basis of the testimony of Shri H.L.Mehra approver. Therefore, this Court has to examine as to whether the uncorroborated testimony of H.L.Mehra alone, can be taken for convicting the appellant as this statement is enough to sustain the sentence of the appellant without corroboration. In paragraph 128 of the impugned judgment, the learned trial court has returned the finding in the following terms:-

"FOR these reasons, I hold that prosecution has failed to prove that the pillars returned to the court at Karnal which were sent and installed at Amin in the temple of Mansa Devi were fake."

(30) In view of the aforesaid finding discussion regarding evidence whether replicas were prepared, by the appellant pillars were stolen or not becomes irrelevant to convict the appellant on account of his alleged presence on 1.3.68 at Karnal as stated by H.L.Mehra.

(31) Another wrong premises from which the trial court held that N.N.Malik posed himself as an Eminent Archeologist is not borne out from the fact of this case. In this connection I have seen the original application of N.N. Malik for obtaining Suprdari of the said pillars wherein no where it was mentioned by him that that he was an eminent Archeologist. What was stated in the application that two idols were required for archeological study for a temporary period in the interest of archeological research and development. I have observed this aspect of the matter for the reason that trial court erred in appreciating the evidence of the prosecution as at many places in the impugned judgment trial court had supposed that Malik made such a representation to the effect that he was an eminent archeologist before Shri R.K.Sain, Sub Judge. The appellant has been convicted for offences committed under Ss.114 and 420 read with Sec.120B Indian Penal Code on the basis of evidence of Shri H.L.Mehra who stated that appellant was with him at Karnal when application was made to the Court of Sub Judge to get these two pillars on Superdari on 1.3.68.. Various authorities were cited at the Bar by the learned counsel for both the parties. In this particular case this Court is to decide as to what is .the extent of corroboration that is required with the statement of an approver. Supreme Court in Dagdu and Others Vs. State of Maharashtra, , held that:-

"BEFORE considering that evidence, it would be necessary to state the legal position in regard to the evidence of accomplices and approvers. Section 133 of the Evidence Act lays down that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. illustration (b) to Section 114 says

that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars."

(32) It is also well settled principle of law that the extent of corroboration with the statement of approver would go with the facts and circumstances of each case and a statement of approver cannot merely be discarded if it is uncorroborated. In *Sarwan Singh Rattan Singh v. State of Punjab* (supra) it has been held that :-

"IT would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true."

(33) Similar view was taken in the case of *The State of Bihar Vs. Basawan Singh*, . The law which emerges from the reading of various authorities of the Supreme Court is that though the conviction on uncorroborated testimony of approver may not be illegal but corroboration is necessitated as a rule of prudence and the corroboration may not be on all the particulars of the case but should be of material facts to support the testimony of the approver. The fact that the statement of H.L.Mehra was recorded in Rc 8/69 and Rc 2/71, fact that he did not even once mention that appellant accompanied him to Karnal on the fateful day on 1.3.68, would it be safe for this Court to sustain the conviction of the appellant on the basis of uncorroborated testimony of H.L.Mehra regarding the factum of the presence of appellant at Karnal. On further scrutiny of the statement of the approver, I find that the learned trial court was under a wrong impression that previously H.L. Mehra did not implicate the appellant in the present case as he was himself an accused, but that was not true. In Rc 8/69 H.L.Mehra was not an accused pursuant to which his first statement was recorded on 17.4.70. Baliram Sharma and one another were accused. H.L.Mehra had lied in his testimony in Court that he did not name the appellant as he was accused himself. One fails to understand as to how much credence could be given to the uncorroborated testimony of H.L.Mehra when in relation to the petition filed before the Supreme Court as well as High Court for quashing his being shown in column no.2 in supplementary charge sheet filed in Rc 4/76 he categorically stated that it was N.N.Malik alone who accompanied him to Karnal and did not name the appellant in the said petitions. He had not even mentioned the name of Nagpal, the then Registrar of Punjab & Haryana High Court on the previous two occasions when the statement was recorded and in cross-examination he had explained that he had not named the appellant or Nagpal on account of advice rendered to him by the appellant and N.N.Malik which fact from the scrutiny of records seems to be incorrect as appellant was in judicial

custody from 1974 till lifting of Internal Emergency in March 1977. In Ram Lal Narang Vs. State (Delhi Administration), , it has been observed that appellant was in judicial custody at the aforesaid period. Therefore, question of appellant instructing approver H.L. Mehra during this period lacks credibility. The learned trial court has also not dealt with the arguments of appellant that when N.N.Malik and H.L.Mehra both were accused in Rc 2/71 at Ambala, said case was withdrawn in 1977 why in 1976 during Internal Emergency H.L.Mehra was made an approver in Rc 4/76. The impugned judgment is silent about this aspect of the controversy. It did not behave a former Chief Judicial Magistrate to act in the manner in which he had acted. His testimony cannot be termed that of a trustworthy witness. The trial court has erred in convicting the appellant on the uncorroborated testimony of such an untrustworthy witness. It was incumbent upon the prosecution to produce the driver of the car named Gopal in which car H.L.Mehra alleged to have travelled with the appellant and N.N.Malik. Head Constable Ram Parkash who was the most important witness as he was the person who while acting as Sho signed the report on the application for Superdari, he was also not brought in the witness-box by the prosecution. H.L.Mehra (Public Witness 1) in his examination-in-chief had staled as follows:-

"THE order is Exhibit Public Witness 1/B. With that order of Mr.R.K.Sen, we came out and, per chance, Mr.Ram Parkash Head Constable of P.S. Butana was found present there. I asked Mr. Ram Prakash to extend all help to Mr.Malik and Mr. Ram a Narang. Mr. Ram Prakash told us that, in the absence of Sho Butana and Asi Butana, he was officiating as Sho Butana."

(34) Similarly, in the absence of corroboration regarding the presence of appellant at Karnal on 1.3.68 either in the court premises or at P.S. Bhutana which is amply demonstrated by the testimony of S.I. Gurchet Singh (Public Witness 10) Sho, Asi Bhagat Ram (PW27) , Asi Bodh Raj (Public Witness 28), H.C. Pawan Kumar (Public Witness 31), Ishwar Chand Sharma (PW32) who was working with H.L.Mehra, peon of the court of Shri R.K.Sain and Ravi Dutt (Public Witness 7) who was working as Naib Court in the court of Shri R.K.Sain at the relevant time who categorically stated that:-

"SHRI H.L.Mehra was Chief Judicial Magistrate at Karnal during those days. H.L.Mehra had come with application for getting the said statues on Superdan to the residing Officer Shri R.K.Sain. When Malik was with Shri Mehra. Baliram was also with them at that time. Mr.Mehra presented this application to Shri Sain in the Chamber. Mr.Mehra and Malik only entered the Chamber. I had escorted them to the Chamber. Bali Ram did not enter the Chamber. He remained outside."

(35) In view of this testimony of Ravi Dutt who was a Naib Court and had categorically slated that with Mehra and Malik, Baliram Sharma was present who was accused in Rc 8/69, the finding of the learned trial court that non-production of material witnesses in relation to this aspect was a lacuna in the investigation but would not reflect on the statement of H.L.Mehra cannot be sustained.

(36) A very important aspect was also overlooked by the trial court when in crossexamination it was brought to the notice of Public Witness 1 that application Ext.PW1/DF the case of the prosecution was that one Asi Sohan Lal met H.C.Ram Parkash at Karnal and told him that he had been sent by one Shri Ram Kapoor Dy.S.P. to meet him and tell him to help N.N.Malik to get the statues on Superdari. This question for the reasons best known to the trial court was disallowed. Asi Sohan Lal has not been brought in the witness-box and neither Ram Parkas Head Constable as I have earlier stated. The witness further slated in his cross-examination which was conducted on 16.10.79 that the original pillars were exported as was told to him by Mr.Malik and fake ones had been returned to the courts which in turn contradicts the finding of the trial court recorded in para 136 of the impugned judgment that the pillars which were returned to the court were not fake.

(37) In view of the above discussion how much reliability and credence can be given to the statement of H.L.Mehra who was himself a Judicial Officer though acted in a most injudicious manner. The Supreme Court while deciding a case wherein the facts about the credibility of such kind of witness held in Rampal Pithwa Rahidass & Ors Vs. State of Maharashtra (supra) held:-

"SECTION 133 of the Evidence Act expressly provides that an accomplice is a competent witness against his co-accused and it renders admissible the testimony of an accomplice against his co-accused. It has, however, been a long settled practice of law that Section 133 of the Evidence Act must be read along with the provisions of illustration (b) to Section 114 of the Evidence Act. Section 114 of the Evidence Act empowers the court to presume the existence of certain facts and illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars. Thus, it follows, that whereas law permits the conviction of an accused person on the basis of the uncorroborated testimony of an accomplice by virtue of the provisions of Section 133 who is treated as a competent witness, the rule of prudence which has rightly been always accepted by the courts, embodied in illustration (b) of Section 114 of the Evidence Act, strikes a note of warning/ caution to the courts that an accomplice does not generally deserve to be relied upon, unless his testimony is corroborated in material particulars. Thus, as a matter of practice and prudence the courts have held that the testimony of an approver may be accepted in evidence for recording conviction of an accused person provided it receives corroboration from direct or circumstantial evidence in material particulars. The courts have generally looked upon with suspicion the statement of an approver because he is considered to be a person of low morals and not a wholly trustworthy person who for the sake of earning pardon for himself is willing to let down his erstwhile accomplices and Therefore before recording conviction Courts insist upon independent corroboration of his testimony. In Ram Narain v. State of Rajasthan 1973(3) Scc 811, Dua, J. while speaking for the Court dealt with the subject and observed: "An approver who is admittedly guilty of the crime is an accomplice who has betrayed his associates and has

apparently sought pardon for saving his own skin. In other words he has purchased complete immunity for his prosecution at the expense of his associates by agreeing to give evidence against them for the prosecution.. He is, Therefore, presumed not to be a man of high character or a fair witness. His pardon being conditional, to please the prosecution he may well weave some false detail into the true details of the prosecution story and may also falsely involve some innocent person. There is thus a real danger of his telling a story true in general outline but containing some untruth which he can easily work into the story. It is for this reason that the courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience that the approver's testimony which is clearly admissible is also worthy of belief credit. One can of course visualise an accomplice who is genuinely repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence. But even in such cases the court has to judicially determine the extent to which his uncorroborated testimony can be considered as trustworthy by looking to the other relevant material and the attending circumstances on the basis of which the accused can be safely convicted. The rule which seems to emerge from the foregoing discussion and judicial decisions is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the judge."

(38) The impugned judgment also suffers from another infirmity Ravi Dull (Public Witness 7) had stated that Baliram Sharma was present on 1.3.68 and the person who was with H.L.Mehra was Baliram Sharma, the learned Additional Sessions Judge rejected it on the ground that it was not a defense taken by the accused. The learned trial court committed a grave error because it was not the defense of the accused but a statement coming from prosecution witness (Public Witness 7) that he had seen Baliram Sharma. In the absence of any other evidence on record as to who was with H.L.Mehra on the fateful day, in view of the testimony of Ravi Dull who was Naib Court of Shri R.K.Sain, the rejection of the testimony of Ravi Dull summarily on the ground that it was the defense of the accused is not sustainable in the eyes of law. Similarly, the trial court fell in an error regarding the statement of Public Witness -34 V.K.Malik s/o N.N. Malik which dealt with the plea of N.N. Malik vis-a-vis H.L.Mehra and not of appellant as it was not the defense of appellant. I am of the opinion that approver had been shifting stands. The witness has been changing stand which creates doubt about the credence and trustworthiness of the witness.

(39) Finding of the trial court in paragraph 106 of the impugned judgment is that on the basis of evidence led by the prosecution which was totally sketchy, prosecution had failed to prove that the pillars returned at Malkhana, Police Station Bhutana were fake.

(40) In view of the finding of the trial court that the pillars which were returned to the P.S. Bhulana were not fake, how can the appellant be convicted merely on

the basis of the uncorroborated testimony of H.L.Mehra under Scc.114 read with Ss.420 and 120 Indian Penal Code when he acquitted for offences under Ss.406 and 411 Indian Penal Code Mr.Lal learned counsel for the Cbi has agitated before me that taking into consideration the testimony of Bal Kishan (Public Witness 45) appellant's conviction can be sustained. How much reliance can be placed and for what purpose on the testimony of Public Witness 45 in view of the finding of the learned trial court itself an offence under Ss. 406/411 Indian Penal Code for which Bal Kishan's testimony was relevant. Even otherwise this witness was called to Delhi, quoting the language of the impugned, judgment in Baroda Dynamite case during the emergency. This fact was admitted by the witness and this is how in paragraph 160 of the impugned judgment the learned Additional Sessions Judge has dealt with:-

"ONE agrees with the defense counsel in the face of this cross- examination that it was unethical to call the witness in Baroda Dynamite case and thereafter record the statement in the present case. It does not behave the State to use such tactics.

(41) In paragraph 166 again of the impugned judgment the learned trial court observed that:-

"BAL Kishan has also made contradictory statements as how he came to know Shankar Singh or in other words whether he knew him before he went to the house of Rama Narang or not and this version in that light cannot be accepted.

(42) In spite of the above statement of Bal Kishan the court below went on believing the statement of Bal Kishan. More so, when the trial court on its own has recorded that Ram Parshad who had purported to have gone with bal Kishan (Public Witness 5) looking for stones and Mahfuz Ali and the truck driver who brought the stones were not examined. In any event of the matter as I have observed earlier the testimony of Bal Kishan has nothing to do with the charge framed by the court below for which the appellant has been convicted, more so in view of the fact that appellant and his two brothers were acquitted of charges under Ss. 406 and 411 IPC. Bal Kishan's testimony was of some relevance had the appellant was found guilty of Ss.406/411 IPC.

(43) I have to also answer as to whether making an order by a judicial officer for granting superdari would amount to delivery of property and if that is so whether any offence under provisions of S.114 Indian Penal Code can be maintained against the appellant. In the absence of no evidence on record that original pillars were not returned and in view of the finding of the trial court that the pillars which were returned were not fake and in view of the fact that Ambala court discharged both the accused H.L. Mehra and N.N.Malik. How in relation to the same offence a subsequent Rc 4/76 was Filed when after long investigation prosecution did not file any charge of conspiracy, no allegation of conspiracy finds mention in the charge sheet Filed in the court at Ambala, only offence alleged to have been committed by Nn Malik and H.L.Mehra were under Scc.420

Indian Penal Code Once the appellant has been acquitted under Sec. 406 Indian Penal Code liability can not be fastened for an offence under Sec. 420 Indian Penal Code in view of peculiar facts and circumstances of this case. Inducing a person to pass a judicial order whether would be punishable under Sec. 420 in the absence of any allegation or averments that any property was passed by that judicial officer. To my mind the answer is in negative.

(44) There is no evidence that the appellant was at Karnal except the testimony of the approver how the present conviction and sentence can be sustained as from the allegations itself the conspiracy was not for cheating or for joining hands for seeking money in view of the Finding of the trial court that pillars returned at Malkhana, P.S. Bhutana were not fake. Even the charge for conspiracy was not for preparing the replicas. As a matter of fact there was no charge for preparing replicas and how the conviction and sentence of the appellant can be sustained when both the other two brothers have been acquitted of charge of conspiracy.

(45) A careful analysis of the statement of the approver given at the trial coupled with the circumstances under which he came to be arrested, the averments in his application for grant of bail and other circumstances have created an impression in my mind that his testimony was not worthy of reliance and credence in the absence of any corroboration from Ram Parkash H.C., driver of the vehicle, and peon of the Court of Shri R.K.Sain, Sub Judge, no material has been brought on record to show that efforts were made to bring them to the witness box.

(46) Before I set aside the impugned judgment, I would also like to emphasise that 27 years have passed since the alleged offence was committed from 1967 till 1976 i.e. almost 9 years, no allegations were made against the appellant though prosecution was launched at Karnal against Baliram Sharma and another in 1967 and against N.N.Malik and H.L.Mehra in Ambala in the year 1971. The trial court took almost 8 years to pronounce the judgment and it is almost 10 years that the appeal has been pending in this Court. The appellant has been under constant fear of arrest that itself is a punishment to him. However, taking into consideration the totality of circumstances and the conviction of the appellant in view of the discussions aforesaid the impugned judgment has charged in miscarriage of justice. The conviction of the appellant on the uncorroborated testimony of H.L.Mehra cannot be sustained in the eyes of law. The result is that the impugned judgment and the order of conviction and sentence are set aside. The appeal is allowed.