

P L D 1971 Supreme Court 447

Present : Hamoodur Rahman, C. J., Sajjad Ahmad, M. R. Khan and Waheeduddin Ahmad, JJ

DR. MUHAMMAD BASHIR-Appellant

versus

THE STATE-Respondent

Criminal Appeal No. 56 of 1970, decided on 27th April 1971.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 4th July 1969, in Criminal Appeal No. 670 of 1968).

(a) Criminal trial-Autrefois acquit and autrefois convict, ' principle of-Protects an accused person from "double jeopardy"-

Criminal Procedure Code (V of 1898), S. 403.

The common law principle of autrefois acquit or autrefois convict, protects an accused person from 'double jeopardy' so that he is not put to the peril of being tried again for an offence for which he has been acquitted by a Court of competent jurisdiction on the merits of the prosecution case. Similarly, where a person has already been tried and convicted for an offence by a competent Court, he cannot be tried and convicted for , the same offence over again. In Pakistan, this principle is embodied in section 403 of the Criminal Procedure Code.

Sambasivam v. Public Prosecutor, Federation of Malaya 1950 A C 458 L R (H L) ; Pritam Singh v. The State of Punjab P L D 1957 S C (Ind.) 1; Malak Khan v. Emperor A I R 1946 P C 16 and Connelly v. D. P. P. 1964 All E L R 401 ref.

(b) Criminal trial-Evidence-Piece of evidence weak enough by its own force to sustain a particular charge-May yet provide a link in chain of evidence available on other charge.

A piece of evidence, which is weak enough by its own force to sustain a particular charge, may yet provide a link in the chain of evidence that may be available on the other charge or charges. So long as the link holds the chain, its weakness notwithstanding, it cannot be totally discarded as useless evidence. What support it can impart to the whole chain will, of course, depend on its own inherent strength.

(c) Criminal trial-Approver-Evidence of approver cannot be viewed without natural reaction of distrust and incredulity-Such evidence to satisfy a double test.

As a rule of prudence, which has almost hardened into a rule of law, it is dangerous to act on the uncorroborated testimony of an approver, who is a self-confessed criminal, having betrayed his former associates under the temptation of saving his own skin. Suffering from this stigma and marked depravity of character, an approver's evidence cannot be viewed without natural reaction of distrust and incredulity. His evidence must first be tested on its basic probabilities or improbabilities like the evidence of any other witness, and more strictly so in his case, because it is the statement of a person of suspicious credentials. His evidence needs corroboration for the simple reason that it cannot be accepted without mental reservation and distrust, and it must, therefore, gather support from other sources to induce faith in its veracity. The corroboration, which is, thus, needed, must confirm in material particulars not only that the crime has been committed, as alleged by the approver, but also that the accused concerned has, or have, committed it. The type of corroboration needed must differ with different cases, but such corroboration, although not required to be adequate and sufficient by itself to prove the charge, must tend to show a strong link between the crime and its perpetrators, as alleged by the approver. It often happens that an approver, who has polluted his own hands in the crime, is ready with an imaginative or tutored story to explain the crime owned by him, and substitutes an innocent person to shield the really guilty for his own ulterior interest. Basically, therefore, the intrinsic worth of the approver's testimony must first be judged. Before the Court reaches the stage of considering the question of corroboration, the first and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is

against the approver, then there is an end of the matter. An approver's evidence has to satisfy a double test. His evidence must first show that he is a reliable witness. If this test is satisfied, then the second test has to be applied, namely, as to whether it has received sufficient corroboration. The latter is a special test, which has to be applied in the case of tainted evidence like that of an approver.

(d) Penal Code (XLV of 1860), S. 302-Murder-Evidence of .approver found wholly unworthy of credit-Corroborative pieces of ,evidence used in support thereof not serving to advance approver's testimony and failing to strengthen prosecution case in any manner-Accused given benefit of doubt and conviction set aside. '{p. 459] D

M. Saleem, Senior Advocate Supreme Court instructed by Masood Akhtar, Advocate-on-Record for Appellant.

Saeedur Rahman, Advocate Supreme Court instructed by Ijaz Ali, Advocate-on-Record for the State.

Dates of hearing : 11th, 12th, 13th November and 11th December 1970.