SEVAKA PERUMAL, ETC.

v.

STATE OF TAMIL NADU

MAY 7, 1991

[B.C. RAY AND K. RAMASWAMY, JJ.]

Indian Penal Code, 1860: Section 302 read with section 34 and sections 120-B, 364 and 392 read with section 397—Enticing young boys to bring cash and jewellery—Murdering them for gain and throwing into wells etc.—Recovery of dead body—Whether absolutely necessary to convict accused—Benefit of doubt—Whether a relevant factor in imposing sentence.

Criminal Procedure Code, 1973: Sections 309 and 235(2)—Right to be heard on the question of sentence—Necessity of—Adjournment on that ground—Whether and when necessary.

Evidence Act, 1872: Sections 114 and 133—Evidence of approver —Nature of corroboration required.

Penology: Award of sentence—Showing undue sympathy harmful to justice system—Would undermine public confidence—Hence courts to award proper sentence having regard to the nature of the offence and the manner in which it was executed.

According to the Prosecution, appellants 1 and 2 have been friends and were in the habit of selling ganja and spending money lavishly. They attempted to commit theft in their locality, but were not successful. Therefore, they hatched a conspiracy to entice boys from affluent families to bring cash and jewellery and murder them after taking away the cash and jewellery. Likewise, they killed 4 boys, in a span of about 5 years.

Both of them were charged with offences under sections 120B read with section 34 IPC, sections 364 and 392 read with section 397 IPC in all the four cases filed against them, and were convicted by the Sessions Court. However, in one case, on appeal, they were acquitted by the High Court. In another case, the death sentence imposed by the Sessions Court is pending confirmation by the High Court.

In the other two cases, both the appellants were sentenced to

A death by the Sessions Court and on appeal the High Court confirmed the sentence in one case and in the other, the High Court confirmed the death sentence passed against appellant No. 1 and acquitted appellant No. 2 of all the charges.

The appellants preferred the present appeals challenging the said
B orders of the High Court confirming the sentence against them by contending that there was no proper identification of the dead body and that the approver was not a reliable witness and since his evidence did not receive corroboration, it cannot form the basis for convicting the appellants. It was also contended that the extreme penalty of death sentence imposed was not justified.

C Dismissing the appeals, this Court,

HELD: 1.1 In a trial for murder it is not an absolute necessity or an essential ingredient to establish *corpus delicti*. The fact of death of the deceased must be established like any other fact. *Corpus delicti* in
D some cases may not be possible to be traced or recovered. If a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out, it is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and that would afford a complete
E immunity to the guilty from being punished and the accused would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum, of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be
F traced. [717A-D]

1.2. In the instant case, the evidence of PWs. 7 to 10 would establish that they have seen the dead body of the deceased in the well and brought it out and the photograph was taken at the time of inquest. It was identified to be that of the deceased by no other than the mother
G of the deceased. Thus there is no doubt as regards the identity of the dead body. Also the medical evidence establishes that the deceased died due to stabbing with sharp edged weapon like knife. [717E]

2. Law is settled that an approver is a competent witness against the accused person. But the court, to satisfy its conscience, insists as
H caution and prudence to seek, as a rule, corroboration to the evidence

of the approver, a *particips criminis* from independent evidence occular or circumstantial, of general particulars regarding the story spoken of by the approver of the commission of the crime and the part played by the accused therein to find whether it is true and worthy of acceptance. The reliability of the evidence of an approver should be considered from totality of the facts and circumstances. In one of the two trials there is no dispute that such a corroborative evidence connecting both the appellants is available which was minutely considered by the trial court and the High Court and was accepted. There is infirmity in that regard. In the other trial appellant No. 2 was acquitted on the ground that his extra-judicial confession made to PW23, the only corroborative evidence, was disbelieved by the High Court. Both the courts below gave categorical finding that PW 1 is a reliable witness. The evidence of the approver received corroboration from independent evidence. The canopy of the material evidence from independent sources sufficiently corroborates the approver's evidence. He is a reliable witness. No infirmity has been pointed out to disbelieve his evidence. [719D-H; 720A]

Rameshwar v. *The State of Rajasthan,* [1952] SCR 377; *S. Swaminathan* v. *State of Madras,* AIR 1957 SC 340; *Sarwan Singh* v. *The State of Punjab,*, [1957] SCR 953; *B.D. Patil* v. *State of Maharashtra,* [1963] 3 SCR 830; *Md. Hussain Umar Kochra etc.* v. *K.S. Dalipsinghji & Anr.,* [1970] 1 SCR 130; *Ram Narain* v. *State of Rajasthan,* [1973] 3 SCC 805 and *Abdul Sattar* v. *Union Territory, Chandigarh,* [1985] (Suppl.) SCC 599, relied on.

King v. *Baskervilli,* [1916] 2 K.B. 658 (C.A.) and *Mahadeo* v. *The King,* AIR 1936 P.C. 242, referred to.

3. In the instant case, it is clear from the evidence that the accused indulged in illegal business of purchase and sale of ganja. They conspired to entice innocent boys from affluent families, took them to far flung places where the dead body could not be identified. The letters were written to the parents purporting to be by the deceased to delude the parents that the missing boy would one day come home alive and that they would not give any report to the police and the crime would go underected. Four murders in a span of five years were committed for gain in cold blooded, premeditated and planned way. In this case the trial of the murder relating to the two deceased practically took place simultaneously by which date the appellants were convicted for the murder of two other boys. Therefore, the reference of conviction and sentence by the Sessions Court to those two cases also are relevant facts. One of the deceased is no other than the nephew of appellant No. 1. This

A **would establish his depravity and hardened criminality. No regard for precious lives of innocent young boys was shown. They adopted the crime of murder for gain as a means to living. As such there is no infirmity in the sentence awarded by the Sessions Court and confirmed by the High Court.** [721D-G]

B **4. The doctrine of benefit of doubt only would operate in proof of the commission of the offence. If there is any reasonable doubt, not the doubt of vacillating mind of a Judge, the accused is entitled to that benefit and be acquitted. The benefit of doubt again does not enter in the area of consideration of imposing sentence.** [720C]

C **5.1. Undue sympathy to impose inadequate sentence would do harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured the injured would then resort to private vengeance. It is, therefore, the duty of every court to award**
D **proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.** [721C]

5.2. The compassionate grounds such as the accused being young bread-winners of the family etc. would always be present in most cases and are not relevant for interference with the sentence. [722D]

E **6. Under section 235(2) when the accused has been given right to be heard on the question of sentence it is a valuable right. To make that right meaningful the procedure adopted would be suitably moulded and the accused given an opportunity to adduce evidence on the nature of the sentence. The hearing may be on the same day if the parties are**
F **ready or to a next date but once the court after giving opportunity, proposes to impose appropriate sentence again there is no need to adjourn the case under section 235(2) to next date. In the present matters, the counsel was directed by the High Court to show any additional grounds on the question of sentence, but the counsel was unable to give any additional ground.** [722B-C]

G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 345-346 of 1991.

From the Judgment and Order dated 14.6.1990 of the Madras High Court in Referred Trial Nos. 4/89 and 5/89 and Crl. Appeal Nos.
H 593/89 and 594 of 1989.

Raju Ramachandran, Jaga Rao, Alok Agarwal, Ms. Malini Bhat and S. Ravindra Bhatt for the appellants. A

V.R. Karthikeyan and V. Krishnamurthy for the respondent.

The Judgment of the Court was delivered by

B

K. RAMASWAMY, J. Special leave to appeals granted.

Heard the learned counsel, Sri Raju Ramachandran *amicus curiae* for the appellants and Sri V. Krishnamurthy, the learned Standing Counsel for the State. The appellants Sevaka Perumal and Isakkimuthu for short 'A-1' and 'A-2' in Appeal arising out of S.L.P. (Crl.) No. 1842/90 are accused in Sessions Case No. 283 of 1986 on the file of the Addl. Sessions Judge, Tirunelveli Sessions Division and appellants in Criminal Appeal No. 594 of 1989 and R.T. No. 4 of 1989 by judgment, dated June 14, 1990 of the High Court of Madras. Criminal Appeal arise out of S.L.P. (Crl.) No. 1841/90; Sessions Case No. 284 of 1986 of the same Sessions Division and Criminal Appeal No. 593 and R.T. No. 5 of 1989 dated June 14, 1990 of the Madras High Court respectively, A-1 is the appellant. In each case the Sessions Court convicted them under ss. 120B, 364, 392 read with s. 397; s. 302 read with s. 34 I.P.C. and sentenced to death. In Crl. Appeal No. 594 of 1989 and R.T. No. 4 of 1989, the High Court confirmed the conviction and sentence of death of both the appellants. In Crl. Appeal No. 593 of 1989 and R.T. No. 5 of 1989, the High Court confirmed the conviction and sentence of death of the A-1 and acquitted A-2 of all the charges.

C D E

The case of the prosecution in brief is that the appellants and PW-1, the approver belonged to kidarakulam village and became friends. A-1 used to bring money from the timber shop of his brother-in-law (PW-4) in Sessions Case No. 284/86 in whose shop A-1 had worked. They used to go to various places. A-1 used to purchase ganja from Chenglpatai and other places and A-1 and A-2 used to sell them. Yet they did not have enough money to spend lavishly. They attempted to commit theft in the localities but became impracticable. Therefore, they conspired to entice boys from affluent families to bring cash and jewellery from their houses; take them to far away places; take their money or jewellery and to murder them for gain. Pursuant thereto in 1978 they murdered one Athiappan; in 1981 one Chelladurai; in March, 1982 one Hariramachandran and in 1983 one Christodas. In Sessions Case No. 283/86, the deceased boy is Athiappan. In

F G H

A Sessions Case No. 284/86, the deceased boy is Hariramachandran. Sessions Case No. 282/86 on the file of the Sessions Court. Madurai Division relates to deceased Chelladurai. Therein also we are informed that the appellants were convicted but on appeal they were acquitted. In Sessions Case relating to the death of Christodas, it also ended in conviction and sentence of death was imposed on the appel-
B lants and is pending confirmation in the High Court.

It is sufficient to set out the material fact leaving out the minor details in Sessions Case No. 284/86 to meet the points raised by the counsel for the appellants. A-1 enticed the deceased, Hariramachandran, his nephew (elder sister PW-2' son) to bring jewellery from the
C house of PW-2 and PW-4. The appellants and PW-1 took him to Madurai. On the way the deceased went to the house of PW-3 and handed over one chain to be delivered to his mother and took M.O. 1 chain with him. A-1 had taken a room in the lodge at Madurai run by PW-16. On coming to know that they were staying in Madurai, PW-2, PW-4, her husband and PW-3 went to the lodge and the deceased was
D found threat. He informed them that the chain was with A-1 and he would come in the evening at 8.00 p.m. After waiting for some time and when it was getting dark, the ladies went away asking PW-4 to get the chain and the deceased after A-1's arrival. While PW-4 was waiting the deceased went down stairs and after A-1's arrival told him of his mother's coming etc. and from there they went away to Madras,
E and having come to know that they left the place PW-4 left to his village. On the next day they returned to Madurai. From there they went to Usilampatti and A-1 then purchased a knife at the Bus Stand without the knowledge of the deceased and proceeded to Peraiyar Road. They sat near a jungle stream. While A-1 and the deceased Hariramachandran were sitting near a stone on the southern side of
F the road, A-2 and PW-1 were standing at a distance, A-1 stabbed Hariramachandran in his stomach with a knife and the deceased collapsed on the stone. A-1 threw away the knife in the river. He threw the deceased in the nearby well and washed his hands and legs in the stream. They returned to Usilampatti Bus Stand. From there they came to Madurai. A-1 sold M.O. 1 chain to PW-24 and gave one
G hundred rupees each to PW-1 and A-2. This evidence of PW-1 received sufficient corroboration from the evidence of prosecution witnesses.

Sri Raju Ramachandran contended that the dead body was admittedly found in a highly decomposed condition. There is no
H proper identification of the dead body to be of the deceased. The

mother PW-2 identified only with reference to the photograph taken of the dead body. There is evidence that the deceased wrote a letter of leaving to unknown destination. Unless there is proof that the dead body belongs to Hariramachandran, it is not safe to convict to A-1 to a capital punishment of death sentence. We find no force in the contention. In a trial for murder it is not an absolute necessity or an essential ingredient to establish *corpus delicti*. The fact of death of the deceased must be established like any other fact. *Corpus delicti* in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum, of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced. In this case the evidence of PWs.-7 to 10 would estbalish that they have seen the dead body of the deceased Hariramachandran in the well and brought it out and the photograph was taken at the time of inquest. It was identified to be that of the deceased by no other than his mother, PW-2. Thus we have no hesitation to hold that there is no doubt as regards the identity of the dead body and that the medical evidence establishes that the deceased died due to stabbing with sharp edged weapon like knife.

It is next contended that PW-1 being an approver, his evidence must be reliable and must receive corroboration on all material paticulars from independent evidence. PW-1 is neither a reliable witness nor did his evidence receive such corroboration. Therefore, his evidence cannot form the basis to convict the appellants. It is his contention that in Hariramachandran's death case the evidence of PW-1 was not accepted as regards the complicity of A-2 and he was acquitted. Therefore, PW-1 is not a reliable witness. This contention too is devoid of any force. PW-1 had given wealth of details of commission of the crimes. Under s. 133 of the Evidence Act 1 of 1872, an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Section 114 illustration (b) postulates that an accomplice is unworthy of credit, unless he is corroborated in mate-

A rial particulars. In *King* v. *Baskervilli,* [1916] 2 K.B. 658 (C.A.) Lord Reading, CJ, laid the test that the corroboration need not be direct evidence that the accused committed the crime. It is merely circumstantial evidence of his connection with the crime. The nature of the corroboration will depend and vary according to the particular circumstances of each case. What is required is some additional evidence B rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon. In *Mahadeo* v. *The King* AIR 1936 P.C. 242 the judicial committee held that the evidence of an accesory must be corroborated in some material particulars not only bearing upon the facts of the crime but upon the accused's implication in it. This Court in *Rameshwar* v. *The State of Rajasthan,* [1952] S.C.R. 377 held C that it is not neccessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence of the case, apart from the testimony of the complainant or its accomplice should in itself be sufficient to sustain conviction. All that is necessary is that there should be independent evidence which will make it reasonably safe to believe that the witness's story that the D accused was the one that committed the offence could be acceptable. The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. In *S. Swaminathan* v. *State of Madras,* AIR 1957 SC 340 this Court held that corroboration of approver's evidence need not be of a kind which prove the offence E against the accused. It is sufficient if it connects the accused with the crime when the accused had been charged for the offences of conspiracy and of cheating, a specific instance of cheating proved beyond doubt against one of the accused would furnish the best corroboration of the offence of the conspiracy. In *Sarwan Singh* v. *The State of Punjab,* [1957] S.C.R. 953 relied by Shri Raju Ramachandran, this F Court held that the approver must be a reliable witness and the evidence must receive sufficient corroboration. In that case the corroboration of minor particulars was accepted to be sufficient to hold the approver to be reliable witness. In *B.D. Patil* v. *State of Maharashtra,* [1963] 3 S.C.R. 830 this Court held that the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the G courts will, as a matter of practice do not accept the evidence of such a witness without corroboration in material particulars. There should be corroboration of the approver in material particulars and must be qua each accused. In *Md. Hussain Umar Kochra etc.* v. *K.S. Dalipsinghji & Anr.*, [1970] 1 S.C.R. 130 it was held that the combined effect of ss. 133 and 114(b) is that though a conviction based upon accomplice H evidence is legal the court will not accept such evidence unless it is

corroborated in material particulars. The corroboration must be from an independent source. If several accomplices simultaneously and without previous concert giving consistent account of the crime implicating accused, the court may accept the several statements as corroborating each other. In *Ram Narain* v. *State of Rajasthan,* [1973] 3 S.C.C. 805 this Court held that s. 114(b) strikes a note of warning, cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the Judge. In *Abdul Sattar* v. *Union Territory, Chandigarh,* [1985] (Suppl.) S.C.C. 599 this Court further held that it is not safe to convict an accused on the charges like murder upon the evidence of uncorroborated testimony of the approver.

Thus the settled law is that an approver is a competent witness against the accused person. But the court, to satisfy its conscience, insists as caution and prudence to seek, as a rule, corroboration to the evidence of the approver, a *particips criminis* from independent evidence occular or circumstantial, of general particulars regarding the story spoken off by the approver of the commission of the crime and the part played by the accused therein to find whether it is true and worthy of acceptance. The reliability of the evidence of an approver should be considered from totality of the facts and circumstances. In the trial of Athiappan murder there is no dispute that such a corroborative evidence connecting both the appellants is available which was minutely considered by the trial court and the High Court and was accepted. We find no infirmity in that regard. In the trial of the death of Hariramachandran, A. 2 was acquitted on the ground that his extrajudicial confession made to P.W. 23, the only corroborative evidence, was disbelieved by the High Court. Both the courts below gave categorical finding that P.W. 1 is a reliable witness. The evidence of the approver received corroboration from independent evidence on general prosecution case, namely, P.W. 16 spoke that the deceased was brought by the accused and stayed in the lodge. P.Ws 2 to 4 spoke of A-1 working in their shop, previous thefts by A-1 and M.O. 1 being missing, their attempt to take back the deceased and M.O. 1, the dead body was found in the well and was taken out as spoke to by P.Ws. 7 to 10. The medical evidence establishes the stabbing with the knife and death was due to it. P.W. 24 corroborates A. 1 of selling M.O. 1 chain and taking the money. The canopy of the material evidence from independent sources sufficiently corroborates the approver's evidence.

A PW-1 is a reliable witness. No infirmity has been pointed out to disbelieve his evidence.

It is next contended that the courts below were not justified in imposing the extreme penalty of death sentence under s. 302, I.P.C. and strongly relied upon the judgment of *Bachan Singh's* case. It is B contended that the acquittal of A. 2 giving the benefit of doubt in Hariramachandran's death trial introduces an element of doubt which should be extended to convert the death sentence of A. 1 to life imprisonment. We find no substance in the contention. The doctrine of benefit of doubt only would operate in proof of the commission of the offence. If there is any reasonable doubt, not the doubt of vacillating mind of a Judge, the accused is entitled to that benefit and be acquit- C ted. The benefit of doubt again does not enter in the area of consideration of imposing sentence.

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an D essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out crimi- E nal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of order should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society". Therefore, in operating the sentenc- F ing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the G accused and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh* v. *State of M.P.*, [1987] 2 S.C.R. 710 this Court while refusing to H reduce the death sentence observed thus:

> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon". A B

Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine to public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. C

It is clear from the evidence that the accused indulged in illegal business of purchase and sale of ganja. They conspired to entice innocent boys from affluent families took them to far flung places where the dead body could not be identified. The letters were written to the parents purporting to be by the deceased to delude the parents that the missing boy would one day come home alive and that they would not give any report to the police and the crime would go undetected. Four murders in a span of five years were committed for gain in cold blooded, pre-meditated and planned way. It is undoubted that if the trial relating to Athiappan murder had taken place and concluded earlier to the trial and conviction of other three murders, the subsequent murders are not relevant facts to be considered. But in this case the trial of the murder relating to Athiappan and Hariramachandran practically took place simultaneously by which date the appellants were convicted for the murder of Chelladurai and Christodas. Therefore, the reference of conviction and sentence by the Sessions Court to those two cases also are relevant facts. The deceased Hariramachandran is no other than the nephew (elder sister's son) of A-1. This would establish his depravity and hardened criminality. No regard for precious lives of innocent young boys was shown. They adopted the crime of murder for gain as a means to living. D E F G

Undoubtedly under section 235(2) of Code of Criminal Procedure, the accused is entitled to an opportunity to adduce evidene and if need be the case is to be adjourned to another date. It is illegal to convict, an accused and to impose sentence on the same day. It is true H

A as contended for the State that under s. 309, third proviso brought by Amendment Act, 1978 that no adjournment should be granted for the purpose only of enabling the accused person to show cause against sentence to be imposed upon him. Under s. 235(2) when the accused has been given right to be heard on the question of sentence it is a valuable right. To make that right meaningful the procedure adopted B should be suitably moulded and the accused given an opportunity to adduce evidence on the nature of the sentence. The hearing may be on the same day if the parties are ready or be adjourned to a next date but once the court after giving opportunity propose to impose appropriate sentence again there is no need to adjourn the case any further thereon. No doubt the Sessions Judge needed to adjourn the case C under s. 235(2) to next date but in the High Court the counsel was directed to show any additional grounds on the question of sentence. The High Court observed that the counsel was unable to give any additional ground. It is Further contended that the appellants are young men. They are the bread winners of their family each consisting of a young wife, minor child and aged parents and that, therefore, the D death sentence may be converted into life. We find no force. These compassionate grounds would always be present in most cases and are not relevant for interference. Thus we find no infirmity in the sentence awarded by the Sessions Court and confirmed by the High Court warranting interference. The appeals are accordingly dismissed.

G.N. Appeals dismissed.