
(1967) 01 GAU CK 0005
In the Gauhati High Court

Thangbul and Others

APPELLANT

Vs

Government of Manipur

RESPONDENT

Date of Decision : 17-01-1967

Acts Referred:

Arms Act, 1959 — Section 25

Evidence Act, 1872 — Section 30

Penal Code, 1860 (IPC) — Section 148, 149, 307, 338, 449

Citation : AIR 1968 Guw 34 : (1968) CriLJ 514

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is an appeal filed by the accused Thangbul alias Thangyang Baite, Songam Baite, Chongkhulet alias Chongkhu Baite, Ngamkhai Baite, Nemjatong Baite, Jilkhothang alias Jilkho Baite, Ngulyang Baite and Ngamsei Baite, who were accused Nos. 2, 3, 4, 5, 6, 8, 10 and 11 respectively in Sessions Trial Case No. 17/4 of 1964 on the file of the Additional Sessions Judge, Manipur, against their convictions under Sections 148 307 and Section 307 read with Section 149 of the Indian Penal Code and sentences that they should undergo rigorous imprisonment for 2 years, 7 years and 5 years under each count. The Additional Sessions Judge directed that the sentences should run concurrently.

2. The case of the prosecution is that since the Government of Manipur did not recognise the Matte tribe, the appellant and three other accused, who belong to Maite tribe and some other Maites, about 30 persons in all, attacked the police outpost in Sugnu and the quarters of M. Netra Singh (P.W. 16), who was the officer-in-charge of the Police Outpost, armed with fire-arms, daos and knives at about 11.30 p.m. on 26.1.1963 (Republic day), that there was exchange fire for about one and half hours between the armed Police on duty and the attacking party and that, as a result of the attack, one of the assailants died on account of injuries caused by bullets. P.W. 16, the officer-in-charge of the Police outpost

received an injury in his cheek. He was treated by P.W. 3. a compounder and subsequently by P.W. 17 Medical Officer in Imphal Police Hospital. P.W. 2, Head Constable (Th. Pishak Singh) sent a report Ex. A-3 to the Mayang Imphal Police Station in the morning of the next day viz., 27.1.1963 through a Constable P.W. 18, who was the scribe of Ex. A-3. P.W. 34, the S.H.O. of the Mayang Imphal Police Station registered the case as F.I.R. Case No. 8(1)63 under Sections 148 149 449 307 and 338 of the Indian Penal Code and u/s 25 of the Indian Arms Act as per Ext. A-3(I). P.W. 34 proceeded to the scene of occurrence and inspected the same.

He seized Ext. M/2 (27 empty cases and 5 chargers) under Ext. A/4. Also he seized Ext. M/10, a big flag, Ext. M/20 bamboo post, Ext. M/21, Ext. M/22 and Ext. M/23 live ammunition, Ext. M/24 unfired ammunition, Ext. M/25 ammunition of Japanese Rifle, Ext. M/26 six empty cases, Ext. M/27 3 empty cartridges, Ext. M/28 3 more empty cartridges of Tomy guns, Ext. M/29 2 bullet ends and Ext. M/30 misfired Tomy gun ammunition under Ext. A/5. He also seized some other articles, viz. Ext. M/31 to Ext. M/36 broken glasses etc. under Ext. A/6. He prepared Ext. A/34 plan of the scene of occurrence and examined witnesses. On 9.2.1963, he went to the jungle which is about 14 miles away from Sugnu to arrest the miscreants and seized Exts. A/35 to A/37 Chits under Ext. A/38 in some temporary sheds. He seized a dao, Ext M/19 He investigated into the case until 28.3.1963. Later on, the investigation was taken over by P.W. No. 33 (Madhumangol Singh) who was C.I. with Head Quarters in Kangpokpi, He seized Ext. M/9 (pistol) and Ext. M/20 empty cases under exhibit A/31 from P.W. 32 Assistant Sub Inspector attached to the C.I.D. Department, to whom they were surrendered under Ext. A/31 by the accused No. 8 (Jilkhothang alias Jilkho Baite). P.W. 33 seized Ext. M/1 bullet and under Ext. A/2, which were produced by P.W. 1 Dr. K. Gopal Singh, the R.M.O. who removed them from the mouth of P.W. 16 (M. Netra Singh) He sent all the arms and ammunition to the P.W. 9 Arms Expert. Calcutta for his opinion and he sent his report Ex. A-16.

3. The accused were arrested on various dates between 3.4.1963 and 30.5.1963. The accused Khetkhu Baite confessed his guilt and conspiracy to overthrow the Government by attacking the Police Station in Sugnu and Ex. A-20 his confessional statement was recorded by P.W. 23 Sub Divisional Magistrate on 31.5.1963. He was taken as an approver. The accused Nos. 3,4, 5, 6, 8, 10 and 11 made confessional statements on 4.6.1963, 6.6.1963, 7.6.1963, 4.7.1963, 3.6.1963 and 31.5.1963 as per Ext. A/11, Ext. A/12, Ext. A/13, Ext. A/14, Ext. A/9, Ext. A/15 and Ext. A/22 admitting their guilt and the guilt of their co-accused. Out of them P.W. 8 (S.D.M.) recorded Exs. A/11 to A/14, A/9 and A/15 confessions. P.W. 23 recorded Ex. A-22. After completing the investigation, P.W. No. 33 filed the charge sheet as per Ext. A/32.

4. The learned Additional Sessions Judge relied on Ext, A/21 evidence of P.W. 22, the approver in the Committing Magistrate's Court and also the confessional statements of A/3, A/4, A/5, A/6, A/8, A/10 and A/11. He relied on other

circumstantial evidence corroborating the evidence of P.W. 22 approver and the confessional statements. However, he acquitted A/1, A/7 and A/9 and convicted the other accused as mentioned in para one supra.

5. The convicted accused, viz., A/2 to A/6, A/8, A/10 and A/11 (who are hereinafter referred to by the same numbers) filed the present appeal.

6. There are several hill tribal people in Manipur, Most of them live in the hills. Baite tribe is one such. The case of the prosecution is that the Government of Manipur refused to recognise Baite tribe and that therefore Baite tribals entered into a premeditated plan to attack Sugnu Outpost Police Station. Though there is no evidence to show that the Government of Manipur refused to recognise Baite tribe, there is evidence to show that on 25.9.1963 some tribals planted Ext. M/10 a big flag containing an inscription "United States of Chin B.N.C.C." by means of Ext. M/20 bamboo post in the Police Station in Sugnu. P.W. 16 Netre Singh, the then station house officer of Sugnu Police Outpost removed Ext. M/10 and showed it to his superior officers.

As can be seen from his evidence, he was directed by the S.P. to remain alert. So he posted 4 or 5 constables armed with rifles with 50 rounds each in the Police Station. The evidence of P.W. 12 Hijam Thambal Singh, a tailor of Sugnu shows that about 2/3 days prior to the occurrence 3 hillmen came to his tailoring shop and got 2 big and 6 small flags stitched by him according to a design shown to him on a paper. His evidence shows that the 3 hillmen brought the-cloth and that Ext. M/10 and Ext. M/11 are two of the flags stitched by him. Chin is said to be a bordering town between Manipur and Burma. So, the evidence of P.W. 12, tailor and that of P.W. 16, the then S.H.O. of Sugnu Outpost Police Station proves the version of the prosecution that some tribals planted Ext. M/10 flag in the compound of the Police Station in furtherance of their object to take over the outpost Police Station in Sugnu.

7. That there was a deliberate, preplanned and armed attack on the outpost Police Station in Sugnu at about 11.30 P.M. on the Republic Day of 26.1.1963 is clear from the evidence of a number of witnesses. The evidence of P.W. 13 (M. Paka Singh) of Sugnu is that a few minutes before the occurrence he met about 14/15 hillmen in his locality, that they proceeded in the direction of the Outpost Police Station, that they put on black uniforms, that they covered their heads with black clothes, that 7/8 of them were armed with guns, that the house of P.W. 13 is at a distance of about 100 yards from the outpost police station and that within a few minutes of his arrival in his house, he heard the sounds of firing near the police outpost for sometime, that he also heard sound of weeping of a man and that early in the morning he went to the police station and saw the dead body of a person lying in the verrandah. As he is a villager coming across with hillmen, his evidence that the strangers were hillmen is believable, though the night was dark. P.W. 10 (E. Leipaklokpa Singh) is another resident of the same village of Sugnu.

His house is just adjacent to the compound of the outpost police station. At about 11.00 P.M. he was awakened from his slumber by the sound of firing. One bullet hit a wall of his house. His evidence is that being frightened he concealed himself along with his wife and children below the bedstead, wrapped with quilt. Early in the morning he saw the dead body of a hillman lying near the step of the police station. P.W. 11 (Kh. Thambaljao Singh) is a resident of Sugnu and his house is about 200 yards from the Outpost. After hearing the sounds of firing near the police station he raised an alarm asking the villagers to come out. It is his evidence that some villagers assembled in his house and that, after the firing ceased, he along with a village chowkidar went to the Out-post Police Station, but could not enter into it out of fear. In the morning he went and saw the dead body of a hillman lying near the step of the Outpost. He also saw P.W. 16, the officer-in-charge lying in his quarters with an injury in his jaw. He attested Exts. A/4, A/5, and A/6 Panchanamas prepared by P.W. 34 (the investigating officer). As the above witnesses belong to the same village of Sugnu, their evidence is quite trustworthy. The fact that the body of a hillman was found further shows that the assailants were hillmen.

8. There is also the evidence of P.W. No. 2 (Th. Pishak Singh), P.W. No. 16 (Netra Singh), the officer-in-charge of Out-Post Police Station, P.W. 17 (B. Giridhari Sharma) Constable and P.W. 18 (Kamson Lamka) Police Constable with regard to the occurrence. P.W. 2 deposed that his quarters were near those of P.W. No. 16 (Officer-in-charge), that at about 11.30 P.M. he heard gun shot sounds and went out of his quarters and saw some 14/15 persons entering into the quarters of P.W. No. 16, that on seeing them he remained concealing in his quarters, that he heard exchange of fire outside the outpost, that there were about 30 assailants, that there was exchange of fire for about one hour and that some time later he went to the Out-post and saw a dead body with olive green uniform. It was he, who sent to P.W. No. 34 Ext. A/3 (report). He was present when Ext. M/2 (27 empty cases and 5 chargers) were seized under Ext. A/4. He was also present when Ext. M/3 articles were seized under Ext. A/5 and also when Ext. M/4 articles were seized under Ext. A/6 by P.W. No. 34 P.W. No. 16, the then officer-in-charge of the outpost police station deposed that he was awakened from his sleep when the doors of his quarters were knocked heavily and when he heard simultaneously shots of firing, that he entered into the bath-room of his quarters, but that 3/4 persons broke open the door and entered into his room and fired at him.

A bullet hit his lip and chin. He fell down unconscious. He regained his senses early in the morning when he was attended upon by P.W. 3 a compounder. In the evening he was removed to the Civil Hospital in Imphal where he was treated by P.W. 19. The evidence of P.W. 17 (Police Constable) is that there were two armed constables on night duty, that P.W. 17 was also in the office at that time, that at about 11.30 P.M., when they were about to go to bed, he heard the sounds of striking the doors as though with stones, that the constables took up position, that the miscreants fired at them and that the constables returned the fire. His

evidence also shows that he heard a whistle may be, the miscreants from outside, that some of them went into the quarters of P.W. No. 16, that there was exchange of fire for about one hour, that at about 3 or 3.30 A.M. he heard a groaning sound of a person in front of the door and that at about 5.00 A.M. the Constables came out and found a dead body in Khaki uniform.

His evidence further shows that he was examined by P.W. No. 34. He identified the Ext. A/3 (report) written by him at the instance of P.W. 2 (Head Constable). P.W. No. 18 is Kamson Lamka. Havaladar attached to the outpost Police Station. He too spoke to the incident and corroborated the evidence of P.W. 17. His evidence further shows that early in the morning, two unknown persons entered into the compound of the Police Station through the gate (to take away the dead body), that they were fired at and that they disappeared. So, the evidence of the Police Officers also shows that there was an attack by armed hillmen.

9. The contention of the learned Counsel for the appellants is that 26.1.1963 happened to be "padyamai" after "amavasya", that there was no light and that, therefore, none of the P. Ws. could identify the assailants as hill men or know their number or see their dress. No P.W. identified any appellant. As the attack took place at the outpost, it was not impossible for P.W. 2 to identify the colour of the uniform worn by the assailants. In fact, the olive green uniform worn by the deceased that the other assailants were also similarly dressed, (sic) It was also urged by the Counsel for the appellants that P.W. 17 Police Constable deposed that he heard the groaning sound of the deceased at about 3 or 3.30 A.M. and that if the attack took place at 11 P.M. then the deceased would have died immediately and that therefore there was no attack at all. The evidence shows that there was exchange of firing for about one or 1? hours from about 11.30 P.M. It was possible that the deceased, who received injuries due to bullets, did not die immediately. The evidence of P.W. 1, Medical Officer, who conducted the Post mortem examination shows that the deceased would not have met with sudden death. The further contention of the counsel for the appellants that P.W. 16 (S.H.O.) was injured due to indiscriminate firing by the Police Constables themselves is absurd. The evidence leaves no doubt whatsoever that there was organised and unprovoked armed attack on the Out-Post Police Station.

10. There is no direct evidence in the present case to show that the appellants participated in the offence, except that of P.W. 22 (Khetkhu Baite), the approver. He was arrested by the police and on 31.5.1963 he made Ext. A/20 (Confessional statement) before P.W. 23, who was the Sub-Divisional Magistrate, Imphal East, Manipur P W 22 was subsequently taken as an approver Ext. A/20 is not admissible in evidence against the appellants u/s 30 of the Indian Evidence Act, in as much as he was not made a co-accused. But, afterwards, he was given pardon and was examined as an approver in the Committing Magistrate's Court. Ext. A/21 is his deposition in the Committing Magistrate's Court. Therein he mentioned how he and the appellants planned and attacked the Outpost Police Station in Sugnu.

He deposed that, about 4/5 days before Christmas Day of 1962, A/7 (Sulkhopao Baite) and A/8 (Jilkho Baite) of Leitan village told him that A/2 (Thangbul of Ponglen village, new Chura Chandpur) had informed them that since Manipur Government did not recognise the Baite tribe, all the Baites proposed to go underground, that they requested P.W. 22 to join them, that at first he refused, that later on, he agreed, that 4/5 days later he along with A/7 and A/8 (Sulkhopao Baite and Jilkho Baite) went towards Sugnu and halted in Lunti village, that in Lunti a quarrel arose between A/8 I and A/7 (Jilkho and Songkhopao Baite), A/7 (Sulkhopao) went alone, that P.W. 22 and A/8 (Jilkhopao) proceeded together and went to the village of Hongbung where they met A/1 (Senkholun), that the latter accompanied them, that they all reached Mouyang village where a villager advised them to go underground, then the three went to Loutic and Lanlai to collect some men to join them, that they collected 10 persons from Lanlai and Chadong, that all the 13 persons proceeded towards Sugnu, but that the other 10, persons left the party stealthily.

From Mouyang village, they went to Danyang village where they met A/9 (Thangjil Baite) and another. Then they went to Sugnu led by one of them. They reached Dongyang village in the night and halted in the jungle. On the following morning, A/2 (Thangbul) organised a meeting in the jungle. There were A/3 (Songam Baite), A/11 (Ngamsei Baite), A/6 (Hamjatong Baite), A/10 (Ngulyang Baite), A/4 (Chong-khulet Baite), A/7 (Sulkhopao Baite) and A/11 (Ngamsei Baite). A/2 (Thangbul Baite) presided over the meeting and proposed that they should attack the Sugnu Police Station in the night. In Danyang Jungle they took away their dress and put on uniforms of olive green colour supplied by A/2 (Thangbul). A/2 (Thangbul) decided that 10 persons led by him should attack the Police Station and other 5 persons led by A/8 (Jil-khothang) should attack the quarters of P.W. No. 16. It is his further evidence that in the jungle of Danyang there were one pistol, 3 British rifles, one Japanese rifle, 2 M.L. guns and one single barrel gun in the charge of A/2 (Thangbul). A/2 (Thangbul) held one British rifle. A/7 (Sulkhopao) held one British rifle. A/11 (Ngamsei) held another British rifle. Lunkhovang held a single barrel gun. A/8 (Jilkhohang) held one pistol. A/10 (Ngulyang) held one Japanese rifle A/9 (Thangjil) held a M.L. gun. One Ngamsei (junior) who is not an accused held another M.L. Gun. Then they left Doyang for Sugnu.

They crossed the Imphal river behind Sugnu on a boat. P.W. 22, A/8 (Jilkho), A-7 (Sulkhopao), A/10 (Ngulyang) and (Ngamsei Junior) attacked the quarters of P. W. 16. The party of A/2 Thangbul consisting of himself, A/11 (Ngamsei), A/7 (Sulkhopao), A/5 (Ngamkhai), A/9 (Thangjil), A/6 (Hemjatong), A/3 (Songam), A/4 (Chongkhu-let), Shunkhayang and the deceased Sukho attacked the Police Outpost. P.W. 22 proceeded to state that he ran away on account of fear followed by the others upto Khoukul camp, that they were 12 in number, that A/11 (Ngamsei), A/3 (Songam) and Sukho did not turn up, that in all 18 persons halted for 3 days that they were hiding in the jungles, that when the rations fell short, A/2 (Thangbul) directed A/8 (Jilkho) to go to the villages to collect money,

that accordingly A/8 (Jilkho), Ngamsei junior, A/5 (Ngam-chai), A/1 (Senkholun) and P.W. 22 went Maipi to collect money, that they also went to Laikai and Chadarg, that subsequently P.W. 22 went away to his village, that he learnt that the Police Officers were searching for him, that he decided to surrender himself before the Police and that when he went to Imphal he was arrested by the Police. P.W. 22's chief examination was recorded on 15.4.1964.

Then he was cross-examined on 16.4.1964. His cross-examination was not finished on 16.4.1964. So, his cross-examination was taken up 8 days later, viz., on 24.4.1964. Then, on that day, he turned hostile and stated that he gave the evidence as directed by the Circle Inspector.

11. The lower Court examined the approver as P.W. 22. He denied the truth of his evidence as per Ex. A/21. The Addl. Sessions Judge treated Ext. A/21, evidence of P.W. 22 as substantive evidence u/s 288 of the Criminal Procedure Code. The learned Counsel for the appellants argued that P.W. 22 should have been examined in the first instance and relied on *Ali Muhammad v. Emperor* 36 Cri LJ 491 : AIR 1934 Lah 171. In that case the approver was examined after all the witnesses, who were supposed to corroborate his evidence, was examined. It was held that the assessors could not have appreciated the corroborative evidence when it was given, that the Court and the counsel could not have been in a position to question the witness properly and that the opinion of the assessors lost much of its value.

In the present case also P.W. No. 22 should have been examined at first. But, the other witnesses who were examined did not include any corroborative eye-witness. The corroborative evidence in this case consists of the confessional statements of the accused themselves implicating themselves and their co-accused and general circumstantial evidence. So no prejudice was caused to the appellants. Another contention of the learned Counsel for the appellants is that the evidence of P.W. 22 cannot be acted upon unless it is corroborated by other independent evidence. He relied on the following decisions in support of this contention. In *re In Re: Kataru Chinna Papiiah*, it was held that the evidence of a witness who, in the court of Session, resiles from his statement before the committing Magistrate may be treated as substantive evidence u/s 288 of the Criminal Procedure Code, but that it Should not be relied upon in the absence of corroboration. In *re In Re: Achanta Ramabrahmam and Others*, it was held that except in exceptional cases the evidence of an approver cannot be accepted as sufficient to corroborate the evidence of another approver. In *Parita v. The Crown* 47 Cri LJ 232 : AIR 1946 Lah 48 it was held that, though the previous statement of a witness admitted u/s 288 is substantive evidence, it is to be corroborated by other independent evidence.

In *Rameshwar Vs. The State of Rajasthan*, it was held that there need not be independent confirmation of every material circumstance in the case of corroboration of evidence of accomplice but 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 on it. It was also held that the independent evidence must not only make it safe to believe that the crime was committed but that it must in some cases reasonably connect the accused with the crime. It was further held that the corroboration must come from independent sources, but that the corroboration need not be direct evidence and that it is sufficient, if it is merely circumstantial evidence of his connection with the crime.

In *Sarwan Singh Vs. The State of Punjab*, it was held that an approver is undoubtedly a competent witness under the Indian Evidence Act, but that the appreciation of his evidence has to satisfy a double test. Firstly, his evidence must show that he is a reliable witness and that is a test which is common to all witnesses. Secondly, his evidence must receive sufficient corroboration. This test is special to the cases of weak and tainted evidence like that of the approver, vide also *Jnanendra Nath Ghose Vs. The State of West Bengal*,

12. As against these decisions, the learned Assistant Public Prosecutor relied on *In re In Re: Paramban Mammadu and Others*, where it was held that if the evidence of an approver is rich in details and colour consistent within itself and not having any important contradictions when compared with other statements made by him earlier, then it carries conviction to the mind, so that very little other evidence is necessary to satisfy the Court beyond all reasonable doubt that the approver's story is true. It was further held that where, however, the evidence of an approver is thin and bare and does not carry with it an air of conviction, very substantial corroboration of his story would be necessary before it would be possible to bring home the guilt of the offence to the accused beyond all reasonable doubt.

In *Bhairon Lal Vs. The State*, it was held that a voluntary confession of an accused, even if it is retracted, is sufficient corroboration of the accomplice's evidence. In *Ramanlal Mohanlal Pandya Vs. The State of Bombay*, it was held that it is not necessary that there should be independent corroboration of every material circumstance, but that 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. It was further held that the corroboration need not be by direct evidence but that it is sufficient if it is merely circumstantial evidence of the connection of the accused with the crime: vide also *State of Bihar Vs. Srilal Kejriwal and Others*,

13. Ext. A/21 confession of P.W. 22 the approver is rich in details. It contains all the particulars about the accused meeting together and planning a two-pronged attack on the out post Police Station. There are A/14, A/9 and A/15 (Confession). P.W. 23 was cross-examined on 16.3.1964 he stated that his evidence was not false. As such, his further evidence after one week that he was tutored to give the evidence is not believable.

14. There are the confessional statements Exts. A/11, A/12, A/13, A/14, A/9, A/15 and A/22 made by the accused 3, 4, 5, 6, 8, 10 and 11 respectively, which

further lend assurance to the truth of the version of P.W. 22. P.W. 8 the S.D.M./I.N. recorded Exts. A/11 to A/14, A/9 and A/15 (Confession). P.W. 23 S.D.M./I.S. recorded Ext. A/22 (Confession) of A/11. The evidence of P Ws. 8 & 23 shows that they gave sufficient time to the accused for reflection that they warned them and told them that their confessions would be taken against them. Their evidence also shows that the confessing accused were brought from and sent back to the Jail in Imphal through their Court peons and that they were also kept segregated. They complied with the provisions of Section 164 Cr.P.C. except in the case of Ext. A/12 P W. 8 deposed that he forgot to make the memorandum at the foot of Ext. A/12 as required by Section 164 Cr.P.C. by oversight. u/s 533 Cr.P.C. the defect is a curable one if it has not affected the accused as to his defence on the merits. The evidence of P.W. 8 shows that A/4 was not prejudiced in any manner. So, Exts. A/11 to A/14, A/9, A/15 and A/22 can be taken into account, though the confessing accused 3 to 6, 8, 10 and 11 retracted their confessions before the committing Magistrate as well as the Addl, Sessions Judge.

They made a common allegation that they were threatened and tutored by the Police, which is not made out and which is unbelievable. They are voluntary confessions. In view of the fact that their confessions materially corroborate Ext. A/21 evidence of P.W. 22, they can be relied upon not only to prove their own guilt, but also the guilt of their co-accused whom they implicated. There are a number of decisions which have laid down the test when a retracted confession can be acted upon. In *Puran Vs. The State of Punjab (I)*, it was held that it is a settled principle that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal, case on its strength alone, Vide also *E. Mohan Singh v. Manipur State AIR 1954 Manipur 6* which is to the same effect. In *Pangambam Kalanjoy Singh Vs. State of Manipur*, it was held that even if a confession is inculpatory, corroboration is necessary if the confession is retracted. In *Subramania Goundan Vs. The State of Madras*, the difference between the evidence of an accomplice and the confession of an accused was clearly indicated. An accomplice is a depraved and a debased individual on his own showing, who, having taken part in the crime, tries, to exculpate himself and wants to fasten the liability on others, so, it is necessary that his evidence should be corroborated on material particulars.

But, in the case of a person who makes a confession on account of remorse, repentance and contrition, one has to find, when there is retraction, whether the confession was voluntary and true or not so, in his case general corroboration is sufficient and the Court must also feel that the reasons given for retraction are untrue. In *Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar*, it was held that the confession of a co-accused cannot be treated as substantive evidence, but that it can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. As the confessional statements are corroborative of one another and further corroborate Ext. A/21, they can be taken into consideration not only against the confessing accused but also against

their co-accused.

15. To corroborate Ext. A/21 and the confessional statements, the prosecution let in circumstantial evidence to show that the appellants absconded. P.W. 4 (Thangol Maite) of Churachandpur deposed that Thangil Baite (A 9) is the younger brother of the wife of P.W. 4 and that he did not abscond. He was treated as hostile and cross-examined by the Assistant Public Prosecutor. P.W. 5 (Paoiathang Haokip) deposed that he was chowkidar of the Civil Hospital in Sugnu, that A/11 (Nagamsei Baite) is his co-villager, that A/11 was present in the village for some days prior to the occurrence and that thereafter he was not to be seen. He also deposed that Thangopam Baite was also not to be seen after the occurrence in Sugnu Bazar. P.W. 7 (Thongam Kuki) of Sugnu stated that A/11 is his co-villager and that he was not to be seen for about 2 months after the occurrence. P.W. 15 (Yamsu Haokip) stated that A/3 Songam Baite and A/1 Senkholun Baite belong to his village and that they were present in the village in the month in which the occurrence took place. P.W. 20 (Lungam) stated that he did not know anything about the arrest of A/11 Ngamsei Baite and A/10 Ngulyang Baite. Thus, some witnesses viz., P. Ws. 4 and 15 were hostile to the prosecution. In *Munsar Aliv. Union Territory of Tripura AIR 1954 Gau 45* it was held that the defence is entitled to rely upon the evidence of a hostile witness. So, A/1, A/3 and A/9 were in their villages. But, the other accused absconded. It has to be noted that the accused are the residents of interior hill villages and it was difficult to trace them.

16. The prosecution also let in evidence to show that guns etc. were seized from some of the accused. There is the evidence of P.W. 28, who was the officer-in-charge of Thoubal Police Station and who was directed to arrest the suspects. He deposed that he proceeded from his Police Station on 3.4.1963 and arrested A/2 (Thangbul), A/1 (Senkholun) and A/4, (Chungkhulet) in the house of A/1 in Mongjung. He further stated that he seized Exts. M/5 (rifle) M/17 (four chargers), M/18 (fifty one bullets) and M/19-(sword) from A/2 under Ext. A/25 in the presence of witnesses. He stated further that he seized Ext. M/6 (British rifle) loaded with 5 bullets and Ext. M/7 (Japanese rifle) under Ext. A/26 from A/1 in the presence of witnesses. It is also his evidence that on 6.4.1963 he arrested Pakang and seized Ext. M/8 (gun) under Ext. A/27 and that he sent the arrested persons together with the seized weapons to P.W. 33 the C.I. (Madhu-mangol Singh). P.W. 29 (Ningthoujara Shamu Singh) deposed that he was in charge of Sugnu Outpost Police Station in April, 1964, that Paokhoson Haokip produced before him Ext. M/4 (British rifle) alleging that A/11 gave it to him and that he seized it under Ext. A/30. P.W. 31 (Man Bahadur) stated that he was present when Ext. M/5-(British rifle) and Ext. M/19 (Dao) were seized under Ext. A/25 at the instance of a "person".

But, he did not identify the person from whom they were seized. P.W. 32 deposed that Jilkho surrendered a pistol and empty cases (Ex O M 9 and M 20). But he did not identify A/8 as the person who delivered Exts. M/9 and M/20. P.W. 33

deposed that he seized Exts. M/9 and M/20 under Ext. A/31 from P.W. 32, P.Ws. 24 (Yamlet) and 25, (Thonghem) stated that they did not witness any seizure. So, much reliance cannot be placed on the case of the prosecution that several weapons were seized at the instance of the accused. The investigation made by P. Ws. 34 and 33 in this regard calls for adverse comment. P.W. 9, the fire arms Expert, no doubt, stated that the pellet seized from the mouth of P.W. 16 might have been shot with Ext. M/9 (Pistol). But, P.W. 32 before whom A/8 was alleged to have surrendered Ext. M/9 did not identify A/8. So, his evidence is not of much value. It is not necessary to consider, the contention off the counsel of the appellants that the evidence of P.W. 9, which is primarily the evidence of opinion and not of facts, is inconclusive as laid down in Chacko Mathai Vs. State of Kerala,

17. Thus, to corroborate Ext. A/21 and confessional statements of the accused, there are some general circumstances. Firstly, the accused belong to the hill tribe of Baites living near about Sugnu Police Station. Secondly, Ext. M/10 (flag) got stitched by P.W. 12 tailor in Sugnu by hill men. Thirdly, it was found hoisted in the Police Station of Sugnu on 25.1.1963 (declaring the independence of the Baites). Fourthly, one of the hill men, a Baite lad in green uniform was found dead in the encounter. Fifthly, ammunition, live and used cartridges, empty cases etc. were seized from the scene of attack in the Police Station. Sixthly, some of the accused absconded. In Ext. A/21, P.W. 22 deposed that A/2 got the flag Ext. M/10 and other flags stitched. Ext. A/21 and confessional statements of the accused go to show that they made a two pronged attack on the Out-post armed with guns and ammunitions and dressed in green uniforms led by A/2 and A/8. They also show that one of their party men was shot at and that he died. So, there is general corroboration of Ext. A/21 and the confessional statements.

18. The specific evidence as against each accused is as follows:

(i) A/2-Firstly, there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there are the confessional statements of A/3, A/4, A/5, A/6, A/10 and A/11 as per Exts. A/11, A/12, A/13, A/14, A/15 and A/22 implicating A/2, who led the party against the outpost Police Station as its commander. The contention of the learned Counsel for the appellants is that A/2 is leper and that, therefore, he could not have taken part in the offence. But, this cannot be upheld in view of the strong incriminating evidence against him. (ii) A/3-Firstly there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there is Ext. A/11 his own confession of his guilt. Thirdly, the confessional statements of A/4, A/6, A/10 and A/11 as per Exts. A/12, A/14, A/15 and A/22 implicate him.

(iii) A/4-Firstly, there is the evidence of P.W. 22 as per Ext. A/21. Secondly, there is his own confessional statement Ext. A/12. Thirdly, A/3, A/6, A/10 and A/11 implicate him in their confessions.

(iv) A/5-There is the evidence of P.W. 22 as per Ext. A/21. Secondly, there is his own confession Ext. A/13. Thirdly, there are the confessional statements of his

co-accused A/3, A/6, A/8, A/10 and A/11 who implicate him.

(v) A/6-Firstly, there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there is his own confessional statement, Ext. A/14. Thirdly, A/4, A/10 and A/11 implicate him in their confessional statements.

(vi) A/8-Firstly, there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there is Ext. A/9 confession of his, though he did not admit participation in the offence. Ext. A/9 shows that he organised the attack. Thirdly, there are the confessional statements of his co-accused A/3, A/5, A/6, A/10 and A/11.

(vii) A/10-Firstly, there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there is his own confession Ext. A/15 in which he confessed his guilt. Thirdly, there are Exts. A/11, A/12, A/13, A/14 and A/22 (Confessional statements) of his co-accused A/3, A/4, A/5, A/6 and A/11 implicating him.

(viii) A/11-Firstly, there is the evidence of P.W. 22 as per Ext. A/21 against him. Secondly, there is his own confessional statement. Ext. A/22 in which he confessed his guilt. Thirdly, there are Exts. A/11, A/12, A/13, A/14, A/9 and A/15 (confessional statements) of his co-accused A/2, A/3, A/4, A/5, A/6, A/8 and A/10.

(ix) There are also the other corroborative circumstances already referred to. The learned Counsel for the appellants contended that the circumstantial evidence should be consistent with the guilt and inconsistent with the innocence of the accused, as laid down in Mangleshwari Prasad Vs. State of Bihar, . But, the present case is not dependent upon circumstantial evidence only. There is also other evidence, already mentioned above.

19. Thus, the appellants are guilty of the offence u/s 148 I.P.C. they are also guilty u/s 307 read with 149 I.P.C. as they had the common object of killing P.W. 16 the S.H.O. of the Police Out Post The Lower Court framed a separate charge No. 3 against all the accused u/s 307 I.P.C. and convicted them thereunder and sentenced them to undergo R.I. for 7 years. This charge is not maintainable in view of the charge No. 1 under which they were all charged for the same offence u/s 307 I.P.C. read with Section 149 I.P.C.

20. In the result the conviction of the appellants u/s 148 I.P.C. and u/s 307 read with Section 149 I.P.C. and the sentences imposed upon them by the Lower Court viz., that they should suffer R.I. for 2 years u/s 148 I.P.C. and R.I. for 5 years u/s 307 read with Section 149 I.P.C. are confirmed. The sentences should run concurrently. Their convictions u/s 307 I.P.C. and the sentences that they should suffer R.I. for 7 years is hereby set aside.