
(1973) 03 RAJ CK 0022
In the Rajasthan High Court

State	Vs	APPELLANT
Sardara		RESPONDENT

Date of Decision : 21-03-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 164, 337, 342, 374, 376

Evidence Act, 1872 — Section 114, 133

Penal Code, 1860 (IPC) — Section 201, 302, 34, 363, 367

Citation : (1974) CriLJ 43

Hon'ble Judges : L.S. Mehta, J;J.P. Jain, J

Bench : Division Bench

Judgement

L.S. Mehta, J.—The prosecution story in brief is that Kanhaiya Lal Periwal, P. W. 17, a resident of Nohar, had a son Naresh and a daughter Sarita. Naresh was about 5 1/2 years" old and Sarita was nearly 4 years of age. Naresh was studying in the first standard in Pooran Mal Middle School, Nohar. On July 15, 1971, Naresh returned from his school at about noon. Thereafter both Naresh and his sister Sarita went out of their house to play in the lane. That very day at about 3 p. m. Kanhaiya Lal's another son Ghanshyam went to his father's shop and informed him that both Naresh and Sarita, who had been playing in the lane at 2-30 p. m. were missing. On receiving that information Kanhaiya Lal went to his house. There his wife Mst. Godawari, P. W. 1, told him that Naresh and Sarita had been missing. Kanhaiya Lal made a search of his two children in the town of Nohar, but when he could not get their clue, he made a report (Ex. P-34) to A. S. I. Nohar, Gajs Nand, P. W. 23, on July 15, 1971, at 8.30 p. m. On receipt of the above report the police also strove to trace the whereabouts of the two children. Next day, i.e.. on July 16, 1971, at 5 p. m. Kanhaiya Lal lodged another report (Ex. P-35) with the police station, Nohar. Gaja Nand, P. W. 23, A. Section 1. in-charge of the police station, Nohar, registered the case under Sections 363 and 367, I. P. C. Soon after the police made a thorough search of the two children at the railway station and various other places. But all their endeavours met with a failure. In the meantime, S. H. O. Khushal Chand, P. W. 27, returned to the

police station. On August 3, 1971, Gaja Nand informed Khushal Chand that some foul smell was emitting from the "Tehsil"-well and that the dead bodies were seen floating therein. Thereupon Khushal Chand went to the well. He peeped into it and saw that two dead bodies were resting on the surface of water. Jetha Ram, P. W. 26, got down into the well, he took two headless dead bodies out of it. One of the corpses was of Naresh and the other one was of Sarita, Memos Exs. P-36 and P-37 were prepared in respect of these recoveries. Naresh was putting on a white bush-shirt Ex. 12 and a blue underwear Ex. 13. Sarita was wearing a black frock Ex. 14 and a blue underwear Ex. 15. Four Chhappals of the two children were also recovered. All these articles were seized by the police under memo Ex. P-41. On August 4, 1971, Jetha Ram, P. W. 26 and Modu Khan, P. W. 5, again got into the well and brought out joints of bones and small pieces. They were seized by the police under memo Ex. P-42. The same day one Chappal and one bag belonging to Sarita were further recovered under memo Ex. P-44. On August 5, 1971, two skulls and jaws with teeth were taken out of the well : vide memo Ex. P-45. Thereafter the investigation was conducted under the guidance of Manphool Singh, Circle Officer, P. W. 25. In the course of the investigation Sardara Ram, Mst. Tulsi and her husband Bhikha Ram were arrested on August 22, 1971 : vide memos Exs. P-48, P-49 and P-50. After his arrest Sardara Ram furnished information regarding the discovery of the weapon of offence to the police : vide Ex. P-51 dated August 26, 1971. Pursuant to that intelligence the police recovered the dagger Ex. 11 from the house of Sardara Ram under memo Ex. P-26. On August 28, 1971, accused Bhikha Ram gave information Ex. P-2 to the police regarding the availability of a quilt used by the accused in the course of the crime. Consequent on that information the police recovered the quilt, Ex. 6 at the instance of Bhikha Ram accused under memo Ex. P-2. Mst. Tulsi told the police under memo Ex. P-54, dated August 29, 1971, that she had obtained an iron pan from Dr. Mohan Lal . In conformable to that information the police recovered an iron pan from the house of Dr. Mohan Lal Narula, P. W. 3. Its seizure memo is marked Ex. P-13. On September 5, 1971, accused Bhikha Ram was produced before the Munsiff-Magistrate, Hanumangarh, for getting his confessional statement recorded. Learned Munsiff-Magistrate sent Bhikha Ram that day to the judicial lock-up. Next day, i.e., on September 6, 1971, he was again produced before the Munsiff-Magistrate. He recorded his statement Ex. P-7 u/s 164, Cr. P. C. Thereafter Bhikha Ram accused submitted an application Ex. P-5, dated September 25, 1971, to the District Magistrate, Ganganagar, u/s 337, Cr. P. C., stating therein that he should be tendered pardon on the condition of his making a true and correct statement relating to the offence. The, District Magistrate, Ganganagar, recorded the statement of Bhikha Ram (Ex. D-2) on October 7, 1971. The accused was later on tendered pardon by him and was made an approver. The seized articles were sent to the Chemical Examiner, Government of Rajasthan, Jaipur. The Chemical Examiner in his report Ex. P-62 opined that the quilt and the four garments were positive for blood. He could not detect any blood on the iron blade of the dagger, nor from its wooden handle. The other articles were found negative for blood. The Chemical Examiner and

Serologist to the Government of India, in his report Ex. P-63, opined that the blood stains on the quilt and other articles sent to him were disintegrated and their origin could not be determined. Post mortem examinations of the two dead bodies were conducted by Dr. Sahi Ram, P. W. 16, In-charge Government Dispensary, Nohar, on August 3, 1971. As the dead bodies were highly decomposed and incomplete, he could not ascertain the cause of death. The remains were identified by the father of the two children after having seen their clothes. In the opinion of the Doctor death of Naresh and Sarita took place between two to three weeks prior to the post-mortem examinations. Possibly the death, according to the Medical Officer, occurred due to severance of necks and heads from the dead bodies. The severance could not have been caused only because of decomposition.

2. According to the prosecution case Sardara Ram Dakot used to prepare amulets and talismans. He also propagated human sacrifices for promoting the birth of children. He generally induced ladies having no children to have an irrational belief in supernatural agency to be propitiated with the blood of human beings. Accused Mst. Tulsi had been married to Bhikha Ram some 15 or 16 years back. First, she gave birth to a male child 10 years after her marriage in Ganganagar Hospital. That child did not survive. Subsequently she started visiting accused Sardara Ram. Once Sardara Ram told her to give him Rs. 4/-, in lieu of preparing a talisman. As no money was given to him, that could not be done. Mst. Tulsi was again impregnated. She in connection with delivery went to her parents' house at Suratgarh. There she gave birth to a child. The child, however, could live only for 10 minutes. After a couple of days Mst. Tulsi returned from Suratgarh to her home at Nohar. Accused Sardara Ram told Mst. Tulsi that without amulet or talisman she could not remain happy and that it was not possible that child would remain alive without it. Sardara Ram also suggested to her that human sacrifice was equally necessary to appease "Kali Devi" and without it her child would not remain alive. In the afternoon of July 15, 1971, Mst. Tulsi took away to her house her neighbour Kanhaiya Lal 's two children Naresh and Sarita, who were playing in the lane, and concealed them. Her husband Bhikha Ram, a peon in the office of the Sub-Divisional Magistrate. Nohar, returned home in the evening. She asked her husband to call Sardara Ram so that human sacrifice of the two children might be duly carried out in fulfilment of his suggestion. Bhikha Ram went to Sardara Ram. Both Bhikha Ram and Sardara Ram bought wine worth Rs. 10/-, from the shop of the wine merchant Sattar Khan, P. W. 18. Both of them took that wine but that much of its quantity was not sufficient to excite them to enthusiasm. They, therefore, purchased additional 500 grams of liquor for Rs. 7/-, from Sattar Khan and took it. Thereafter Sardara Ram having taken a dagger and a patched quilt accompanied Bhikha Ram at about 11 or 11.30 in the night. Both Sardara Ram and Bhikha Ram reached the latter's residence after a short time. Bhikha Ram called out his wife and got the door of his house opened. Both Bhikha Ram and Sardara Ram entered the house. Thereafter Tulsi bolted the door from inside and

then she went upstairs for keeping a watch. Sardara Ram went inside the room. Bhikha Ram kept standing on its entrance. Naresh and Sarita were found sleeping in that room on a gunny bag. A lamp was also seen burning therein. Sardara Ram then placed an iron pan having been obtained by Mst. Tulsi from Dr. Mohan Lal Narula, P. W. 3, on the quilt which he had brought. He first put Naresh's head on the pan and struck a dagger blow on the boy's throat. Half the throat was cut. Then Sardara Ram pressed the boy's mouth with his hand and he also pressed his legs with his own legs. The victim died. His blood was collected in the vessel. Thereafter Sardara Ram put an end to the life of Sarita repeating the same modus operandi. He then called Mst. Tulsi. He offered handful of blood to "Kali Devi's" statue installed on a wall, A handful of blood was also rubbed on the abdomen of Mst. Tulsi. Sardara Ram invoked "Kali Devi", imploring it to carry into effect the desire of Panditani (Mst. Tulsi). The iron vessel, containing the two dead bodies and the blood, was tied in the quilt. The pan was then lifted by Sardara Ram to be taken to the "Tehsil" well. "For half the distance it was taken by Sardara Ram. For the remaining half it was carried by Bhikha Ram. The moment Bhikha Ram and Sardara Ram reached the "Tehsil" well, the bundle was untied and the vessel was separated from the quilt. The dead bodies, along with the blood, were thrown into the well. After accomplishing the object both Sardara Ram and Bhikha Ram returned home. The dagger was taken by Sardara Ram at his house and the quilt and the iron pan were carried by Bhikha Ram to his house. The vessel was washed and after sometime it was returned to Dr. Mohan Lal Narula by Mst. Tulsi. The quilt was thrown into dirty water-pit, situate behind Bhikha Rani's house. In the course of investigation Bhikha Ram's sister Mst. Jana and her paramour Mukand Singh were also arrested by the police. After necessary investigation the police presented a "challan" against accused Sardara Ram, Mst. Tulsi, Bhikha Ram, Mst. Jana and Mukand Singh to the Court of the Munsiff-Magistrate, Bhadra. Thereafter Bhikha Ram was made an approver by the orders of the District Magistrate, Ganganagar. Learned Munsiff-Magistrate, Bhadra, conducted preliminary inquiry in accordance with the provisions of Section 207A, Cr. P. C. and committed accused Sardara Ram and Tulsi for trial to the Court of Sessions Judge, Ganganagar. He, however, discharged Mukand Singh and Mst. Jana. Sardara Ram was charged by the learned Sessions Judge, Ganganagar, under Sections 302 and 201, I. P. C., to which he pleaded not guilty and claimed trial. Mst. Tulsi was charged under Sections 302/34, I. P. C. and the same was denied by her. In support of its case the prosecution examined 27 witnesses, including P. W. 8 Bhikha Ram approver. In his statement recorded u/s 342, Cr. P. C., Sardara Ram refuted the prosecution story. He admitted that he was an astrologer, but he knew nothing about the insidious propaganda regarding amulets or talisman. He also disowned the fact that he had given information to the police for the discovery of the dagger. He further stated that A. S. I. Prakash Singh had in the past falsely implicated him in connection with the theft of an idol in the year 1968-69, and it is on account of his contrivance and device that this false case has been foisted on him. He further stated that Bhikha Ram became an approver at the instance

of the police. Mst. Tulsi also denied the prosecution version. She stated that the prosecution witnesses gave evidence against her because of the police pressure. The accused did not produce any evidence in their defence. Mr. M. C. Jain, Sessions Judge, Ganganagar, found the prosecution story, as unfolded by the approver, worthy of credence and convicted Sardara Ram for the offence u/s 302, I. P. C. and sentenced him to death. He also found Sardara Ram guilty u/s 201, I. P. C. for causing disappearance of the evidence of the offence, and sentenced him to five years' rigorous imprisonment and to pay a fine of Rs. 250/-, in default of payment of fine to undergo further rigorous imprisonment for six months. Both the sentences of imprisonment were made concurrent. He convicted Mst. Tulsi u/s 302, I. P. C. and sentenced her to imprisonment for life.

3. Against the above verdict, the present jail appeal has been taken by accused Sardara Ram, which has been registered as D. B. Criminal Jail Appeal No. 711 of 1972 (Sardara v. State). The Sessions Judge, Ganganagar, has submitted the proceedings along with all the material exhibits to this Court in accordance with the provisions of Section 374, Cr. P. C., for confirmation of the death sentence imposed on Sardara Ram u/s 376, Cr. P. C. As Sardara Ram was unrepresented, this Court appointed Mr. K. N. Tikku, Advocate, as amicus curiae to defend accused Sardara Ram. It may also be noted here that as no appeal has been preferred by Mst. Tulsi against her conviction and the sentence, it is not necessary for us to deal with her case.

4. The first thing to be weighed is whether Naresh and Sarita met with homicidal death. No argument was advanced by learned Counsel for the appellant challenging this aspect of the case. It is in the evidence of P. W. 1 Mst. Godawari, mother of the two children, that both Naresh, aged 5 years and Sarita, who was 4 years old, went out of her house to play in the lane in the afternoon of July 15, 1971. Thereafter they never returned. P. W. 4, Devi Lal, a teacher of the Middle School, Nohar, has deposed that Naresh was studying in his school in the first standard. He was present in the school from July 2, 1971 to July 15, 1971. The attendance register is in his hand-writing and the relevant entry is marked Ex. P-14. The school time ran from 7 a.m. to 11-30 a.m. Naresh did not attend the school after July 15, 1971. Modu Khan, P. W. 5, and Jetha Ram Jat, P. W. 26, dived into the well-water and took out two dead bodies and two skulls separated from the corpses. The dead bodies were having clothes on them. The corpse of Naresh was having a white bush-shirt (Art. 12) and yellow underwear (Art. 13). The dead body of Sarita was having a frock (Art. 14) and underwear (Art. 15). Besides, four Chhappals were also recovered from the well. Naresh's Chhappals are Articles 2 and 3 and Sarita's nylon Chhappals are Articles 4 and 5. P. W. 27 Khushal Chand, Sub-Inspector of police station Nohar, prepared memos in respect of these recoveries. They are marked Exs. P-36 and P-37, Post-mortem examinations of the dead bodies were conducted by Dr. Sahi Ram, P. W. 16, Incharge, Government Dispensary, Nohar, on August 3, 1971. The dead bodies had no necks or heads. They were, however, identified because of the clothes, which covered them. Penis was seen on one body and vagina on the other. As the

dead bodies were highly decomposed and incomplete, the Doctor could not ascertain the cause of their deaths. After having examined all the symptoms on the dead bodies the Doctor expressed the view that the death of Naresh and Sarita had taken place between two to three weeks prior to the post-mortem examinations. Probably the death, in the opinion of the Doctor, occurred due to severance of necks and heads from the bodies. The Doctor is definite on the point that the severance could not have been caused only by decomposition. On August 5, 1971, the Doctor also examined the two skull-bones with the mandibulars which had been separated from the mandibular joint. One skull was larger and the other one was smaller. Both the skulls were of children. The larger skull was of a male child and the smaller one was of a female child. After inspecting both the skulls the Doctor expressed the view that they appeared to be the skulls of two children under the age of 6. The male skull bone, the Doctor added, could be of Naresh and the tibia bone also could be of Naresh. The other parts could be of Sarita. In the cross-examination the Doctor stated that he gave his opinion regarding the male and the female skulls as he had fitted respective mandibulars with each skull. The skulls and the Chappals of the two children had been identified by P. W. 1 Mst. Godawari, their mother, and P. W. 17 Kanhaiya Lal, their father. They both have stated that the bush-shirt Article 12 and the underwears Article 13 found on one of the dead bodies were of their son Naresh. The Chappals Articles 2 and 3 were also of Naresh. The frock Article 14 and the "Chhadi" Article 15 found on the other corpse were of Sarita. Nylon Chappals Articles 4 and 5 too were of Sarita.

5. It is not necessary (and indeed in the case of some crimes it would be impossible) to prove the corpus delicti by direct and positive evidence : vide Phipson on Evidence, Ninth Edition, Page 53. The corpus delicti of a crime is the body or the substance of the crime charged. It involves two elements- (1) injury to a specific person; and (2) Criminal agency of someone in producing that injury. Proof of the accused's connection with the crime as the operative agent, although essential for conviction, is not part of the corpus delicti : vide page 48 of Wharton's Criminal Evidence, 12th Edition, Vol. 1. Corpus- delicti, which is the body of the substance of crime, normally contains two elements : - (a) the end result of an act, such as in homicide a death; and (b) the fact, that the end results so produced by a criminal act, such as in a homicidal case, that death was caused by killing. The corpus delicti may be proved by circumstantial evidence. Learned Counsel for the appellant submits that the real death should have been proved by the prosecution by direct evidence. In our opinion such proof is often difficult to produce and, in the absence of statute, weight of authority supports the proposition that the fact of death may be proved by circumstantial evidence : see page 54 Underbills' Criminal Evidence 5th Edition, Vol. 1. Thus, where the body has been destroyed or decomposed or thrown over-board and not recovered, circumstantial evidence may be received. If direct evidence exists, however, it must be produced. The criminal agency may always be proved by circumstantial evidence. As has been observed in Ram Chandra and Another Vs.

State of Uttar Pradesh, , in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable.

6. In the instant case although the dead bodies of the two children have not been identifiable because of their decomposition, the clothes and the chappals recovered along with the remains furnish convincing, credible and cogent evidence to the effect that these bodies were of no other persons but of Naresh and Sarita. The trial Court also, after taking into consideration the relevant evidence, gave a positive finding in the following words:

There does not remain any doubt whatsoever that the dead bodies and other parts of bodies were of Naresh and Sarita.

We agree with that finding and hold that the remains recovered from the "Tehsil" well were of none else but of Naresh and Sarita.

7. Now the question that survives for consideration is whether the prosecution has succeeded in proving, beyond reasonable doubt, that it was appellant, Sardara Ram, who assassinated Naresh and Sarita. There is no eye-witness to the actual commission of the crime except approver Bhikha Ram, husband of accused Mst. Tulsi. Bhikha Ram undoubtedly is an accomplice. The law in India relating to the evidence of accomplices stands thus:

Even before the passing of the Indian Evidence Act, 1872, it had been held by a Full Bench of the Calcutta High Court in *R. v. Elahi Buksh* 5 WR Cr 80 that the law relating to accomplice evidence was the same in India as in England. Then came the Indian Evidence Act, which by Section 133 enacts 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.

Illustration (b) to Section 114, Evidence Act however provides:

that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

Reading these two provisions together the Courts in India have held that while it is not illegal to act upon the uncorroborated evidence of an accomplice, it is a rule of prudence of universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused. The law in India, therefore, is substantially the same on the subject as the law in England. The law in England has been laid down in *Davies v. Director of Public Prosecutions* (1954) 1 All ER 507. Therein House of Lords remarked:

In a criminal trial, where a person, who was an accomplice, gave evidence on behalf of the prosecution, it was the duty of the Judge to warn the Jury that

although they might convict on his evidence, it was dangerous to do so unless it was corroborated.

In the United States of America almost identical law prevails. In Underbills' Criminal Evidence, Article 183, 5th Edition, it has been laid down as under:

Admissibility and priority of the consistent declaration of an accomplice in corroboration of his testimony has been both denied and affirmed. Corroboration by independent evidence is not dispensed with where several accomplices testify against the other.

The celebrated author Wigmore on Evidence in Article 1128 says:

An accomplice, whether a confidante or not, is always under a suspicion of discredit, implied from his interest to screen himself and to secure the conviction of his companion and he is usually required to be corroborated by other witnesses.

The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who takes part in the crime and later on to save himself he betrayed his former associates. The real danger is that his telling a story which in its general outline is true, but it is also easy for him to work in the story matter which is untrue. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting upon independent evidence which in some measure may implicate each accused. This aspect of the matter was expressed by Sri George Rankin, C. J. in *Arnbikacharan Roy v. Emperor* AIR 1931 Cal 697 : 33 Cri LJ 19 & *Bhuboni Sahu v. The King* AIR 1949 PC 257 : 50 Cri LJ 872. In *B. G. Lerctholi v. The King* AIR 1950 PC 10 : 51 Cri LJ 630, which was a case from Basutoland, South Africa, it was observed by Lord Reid:

Basutoland as elsewhere must always have in mind the danger of accepting accomplice evidence which is uncorroborated by independent evidence.

The matter also received the consideration of their Lordships of the Supreme Court in *Rameshwar Vs. The State of Rajasthan*, . His Lordship Bose, J., speaking for the Court, said:

The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, before a conviction without corroboration can be sustained. It is not necessary that there should be independent confirmation of every material circumstance.... All that is required is that there must be some additional evidence rendering it probable. It probabilises that the story of the accomplice is true.... 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.

The matter was again examined by the Supreme Court in *Sarwan Singh Vs. The State of Punjab*, His Lordship Gajendragadkar, J., in that case observed thus:

An approver is undoubtedly a competent witness under the Evidence Act. But the appreciation of his evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver... But 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.

His Lordship S. K. Das, J., in *The State of Bihar Vs. Basawan Singh*, has laid down that independent corroboration does not mean that every detail of what the witnesses have said must be corroborated by independent witnesses. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. In this authority their Lordships read with approval the following dictum of Lord Reading in *The King v. Baskerville* (1916) 2 KB 658:

Where on the trial of an accused person evidence is given against him by an accomplice, the corroboration which the common law requires is corroboration in some material particular tending to show that the accused committed the crime charge.

In *Ramanlal Mohanlal Pandya Vs. The State of Bombay*, Kapoor, J. held:

As regards corroboration of accomplice witnesses it is not necessary that there should be independent corroboration of every material circumstance. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplices or the complainant is true and that it is reasonably safe to act upon it.

His Lordship Hidayatullah, J. in *Saravanabhavan and Govindaswamy Vs. State of Madras*, laid down the law thus:

Ordinarily a Court seeks for corroboration of the evidence of an approver before convicting an accused person on that evidence. Generally speaking this corroboration is of two kinds. Firstly, the Court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime, secondly, after the Court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the Court seeks corroboration of the approver's evidence with respect to the part of other accused persons in the crime, and this evidence has to be of such a nature as to connect the other accused with the crime.... But it must never be forgotten that before Court reaches the stage of considering the question of corroboration and

its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness.... If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration.

There is also a recent pronouncement of their Lordships of the Supreme Court on the point in issue in *Tribhuvan Nath Vs. The State of Maharashtra*, In that case his Lordship Shelat, J. observed:

When the evidence of an accused is held as an accomplice evidence, the Court has to see whether such evidence is reliable and whether it is corroborated in material particulars by other independent evidence, direct or circumstantial." From the above discussion, two specific deductions emerge : firstly, that the evidence of a particeps criminal (accomplice) must be worthy of credence; and, secondly, that his evidence must be corroborated by some material particulars connecting the accused with the crime. Unless such an evidence is forthcoming, it would be unsafe to record a conviction against the culprit on the basis of the approver's evidence.

8. With the above background we have to first examine how far the evidence of P. W. 8 Bhikha Ram is trustworthy. Bhikha Ram states that he was married to Mst. Tulsi some 15 or 16 years back. His wife gave birth to a child some 10 years later but that child departed. His wife contacted Sardara. She told Sardara that she was anxious to get a child, who could survive. Sardara demanded Rs. 4/-, from her in connection with the preparation of a talisman. She, however, did not give the amount to him. His wife got conceived and went to Suratgarh to her parents in connection with delivery. There she gave birth to a child, but that too passed away within 10 minutes after birth. His wife then returned to Nohar from Suratgarh. She was told by Sardara that if she was eager to get a living child, she should go in for human sacrifice. Sardara also told her that he was ready to assassinate children, provided they were brought by her. This heart-to-heart chat took place three months before the occurrence. On July 15, 1971, the witness returned home from the Sub-Divisional Magistrate's Office, where he was employed as peon. His wife told him that she had managed to carry off and conceal the two children of Kanhaiya Lal . Kanhaiya Lal 's wife and Mst. Tulsi both originally belonged to Suratgarh and were closely connected with each other. His wife then asked the witness that he should call Sardara Ram to accomplish the set task. The witness went to Sardara Ram at the behest of his wife. He bought liquor worth Rs. 10/-, and then additional liquor, 500 grams in quantity, worth Rs. 7/-. Both he and Sardara Ram drank the wine and then reached his house. His wife opened the door of his residence and then she went upstairs to keep a watch. Sardara Ram entered his room in which the two children were lying asleep. There was a lamp giving light to the room. There was also a statue of "Kali Mata" installed on a wall. The iron pan, which his wife had obtained from Dr. Mohan Lal , P. W. 3, was also lying there. One quilt and a dagger had been brought by Sardara Ram. He put the neck of Naresh on the

edge of the pan and almost severed his neck with the dagger and pressed his mouth with his band and his legs with his legs. In the same manner he put an end to the life of Sarita. The pan was filled up with blood. Some blood was sprinkled on "Kali Mata". It was also rubbed on the abdomen of Mst. Tulsi. Sardara Ram then invoked "Kali Mata" to satisfy the expectation of the "Panditani" (Mst. Tulsi). Thereafter both he and Sardara Ram went to the Tehsil well. The dead bodies along with the blood were flung into that well. Both of them then returned with the quilt, pan and the dagger. Sardara, went away to his house with the dagger with him. The quilt was concealed by the witness behind his house under a pit, containing dirty water. The pan was washed and subsequently it was returned to its owner Mohan Lal by Mst. Tulsi.

9. The evidence of the approver has been assailed by learned Counsel for the appellant on the ground that in the cross-examination he has stated that he had been examined by the Munsiff-Magistrate, Hanumangarh, u/s 164, Criminal P. C. and there he had said that the talk regarding the human sacrifice had taken place between Sardara and his wife three months before the occurrence. This dialogue had not been told to him by his wife; vide Ex. P-7 portion marked U to V. Before the trial Court the witness has said that his wife had told him that Sardara had suggested to her human sacrifice, if she had a desire to give birth to a surviving child. This, according to the learned Counsel, is a significant contradiction in the testimony of the approver. We have looked into the relevant statement available at page 196 of the paper-book. The chat relates to the point of time and to the fact that three months prior to the occurrence this conversation had not been divulged to the witness by his wife. The witness might have been apprised of this at a later stage. It cannot, therefore, be said that the impugned statement is in conflict with the previous deposition. Learned Counsel then pointed out that before the trial Court the witness has said that after the sacrifice of the two children blood was sprinkled on "Kali Mata" and the same was also smeared on the abdomen of the lady and then Sardara Ram implored "Kali Mata" with touching entreaty that "Panditani" expectancy should be materialised. In his earlier statements Ex. D.2 (P.6), recorded by the District Magistrate, Ganganagar and in Ex. D.3, recorded by the committing Court the witness had said that Sardara had prayed that the desire of both of them should be fulfilled. This is only a very minor inconsistency which hardly merits notice. Where on meticulous examination of the evidence of the witness, it has been found that the assault was pre-planned and certain, minor variances in the evidence cannot dislodge the prosecution story : see Sheo Darshan Vs. State of U.P.,

10. We have examined the statement of the approver Bhikha Ram with meticulous and scrupulous care. He unfolds the entire prosecution story with graphic and vivid details. Above all, he had made consistent statements at all stages, i.e., before the District Magistrate and the committing Court, with clarity and precision. He has withstood the test of cross-examination and we are convinced that he has emerged with credit therefrom. The trial Court has

watched his demeanour and has appreciated the manner in which the questions were answered by him and gave a finding to the following effect:

So I hold that the evidence of Bhikha Ram is dependable and reliable and thus it satisfies the first test.

We fully give approval and endorse the above finding.

11. The next question that survives for consideration is whether the evidence of the approver gets corroboration in material particulars from other evidence connecting the accused with the crime. Approver Bhikha Ram, P. W. 8, has said in the trial Court that accused Sardara Ram used to prepare talismans and amulets and that he had previously advised his wife Mst. Tulsi to go in for human sacrifice if she wanted to give birth to a living offspring. This fact is corroborated by P. W. 2 Mali, wife of Bela. She has stated that about a year and a quarter ago she had gone to Jasuwalla well to fetch water. Mst. Tulsi also arrived there. Tulsi had told her that she had given birth to two children, but both of them had expired. On her query Tulsi had told her that according to the advice of Sardara Dakot unless human sacrifice had been made, no child could survive. P. W. 9 Mohini Devi, a teacher in Mabru Bal Vatika, has stated that some 2 to 3 years back the accused had come to her school and had told her that if some one had not got a child he could prepare a talisman and then by human sacrifice a child could also be begotten. P. W. 12 Laxmi Chand, a member of the Municipal Board, Nohar, has said that Sardara was his next door neighbour. He went to Sardara to ascertain the whereabouts of his lost cow. He saw Tulsi sitting in the house of Sardara. Tulsi had told Sardara that in spite of the fact that she had been married years back, she had not been gifted with any child. Thereupon Sardara had told her that she would beget a child but that would not survive and that he would prepare an amulet for her if she would give him Rs. 5/-. P. W. 17 Kanhaiya Lal has also stated that Sardara was an astrologer. He used to prepare amulets and talismans. Thus, the fact that Sardara Ram used to prepare amulets and talismans and that he had advised Mst. Tulsi to resort to human sacrifice stands amply corroborated by the above evidence.

12. The approver Bhikha Ram, P. W. 8, has stated that when the two children of Kanhaiya Lal had been kidnapped and hidden by his wife Mst. Tulsi, he was asked by her to call Sardara Ram to slaughter them as an offering to the deity. This fact gets support from P. W. 19 Ghisha Ram. He has said in his statement that some 13 months back when the two children of Kanhaiya Lal had been found missing, he was returning home from Shivji's temple at about 11 in the night. On his way he saw both Bhikha Ram and Sardara Ram, who were drunk. On his way Bhikha Ram told him that they were going to his house. Thus, the fact that the witness had been sent to call Sardara Ram and that he and Sardara Ram had come to the house of Bhikha Ram during the night of the occurrence stands corroborated.

13. The approver says that he and Sardara Ram took wine worth Rs. 17/- prior to the occurrence. This fact gets confirmation from the evidence of P. W. 18

Sattar Khan. He says in his statement that he knew Bhikha Ram. On the day when Kanhaiya Lal 's sons were missing, Bhikha Ram came to his shop to buy wine. He first bought liquor worth Rs. 10/-. Subsequently he purchased 500 grams of wine worth Rs. 7/-. Learned Counsel for the appellant submits that as a large number of people visited the shop of the witness and the witness does not maintain accounts relating to the sale of wine, his evidence should not be held reliable. It is no doubt true that a large number of persons did visit the shop of Sattar, but as an important occurrence had taken place in respect of the missing of the two children in the town of Nohar, the witness could have remembered how Bhikha Ram had come to his shop to buy liquor during the night, Besides, Bhikha Ram visited his shop at about the dead of the night and it is for this reason that the witness could have well remembered the visitant. There was no antagonism or animus between Sattar Khan and the accused or the accomplice. There is, therefore, no reason why he should make a false statement.

14. The approver has said that Sardara Ram came to his house. He brought with him a dagger and a quilt. He employed that dagger in cutting off the necks of the two children. The quilt according to the witness was spread before "Kali Mata" and on that quilt the iron vessel was put and that pan was filled up with the blood of the two children. P. W. 25 Manphool Singh, Circle Officer, Nohar, has stated that Sardara Ram while in the police custody furnished information (Ex. P.51) to him regarding the availability of the weapon of the offence. Pursuant to that information a dagger (Ex. 11) was recovered at his instance under memo Ex. P.26. The recovery stands proved by the evidence of Mahabir Prasad, P. W. 21, Manphool Singh, P. W. 25 and Kastoor Chand, P. W. 14. The weapon has been identified by the approver as the one with which the two children had been slaughtered. Bhikha Ram furnished information to the Circle Officer Manphool Singh, P. W. 25, that the quilt had been thrown in a nearby pit containing dirty water. It was reduced into writing and is marked Ex. P.51, dated August 26, 1971. Consequent on that information the quilt was recovered under memo Ex. P.2. The recovery stands proved by Mahabir Prasad, P. W. 21, Manphool Singh, P. W. 25 and Kastoor Chand, P. W. 14. The quilt has also been identified by the approver. According to the approver iron pan had been obtained by Mst, Tulsi from the house of her neighbour P. W. 3, Dr. Mohan Lal Narula, prior to the occurrence and after the occurrence it had been returned to him. On August 2, 1971, Mst. Tulsi gave information to Circle Officer Manphool Singh, P. W. 25, regarding her procuring and returning the pan to Dr. Mohan Lal . That information was reduced into writing and is marked Ex. P.54. Following upon that information the pan Ex. 1 had been recovered at the instance of Mst. Tulsi, under memo Ex. P. 13. That memo has been proved by the evidence of Mahabir Prasad, P. W. 21. Dr. Mohan Lal Narula, P. W. 3, and Manphool Singh, P. W. 25. Dr. Mohan Lal has categorically stated that on September 12, 1972, Mst. Tulsi had obtained the pan from him some 13 or 14 months back and has returned to him after 3 or 4 days. There is no reason why P. W. 3 Mohan Lal Narula should tell a deliberate lie and falsely implicate the accused. The approver has said that Sardara had cut

off the necks of Naresh and Sarita and propitiated "Kali Mata" with their blood, and thereafter they threw away the dead bodies into the Tehsil" well. This fact gets support from the recovery of the broken idol of "Kali Mata" from the house of Bhikha Ram under memo Ex. P.29, dated August 27, 1971. The idol's photos were taken by P. W. 7 Ram Kumar. They are marked Exs. P. 15, P. 16, P. 17, P. 18 and P. 19. The dead bodies along with their clothes and Chhappals had been taken out of the well by P. W. 5 Modu Khan, and P. W. 26 Mha Ram Jat. Their clothes and the Chhappals had been identified by the parents of the two children, Mst, Godawari P. W. 1 and Kanhaiya Lal . P. W. 17. Thus, the evidence of the approver, P. W. 8, Bhikha Ram is corroborated in ample measure by other independent circumstantial evidence in material particulars, connecting Sardara Ram with the crime. Here, it may also be noted that though according to the report of the Serologist blood was found disintegrated on "Gudri", "Dharia" and clothes, the disintegration of the blood can well be explained by lapse of time or by the blood having been washed off. That circumstance, when the identification evidence is clear, would not stand in the way of seeking support from the various recoveries : vide *Sakharam v. State of Maharashtra* AIR 1969 NSC 85 : 1969 LJ (SC) 423 . The trial Court correctly applied the double test as laid down in *Sarwan Singh Vs. The State of Punjab*, It has rightly held that the evidence of the accomplice is corroborated in material particulars by other independent evidence. Despite some minor inconsistencies in the statements of the approver, the Court reposed confidence in his testimony, duly strengthened by circumstantial evidence discussed above. It is not a sound law that an accomplice's evidence cannot be relied upon, even though it is totally and absolutely blemishless. A case illustrating this proposition is to be found in *Saravanabhavan and Govindaswamy Vs. State of Madras*, in which the evidence of the approver contained certain discrepancies and was also contradicted by the testimony of another witness and yet that evidence held the test of its being credible and was accepted as it was also corroborated by other evidence. The trial Court also rightly held that the corroboration in this case is adequate enough to afford the necessary assurance that the main story testified by the accomplice can be reasonably and safely accepted as credible. That being the position, it is difficult to accept the contention of learned Counsel for the appellant that there is no adequate evidence corroborating the evidence of the approver and justifying the conviction of Sardara Ram.

15. In the view aforesaid, we find no reason to warrant any interference in the order of conviction.

16. Lastly, learned Counsel for the appellant submitted that sentence of death awarded to the appellant is too severe. The object of sentencing the criminal, according to the learned Counsel, is to reform them, and, therefore, the extreme sentence passed by the trial Court should not be maintained. The courts are not much concerned with the policy or reason behind the law which they have to administer. It is for the Legislature to lay down the policy. If change of time, change of circumstances and change of moral values and sentiments are

supposed to make a law out of date, it is for the legislature to intervene and amend the law in consonance with the prevailing wishful emotion. The courts cannot determine the policy of the legislature. Section 302, I. P. C., provides that whoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine. This gives a discretion to the Court to award either of the two sentences according to the circumstances of the case. In the present case no extenuating circumstances existed to enable the trial Court to withhold the passing of the death sentence. That Court awarded the normal sentence of death penalty. The crime committed by the accused was brutal, callous, cold-blooded, highly repugnant to morals and pre-meditated. The accused Sardara Ram indulged in the nefarious activity by inducing innocent womenfolk as to how they should go in for human sacrifices, if they needed children. He committed a very heinous crime by taking the lives of two innocent children, who had done him no harm, with (he object of achieving success or thrive in his profession. In these circumstances, we are inclined to hold that the punishment of death awarded by the trial Court to Sardara is in proportion to the malignity appearing in the act and intention of the accused and we decline to interfere with the discretion exercised by the Court below.

17. In the result, we accept the reference submitted by learned Sessions Judge, Ganganagar, for confirmation of the death sentence u/s 376, Criminal P. C. and maintain the conviction and the sentence of Sardara Ram both under Sections 302 and 201, Indian Penal Code and the sentences awarded to him under both the counts. The existence of fine of Rs. 250/-, under the latter count, however, under the circumstances of the case, is remitted. Sardara Ram's appeal fails and is hereby dismissed, subject to the above modification in the sentence u/s 201, I. P. C.