

(1971) 01 RAJ CK 0001
In the Rajasthan High Court
Case No : Criminal Jail Appeal No. 339 of 1970

Tillu	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 30-01-1971

Acts Referred:

Evidence Act, 1872 — Section 114, 133, 27
Penal Code, 1860 (IPC) — Section 201, 302, 365

Citation : (1971) RLW 456 : (1971) WLN 74

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

L.S. Mehta, J.—The appellants Tillumal and Asandas have been convicted by the Additional Session Judge No. 1, Jaipur City, for offence under S 302, I.P.C., and each of them has been sentenced to imprisonment for life.

2. The prosecution story, in brief, is that the accused Tillumal and the approver Sajan became partners in the business of illicit liquor. Saroopa (deceased) was a taxi-driver. Sajan and Tillumal gave him Rs. 50/- per trip in addition to the fare of conveyance by which he brought illicit liquor from outside. The accused Asandas of Ajmer was another taxidriver. He also used to supply Tillumal and Sajan with illicit liquor through his taxi. On the advice of the accused Tillumal Sajan bought an Ambassador car (No. KSL 6598) in the month of February, 1967, in partnership with Saroopa. They gave Rs. 8000/- towards the part payment of its price. The residue was obtained from Prakash Financer. Saroopa, who was in the service of K.B. Singh (P.W. 11), left his job and started driving the Ambassador car. The vehicle met with an accident in the month of March, 1967, on Amber road. It was sent for repairs. After it was mended, Saroopa again took to driving it for a couple of days. No profit, however, accrued to its owners. By negotiation Sajan took the car under his exclusive possession on May 22, 1967, and gave assurance to Saroopa that he would soon pay him the money

that was due towards the purchase of the car. Saroopa again joined the service of K.B Singh. He demanded his dues many a time from Sajan. On June 10, 1967, Saroopa went to Sajan at about 9.30 a.m., and asked him to settle his account with the financier, Sajan told him to come at 12 noon to Bansi's hotel, situate in front of the Shah Building. Chuara Rasta, Jaipur. Saroopa could not spare time upto 3 p.m. At Bansi's hotel Sajan and his associates Asandas and Tillumal had already arrived earlier. They all waited for Saroopa. Then all the 3 persons went to Ram Prakash cinema to graphic theatre to see a movie. In the interval Tillumal told Sajan that Saroe pa had got his illicit liquor seized and that he had also put Sajan to loss and, therefore, he should be taken to jungle and be completed to divulge what he had done. Both Asandas and Sajan agreed to it. After having teen the picture, all the three returned to Bansi's hotel. In the meantime Saroopa also reached there. He told Sajan that he had contacted the financier and he had told him that he was to go outside for about 25 days. Saroopa suggested that both of them should go to the financier for the adjustment of the account. Sajan agreed to it and told him that he would take him there in his car at about 9 p.m. The accused Tillumal, Asandas and Sajan sat in the car and left for their respective houses. At 8.30 p.m. Sajan went to Tillumal's house, where Asandas had already arrived. All the three then sat in the car aid came to Bansi's hotel, where they took wine. Mean while Saroopa also reached there. After about 15 to 25 minutes they all sat in the car No. RSL 6598 and first went to the financier's house. Sajan and Saroopa got down from the car and contacted the financier Uttamchand, P.W. 18. He told them to come to his office next day. When Asandas and Saroopa were coming out of Uttamchand's residence-cum-office, Saroopa demanded a sum of Rs, 500/- from Sajan. Sajan said that he had no money with him. He asked Tillumal to give him Rs. 500/-. Tillumal said that he would arrange for the amount from his wine shop at Phagi. Saroof a agreed to it. Thereafter Tillumal, Sajan, Assandas and Saroopa left for Phagi in the car. When they reached the hospital square, they met K.B Singh, who was coming from the opposite direction on his scooter. The car was stopped there. K B Singh asked Saroopa as to where he was going. Saroopa replied that he was going to get his account settled. All the four persons reached Phagi at about 11 in the night. Sajan woke his servant Ghasi, P W. 3, at his Phagi liquor shop and asked him about the where abouts of Chuharmal, the sales-man at the wine shop. Ghasi informed him that neither wine nor money was available in the shop. Tillumal then told Asandas that at Dudu he had a friend Thanwardas, fion whom he would get Rs. 500/-. Thereupon the car started towards Dudu After covering a distance of about 4 to 5 miles from Phagi, Tillumal asked Asandas to stop the car. All the 4 persons then came out of the car. Tillumal gave 4 or 5 first blow on the abdomen of Saroopa and told him as to how he had got his 2000 bottles of Rajasthan wine and 80 or 90 bottles of U.P. liquor seized. Saroopa replied that he had not done so and requested Sajan to rescue him. He was, however, given further 4 to 5 blows with iron bars by Tillumal. Saroopa fell down on the ground. Tillumal tied his legs together. Asandas and Sajan also fastened his hands with cord, which Tillumal had brought from his house while boarding

the car at 8. 30 p.m. All of them lifted Saroopa and put him in front of the car. Under the direction of Tillumal Asandas ran over the car over Saroopa's body. Saroopa died soonafter. Then tlv accused asked Asandas to get petrol from the car. It was sprinkled over Saroopa's body. Tillumal set fire to it. Before doing so Sajan had removed the watch which Saroopa was wearing on his wrist and gave it to Tillumal. Later on Asandas, Tillumal and Sajan went to Dudu, wherefrom they proceeded towards Ajmer side and covered a distance of about 4 to 5 miles. Then they returned towards Jaipur. The shoes of Saroopa and the iron bars were thrown on their way. They stopped the car at the P.W.D nursery, situate on the Jaipur-Ajmer Road. There they washed the tyres of the car. Tillumal threw the watch into the nursery well. Thereafter the 3 persons went towards Purana Ghat. On their way to Bassi they saw some police constbales. They, therefore, returned to Purana Ghat, where police constable Amar Singh, P.W. 20, saw Tillumal, Sajan and Asandas. Amar Singh stopped the car by putting a barrier. Tillumal told Amar Singh that he had gone to Bassi to take food. The car was then allowed to pass. Subsequently all the three went to their respective houses at Jaipur at 2 in the night. Next day they met each other in the Ram Niwas Garden, where Tillumal told Sajan that if any body asked the whereabouts of Saroopa, he should tell him that Saroop had been given Rs. 500/-, and that he had gone somewhere. Mst. Phula Devi, P.W.7, mother of the deceased submitted a report to the police station, Ashok Nagar, on June 14, 1967, stating that her son had left Bikaner house at 10 pm. on June 10, 1967, in the company of Sajan, Tillumal and the driver of car No. RSL 6598 under the assurance that he would be given Rs. 4000/-, and that his whereabouts were not known. It was further mentioned in the report that on her asking Sajan she had been informed of his total ignorance in the matter. She came to know about the taking away of her son from K. B. Singh, who had employed him as his taxi-driver. After the receipt of the report a search was made in the vain hope of finding out Saroopa. On July 4, 1967, Investigating Officer Manzoor Ahmed, P.W.23, came to know that a dead body had been discovered near Chakwara village by a police constable and that certain articles hid been recovered from the spot by the police officer Phagi. He was also informed that the post-mortem examination of the dead body had already been conducted by the medical Jurist, S.M.S. Hospital, Jaipur, on June 13, 1967. Thereupon he registered a case u/s 302, I.P.C., and took up investigation in his hands. The accused Tillumal. Asandas and Sajan were arrested on July 16, 1967. In the course of investigation Tillumal furnished information to the police that he had thrown Saroopa's watch into the P.W D nursery and he was prepared to get it recovered. The information was reduced to writing and is marked Ex. P. 10 Pursuant to that information the police recovered the watch Article I at the instance of the accused Tillumal, under memo Ex. P.9, dated July 22, 1967. The articles recovered on the spot as also the watch were identified by certain prosecution witnessed in the presence of Shri Shyam Sunder, Munsiff Magistrate, Jaipur, P.W.2, on August 1, 1967, under memo Ex. P.3. Certain articles recovered on the spot were sent to the Chemical Examiner and the Serologist and it was found that the cuttings from the burnt clothes (underwear, Baniyan, and half

pant) were stained with human blood. Sajan was made approver by the District Magistrate, Jaipur, on September 20, 1967. After the conclusion of the investigation the police put up a challan against the accused Tillumal and Asandas in the court of the Munsif-Magistrate, Jaipur City (East). The said Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207A. Cr.P.C, and committed both the accused to the court of Sessions Judge, Jaipur City, to face trial under Sections 201, 302, and 365, I P.C. The case was partly tried by the then learned Sessions Judge No. 1 Jaipur City. Thereafter it was transferred to the court of the Additional Sessions Judge No. 1, Jaipur City, for trial. The accused were charged under the aforesaid sections of the Indian Penal Code, to which they pleaded not guilty. In support of its case the prosecution examined 23 witnesses, including the approver Sajan, P.W. I. Both the accused in their statements, recorded under S 342, Gr. P.C, denied the indictment. Tillumal also denied the fact that Ghasi was employee. He further said that he did not meet the police constable Amar Singh. He also disowned the information memo Ex. P.10, regarding the recovery of the watch (Article 1) and the recovery memo Ex 9. He then stated that Sajan (approver), Banshi and K.B Singh, dealt in illicit liquor and they falsely implicated him. Tillumal added that Amar Nath, Excise Inspector, launched a false case against him and that he had nothing to do with the seizure of 93 bottles alleged to have been recovered by Lokesh Kumar from the possession of Harumal. Similarly the accused Asandas made a total denial of the crime, of which he has charged. He further stated that he did not see K.B. Singh, Ghasi or Banshi. In the end, he said that he was living in Ajmer during the relevant time. The accused did not produce any evidence in their defence. The trial court relied upon the statement of the approver Sajan, P.W. 1 and on the corroborative evidence produced by the prosecution and convicted and sentenced the accused as stated above.

3. Mr O.C. Chatterji argued the case on behalf of the accused Tillumal and Mr. T.C. Mehta advanced arguments for the appellant Asandas. The substance of Mr. Chatterji's argument is that the approver having been involved in the business of illicit liquor is not reliable. He is also an ex-convict. He has told lies at several places in his statement before the trial court. At one place he has said that there was moon-lit night, though in fact it was not. Again, he has said that the car in which Tillumal and others proceeded towards the place of the occurrence stopped outside a Thakur's house. This is improbable. Sajan is silent about the watch having been dropped by Tillumal into the P.W.D. nursery well and, therefore, the recovery of the watch does not connect him with the crime. Mr. Chatterji has further added that no motive for the crime has been brought home and that the evidence of the approver is not only unreliable but it also stands uncorroborated in material particulars by other evidence, and, therefore, the conviction of Tillumal is unwarranted by law.

4. Shri T.C. Mehta has submitted that the first information report lodged by Mst. Phula Devi, P.W. 7, mother of Saroop, does not support the prosecution story though that information was communicated after the informant had a talk with

the approver Sajan, P.W., 1 and K.B. Singh, P.W.D. 11. The prosecution has failed to prove that Saroopa met homicidal death. The articles alleged to have been found on the spot by the police were unidentifiable. Motive has also not been brought home against Asandas. Learned Counsel then urged that the testimony of the approver Sajan both intrinsically and extrinsically is unworthy of credence and that several improbabilities entrenched therein. The prosecution has tried to furnish corroborative evidence by producing K. B. Singh, P.W. 11, Banshi, P.W. 9, Amar Singh, P.W. 20. Ghasi, P.W. 3, and Phula Devi, P.W. 7. But the trial court went wrong in placing reliance on their testimony. Learned Counsel for the State, on the other hand, supported the judgment of the court below.

5. The first question that needs serious consideration is whether the skeleton found in the jungle of Chakwara was that of Saroopa and who that Saroopa met unnatural death. Post-mortem examination of the dead body was conducted by Dr. B.B. Bhatnagar, P.W. 4, Medical Jurist, S.M.S. Hospital, Jaipur, on June 13, 1967. The Doctor found in the mouth of the deceased teeth, 15 in the upper jaw and 16 in the lower one. Features of the dead body were not identifiable. He found the following injuries on the person of the deceased:

1. Lacerated wound 2" X 1?" bone deep on middle of the vertex.

2. Marks of partial burns were present on both upper limbs.

3. Fracture on the right side of mandible. He noticed fracture on the first, second and third ribs on the right side. He also saw fracture on the first to fourth and eleventh ribs on the left side. The exact cause of death could not be given by the Doctor due to the advanced stage of decomposition. There was evidence of ante-mortem injuries on the scalp. The burns on the fore-arm were found antemortem. The Doctor expressed the view that there was some foul play. The fracture of the first, second and the third ribs on the right side and fracture on the fourth and eleventh on the left side, could have been caused by running over a car. The duration of the injuries, the Doctor adds, was 2 to 8 days. In the post-Mortem examination report Ex. P. 4 the duration was mentioned as 5 to 8 days. The doctor corrected this error subsequently on reference having been made to him. The Doctor mentioned that the age of the deceased was about 35 years. Mst. Phula Devi, mother of the deceased, has stated that her son Saroopa was about 25 years" old. To reconcile this discrepancy Doctor Bhatnagar was again examined on March 14, 1970, as CM. 1. The Doctor said that the deceased was more than 25 years" old as he had more than 30 teeth in his jaws. It must be noted that the estimation of age, after age of 25 years, becomes more uncertain, whether in the living or the dead. It is true that common knowledge comes more or less to our aid to make a hair approximation to the decade within which a person may be, but any closer approximation must be made with considerable reservation. It is difficult to achieve accuracy in estimating the age and it is manifest that no one of the observations can be relied upon to give precise age, but a careful consideration of the skeleton may enable us to give only an approximation: vide Taylor's Principles and Practice of Medical Jurisprudence,

twelfth edition, Vol. 1 Pages 142, 143, The Doctor has given only an approximated age. It may also be Pointed out here that the evidence given by the Doctor in the matter of age is only an opinion. As has been stated by Byon in his Medical Jurisprudence, 10th page 99, "there are no accurately placed milestones on the road of life." The conclusive piece of evidence is birth certificate but unfortunately in this country such a document is not ordinarily available. The court has to base its conclusions upon all the facts and the circumstances in conjunction with the oral testimony as may be available. In this case the oral testimony of the mother of the deceased" in regard to the age of the deceased is more authenticated convincing. There are, however, other points to identify that the dead body was that of Saroopa. Approver Sajan, P.W. 1, has stated, that Saroopa was killed at the place where the dead body was recovered. His evidence, as would be discussed at a later stage, is worthy of credence. That fact gets corroboration by the detection of human blood on the deceased's clothes, "Baniyan", underwear and half-pant by the Serologist: vide his report Ex. P. 22.

6. P.W. 5 Heed Constable Lakhi Singh, posted at Phagi police station, went to the spot and collected certain pieces of burnt clothes, a currency note, a lighter and two pieces of leather belt, scattered around the body. He seized all these articles in the presence of Ram Sahai, P.W. 6, Sarpanch of the village Chakwara and prepared a memo Ex. P. 5. These articles were duly sealed and were sent to Shri Shyam Sunder, Munsiff-Magistrate, Jaipur City, P.W. 2, for the purpose of conducting identification proceedings. Shri Shyam Sunder states that 7 or 8 pieces of similar type of clothes, 6 watches and 2 belts were mixed with the articles to be identified and then each one of the witnesses was asked to identify them. Mst. Phula Devi, P.W. 7, mother of the deceased Saroopa and Mst. Prem, P.W. 8, wife of the deceased, successfully identified the articles belonging to Saroopa. P.W. 7 Phula Devi has stated:

These articles belonged to Saroopa deceased. All the above mentioned articles were on the body of Saroopa when he left the house on 10th June.

The following passage occurs in the statement of Mst. Prem, P.W. 8:

I had identified all the pieces of the articles before the Magistrate. Belt Article 10, watch Article 1, Lighter Article 5, pieces of Banyan Article 9, pieces of pant Article 2. pieces of cloth Article 6, pieces of T. shirt Article 3, pieces of lining cloth Article 4 have been correctly identified by the witness.

Learned Counsel representing the 2 appellants have argued that these articles are of common pattern and unless some special features were given by the witness, it could not be said with certainty that the articles were actually connected with Saroopa. It is true that the Deputy Superintendent of Police Lakshmikant, P.W. 15, has said that he could not identify the piece of the clothes because of lapse of time and because of the piece of clothes were of common pattern. But that does not mean that the testimony of Mst. Phula Devi and Prem

is false. It should not be forgotten that small and even nice points of difference distinguishing one thing from others of the same kind may, merely by the frequent sight of them and without any special attention to them, make an impression on the mind and in such cases the impression is the general appearance of the thing. This sort of impression is common; a workman has it of his tools and most people have it of their dresses, jewellery and other things. They are frequently seen, handled or used. Observation teaches that such identification may be safely relied upon, even though the witnesses is not able to formulate an cogent or intelligent reason for identification: vide Public Prosecutor Versus I. C. Lingish AIR 1954 Mad. 433. Here the 2 ladies used to see these articles with Saroopa every day and, therefore, by their frequently sight they must have made an impression in their minds about them. In this view ?, of the matter, we do not agree with the argument put forward on behalf of the appellants that no value should be attached to the testimony of the aforesaid 2 ladies in so far as the identification of the above articles are concerned.

7. Here it may also be pointed out that it is in the evidence of Mst. Phula Devi, P.W. 7, that Saroopa had a false tooth and on June 10, 1967, he was having it. Dr, B.P. Bhatnagar, P.W. 4, who conducted the post-mortem examination of the dead body, has stated that he found 31 teeth in the skelton-15 in the upper jaw and 16 in the lower one. The teeth, both primary and secondary dentition, are almost indestructible by the normal putrefactive process. Only intense fire may destroy them. They, therefore, offer excellent means for positive identification. Taylor in his principles and Practice of Medical Jurisprudence, Twelfth Edition Vol. 1, at page 126 has opined:

A single tooth denture has been sufficient to clinch identity.

Glaister in his Medical Jurisprudence and Toxicology, Eleventh Edition, writes at page 64:

An examination of the teeth may prove of high value in regard to identification, more particularly if dental work has been carried out.

The availability of 31 teeth and the missing of one teeth is of great importance It serves to identify the .remains as those of the missing man.

8. Watch (Article 1) has been recovered on the information furnished by the accused Tillumal under memo Ex. P. 10. Pursuant to that information it was recovered by the police at the instance of the accused Tillumal from the well of the P.W.D. nursery, Jaipur. This watch has also been identified before Shri Shyam Sunder, P.W. 2, Munisiff-Magistrate, Jaipur City, by Pnula Devi, P.W. 7, and Mst. Prem, P.W. 8. The recovery of the watch helps the identity of the deceased Saroopa.

9. Keeping in view the above evidence, including the testimony of Dr. P. B. Bhatnagar, P.W. 4, and the approver Sajan, P.W. 1, we are firmly of the opinion that the dead body recovered in the jungle of Chakwara was of the deceased

Saroopa, and the saroopta, who was seen healthy just before the occurrence, met unnatural death.

10. The question that survives for consideration is whether Saroopta was murdered by the accused Tillumal Asandas and the approver Sajan during the night intervening June 10 and 11, 1967, in Chakwara jungle. The most important evidence in this case is that of the eye witness Sajan, P.W. 1, who was granted pardon on September 20, 1967, by the District Magistrate, Jaipur. The other evidence which the prosecution has led relates to the corroboration of testimony of approver Sajan P.W. 1.

11. We may first examine the statement of P.W. 1 Sajan In his examination-in-chief he has supported the prosecution story in Toto. He says that Tillumal used to come to his hotel to take meals. He dealt in wine He and Tillumal became partners in the business of wine. Saroopta, a was the taxi driver. He and Tillumal used to give Saroopta Rs. 50/ per trip in addition to fare of the car, for bringing liquor. Asandas of Ajmer who was also a taxi-driver. Tillumal asked the witness and Saroopta to buy a car in partnership Consequently, an Ambassador car was purchased on February 2/3, 1967, with the help of Prakash financier, Subhash Marg, Jaipur. The witness contributed Rs. 6000/- and Saroopta paid Rs. 3000/- towards its purchase price. The rest of the money was paid by the financier. A month after the purchase of the car it met with an accident at Amber. The car was taken to a workshop for repairs. After the accident the car was driven by Saroopta for a couple of days and it was realised that no profit accrued in the business of illicit liquor. The witness then proposed to Saroopta to keep the car for himself and give him its price. Saroopta put up a counter proposal. The witness took the car in his possession on May 2, 1967, and told Saroopta that he would settle his account within a few days. On June 9, 1967, Tillumal and the witness were sitting in Banshi's hotel. Saroopta demanded Rs. 50/- from the witness. The witness gave him that amount out of which he spent Rs. 10/- for the purchase of liquor. On June 10, 1967, Saroopta came to the shop of the witness at 9 or 9-30 a.m., and asked him to settle his account with the financier. The witness told Saroopta that he should better come to Banshi's hotel at 12 in the noon. The witness went there. Asandas and Tillumal also arrived at the hotel. Upto 3 p.m., all the persons waited for Saroopta. Saroopta could not reach the hotel at the appointed time Sajan, Tillumal and Asandas then went to see a picture in the Ram Prakash cinematographic theatre. In the interval Tillumal said that he had been put to a great loss by Saroopta, by getting his illicit liquor seized and that he had also caused loss to the witness. He, therefore, suggested that Saroopta should be taken to the jungle and be forced to divulge why he was giving information. After the picture was over all the 3 came to Banshi's hotel. Saroopta also arrived there. He told the witness that as the financier was going out for 25 days, he should better be approached in connection with the settlement of his account. The witness told Saroopta that he would take him in his car at the hotel at about 9 pm. Thereafter Saroopta went away. Tillumal, Asandas and the witness also went away to their respective houses. Subsequently Sajan and Asandas

went to Tillumal's house. Tillumal asked the witness and Asandas to come back at about 8 or 8.30 p.m. The witness then went away to his house. He again came to Tillumal's house at about 8-30, where Asandas had already arrived. Then all the 3 started in the car. Tillumal took with him 2 iron bars of about 1? or 2 ft. in length and a string 5 to 6 ft. long. They all went to Bansi's hotel. There they took wine. In the meantime Saroopa also came there in a rickshaw. He also joined the drinking party. After sometime they started in Ambassador car No. RSL 6698 and went towards the financier's residence at Subhash Marg, Jaipur. The witness and Saroopa alighted from the car and approached the financier Uttamchand, P.W. 18. Uttamchand asked them to come to him next day at 10 a.m. when the witness and Saroopa were coming out from the house of the financier, Saroopa demanded from him Rs. 500/-. The witness told him that he had no money and that he would get it from Tillumal. He asked Tillumal to give him Rs. 500/- Tillumal said that he had no money and that he would arrange it from his Phagi shop. Then all the 4 left for Phagi. Near the hospital they met K.B Singh P.W. 11, who was coming from the opposite side on his Scooter. Thereafter they proceeded towards Phagi. They reached Tillumal's wine shop at about 11 or 11-25 p.m. They got down from the car and Sajan woke up his employee Ghasi P.W. 3. On query it was found that he had neither any money, nor any liquor in the shop. Tillumal then said that he would arrange for the money from one Thanwardas at Dudu. Then they started towards Dudu through a link road, connecting Phagi with Dudu. After covering a distance of 4 to 5 miles Tillumal asked Asandas to stop the car. All the 4 persons came out of the car. Tillumal gave 4 to 5 first blows on the abdomen of Saroopa and told him as to how he has got his goods seized. Then Saroopa denied this fact, he was further given first blows. Saroopa asked the witness to save him but he declined to do so. Tillumal then took out the iron bars and the string from the car. He gave 4 to 5 blows with the iron bars to Saroopa. Saroopa fell down. He was tied with the string. Then he was put in front of the car. Tillumal asked the witness to run over the car over Saroopa. In the meantime Saroopa awoke at some distance. Tillumal told Asandas that as the witness was cowardly, he should run over the car over Saroopa, which he did. The front wheel of the car passed over the body of Saroopa, Saroopa died soon after. His body was taken at some distance. Tillumal asked the witness to remove the watch of Saroopa. The witness took out the watch and gave it to Tillumal. Its glass was found broken. At the request of Tillumal, Asandas gave petrol to him. It was sprinkled over Saroopa's body. Thereafter all the 3 left for Dudu. On the way Asandas threw one shoe of the deceased Saroopa on the one side and the other on the opposite direction. The iron bars were also thrown off by Tillumal when the car was moving. The car was stopped at the P.W.D. nursery on its way to Jaipur. Later on they intended to go towards Agra via Parana Ghat. Finding some police constables some where near Bassi, they turned their car back and returned to Parana ghat. There some police constables, who were petroling, stopped them and of their quarry they were told that they were coming from Bassi. Next day at about 12 Tillumal and Asandas came to the house of the witness. They all went to Ram Niwas Garden, where

Tillumal told the witness that if anybody asked about the whereabouts of Saroopaa, he should tell him that he had taken Rs. 500/-- from Tillumal and had gone some where. On June 11, 1967, K B Singh met the witness and he was told that Saroopaa had taken Rs. 500/- from him. Sapoopaa's mother also met him at about 8.30 p.m., and she was also given the same information. Later on they were all arrested on July 16, 1967.

12. The evidence of the approver has been assailed by the learned Counsel for the appellants on several grounds. It has been submitted his testimony, when closely scanned, suffers from various infirmities.

13. Learned Counsel for the appellants first attacked the evidence of the approver with the aid of first information report Ex. P. 8, which according to them, unfolds a different story. According to the counsel the place of meeting of the accused persons and Saroopaa, as mentioned in the first information report, was Bikaner House. But in the evidence of the approver Sajan the venue was changed to Bansii's hotel. Sajan has said:

I told him (Saroopaa) that I would take him in my car from hospital at 9 p.m.

He has further said:

We sat in the car and came to the hotel of Bansilal. There we took the wine for which we had placed an order to bring. In the meantime -Saroopaa came there in a rickshaw. He also joined us in drinking.

The reason as to why all the 4 persons assembled at Bansii's hotel is obvious. From the evidence it appears that Tillumal, Asandas and Sajan were addicted to taking wine and it is with that object that they first went to Bansii's hotel. Saroopaa thought that all the 3 persons must have gone to Bansii's hotel. There is, therefore, no wonder that all the four persons first assembled at Bansii's hotel. In the first information report it is mentioned that on June 10, 1967, Sajan, Tillumal and the driver of the Ambassador car No. RSL 6598 came to Bikaner House at 10 p.m., and took away Saroopaa therefrom under some pretext or other. The first information report was given by Mst. Phule Devi, who was not eye witness, but who had simply collected intelligence from K.B. Singh. In the first information report made by a person who had collected information from others, sometime a fact, which should have been mentioned, gets omitted. In that circumstance, suspicion cannot be attached to such a statement: vide State of Rajasthan Vs. Kartar Singh, . In this case, in the F.I.R. not submitted by an eye-witness the omission of Bansii's hotel as a starting point will not damage the prosecution story. Learned Counsel then submitted that in the statement of Sajan P.W. I, it is given:

After 15 to 20 minutes we all the four sat in the car No. RSL 6598 and started for the place of financier.

Financier Uttamchand, P.W.18, has said:

On the night of 10th June, 1967, at about 9-30 p.m. Sajan and Saroopu came to my office-cum-residence and asked me to settle the account.

This discrepancy, according to the learned Counsel, is very material. We do not agree with this. The reply to the alleged inconsistency is found in the statement of Sajan himself. He has deposed:

I and Saroopu alighted from the car and went to the officer of the financier.

That shows that only Sajan and Saroopu got down from the car and they alone contacted the financier. Learned Counsel urged that according to the approver Rs. 3000/-, were due to Saroopu as his share in the car. The first information report speaks that Sajan owed Rs. 4000/- to deceased. This difference of Rs. 1000/- relates to the accounts. The best evidence in that regard would have been that of Saroopu, but he is no more in this world. This inconsistency, the refer, does not appear to be significant. Learned Counsel then pointed out that in the first information report it has been categorically mentioned by Mst. Phula Devi that the informant contacted Sajan and he had told her that he knew nothing about her son. Contrary to this Phula Devi deposed before the trial court in her statement that Sajan had told her that he had given Rs. 600/- to Saroopu and left him at Ajmeri gate on 10th June. A question in the course of cross-examination was put to Mst. Phula Devi about this omission in the first information report, to which her answer was:

I did not mention in Ex P. 8 that Sajan had told me that he had given Rs. 600/- to Saroopu and left him at Ajmeri Gate because I had considered this thing as a lie.

No informant is expected to make a statement in the first information report which he or she does not believe to be true. No doubt first information report being an early record and the first version of the alleged criminal activity, conveyed to the police officer with the object of putting the police on motion, is an important and valuable document. But it must be borne in mind that it is not a substantive piece of evidence and it can only be used for the purpose of corroborating or contradicting its author, as has been observed by their Lordships of the Supreme Court in Criminal Appeal No. 135 of 1967, Chandra Bhai v. State of U.P. decided on February 19, 1970, "first information report is not to be treated as the last word of the prosecution in the matter." That being the settled law, the alleged omission in the first information does not serve as "the sole and conclusive test for determining the fate of the case."

14. Learned Counsel for the appellant argued that Mst. Phula Devi has admitted in her statement that she knew Asandas for about 2 years and yet she did not mention his name in the first information report. Phula Devi has no doubt stated that Asandas used to come to her house. His taxi also used to remain outside her house. In the course of cross-examination she has made the position clear. She has said of Asandas She knew him only as a driver. She again stated that K.B. Singh told her that the driver of the car was from Ajmer. This explanation

appears to be satisfactory and, therefore, want of insertion of the name of Asandas specifically in the first information report Ex. P. 1 would not affect the merits of the case. According to the Statement of Sajan, Asandas was driving the car and it is given in the first information report that besides Tillumal and Sajan approver, the driver of the Ambassador car No. RSL 6598 was also sitting there. In that context, the alleged omission is of no consequence. We may take up the question as to how far the testimony of the approver Sajan, P.W.I, is reliable. Sajan had said in his committing court's statement Ex. U. 2 that on June 10, 1967, it was moon-lit night. We, however, told the trial court:

It was dark night when the incident took place.

This discrepancy is more or less based on lapse of memory and is of little consequence. It has further been urged that it is in the evidence of the approver Sajan that the body of Saroopa was run over by the car once and thereafter it was moved 4 or 5 times backward and forward. In Ex. D. 1 (Sessions Court's prior statement) he had said that the car was run over the body of Sajan 4 or 5 times. This discrepancy, according to the learned Counsel, is irreconcilable. We do not agree with this reasoning. Sajan himself has explained the position by saying that the body of Saroopa was run over by the car once and thereafter the vehicle was moved 4 or 6 times backward and forward. There is thus no material inconsistency in these 2 statements. Then it was submitted that at one place Sajan states before the trial court that he gave the watch and the pant free to Saroopa on account of friendship. Contrary to this he had said in Ex. D. 2 (committing Court's statement) that the watch and the pant had been given to Saroopa in lieu of this salary for the month June. This discrepancy is not of great value. The pant and the watch at the initial stage might have been given by Sajan without telling him that their prices would be adjusted towards his salary for the month of June. Subsequently when Saroopa could not give profit to Sajan by successfully plying the Ambassador car, Sajan might have adjusted the cost of these two articles towards Saroopa's salary for June Sajan stated before the trial court that he participated in the crime of his own accord, but in Ex. D. 1 (Sessions Court's prior statement) he had said that he joined the crime at the instance of Tillumal. This discrepancy may be due to mixed motives and is not of much importance. The fact remains that Sajan did take part in the crime. Sajan said before the trial court:

I am very definite that Assan had thrown the shoes.

In Ex. D. 1 he had said:

Tillu threw away the iron bars and both the shoes one by one outside the car.

This inconsistency does not appear to us to be very material. Neither the shoes nor the iron bars have been recovered by the police to connect the accused with the crime. Saroopa had said in the committing court's statement Ex. D. 2:

The car was stopped near the Thakur's house and fists were given.

This statement he has disowned before the trial court. It is just possible that due to lapse of time this small discrepancy, having little bearing on the material facts of the case, might have cropped up.

15. Learned Counsel in the course of their arguments drew the attention of the court towards certain improbabilities in the statement of the approver. These improbabilities also deserve discussion. Sajan has said before the trial court that Rs. 3000/- were due to Saroopa as his share in the car. Mst. Phula Devi, P.W. 7, has stated that Saroopa contributed Rs. 4000/- towards the purchase of the car. As has already been stated above, this difference is related to accounts and it cannot impair the testimony of Sajan. It was then pointed out on behalf of the appellant that it was improbable that Sajan and Saroopa would go to Uttamchand late in the night for settlement of accounts. The conflict has been resolved by Sajan in his statement before the trial court. He says that as the financier was going out, Saroopa was very particular to get his accounts settled. It was further submitted that when Rs. 4000/- were due to Saroopa how did he come to demand only Rs. 500/- from Sajan when both of them came out of the house of the financier Uttamchand P. W 18. We do not find any improbability in this statement. It is in the prosecution evidence that on June 9, 1967, Saroopa demanded from Sajan, according to his own need, a sum of Rs. 50/-, only. An argument was put forth on behalf of the accused that there was hardly any necessity for the accused to go as far as Phagi to achieve the desired object. The prosecution evidence shows that when Saroopa wanted Rs. 500/- from Sajan in the night of June 10, 1967, he was told that neither Sajan, nor Tillumal had any money at Jaipur and that the requisite money could be arranged at Tillumal's wine shop at Phagi. Saroopa knew well that Tillumal and Sajan had their shop at Phagi and, therefore, it was possible that he would get money there. Had this been not told to Saroopa, he would not have accompanied the accused persons in the car. He believed in the words of Tillumal that he would get money at Phagi and, therefore, he showed readiness to leave Jaipur for the above place. Besides, the accused had to take proper precautions to avoid detection of the crime. It is for this reason that Saroopa was taken to Ghakwara jungle, near Phagi. Learned Counsel for the appellants strenuously argued that the crime was committed on the main road linking Dudu and Phagi. No blood was found on the highway. This is, according to the learned Counsel, another improbability, Head Constable Lakhi Singh, P.W. 5, resolves this conflict. He says:

The road from Chaksa to Sambhar is a Kutcha road. There are pebbles on it. It goes via Dudu, There is little traffic on this road. The corpse was lying about 20 paces away in the field of Ramchandra Jat.... I found some blood stained earth which was also burnt.

In the light of this statement, there can be no two opinions that the road was lonely. The police reached the spot as late as June 12, 1967. It is, therefore, possible that it could not trace out the blood on the road, though the same along with rags of clothes, stained with human blood, was found near the dead body.

Learned Counsel also urged that Sajan said before the trial court:

"When the occurrence took place Saroopa neither raised any hue and cry nor did he resist us to any manner." Sajan did say in the examination-in-chief:

Tillu gave 4 to 6 fist blows on the abdomen of Saroopa. He asked him why he got his goods seized Saroopa asked me to save him.

I told him that he had not benefited me in any way Not to raise an outcry, according to learned Counsel, is an improbability. The scene of the occurrence was a lonely jungle and when Saroopa's entreaty to Sajan for saving his life failed, no useful purpose would have been served by raising alarm. Besides Tillumal gave blows with iron bars on the head of Saroopa before he was crushed underneath the car. The impact of these blows might have silenced his urge to speak. This argument, therefore, is devoid of force.

16. As regards motive for the crime, it has been vehemently argued that neither Tillumal nor Asandas had any motive for the crime. There is the evidence of Amarnathb, Excise Circle Inspector, Jaipur. P.W. 16, that he had been informed by one contractor and a spy that Tillumal Sindhi had in his shop illicit liquor in sufficient quantity. His shop, therefore, was searched and 1943 bottles of illicit liquor were recovered therefrom under memo Ex. P.11, dated April 20, 1967. The witness has further said that Tillumal was being prosecuted for the recovery of this liquor. There is also the evidence of Lokesh Kumar, Circle Inspector, Excise Department, Jaipur City, P.W. 17, who deposes that Harumal represented himself to be an employee of Tillumal., He on information furnished to him by some spy, raided the house of Haru Mal in the presence of Amarnath and other witnesses. In the course of search 94 bottles of illicit spirit were recovered under memo Ex.P.13, dated June 9, 1967, that is a day before the occurrence. Tillumal suspected that it must be Saroopa who got the liquor recovered twice. It is in the evidence of the approver Sajan that Asandas was also closely associated with Tillumal. This fact is further corroborated by Bansi, P.W.9. He says that Tillumal, Sajan and Asandas came to hotel. They remained sitting in his hotel and then at 3 p.m. they left to see a picture in Ram Prakash cinema. Phula Devi, P.W. 7, mother of the deceased, has also stated that the driver used to come to her house and he feigned to be his friend. He used to keep a taxi at the door of his house. This evidence suggests that Asandas was hand-in-glove with Tillumal and when Tillumal expressed his desire to teach a lesson to Siroopa, who act his illicit liquor recovered, Asandas to it. Asandas also supplied illicit liquor to Tillumal. There is, therefore, no wonder that he gave consent to Tillumal to accompany him for taking Saroopa to task. This part of the argument also, therefore, is devoid of substance.

17. It is true that the testimony of an approver, who has thrown to the wolves his erst-while associates in order to save his own skin and who is a criminal and has purchased his liberty by betrayal, must be received with very great caution.

18. It has now to be seen whether there is confirmatory evidence to corroborate

the approver's testimony qua each accused. Bansi, P.W. 9 says that his hotel is in front of Shah building, Ghaura Rasta Jaipur. Tillumal and Sajan used to come there. He also knew Saroop. He used to come to his hotel sometimes alone and sometimes with other persons. All these persons came to his hotel for meals. Wine was also supplied. On June 9, 1967 Sajan and Saroop came to his hotel at 8.30 p.m. They took their meals and wines there. He charged Rs. 10/- from Saroop and demanded Rs. 50/- from Sajan out of which he spent Rs 10/- over hotel expenses. Afterwards they left the hotel. On June 10, 1967, Tillumal, Sajan and Asandas came to his hotel. All of them were present before the court. They came at about 12 to 12.30 in the noon. They kept sitting in his hotel. At 3 p.m. they left for seeing a picture in Ram Prakash Unema. They came back at 7 p.m. In the mean time Saroop also came. There was some other person sitting in the car Saroop came out of the car and told Sajan that as the financier was going out for 25 days his account should be settled. Sajan agreed. Sajan asked Saroop to meet him at about 9.30 near the hospital road. Later on all the persons left for Bansi's hotel. Asandas, Tillumal and Sajan came back. After 10 a.m. Saroop also arrived in Rickshaw. They sat in his hotel and took wine & their meals. They stayed there about 20 minutes. Then all the 4 - Sajan, Tillumal, Asandas and Saroop left the place in the car No. RSL 6598. Thereafter he never saw Saroop. Bansi corroborates Sajan as to how all the 4 persons Tillumal, Asandas, Sajan and Saroop left together in the Ambassador car No RSL 6598. He further corroborates the fact that there was close association between all these four persons. The evidence of this witness has been attacked by the learned Counsel for the appellants on the ground that as the witness used to supply illicit liquor, he was not a reliable person. It has further been urged that the evidence failed to give the names or other persons who visited his hotel on June 10, 1967. It has also been submitted that Sajan being a stranger was not identified by the witness in a test identification parade. It is true that the customers of Bansi used to take wine in his hotel. If this was a fact and Bansi admits in his statement that this fact was true, it cannot be said that his statement on this point is false. The witness is unable to give the names of other persons who visited his hotel on June 10, 1967, or a day prior to it. This will not falsify his statement. From the trend of his evidence it is manifest that Tillumal, Sajan and Saroop were friendly to him and they often used to visit his hotel. It was, therefore, but natural that he knew their names. The witness has said:

I do not remember having ever seen Asandas prior to June 9, 1967." subsequently he again said:

I saw Asan once standing outside Prem Prakash Talkies after 10.6.67 at 8 a.m.

As the witness saw Asandas subsequently, no identification parade in respect of Asandas was necessary. The witness has said in the examination-in-chief:

Afterwards they left. On 16th June, 1967, Tillu, Sajan and Asandas came to my shop. All of them are present in court.

This statement shows that the witness did identify the accused Asandas before the court. On the whole the evidence of Banshi has been rightly held by the trial court as credible and trustworthy.

19. It is in the evidence of approver Sajan that on June 10, 1967, when he and his associates Tillumal and Asandas returned at Banshi's hotel after seeing the movie in Ram Prakash cinema hall, Saroopu came there. The approver further said:

Saroopa was accompanied by a person who was said to be of Bikaner house.

Banshi also confirms this fact. He states:

In the meanwhile Saroopu also came there. He also came in a car. That car belonged to K.B. Singh. There was some other person in the car whose name I do not know.

This fact is confirmed by Antnd, P.W. 12, an employee of Maharaja of Bikaner. He says that on June 10, 1967, he and Saroopu first went to Polo-victory and when they were returning through Choura Resta, Jaipur, Saroopu asked him that he would like to talk to his partners. Both he and Saroopu then went to Banshi's hotel at about 6.30 p.m. Thereafter they left for Bikaner house. Anand is thoroughly an independent witness. He is not in any manner on inimical terms with the accused persons. His evidence, therefore, has been rightly given credence by the trial court.

20. It is in the statement of the approver Sajan that after leaving Banshi's hotel all the 4 persons went to the financier's office-cumresidence near the Tourist Hotel, Subhash Marg, Jaipur. Sajan further said:

I and Saroopu alighted from the car and went to the office of the financier.

This fact gets support from P.M. 18 Uttamchand. He testifies that his firm's name is Surendra Finance Company. He deals in hire-purchase of motor-cars, trucks and buses. His office is at 19, Subhash Marg, Jaipur, behind the Tourist Hotel. Sajan and Saroopu used to ply the Ambassador car No. RSL 6598, financed by him. Sajan and Saroopu were guarantors of the car. An agreement to that effect made and is marked Ex. P. 15. It bears the signatures of Sajan and Saroopu. During the night of June 10, 1967, at about 9.30 p.m. Sajan and Saroopu came to his office-cum-residence and asked him to settle their accounts. The witness told them to come to his office next day for the purpose. Thereafter Sajan and Saroopu never came to him together. Uttamchand Jain is an unbiased witness. There is no material in the cross-examination which may in any manner wreck his testimony.

21. Approver Sajan says that after seeing the financier they proceeded towards Phagi in the car. Tillumal and Saroopu sat on the back seat of the vehicle. The witness and Asandas occupied its front seat. Asandas was driving the car. On their way they first reached the hospital road, there P.W. 11 Sardar K.B. Singh,

Saroopa's employer, came on his scooter from the opposite direction. He got the car stopped and asked Saroopa where he was proceeding at the moment. Saroopa told him that he was going to get his account settled. Sardar K.B. Singh confirms this fact. He says:

I came via Jaipur Tonk Road. From the opposite side Sajan's car RSL 6598 was coming. Car was slow I was on the scooter. I got the car stopped. In that car Sajan, Assan Das, Tillu Mal and Saroopa were sitting. Assan Das was driving the car. On the back seat there were Saroopa and Tillu. On the front seat by the side of Assan Das, there was Sajan. I asked Saroopa where he was going He said that he was going to Financier to settle accounts.

The evidence of K.B. Singh has been challenged by the learned Counsel for the appellants on more than one grounds. It has been argued that he was examined by the police as late at July 14, 1967. In this connection, it may be pointed out that the police could not get definite clue of the murder of Saroopa for long. The accused were arrested as late as July 16, 1967. Therefore, the late examination of K.B. Singh will not bear upon the merits of the case. The other point raised in regard to the evidence of K.B. Singh is that there is no convincing reason why he came to the hospital road at 10 p.m. The explanation has been furnished by the witness himself in his statement. He says:

I was going to Bungalow No. 9, Hospital road, from my house as the driver Saroopa had informed me that the car had some defects. My house is situated in Rajapark beyond Moti Doongri road.

It is true that driver Saroopa's duty on car No. RSL 6969 was fixed from 6 a. m. to 9 p. m. The witness had 4 taxis. He had engaged Saroopa as the taxi-driver of car No. RSL 6969. One or two days before June 9, 1967, Saroop had informed the witness that there was some thing wrong with the car, which had been sent to Bikaner house. If the motor-owner had been informed that there was some defect in the vehicle, it was but natural that he would get his car checked-up. The head light of the car RSL. 6598, according to the witness, was on and so also the head light of the scooter. Therefore, there is no wonder that K.B. Singh, while going to Bikaner house, did pass through hospital road and saw the 4 persons, Asandas, Tillumal, Saroopa and Sajan in the car. In his statement Ex. D. 8, recorded u/s 164, Cr.P.C the witness had said that the car had been driven by Sajan, but in the trial court he stated that the car RSL. 6598 was being driven by Asandas. This discrepancy may be due to lapse of memory. At one place the witness K.B Singh has said that he asked Saroopa as to where he was going, and he replied that he was going to the financier. When the party had already contacted the financier how Saroopa told K.B. Singh that he was going to him. This inconsistency has been set at rest by the witness himself and in the examination-in a chief he corrected his previous mistake by saying as under:

Saroopa had told me that he was going to settle accounts and he did not tell me that he was going to Financier.

By settlement of account Saroopa obviously meant to get his dues. Therefore, there is nothing wrong in this regard in the statement of K.B. Singh. K.B. Singh is a respectable person He possessed as many as 4 taxies In the cross-examination of this witness nothing is made out, which may show that he was bearing ill-will or enmity against the accused persons True, the witness 4 was the employer of Saroopa, but that relationship does not detract from the value to be attached to his evidence. He cannot be expected to adopt a course by which innocent persons would be implicated when no enmity as such has been proved to have existed between him and the accused as would induce him to give false evidence.

22. After meeting K.B. Singh, the party reached Phagi, where Tillumal's "Theka" shop was situated. The approver says:

We reached there at 11 p.m. or 11.25 p.m. I got down from the car and woke up my servant Ghasi. I asked him whether there was any wine and where Chuhamal was He told that there was no wine left and Chuhamal had gone to Jaipur in the evening. Chuhamal was my salesman....

P.W.D. Ghasi corroborates this fact He says that both Tillumal and Sajan had a licence of liquor at Phagi. Their shop was in half the portion of his house. Saroopa and Asandas used to come to the "Theka". The witness knew Asandas, who was present before the court. He knew Saroopa also. Saroopa and Asandas used to come to the "Theka" at Phagi. Asandas, Saroopa, Sajan and Tillumal came at the shop on June 10, 1967, at mid-night in the car. They stopped the car at a distance of 4 to 5 paces from the cot on which he was sleeping. Sajan woke up the witness and in his query he told Sajan that there was neither any money, nor was there any wine in the shop. The witness then says:

At that time Asandass, Tillu and Saroopa were in the car. I recognised them well. They were known to me since before. Hence I recognised them.... Afterwards all went towards the road in the car. This road leads to Sambhar through Dudu. Village Chakwara falls in between on the way.

The evidence of Ghasi has been assaulted by learned Counsel for the appellants on the ground that there was no light at Phagi and, therefore, it was hardly possible for him to recognise the 4 persons sitting in the car. When the front door of an ambassador car is opened, light is furnished inside the car and when the witness knew all these 4 persons well, he could have recognised them. At any rate, no effective cross-examination has been made on the statement of the accused "I recognised them well." The witness might not be knowing the colour of the car but that would not falsify his testimony in so far as the identification of the 4 persons is concerned The car did stop for about 3 to 4 minutes at the Phagi shop. That time was enough for the witness to take notice of the 4 persons. At one place the witness has said:

I learnt the date 10.6.67 by heart because I knew that this question would be asked to me every time. I learnt this thing because I would be asked by public

authorities.

The witness knew well that his statements would be recorded at various stages of the case and, therefore, if he remembered the date June 10, 1967, there is nothing improper. In the cross-examination the witness says:

I do not know to which place Assan belongs and what he does.

From this statement it cannot be inferred that Asandas was unknown to him. In the examination-in-chief the witness has unequivocally stated that both Saroopa and Asandas used to go to the "Theka" of Saroopa and thus he knew them. Ghasi was the employee of both Tillumal and Sajan. There is no reason why he should falsely implicate his own employer Tillumal. No enmity has been proved to have existed between the witness and the accused as would induce him to give purposely untrue evidence. Consequently, the evidence of Ghasi cannot be discarded on the ground of minor discrepancies.

23. After meeting Ghasi the party, according to Sajan, reached Chakwara jungle, where Tillumal first beat Saroopa with iron bars. Then he was tied with a string and the car was run over his body. After Saroopa was dead, petrol was sprinkled over his corpse and it was burnt. The watch of the deceased was taken over by Tillumal. This fact is corroborated by the recovery of burnt clothes and the lighter near the dead body. The recovery was made by P.W. 5 Lakhi Singh, Head Constable, posted at Phagi. The recovery memo is marked Ex. P. 5, dated June 12, 1967. It was prepared in the presence of the Sarpanch of Chakwara, Ram Bahai, P.W. 6. These articles were identified by the mother of the deceased, Mst. Phula Devi, P.W. 7, and the wife of Saroopa, Mst. Prem, P.W. 8, in the presence of P.W. D. 2. Shri Shyam Sunder, Munsiff-Magistrate, Jaipur City, under memo Ex. P. 3. The watch was found in the P.W.D. nursery well, falling on Ajmer-Jaipur road. Tillumal furnished information to the police u/s 27 of the Evidence Act, that he had thrown the watch into the well: vide Ex. P. 10. Pursuant to that information of the accused under memo Ex. P. 9. It was identified by Mst. Phula Devi, P.W. 7, and Mst. Prem, P.W. 8, in the presence of Munsiff-Magistrate, Shri Shyam Sunder, P.W. 2. There is no eye witness excepting the approver to the actual commission of the crime committed in the jungle of Chokwara. However, the recovery of the above articles does furnish a very material corroborative link in the chain of circumstantial evidence. Lakhi Singh further says that he found on the spot some burnt blood stained earth. Nearby he saw a "Kair" bush. That too was found burnt.

24. After the murder of Saroopa the 3 persons Tillumal, Sajan and Asandas, according to the approver, reached Purana Ghat, where from they proceeded towards Bassi. Finding some police constables nearabout Bassi, the car returned to Purana Ghat, where the party met some police constables. Sajan says:

Those constables were of Adrash Nagar police station and we were knowing each other. One of the constables was Amar Singh.

In support of this version the prosecution has examined Amar Singh. P.W. 20.

The witness says:

I know Sajan, Tillu and Asandas from before. On the night intervening 10-6-67 and 11-6-67 at 2. 30 p.m. I saw Tillu, Sajan and Asan Dass going in a car from Jaipur side to Bassi side. After 15 minutes of it that car returned. All three persons were sitting in it. I stopped them after putting a barrier. I asked Tillu "How did you return within 15 minutes". Tillu said "I had gone to my relation at Bassi to take food I have come back now." I thought that perhaps he might have come with illicit liquor so I opened the boot. Boot means the back part of the car in which luggage is kept. Illicit liquor was not found. The car was Ambassador and it was of cream colour. Its number was 6598. I allowed them to go. Tillu, Sajan and Asandas are present in court.

In the cross-examination he says that he is posted in Adarsh Nagar police station and Sajan and Tillu lived nearby. He had been Asandas 10 minutes prior to his checking at the barrier with Tillu and Sajan. The witness also saw Asandas at Bansi's hotel. The witness further says that Asandas was the car driver. In Ex B. in (prior statement in the Sessions Court) the witness had deposed that he had seen Asandas in the night of 10-6-67 for the first time. This statement, the witness admits, is correct. Though the witness identified Asandas before the trial court, yet for want of identification parade his evidence in so far as Asandas is concerned is equivocal or indeterminate. Nevertheless it does corroborate the testimony of the approver Sajan that the car in which 3 persons were sitting did pass through Purana Ghat. Of these 3 persons the witness knew Tillu and Sajan well.

25. What is an accomplice? There is no formal definition of the term "accomplice". An accomplice is one concerned with another or others in the commission of a crime: see Wharton Law Lexicon, 5th Edn. and Wharton. Cr. Ev. Section 440. Persons who are "particeps criminalis" in respect of the actual crime charged, whether as principals or accessories before or after the fact are accomplices. This is surely the natural and primary meaning of the term "accomplice"; vide *Davies v. Director of Prosecutions* (1954) 1 All. E LR 507 (H.L.). In *Hussain Umar v. Dalipsinghi* AIE 1970 S.C. 45, while approving the above citation of the House of Lords, it has been held that the witness concerned may not confess to his participation in the crime, yet it is for the Court to decide on a consideration of the entire evidence whether he is accomplice. In the present case Sajan, P.W. 1, admits that he of his own accord or at its instance of Tillu has participated in the crime. Therefore, he is an accomplice.

26. The reasons which lead to the distrust of an accomplice's testimony are not far to seek. He may expect to save himself from punishment by procuring the conviction of others. It is true that he is also charging himself, and in that respect he has burned his ships, but he can escape the consequences of this acknowledgment, if the prosecuting authorities choose to release him, provided he helps them to secure the conviction of his partners in crime vide Article 2057 Wigmore on Evidence, Third Edition, Volume VII. Where a person, who is an

accomplice gives evidence, it is the duty of the Judge to seek corroboration. This rule although a rule of practice now has the force of law In this connection a reference is made to Taylor on Evidence, Twelfth Edition, Article 967, Vol. I. where it is said:

It may be regarded as a settled course of practice not to convict a prisoner, excepting in very special circumstances, upon uncorroborative testimony of an accomplice.

In Phipson on Evidence, Tenth Edition, P. 1566, the following useful passage occurs:

Although the uncorroborated evidence of an accomplice is strictly admissible, it is a rule of practice, though not of law, that the judge would not warn the jury that it is always dangerous to convict on such evidence alone....

In Bhiva Doulu Patil Vs. State of Maharashtra, it is mentioned that 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. There should be corroboration of the approver in material particulars and qua each accused. Similar views have been expressed in Bhuboni Sahu v. The King AIR 1949 P.C. 251. In the words of Lord Reading, C.J. in R. v. Beskerville AIR 1916 K.B. 658:

It has been long a rule of practice at common law for the Judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice.

Keeping in view the above authorities, it is clear that the combined effect of Sections 133 and 114 illustration (b), Evidence Act, is that an accomplice is to give evidence and it is almost always unsafe to convict upon the evidence of an approver alone. Therefore, though the conviction of the accused on the evidence of an approver cannot be said to be illegal, the court will insist in not accepting his evidence without corroboration in material particulars.

27. It is now to be seen what phrase "corroboration in material particulars" means? Its answer is found in Wigmore on Evidence; third Edition, Vol. VII, Article 2059(c). The learned author says.

But this phrase seems not to mean more, in any case, than that the corroboration must have the effect of persuading to trust the testimony.

Taylor on Evidence, Twelfth Edition, Vol. 1, Article 969 says:

Some judges have deemed it sufficient if the witness be confirmed in any material part of the case; others have been satisfied with confirmatory evidence as to the corpus delicti only....

Phipson on Evidence, Tenth Edition, P. 1569 writes:

As the nature and extent of the corroboration requires, it is now settled law,

whether required be statute or common law, that there must be corroboration both as to the commission of the crime (i.e. of someone or more, but not of all) the material circumstances, otherwise the evidence of the accomplice would be superfluous.

In Halsbury's Laws of England, Third Edition, Vol. 10 at page 460 it is laid down:

The corroboration need not be direct evidence that the accused committed the crime, nor need it amount to confirmation of the whole of the story of the witness to be corroborated, so long as it corroborates the evidence in some respects material to the charge under consideration. It is sufficient if it is merely circumstantial evidence of the accused's connection with the crime.

In Hussain Umar v. Dalipsingji (quoted supra), it is observed:

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.

28. In Lachhi Ram Vs. State of Punjab, his Lordship Bhargava J lays down the principle on the subject of corroboration. It will be useful to quote below para 8 of the judgment, which runs thus:

It is true that there were some portions of the story of the approver for which no corroborative evidence was available. Learned Counsel for the appellant pointed out that there was no corroboration of the fact that it was the appellant who mixed arsenic poison in the khoa, nor was there any corroboration of the approver's statement that he himself handed over sweets to Devi Ram's wife. This submission ignores the natural sequence of events. When the poison was mixed with khoa, it could not be expected that the appellant would require presence of other persons to see him mixing the poison. Naturally, the poison was mixed at a time when there was no one else present, except the appellant himself and the approver who was his accomplice and whom the appellant had hired for the purpose of carrying out his scheme. At the later stage when the approver gave the sweets to Devi Ram's wife, no corroborative evidence could be available, because Devi Ram's wife died of the poisoning and again, there is nothing to show that any other person was present when the sweets were delivered by the approver.

One of the similar decisions is Sarwan Singh Vs. The State of Punjab, wherein it was laid down:

But it would not be right to expect that independent corroboration should cover the prosecution story or even all the material particulars. If such a view is adopted, it would render the evidence of accomplice wholly superfluous.

In Sheshanna Bhumanna Yadav Vs. State of Maharashtra, it has been observed by his Lordship Ray, J. that the nature of the corroboration required is that it should be confirmatory evidence and in para 16 it has been observed that it may

be difficult to find corroborative evidence of the actual killing.

29. Having regard to the above authorities the first test to be applied in the case of an approver is that his evidence must show that he is a reliable witness, which is a test common to all witness. The second test, which remains to be applied in such a case is that the approver's evidence must receive sufficient corroboration may be in respect of all the circumstances of the crime.

30. We have carefully looked into the statement of Sajan (approver) P.W. 1. He gives a graphic account of the whole story. There is nothing inherently improbable in this evidence and that the trial court has given a precise finding that the approver has given a truthful account of the whole story. It is true that there is no corroboration of the fact that the actual commission of the crime was seen by an independent witness. When the actual murder was committed in a lonely jungle, it could not be expected that the appellants would ensure the presence of other persons to see them committing the crime. The murder was committed at the time and place, when and where no one else was present except the appellants and the approver. That was done to eliminate possibility of detection. However, the approver's evidence, as discussed above, has received sufficient corroboration qua accused. The trial court has held that the evidence of the approver was trust-worthy and it stand corroborated on material particulars by reliable prosecution witnesses who have been believed by the court below. We are therefore, unable to find any error in the judgment of the trial court, and in upholding the conviction of the appellants.

31. In the result, the appeals fail and are dismissed.