
(2003) 01 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 460 of 1990

State of H.P.

APPELLANT

Vs

Surinder Mohan and Others

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162
Evidence Act, 1872 — Section 133
Penal Code, 1860 (IPC) — Section 300

Citation : (2003) CriLJ 4223

Hon'ble Judges : R.L. Khurana, J;M.R. Verma, J

Bench : Division Bench

Advocate : K.D. Batish, A.A.G, for the Appellant; Jagdish Vats, for No. 1 and Om. Prakash, for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The four respondents, Surinder Mohan, Biru Ram, Shashi Pal and Amar Singh, hereinafter referred to as A1, A2, A3 and A4, respectively, were tried for the offences punishable under Sections 302 and 380 read with Section 34, Indian Penal Code, in Sessions case No. 8 of 1988 by the learned Additional Sessions Judge (1), Kangra at Dharmshala. Vide order dated 8-5-1990 all the four respondents were acquitted.

2. By virtue of the present appeal, the State has assailed the acquittal of the four respondents as recorded by the learned Additional Sessions Judge. The appeal was dismissed on 2-1-1998 by a Division Bench of this Court solely on the ground that the Chief Judicial Magistrate had failed to comply with the mandatory directions contained in Clause (a) of Sub-section (4) Section 306, Code of Criminal Procedure inasmuch as no statement of the approver was recorded by him during the committal proceeding which vitiated the committal of the respondents to the Court of Session and consequently the trial by the Sessions Judge.

3. On further appeal before the Hon''ble Supreme Court by the State of Himachal Pradesh being Criminal Appeal No. 131 of 2000, the order dated 2-1-1998 of the Division Bench of this Court dismissing the appeal was set aside vide judgment dated 7-2-2000 and the appeal stands remanded to this Court for disposal afresh in accordance with law. The Hon''ble Supreme Court held that by not examining the approver during the course of committal proceedings, the trial would not get vitiated. The evidence of the approver may have to be scrutinised with greater circumspection and if in such scrutiny, the evidence is found reliable the Court cannot be inhibited from using the evidence.

4. Briefly, the story of the prosecution may be thus stated. One Dr. Kewal Krishan (hereinafter referred to as the deceased) was a registered medical practitioner and having a roaring practice in village Gummer. A1 (Surinder Mohan) is a resident of the said village and at the relevant time was posted as a compounder in Civil Dispensary at Jawalamukhi. He was also engaged in private medical practice in his village and was being assisted by his wife. Due to the roaring medical practice of the deceased, A1 was having malice and wanted to do away with the life of the deceased. A1 is alleged to have extended threats to the deceased. Such threats are alleged to have been indicated and brought to the notice of his father in the letter Ex. PY` which was sent by the deceased to his father through his sister's son. PW-14 Ravinder Kumar.

5. On 24-3-1988 Sandeep Kumar (PW-29), who was initially impleaded in the present case as an accused and who later turned as an approver, was going to attend "Jagrata" at the residence of Biru Chaudhary at village Dehrian. When he could reach near the Government Dispensary, Gummer, he came across A1 and A2. At such time A1 was having his scooter. A1 asked PW-29 as to where he was going. PW-29 informed A1 about his going to attend "Jagrata", whereupon A1 told PW-29 that he (A1) had gone to attend one Nirmala Devi, who was seriously ill and that unfortunately the required medicines were not with him. A1, therefore, requested PW-29 to call the deceased as the requisite medicines were available with him. A1 is alleged to have put forth an excuse about his inability to personally go and call the deceased by stating that his relations with the deceased were not cordial. A1 repeatedly pleaded with and requested PW-29 to help him in calling the deceased since the life of Smt. Nirmala Devi was in danger. As PW-29 agreed, A1 took him on his scooter and alighted him near the shop of PW-16 Kedar Nath. PW-29 thereupon went to the house of the deceased and requested him to accompany him for giving treatment to the abovesaid Smt. Nirmala Devi. At such time one Vijay Kumar, a room-mate of the deceased, was also present in the house. When PW-29 and the deceased had hardly covered a distance of 300 yards, A1 and A2 met them. A1 and the deceased exchange pleasantries with each other and then all four, namely PW-29, A1, A2 and the deceased proceeded further. About 100 yards ahead A3 and A4 also met them. When all of them reached near the Government Dispensary, Gummer, A1 and A2 are alleged to have pounced upon the deceased. A1 gagged the mouth of the deceased with a piece of cloth and tried to push him towards the Nallah nearby.

A3 and A4 came from behind. The deceased was dragged about 10 steps downward. A2 attacked the deceased with a knife and on receiving the stab injury the deceased fell down on the ground.

6. A1 then asked PW-29 if anyone was present in the house of the deceased when he (PW-29) had gone to call him. PW-29 told A1 that Vijay Kumar was present in the house along with the deceased when he had gone to call him and that the said Vijay Kumar knew everything. PW-29 is alleged to have cursed A1 that he had cheated him by making him go to call the deceased on a false pretext. He also threatened A1 that he would reveal the entire episode to his father. A1 thereupon is alleged to have assured PW-29 that he would be paid Rs. 5000/-and that he should keep quiet. PW-29 did not submit to the wishes of A1 and went on shouting. A1 then attacked PW-29 with a knife. PW-29, however, with great difficulty was able to escape and run away from the spot. He was chased by A1 to A4 and A2 was able to give a knife blow on the person of PW-29 which hit him on his back. PW-29 was able to reach home and after cleaning blood from his person, he silently went to his room and did not disclose the incident to anyone. After some time he heard the sound of something being thrown in the water in the nullah. On the following morning when he went to answer the call of nature he noticed red coloured water in the nullah as also the dead body of the deceased lying in the bushes by the side of nullah.

7. Further case of the prosecution is that on the following morning, that is on 25-3-1988 a report was made to the police by PW-11 Vipin Kumar that the shop of one Piar Chand and the residential room of the deceased were lying open and that the dead body of the above named Vijay Kumar was lying in the nearby pasture land. In his report to the police PW-11 expressed a doubt that the assailants had first committed the murder of Vijay Kumar and then had tried to commit theft by trying to break open the safe. He also reported that the deceased was also missing from his house. On the basis of such report, a case for the offence u/s 302, Indian Penal Code, came to be registered.

8. During the course of investigation of the case, the dead body of Vijay Kumar was taken into possession and sent for post mortem, which was conducted by PW-41, Dr. K. S. Dadwal. He observed as under :--

(i) On opening the scalp, haemotoma on the left side of temporal region was found present. There was depressed fracture of left temporal bone underlying range was damaged. The cranial cavity was full of blood;

(ii) Larynx was full of blood; and

(iii) Mouth felling (sic) full of blood.

9. In the opinion of PW-41 Dr. K. S. Dadwal, the deceased Vijay Kumar had died due to fracture of left temporal bone leading to injury to brain, shock and haemorrhage. The injuries were opined to be ante-mortem and sufficient to cause death in the ordinary natural course. The probable time between injury

and death was few minutes and between death and "post-mortem was within 24 hours.

10. During the course of inspection of the shop of PW-12 Piar Chand, where the abovenamed Vijay Kumar deceased used to work, the Investigation Officer recovered a plyer and two bunches of keys. One such bunch pertained to the residential room of the deceased Dr. Kewal Krishan. Two locks were also recovered from the residential room of the deceased and taken into possession.

11. The dead body of the deceased Dr. Kewal Krishan was also recovered and got subjected to post-mortem which was conducted by PW-40 Dr. S. M. Mehta, who observed as under :--

(i) Incised wound on the upper lip lateral side 2 cm x 1/2 cm muscular deep;

(ii) Incised wound 2 cm x 12 cm x 1/2 cm on the left side of ala of nose;

(iii) Incised wound at the medial side of left eyebrow 3 cm x 1 cm in size;

(iv) Incised wound lateral side of right eye-brown 3 cm x 1 cm in size;

(v) incised wound 4 cm x 1 cm x 1 cm in right temporal region;

(vi) Incised wound on the right side of epigastrium 2 cm x 1 cm peritoneal deep. Peritoneum was not perforated.

(vii) Incised wound 2 cm x 1 cm x 1 cm on the left parietal region;

(viii) Incised axillary wound on the left side of chest corresponding to 7th to 10th and 11th ribs 10 cm X 4 cm in size. On probing its visceral depth, a gush of blood came out;

(ix) Stomach and small intestine contained semi-digested food. Large, intestine contained fouled matter; and ,.

(x) Lever -- pale sharp cut injury corresponding to injury No. (viii) above. Lot of blood was present in the hypochondriac region and directly communicating to the exterior through, injury.

12. In the opinion of PW-40 Dr. S.M. Mehta, death was caused due to haemorrhage shock resulting from injury to lever. The probable time duration between injury and death was 1 to 2 hours and between death and post-mortem was more than 48 hours but less than 72 hours.

13. The Investigation Officer also took into possession the scooter of A1 bearing registration No. HPS-5370 since tyre marks were noticed by PW-18 Babu Ram and PW-19 Kishori Lal at the place of occurrence. Mould of tyre marks were lifted. Such mould on examination were found to be of tyres of scooter No. HPS-5370.

14. PW-29 Sandeep Kumar Was arrested on 26-3-1988. A2 to A4 were arrested on 27-3-1988 while A1 came to be arrested on 28-3-1988. On 8-6-1988, PW-29

Sahdeep Kumar moved an application from jail to the Chief Judicial Magistrate expressing his intention to make a true disclosure of facts in relation to the murder of S/Shri Kewal Krishan and Vijay Kumar as he was burdened with guilt. The Chief Judicial Magistrate after completing all the codal formalities, granted pardon to PW-29 Sandeep Kumar and recorded his statement Ex.PM/2 u/s 306(4), Code of Criminal Procedure.

15. PW-29 Sandeep Kumar was also got subjected to medical examination. Such examination was carried out on 26-3-1988 by PW-20 Dr. G.N. Sharma at Jawalamukhi Hospital. The following injuries were found on his person :--

(i) Incised wound 2 cm x 1 cm deep up to the underlying muscle on the middle of left side of back 31 cm below the top of left shoulder. Clotted blood was present inside the wound;

(ii) An abrasion crushed 4 cm x 1/8 cm below the umbilicus on the right side;

(iii) On the palmar surface of right hand following injuries were present:--

(a) One incised wound 1 cm x 1/8 cm deep up to the underlying muscle on the central phalanx of middle finger;

(b) Incised wound on the central phalanx of index finger 1 cm x 1/8 cm deep up to the underlying muscle;

(c) Two wounds on the middle of central phalanx of ring finger 1/2 cm x 1/8 cm each and one wound on the centre of 1st phalanx of ring finger 1/2 cm x 1/9 cm.

(d) One wound on the 1st phalanx of little finger 1/2 cm x 1/8 cm.

(iv) One abrasion 1 1/2 cm x 1/8 cm on the hypothenar surface of right hand;

(v) One abrasion 1/2 cm x 1/2 cm crushed in the palmar surface of 1st phalanx of left little finger;

(vi) An abrasion crushed 2 cm x 1/8 cm and another abrasion near the first abrasion on the middle of right cheek.

16. All the injuries were of simple nature having been caused by sharp edged and blunt weapons. The probable duration of injuries was opined as about 48 hours.

17. Upon having been sent up for trial, A1 to A4 were charged for the offences under Sections 302 and 380 read with Section 34, Indian Penal Code. They pleaded not guilty and claimed trial.

18. The prosecution in support of its case in order to bring home the offences against each of the four accused, examined as many as 41 witnesses.

19. The defence put forth by A1 to A4 is that of denial and false implication. A1 Surinder Mohan, in his statement recorded u/s 313, Code of Criminal Procedure in answer to question No. 78 has stated:--

"The witness Kedar Nath, Bipan Kumar are father and son. There was an excise case against the Bipan Kumar. In that case my cousin brother appeared as witness. My cousin brother also defeated Kedar Nath in the election of Pardhan of Panchayat. For these reasons, both of them made a false statement against me and under the pressure of police. Father of Kewal Krishan prepared a false letter against me and produced before police. Approver Sandeep has made a false statement against me under pressure of police and also his father and MAMA (maternal uncle). In the year 1986 and 87. I had gone to Bilaspur on deputation with O.N.G.C. In September, 1987, I joined back in the hospital at Jawalamukhi on expiry of my deputation. From 2nd January, 1988, I had gone on deputation to Tihri Dispensary. But from there I came back on 6-2-88 and joined at Jawalamukhi. I had also to go on deputation to Tihri Dispensary again with effect from 1st week of April, 1988 because this duty was by rotation between me, Sarwan Kumar and Pawan Kumar. On 25-3-88, I made an application for one day casual leave for 28-3-88, compensatory leave on 29 and 30th March and gazetted holidays on 26-3-88, 30-3-88, 1-4-88 and also for 27-3-88 being Sunday. This leave was taken by me because I was to proceed on deputation to Tihri as stated above. I was present on my duty on 24th and 25th March, 1988. On 25-3-88 in the afternoon during the lunch break at two P.M. I had gone to meet to Shri S. P. Dass D.Y.S.C. of O.N.G.C. in connection of the clearance of my T.A. bill of July, 1987 pertaining to Jammu, he told me that I should visit him on 26-3-88 when he will remove the objection of my bill, at that time, the scooter HPS-5370 was with me. On 26-3-88 firstly I came to my hospital at Jawalamukhi in connection of some work and from there I went to O.N.G.C. at Bohan and after getting my bill passed I carried the bill to Head Office Amb District Kangra and at that time scooter HPS-5370 was with me. It was raining during day time on 26-3-88. On 28-3-88, I had visited C.M.O. office at Dharamshala in connection of medical of Smt. Bimala r/o village Balahar PO Surani in connection of her appointment in service on death of her husband. On that day Captain Roshan Lal was also with me in connection of renewal of his licence in the office of District Magistrate, Dharamshala. One Hem Raj r/o Dehrian also came with me in the hospital at Dharamshala in connection of the treatment-of the ear of his daughter. In connection of the work of Smt. Bimala and Roshan Lal on 28-3-88, I had a talk with them on 23-3-88. I and my wife was not running private practice. My father is 80 years old and mother 72 years old. I have got four children and my wife merely used to look after my parents and children. I am completely innocent and I have been falsely implicated in this case."

20. A2 Biru Ram, after denying the prosecution story, in answer to question No. 77 of his statement has stated :--

"PW Bipan Kumar and Kedar Nath have been indulging in extracting illicit liquor and they were involved in cases and under the pressure of the police they depose falsely against me. PW Sukh Dev is a police tout. At the instance of the police he can state anything. Similarly the PW Piar Chand is the brother of deceased Vijay Kumar and, therefore, he can also depose anything at the

instance of the police. Father, uncles (maternal and paternal) that is Taya and Mama kept on visiting Sandeep in the judicial lock up and put pressure upon him to depose falsely against us. I was arrested by the police on the intervening night of 25/ 26-3-88 at 12.30 a.m. I am a innocent. I have been falsely implicated in this case."

21. A3 Shashi Pal in answer to question No. 77 of his statement recorded u/s 313, Code of Criminal Procedure, has stated :--

"I am innocent. The witnesses Kedar Nath and Bipan Kumar are father and son (sic) extract illicit liquor. They are facing prosecution in this regard. Thus they deposed falsely under pressure of police. PW Shiv Dev is police tout. Under pressure of police he also deposed falsely against me. The police, father, Mama and Taya put pressure upon Sandeep when he was in Jail and he also made false statement. Piar Chand deposed falsely because he is brother of Vijay. I was arrested by the police on 25-3-88 during night, I and Sandeep was given a beating and it may be possible that Sandeep sustained/got injuries during beating by police. I have been falsely implicated in this case."

22. Similarly A4 Amar Singh after denying the prosecution case against, him, in his statement recorded u/s 313, Code of Criminal Procedure, in answer to question No. 76 has stated :--

"I am innocent. The witnesses Kedar Nath and Bipan Kumar are father and son. They extract illicit liquor. They face prosecution in this regard. Thus they depose falsely under pressure of police. Kishori Lal is Halwai and he provide illicit liquor at his shop to the customers. Shiv Dev witness is a police tout and he remains with the police. He deposed falsely against us. We had got land dispute with the family member of approver Sandeep. That land came to us in that case and that judgment was confirmed by the High Court also. Sandeep entertains enmity for that reason and deposed falsely against me. Police also put pressure upon him. Father, Taya and Mama also put pressure on Sandeep to implicate me falsely. All other P.Ws. excepting all Police officials are closed relation of Babu Ram PW and deceased Kewal Krishan. I was arrested by the police on 25-3-88 and my house was also searched by the police on the same day. Sandeep was also arrested by the police on 25-3-88 and police gave beating to him and it is possible that he sustained injuries during beating by police. As far as I remained in the police custody, I was not allowed by the police to sleep. I was tortured and not provided any food and water. I never made any statement before the police."

23. As many as 13 witnesses were examined by the accused in their defence.

24. The learned trial Judge on consideration of the evidence brought on the record came to the conclusion that the prosecution had failed to bring home any offences against any of the four accused. He, accordingly, vide judgment dated 8-5-1990 acquitted all the four accused of the offences charged against them by giving them the benefit of doubt. The approver, PW-29 Sandeep Kumar, was ordered to be discharged and released from custody. Hence the present appeal

by the State assailing the acquittal of the four accused.

25. We have heard the learned counsel for the parties and have also gone through the record of the case.

26. In the present case, all the four accused have been charged for the offence punishable u/s 302 read with Section 34, Indian Penal Code, for having committed two murders, namely, of Dr. Kewal Krishan and Shri Vijay Kumar, on the night of 24-3-1988.

27. Insofar as the murder of Shri Vijay Kumar is concerned, during the course of hearing of the present appeal, it was readily conceded by the learned Additional Advocate General that there is nothing on record either in the statement of the approver P. W. 29 Sandeep Kumar or any other evidence to connect any of the four accused with the murder of Shri Vijay Kumar. The four accused, therefore, in the absence of evidence stand rightly acquitted by the learned trial Judge in respect of the murder of Shri Vijay Kumar.

28. Coming to the murder of the deceased Dr. Kewal Krishan, it may be stated that the learned trial Judge has not relied upon the evidence of the approver PW-29 Sandeep Kumar. The learned trial Judge in para 72 of his judgment while discarding the evidence of the approver PW-29 Sandeep Kumar, has observed :--

"In the light of the above discussion, I find impossible to reconcile his earlier statements with his later assertions. Therefore, his evidence is to be left out of consideration. Only animus against Surinder Mohan accused, alleged is that he was animated by the motive, but no animus has been attributed to the other accused persons. Therefore, testimony of Sandeep Kumar (PW-29) is held to be not believable and is unnatural and, as such, gives no help to the prosecution case."

29. A perusal of the record shows that during the course of cross-examination of PW-29 Sandeep Kumar (the approver), he was sought to be contradicted by the defence with his previous statement purported to have been made by him as an accused, during the course of investigation of the case and recorded by the Investigation Officer in the "Ziminies". An objection was raised on behalf of the prosecution to the use of the "Ziminies" for the purpose of confronting the witness, that is, PW-29, Such objection was overruled by the learned trial Judge by observing as under in para 65 of the judgment :--

""Though the statement of Sandeep Kumar was not recorded as that of an approver before the police, but as an accused, thus it does not fall within the meaning of Section 161, Cr. P.C. and the prosecution also agitated its authenticity alleged it to be an incorrect document prepared by the S. H. O. Sita Ram Parmar. But by virtue of Section 162, Cr. P.C. the right to have a copy by the accused cannot be denied for the purpose of Section 145, Evidence Act and, thus, its use cannot be abrogated by the provisions of Section 172, Cr. P.C. Moreso. when the Hon'ble High Court of H. P. had specifically ordered for the

supply of the same, as stated supra, the very purpose of it is to test the veracity of the witness and to contradict him with reference to his previous statement. Therefore, with the permission of the Court the accused can make use of the same for the contradiction purposes. Hence the objection of the prosecution is overruled."

30. We are not in agreement with the reasons advanced by the learned trial Court either for permitting the alleged previous statements of PW-29 recorded in the "Ziminies" by the Investigating Officer for being used for the purpose of contradiction or for discarding the statement of the approver PW-29 on the basis of the alleged contradictions.

31. It is to be kept in mind that the alleged previous statements made by PW-29, as an accused, during the course of investigation, are not the statements made by him u/s 161, Code of Criminal Procedure but are only the substance of the interrogation recorded by the Investigation Officer. Such statements not being the one recorded u/s 162, Code of Criminal Procedure, cannot be used for the purpose of contradiction of the witness u/s 161, Code of Criminal Procedure. (See Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra,

32. We therefore, hold that statement made by the approver as PW-29 cannot be kept out of consideration for the reasons stated by the learned trial Judge.

33. Next comes the question whether conviction can be based on the sole and uncorroborated testimony of the approver.

34. Section 133 of the Evidence Act, provides :--

"Accomplice :-- 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."

35. Illustration (b) to Section 114, Evidence Act, further provides :--

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

36. Dealing with the scope and ambit of the above-noted two provisions contained in Illustration (b) to Section 114 and in Section 133 of the Evidence Act, the Hon''ble Supreme Court in Bhiva Doulu Patil Vs. State of Maharashtra, has held that both the Sections are part of one subject and have to be considered together. It has further been held :--

"The combined effect of Sections 133 and 114, Illustration (b) may be stated as follows :--

According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter, which is a rule of practice, it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be

illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

37. This principle was reiterated in Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc., and it was held :--

"The combined effect of Sections 133 and 114, Illustration (b) is that though a conviction based upon accomplice evidence is legal, the Court will not accept such evidence unless, it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another."

38. Similar question again came up for consideration before the Hon"ble Supreme Court in Ram Narain Vs. State of Rajasthan, and it was held :--

".....Section 133, Indian Evidence Act, which falls in Chapter IX dealing generally with witnesses, expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on uncorroborated testimony of an accomplice. In other words, this Section renders admissible such uncorroborated testimony. But this section has to be read along with Illustration (b) of Section 114 which falls in Chapter VII dealing with Burden of Proof. Section 114 empowers the Court to presume the existence of certain facts and the illustration elucidate what the Court may presume and make, clear by means of example as to what facts the Court shall have regard in considering whether or not the maxims illustrated apply to a given case before it. Illustration (b) hi express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars; two examples are also given to further explain this subject. The statute thus permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rules of prudence embodied in Illustration (b.) of Section 114 strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. This rule of caution is traceable to the fact that an accomplice witness from the very nature of his position is a suspect. This rule is guided by long human experience and has become a rule of prudence of general application. The Court, therefore, consider it prudent to look for corroboration in material particulars for sustaining the conviction of an accused person. 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. 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.

It is in this background that the Court is required to determine the nature and extent of corroboration of an approver's evidence necessary in a given case for sustaining the conviction of the accused. The corroborating evidence, broadly stated, must connect or tend to connect the accused with the crime charged. This is so because of the danger of the approver introducing some innocent person or persons into an otherwise true prosecution story. Such evidence, however, need not by itself be sufficient for sustaining the conviction of the accused, for, in that case the evidence of the approver would be wholly unnecessary and mere surplusage.

Before considering the evidence on the record it may be borne in mind that the Court should evaluate the evidence of an approver de hors the corroborating pieces of evidence, for, if his testimony is itself uninspiring and unacceptable justifying its rejection outright, then, it would be futile and wholly unnecessary to look for corroborating evidence. It is only when the approver's evidence is considered otherwise acceptable that the Court applies its mind to the rule that his testimony needs corroboration in material particulars connecting or tending to connect each one of the accused with the crime charged....."

39. Further in Ravinder Singh Vs. State of Haryana, the Hon'ble Supreme Court while considering the approver's testimony within the meaning of Section 133, Evidence Act, has observed :--

"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. 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 situation

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, as determined 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."

40. In *Abdul Sattar v. Union Territory, Chandigarh* 1985 (Supp) SCC 599 : (1986 Cri LJ 1072) where the prosecution had sought to prove its case by relying upon the evidence of the approver, it was held that an approver is a competent witness but the position in law is fairly well settled that on the uncorroborated testimony of the approver, it would be risky to base the conviction, particularly in respect of serious charge of murder. Once the evidence of the approver is found to be not reliable, the worth of his evidence is lost and such evidence, even by seeking corroboration, cannot be made the foundation of a conviction.

41. The abovesaid ratio has been reaffirmed and reiterated by the Hon"ble Supreme Court in *Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh, Ramprasad Vs. State of Maharashtra*, and in *Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra*,

42. In *Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra*, has further held that for corroborative evidence, the Court must look at the broad spectrum of the approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration may depend upon facts of different cases. Corroboration need not be, in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable. Once the evidence of the approver is held to be trustworthy, it must be shown that the story given by approver so far as an accused is concerned, must implicate him in such manner as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence upon corroboration is based on the rule of caution and not merely a rule of law.

43. Bearing the above principles in mind, we will have to consider the evidence of the approver P.W. 29 Sandeep Kumar to see as to whether his evidence is reliable and whether the same is corroborated in material particulars to assume its trueness first and then we will have to consider the other circumstantial evidence against the accused persons.

44. We have minutely scrutinised the evidence of PW-29, the approver Sandeep Kumar and the statement Ex. PM/2 made by him before the Chief Judicial Magistrate. PW-29 while appearing in Court has given the same version as earlier given by him in his statement Ex. PM/2. There are neither any omissions nor contradictions in material particulars in the two statements. Therefore, the

statement of PW-29 is not liable to be rejected outrightly on the ground that the same is unreliable or untrustworthy.

45. For the purpose of corroboration of the evidence of the approver PW-29 Sandeep Kumar, the prosecution has relied upon the following evidence and circumstances :

(i) Motive;

(ii) Extra-judicial confession alleged to have been made by A2 to A4 and the approver;

(iii) Recoveries made in pursuance to the disclosure statements alleged to have been made by the accused;

(iv) Presence of tyre marks of the scooter belonging to A1 near the place of recovery of dead body of the deceased Dr. Kewal Krishan;

(v) Recovery of scooter and blood-stained cloth from its dicky.

46. As per the prosecution case the motive behind the murder of the deceased Dr. Kewal Krishan was professional jealousy. The deceased is alleged to be having a roaring medical practice in the area. A1, who is working as a compounder in a Government Dispensary, was also doing private practice as a medical practitioner assisted by his wife. He was jealous of the roaring practice of the deceased and as such wanted to eliminate him.

47. No evidence has come on the record to show that the deceased was having a roaring practice. Rather the evidence coming on the record is to the contrary. The evidence shows that the deceased appeared to be not happy with his medical practice and was desperately looking for some job. PW-27 Yog Raj the then Member of the Legislative Assembly has admitted that he had spoken to the Sub-Divisional Magistrate for providing some employment in the Jawalamukhi Temple to the deceased. PW-18 Babu Ram, the father of the deceased, has also admitted that the deceased had appeared for interview for a job in the Dispensary of Jawalamukhi Temple. He has further gone to state that the deceased used to give him sometime Rs. 50/- sometime Rs. 100/- and sometime Rs. 200/-. The financial assistance which the deceased was rendering to his father speaks volumes as to the extent of his medical practice. DW-2 Shekhar Gupta was the then Sub-Divisional Magistrate, Dehra, and by virtue of such office he was the President of Jawalamukhi Notified Area Committee as also the President of the Jawalamukhi Temple Committee. He had appointed the deceased as a part time Ayurvedic Doctor in the temple dispensary on the recommendations of PW-27 Yog Raj on a monthly salary of Rs. 300/-.

48. The act of the deceased in applying for the post, appearing for interview therefor, obtaining political recommendation and accepting the part-time job at a paltry monthly salary of Rs. 300/- shows that the deceased was not having a roaring practice and was desperate to secure a job in order to have at least a

fixed monthly income.

49. In order to prove the motive, much reliance has been placed by the prosecution on the letter Ex. PY alleged to have been written by the deceased to his father. The original letter is in Hindi. In such letter the deceased is alleged to have conveyed to his father about the threats received by him from A1 and about the danger to his life. This letter, translated to English reads:

"Respected parents, Pranam. Pay my regards to sisters-in-law and love to children. I am sending this letter by hand. Kindly act upon it when you receive it. Respected father, Surender Mohan Sood working as compounder in a hospital at Jawalaji has given threats to me. I apprehend danger to my life from him. Earlier also, he indulged in arguments with me and then had threatened me. He can take even my life. He had falsely told me about your illness and that I should rush home. On that day you had gone to Dhalyara. You may please talk to Yog Raj the moment you receive the letter. Rest of the things are fine. I will try to come home in case I am able to find sometime in a day or two."

This letter is undated. It is alleged to have been sent by the deceased to his father PW-18 Babu Ram by hand through his nephew (sister's son) P.W. 14 Ravinder Kumar.

50. It is pertinent to note that during the course of investigation letter Ex. PY in original along with the admitted handwriting of the deceased was sent to the Examiner of Questioned Documents for comparison and report if letter Ex. PY was in the hand of the deceased. Ex. DW 15/A is the report of the Handwriting Expert, that is, DW-15 Shri R. K. Jain, Assistant Government Examiner of Questioned Documents. As per this report letter Ex. PY is not in the hand of the deceased. DW-5 has categorically stated that there were no similarities in the writing characteristics between the admitted and disputed writings.

51. The prosecution in order to prove that letter Ex. PY is in the hand of the deceased, has examined PW-14 Ravinder Kumar (nephew of the deceased) and PW-31 Mulk Raj (the brother of the deceased). PW-14 Ravinder Kumar, who is alleged to have carried the letter Ex. PY and delivered the same to PW-18 Babu Ram, has stated that the letter was written by the deceased in his presence, while PW-31 Mulk Raj has stated that he is familiar with the handwriting of the deceased and that letter Ex. PY is in the hand of the deceased. To the similar effect is the statement of PW-18.

52. The authenticity of the letter Ex. PY, from the evidence coming on record, is doubtful. As stated above, this letter is undated. PW-18 Babu Ram, the father of the deceased has deposed that the letter Ex. PY was brought to him by PW-14 Ravinder Kumar about one and a half month prior to the occurrence. He has also categorically stated that at no point of time prior to the letter Ex. PY did the deceased complain to him about the threat to his life at the hands of A1.

53. PW-27 Yog Raj, on the other hand has gone to state that the decease and his

father (PW-18) had come to him about two or two and a half months before the occurrence when he was told by the deceased that he (PW-27) should help him (the deceased) in getting employment at Jawalaji temple as he was apprehending danger to his life from a local compounder at Gummer. PW-27 further claims to have shown the letter Ex. PY by PW-18 after the occurrence, though he could not say as to how many days after the occurrence such letter was shown to him by PW-18 Babu Ram.

54. PW-18 Babu Ram has admitted having gone to PW-27 accompanied by the deceased. According to him, he had gone to PW-27 only after the receipt of the letter to apprise him about the threats to the life of his son. He had then shown the letter Ex. PY to PW-27 and had expressed the intention to report the matter to the police. He has further stated that he was advised by PW-27 not to report the matter to the police since there was nothing to worry about and that nothing would happen to his son. This version of PW-18 is in complete contradiction to the version put forth by PW-27.

55. Insofar as the production of letter Ex. PY to the police is concerned, PW-18 Babu Ram has deposed :

"The police demanded the original letter from me but due to lack of faith in police, I did not deliver the original but merely handed over a photostat copy to the police, which is Ext. PB/1. The original letter was produced by me before the police on 13-4-1988 in presence of Braham Dass and Abbey Kumar, which was taken into possession by the police vide memo Ext. PH. I obtained the receipt of that letter from the police."

56. In fact, Ext. PH, vide which the letter Ex. PY is alleged to have been taken into possession by the police on having been produced by PW-18 (as stated by PW 18) is an affidavit of Constable Dhani Ram with regard to the carrying of two sealed packets for delivery in the Forensic Science Laboratory.

57. Ex. PX is the memo vide which the letter Ex. PY is shown to have been taken into possession by the police on having been produced by PW-18 Babu Ram in the presence, of PW-14 Ravinder Kumar and PW-23 Braham Dass, on 2-4-1988.

58. The evidence led by the prosecution with regard to the, taking into possession the letter Ex. PY is thus self-contradictory. Though PW-18 has stated to have produced the letter to the police on 13-4-1988, the recovery memo Ex. PX as well as the deposition's of PW-14 and PW-23 show that the same was taken into possession on 2-4-1988. Besides, as per PW-18, the letter was taken into possession by the police in the presence of PW-23 Braham Dass and one Abbey Kumar. The memo Ex. PX, on the other hand, does not record the presence of Abhey Kumar but records the presence of PW-14 Ravinder Kumar. Further, as per PW-18, he had obtained a receipt about the delivery of letter Ex. PY from the police. However, no such receipt has been produced in evidence.

59. On the basis of evidence coming on record the prosecution has not been able

to conclusively prove that the letter Ex. PY was in fact written by the deceased to his father. The possibility of the said letter having been manufactured as evidence during the course of investigation cannot be ruled out.

60. Even otherwise, the letter Ex. PY does not spell out the motive as alleged by the prosecution. There is nothing in the letter that A1 was jealous of the roaring practice of the deceased. In fact, no reasons are recited in the letter for the alleged threats to the deceased at the hands of A1.

61. From the evidence coming on record two versions are possible, that is, one favourable to the prosecution and another favourable to the accused. It is now well settled that if on the basis of evidence two views are possible then the one favourable to the accused is to be accepted. By taking such view, we hold that the prosecution has not been able to establish the alleged motive.

62. As per the prosecution story A2 to A4 and the approver PW-29 Sandeep Kumar are alleged to have made an extra-judicial confession before PW-12 Piar Chand, brother of deceased Vijay Kumai PW-12 on this aspect has deposed :--

"On 26-3-1988 in the morning at about 6/7 AM accused Biru, Shashipal, Sandeep and Amar Singh came to me and pleaded before me that on account of immature age they have committed such a blunder and that they should be pardon and that the case should not be given to the police."

63. The Apex Court in *Heramba Brahma and Another Vs. State of Assam*, in para 18 of the report has held; that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words the reasons or motive for confession and person selected in whom confidence is reposed.

64. In *Rahim Beg and Another Vs. State of U.P.*, the Apex Court while examining the evidence as to extra-judicial confession made by the two accused therein to one Mohd. Nasim Khan, has observed :

"There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence him. In the circumstances, it seems highly improbable that the two accused would go to Mohd. Nasim Khan and blurt out a confession."

65. The same principle was reiterated in *Heramba Brahma and Another Vs. State of Assam*, where an extra-judicial confession was claimed to have been made by the accused therein to an under-trial prisoner, who was awaiting trial for the offence of dacoity.

66. In *State of Haryana Vs. Rajinder Singh*, where the extra-judicial confession was alleged to have been made to the father of the deceased, the Apex Court disbelieved the same since the same was shown to have been made to the father of the deceased and that too in presence of two co-villagers. It was observed that it could not be acceptable that the accused would make a confession of a heinous crime in the presence of so many persons.

67. There is nothing on the record to show any previous intimacy between PW-12 and A2 to A4 and the approver. Nor there is anything to show as to what were the reasons on the motive to make a confession, or to show that A2 to A4 and the approver could have reposed confidence in PW-12 Piar Chand.

68. Besides, PW-12 did not disclose regarding such alleged extra-judicial confession to anyone including the police, though he admitted that he was examined by the police on 30-3-1988. PW-29 Sandeep Kumar, the approver, is also silent as to the making of such extra-judicial confession in his statement Ex. PM/2 as well as the one made in Court during the course of trial.

69. The learned trial Judge has rightly disbelieved such evidence.

70. As stated above, as per prosecution case A2 to A4 were arrested on 27-3-1988 while A1 was arrested on 28-3-1988. While in custody during the course of interrogation A2 on 30-3-1988 is alleged to have made a disclosure statement Ex. PL/2 in the presence of PW 28 Shiv Dev Singh and one Sant Ram, Chowkidar, and that in pursuance of such disclosure statement, A2 got recovered knife (Khukhari) Ex. P-11, blood-stained Pant Ex. P-13 undervest Ex. P-12, one silver ring Ex. P-15, pass-book Ex. P-14 in the presence of PW-16 Kedar Nath and one Rai Singh.

71. The articles, namely, P-11 to P-15, in the present case cannot be said to have been recovered in pursuance of the disclosure statement Ex. PL/2 alleged to have been made by A2. The statement Ex. PL/2 as recorded by the Investigation Officer reads :--

"I have kept concealed in a trunk (box) in my house "khokhari" (dagger) i.e., weapon of offence besides one silver ring and a pass book of Bank which had fallen in my share out of the stolen property which I can get recovered after pointing them out."

72. The knife (Khokhari) Ex. P. 11 as per recovery memo Ex. PP shows that the same was never recovered from the trunk (box) as stated in the disclosure statement Ex. PL/2, rather it is shown to have been recovered from the rafter of the ceiling on the eastern wall of the inner room of the residential house of A2. Blood-stained Pant Ex. P13. Vest Ex. P12, Silver ring Ex. P15 and pass book Ex. P14, as per recovery memo Ex. PQ are shown to have been got recovered from an iron trunk (box). It may be noticed that no disclosure statement in respect of Pant Ex, P13 and Vest Ex. P12 was made by A2.

73. A3 also while in custody is alleged to have made a disclosure statement Ex.PL/1 on 30-3-1988 leading to the recovery of shirt Ex. P10, one silver ring Ex. P8 and a pass book belonging to deceased Dr. Kewal Krishan. Though all these three articles are shown to have been got recovered by A3 from a trunk (box) in his house, insofar as shirt Ex. P10 is concerned, there is nothing about the same in the alleged disclosure statement Ex. PL/1.

74. A4 too is alleged to have made a disclosure statement Ex. PL/3 on

30-3-1988 leading to the recovery of Purse Ex. P31 belonging to the deceased Dr. Kewal Krishan containing currency notes worth Rs. 235/-, two photographs of the deceased and a learner's driving licence of the deceased, and a shirt of the safari suit. The disclosure statement Ex. PL/3 pertains only to "Purse containing currency notes".

75. It may, at this stage, be noticed that the motive for the murder of the deceased Dr. Kewal Krishan, as per the prosecution own case, was professional jealousy. However, from the recoveries an attempt has been made to show that the murder was committed for the purpose of committing theft. Thus, the case set up by the prosecution is self-contradictory.

76. Blood-stained clothes of A2 to A4 are shown to have been recovered in pursuance of the disclosure statements on 30-3-1988. PW-21 Vinod Kumar has been examined to prove that A2 to A4 were arrested by the police on 27-3-1988 at a place near Chola. At such time A3 and A4 are alleged to be wearing blood-stained Pyjama Ex. P53 and blood-stained Pant Ex. P54 respectively. It does not appeal to mind that A3 and A4 would have removed their blood-stained shirts and hidden them in their respective houses and would have continued to wear blood-stained Pyjama and pant even three days after the occurrence.

77. The story of the prosecution that A2 to A4 were arrested on 27-3-1988 at Chola is also not free from doubt. PW-28 Shiv Dev Singh has deposed that on the morning of 26-3-1988 he had gone to the police station and at that time A2 and A3 were present in the Police Station. The approver PW-29 though initially stated that A2 and A4 were apprehended on the night of 26-3-1988, subsequently went on to state that A2 and A4 were with the police on the morning of 26-3-1988 and that he had seen A3 in the police station on 27-3-1988. PW-11 Vipin Kumar has stated that on the evening of 26-3-1988 at about 5/6 p.m. when he had gone to Jawalamukhi, he had learnt about the arrest of A2 and A4.

78. The disclosure statements by A2 to A4 are shown to have been made on 30-3-1988, that is, three to four days after their arrest. It is on record that such disclosure statements were made after prolonged and rigorous interrogation by different Investigation Officers. The disclosure statements, therefore, do not appear to have been made voluntarily by A2 to A4.

79. PW-28 Shiv Dev Singh, who is a witness to all the three disclosure statements Ex. PL/1 to Ex. PL/3 has categorically stated that none of the three accused, A2 to A4, was interrogated in his presence. He was called to the police station without disclosing the purpose and that the three statements were recorded. It took 15 to 20 minutes in all for recording the three statements. This fact shows as if the police was knowing that the accused were going to make disclosure statements and as to the contents thereof.

80. There is another significant aspect of the case rendering the making of disclosure statements by A2 to A4 and the recoveries pursuant thereto as doubtful. PW-28 Shiv Dev Singh, in whose presence A2 to A4 are alleged to have

made disclosure statements, has deposed that he was called to the Police Station, Jawalamukhi on 30-3-1998 at about 10 or 10.30 a.m. He remained there for 15 to 20 minutes in connection with the recording of disclosure statements. On the other hand, PW-16 Kedar Nath, a witness to the recoveries, has stated that the police had met him at Sapri at about 10.15 a.m. on 30-3-1988 When he was associated in the investigation of the case. If the police was at the Police Station at about 10 or 10.30 a.m. recording the statements of the accused, it could not have been present at Sapri at about 10.15 a.m. for effecting the recoveries. Similarly, if PW-16 is to be believed that he met the police at Sapri at about 10.15 a.m., then the story of PW-28 fails.

81. On the basis of evidence coming on record the story of the prosecution regarding the making of the disclosure statements by A2 to A4 and the recoveries in pursuance thereof is not free from doubt and as such rightly has not been relied upon by the learned trial Judge.

82. There is no denying that Scooter bearing number HPS 5370 belongs to A1. The prosecution claims to have found Scooter tyre marks on 30-3-1988 at the place near the place of recovery of the dead body of the deceased. Such tyre marks were lifted from the scene and a mould was prepared. Such impression on having been sent for comparison was found to be of the tyre of the Scooter of A1.

83. The occurrence took place on the night of 24-3-1988. It is in the evidence of the prosecution itself that during the period 26-3-1988 to 30-3-1988 there has been continual rains. Besides, there is also evidence that about 100 to 150 people had gathered at the spot when the dead body of the deceased Dr. Kewal Krishan was recovered. Under these circumstances it cannot be believed that the Scooter tyre marks would have remained at the spot intact, DW-14, the Junior Scientific Officer of the Central Forensic Science Laboratory, Chandigarh, who had examined the impression mould Ex. P49 has stated that the impression of the tyre had neither been affected by rain or super-imposed by any other object.

84. It is also surprising to note that the tyre impressions could not be noticed by the Investigation Officers for about six days, which is not believable.

85. The learned trial Judge, during the course of spot inspection had found that the place from where the tyre impression was lifted was difficult terrain and more than one person was required "to place the Scooter there and then to remove it". The observations of the learned trial Judge gives an indication that the Scooter could not have been driven to the said place.

86. Admittedly, the mould of the tyre impression Ex. P49 was not sent to the Laboratory in a duly sealed condition. Nor there is any evidence to show that the same was duly sealed immediately after the impression was lifted from the scene. Therefore, the prosecution has not been able to rule out the possibility of its having been tampered with during the period it was lifted and till the date it reached the laboratory.

87. The Scooter HPS-5370 of A1 is shown to have been taken into possession by PW-38 Rattan Singh, the then District Inspector of Police, Kangra, on 30-3-1988 from the verandah of the shop of A1 in the presence of PW-22 Ashwani Kumar and one Raj Kumar vide recovery memo Ex. PJ/1. The wheel flap Ex. P55 of the Scooter was found to be blood-stained. However, on chemical examination no blood-stains were found on such wheel flap. While taking the Scooter in possession, its dicky was checked and a blood-stained piece of cloth Ex. P56 was recovered therefrom.

88. PW-38 has admitted that the Scooter as a whole was never sealed by him. He had carried the Scooter from the verandah to the Police Station in a tempo. He could not tell as to from whom he had obtained the keys of the Scooter. He admitted that he had never visited the house of A1. There is also no evidence to show that the keys of the Scooter were recovered from A1 at the time of his arrest.

89. PW-38 has deposed with regard to recovery of the Scooter as under :--

"I started interrogation of accused Surender Mohan at 10.30 a.m. on 30-3-1988. Thereafter, I left in connection with the recovery of the Scooter at about 3.30 p.m."

90. Nothing has come on the record as to why PW-38 felt the necessity of recovery of the Scooter since by that time nothing appears to have come in evidence with regard to a Scooter having been used in the commission of crime. According to PW-38 while leaving for recovery of the Scooter, he had deputed PW-39 A.S.I. Om Parkash to interrogate A2 and A4. The tyre impression is shown to have been lifted from the spot on 30-3-1988 by PW-39, A.S.I. Orn Parkash. According to PW-39, the tyre impressions were lifted at about 5 or 5.30 p.m. when he had gone to the spot accompanied by the Superintendent of Police and had happened to see the impressions.

91. If the tyre impressions were noticed only at about 5 or 5.30 p.m. on 30-3-1988, why PW-38 felt the need to recover the Scooter at 3.30 p.m. has remained unexplained. It appears that attempt has been made to create evidence against the accused.

92. Surprisingly enough, though PW-38 had been visiting the village of A1 prior to 30-3-1988 he never noticed the Scooter parked in the open verandah of the shop and on 30-3-1988 he is shown to have gone straight to such verandah to recover the Scooter. It is also not known as to how PW-39 came into possession of the keys so as to enable him to unlock the Scooter and also to open its dicky for recovering the bloodstained cloth Ex. P56.

93. The recovery of the Scooter and the piece of cloth Ex. P65 is not free from doubt, and the same stands rightly discarded from consideration by the learned trial Judge,

94. In seeking corroboration to the evidence of the approver, the prosecution

also has relied upon the injuries on his person. PW-20 Dr. G. N. Sharma had found six injuries on the person of the approver out of which two have been opined to have been caused by sharp edged weapon. These sharp edge injuries are on the back of left shoulder and on the palmar surface of right hand. PW-29 has deposed that he had sustained stab injuries on his abdomen near the naval and also in the lower abdomen. However, no such injury was found on his person. The medical evidence coming on record rather contradicts the version of the approver as to the manner he was assaulted and he received the injuries.

95. Considering the evidence coming on record in its entirety, we are in full agreement with the learned trial Judge that there is no corroboration to the evidence of the approver PW-29 Sandeep Kumar on material particulars. In the absence of corroboration, on the facts and in the circumstances of the case, it would not be safe to convict the accused solely on the basis of evidence of the approver.

96. Resultantly, there is no merit in the present appeal. The same is accordingly dismissed. The bail bonds of the accused shall stand cancelled and discharged.