

Asar Ali and Others Vs The State

Court: Gauhati High Court

Date of Decision: March 4, 1953

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 34, 396

Citation: AIR 1954 Guw 27 : (1954) CriLJ 40

Hon'ble Judges: Sarjoo Prosad, C.J; Ram Labhaya, J

Bench: Division Bench

Judgement

Ram Labhaya, J.

All five appellants namely Abdul Latif, Asar Ali, Magar Ali, Ahmed Ali and Afiruddin alias Afluddin were found guilty

and convicted u/s 396, Penal Code. Each of them was sentenced to transportation for life. Along with them 3 others namely Javed Ali, Mia

Hussain and Akas Ali were similarly convicted and sentenced. They have not appealed. The appellants preferred a joint appeal through the jail

authorities. At the hearing two out of the appellants namely Asar Ali and Magar Ali were represented by Mr. Sen. He has presented to us the case

of all the five appellants.

2. The trial was with the aid of. a jury, which returned a unanimous verdict of guilty. A separate charge u/s 302 read with Section 34, Penal Code

was framed against 3 of the accused. The verdict of the jury was that they were entitled to the benefit of reasonable doubt on this charge.

3. The house of one Musraf Hazi in Dakhin Beluati in Mouza Hozai at a distance of 7 miles from Jamunamukh police station was the scene of a

dacoity on the night of 25-1-1950. The occurrence was reported at the police station (Jamunamukh) on 26-1-1950 at 9-30 a.m. One Mukbul Ali

reported the matter who stated when reporting that he was doing so at the instance of one Badsa Sikardar Ali of Rajbari. He stated that a dacoity

had been committed in the house of Mosraf who had been killed by the dacoits. The dacoits had removed some money, clothing and other

property. He also Stated that Musraf Hazi before his death had stated to the people gathered there after the dacoity that he had recognised four

persons amongst the dacoits and added that there were some Maimansinghia and Nowakhali dacoits. He himself had not seen the occurrence. The

names of 4 persons who were said to have been identified by Mosraf, deceased, were given. They were not sent up for trial.

4. Lalit Chandra Singha, P. W. 3 is a bus driver. One of his routes was from Nowgong to Doboka and Hozai. Charali is about 13 miles from

Nowgong and Doboka is about 11 miles from Charali. On 25-1-1950 he went with his bus to Doboka where he stayed for the night. On 26th

morning at about 6-30 he left Doboka with his bus for Nowgong and left Charali at about 7 a.m. Before leaving Doboka he had learnt that there

had been dacoity in the house of one Hazi in the course of the previous night and that Hazi had been murdered. At Charali 5 Muslim immigrants

boarded the bus. They said they had to go to Nowgong. He noticed that mud was sticking to their feet, their clothes were dirty and the eyes red

indicating that they had passed a sleepless night. The condition in which he found them roused his Suspicion, He took them in his bus to Nanai.

There he found Mahendra, P. W. 2 - a police constable, and informed him about the dacoity attended with murder and also about the immigrants

in the bus whom he suspected of participation in it. These suspects were pointed out to the constable by the driver's handiman (help-mate). The

constable asked one of the five men to get down and interrogated him, A pair of silver bangles Ex. VII and a knife Ex. VIII were found with him.

He was then wearing a black coat Ex. IV, The bus was then taken to the police station at Nowgong under the directions of the constable. The five

suspects were taken charge of by the police. Their persons were searched. The seizure list Ex. 1(1) was prepared in the presence of P. W. 3 who

signed it.

5. Articles and cash recovered from each are given below:

(1) Akkas Ali

Twenty ten rupee notes, three five rupee notes. One one rupee note, some change and a big knife, Ex. 8. Certain ornaments Exts. X to XVI, IV

and VI - of these, exhibits XIII was a neklace of -/8/- silver piece with Arabic inscriptions.

(2) Abdul Latif

One currency note of Rs. 100. 21 five rupee notes and some broken coins. A torch with 2 cells, Ex. XVIII. A pair of Silver anklets - Ex. XIX and

some articles of clothing.

(3) Afluddin

15 ten rupee notes, 1 five rupee note, one one rupee note. A piece of rose coloured woolen alwan - Ex. XXV. A coat and a purple coloured

chaddar.

(4) Asar Ali

17 ten rupee notes, a small knife, a silver necklace -/8/- - Ex. XXX.

(5) Ayub Ali

2 hundred rupee notes. 1 ten rupee note. 1 five rupee note. A necklace of silver coins with two double rupees - Ex. II. Striped shirt with stains like

blood. 3rd class Railway tickets from Majrabari to Dagaon.

6. The search was conducted in the presence of the officer in charge Gyasuddin Ahmed, P. W. 11. He then recorded the statement of Ayub Ali

and learnt that another party of culprits were coming by train from Jamunamukh to Chaparmukh, He then sent Surendra Kumar Datta, S. I., D. W.

9 to Chaparmukh in search of others who were said to have participated in the dacoity. He himself proceeded to the scene of occurrence with

Ayub Ali who led him to the very house of the complainant. On the way he showed him a shop of Chira and Muri at a place between Charali and

Doboka. At Doboka he showed him the place over which there was a Chali in the bazar. From Doboka he took him along the bank of the river

towards Jamunamukh and showed to him on the way a bridge made of wood and iron. He then took him to the house of the deceased which was

about a mile and a half from the bridge. In front of this house there was a big pond. The place of occurrence was within the jurisdiction of

Jamunamukh police station. A case u/s 396 had already been registered there and the O. C. of Jamunamukh police station had already arrived

there.

7. P. W. 9 was watching the procession in celebration of the Republic Day on the morning of 26-1-1950 in the Nowgong Bazar. He learnt about

the arrest of some dacoits and hastened to the thana. He saw the suspects being Searched and in pursuance of the orders given to him by the

officer in charge, he went to search for other culprits who were reported to be coming from Chaparmukh. He along with the Inspector and

constables went in a car towards Chaparmukh. On the way they saw a bus coming from Chaparmukh. The bus was stopped. A passenger wanted

to get down. He was prevented from doing so. Another passenger was seen throwing some currency notes under a bench of the bus. He collected

the notes and put them again into his pockets. The bus was brought to Nowgong station. The suspects in this bus were also searched. Before

leaving the police station Ayub had been given the names of 2 persons in the other party. These were Mia Hussain and Magar. From out of this

bus four persons namely Ahmed Ali, Jubed, Mia Hussain and Magar were taken out and their persons were searched. The articles recovered from

each are shown below:

(1) Ahmed Ali

19 notes of rupees ten each.

Copper pica Rs. -/-/9 kept in a

bag Ex. XXXIV.

One torch light, with two cells

big sine Ex. XXXV.

One dirty gamcha Ex. XXXVI.

Ono old dhuti Ex. XXXVII.

(2) Jubed Ali

One hundred rupee note |

10 ten rupee notes | ... Ex. XXXXIII

5 five rupee notes. | ... Ex. XXXVIII

Some broken coins) |

1 knife Ex. XXXIX.

Torch with two culls ... one ... Ex. XL.

Playing cards ... one packet ... Ex. XLI.

Coat Ex. XLII.

(3) Mia. Hussain

1 hundred rupee note |

10 G.C. notes of five rupees |

each. | Ex. XLIII.

11 notes of five rupees each. |

Small coins -/7/6 |

One lathi |

Coat soiled with mud.

(4) Magar Ali

2 ten rupee notes |

35 rive rupee notes | ... Ex. XLVI.

2 two rupee notes |

1 one rupee note |

Edward VII whole rupee - 5 |

Queen Victoria - 2. |

George V - 1. | ...Ex. XLVII.

-/8/- pieces - 6. |

-/2/- and -/1/- - Rs. 1/21- |

A mutilar besides other things.

8. On the 27th January Ayub Ali confessed. His confession was recorded by Mr. K. K. Phukan, Magistrate, first class. Before this Magistrate

Ayub Ali deposed that he had met Magar Ali, Ashu and Mia Hussain accused in front of the Court in Nowgong on the afternoon of the 25th

January. They had a case that day. He informed them that he was leaving for his native place. They told him to accompany them to Doboka Bazar

to enjoy a concert. He told them that he had no money; they promised to give him the money needed. They then went to the bazar and had their

tea and he went with them to Doboka Bazar on a bus. Doboka is about 24 miles from Nowgong. There they held the concert. There were present

at that time Magar Ali, Mia Hussain, Ailuddin, Latif, Asar and five others besides Ayub. All were inside a house. A man from Doboka also joined

them there. Mia Hussain, the man from Doboka and one other went away. They came back after a couple of hours. The rest had a meal in a hotel

and were enjoying music. At Asar and Magar's instance they then proceeded towards Doboka. They walked about 3 miles and reached an iron

bridge. Mia Hussain and the man from Doboka brought out bamboo spears, an iron jathi, two or four bamboo lathis from underneath the bridge.

Three Chunga batis of bamboo and a knife were brought out. Ayub refused to accompany them any further when he was told that they were out to

commit a dacoity, but on account of fear as the result of threats of harm he did not resist. There was a pond in front of the house to which they

went. He had a bamboo bati in his hand. The house was surrounded on all sides. Asar, Magar, Mia Hussain and Latif broke open the door. Latif.,

Asar and Magar assaulted the owner of the house with jathi (spear) and a lathi. He fell down. . They got the keys from his wife. Magar Ali opened

the box with the keys and brought out ornaments, clothes, two torch lights and the cash, and coins. A son of the owner of the house was also

injured. The daccits then left the house with the booty. The bati was thrown away. After walking some distance the Stolen property was divided on

the bank of a river. From this place Magar Ali, Mia Hussain and the 2 other men left the place saying that they would go to Jamunamukh. The rest

with Ayub Ali came to Charali. Here Afiluddin, Asar, Latif, Ayub and another man whose name was not known to Ayub when making his

confessional statement, came to the bus. This bus was searched at Nanai from where they were brought to the police station at Nowgong. Ayub

stated further that he had been able to identify members of the party whose names he could not give.

9. Ahmed Ali also confessed on 28th January. His statement was brief. He deposed that he was taken by Amir Sheikh (absconding accused) from

the bank of river Brahmaputra to see Nowgong District, and then persuaded to go along with him to Doboka. In the evening nine other persons

joined them. He did not know them. There was a talk of dacoity. He then wanted to go but was threatened with injuries and yielded. He saw

weapons of offence being brought from under the bridge. He was kept outside the house which was broken open. He moved away from that

place. Then Amir and others came back. He was given Rs. 190/- as his share. He came by train to Chaparmukh. From Chaparmukh he was

coming on a bus when the police took the bus to the police station and he was apprehended.

10. The police after investigation of the case sent up 10 accused for enquiry under Sections 396/412, Penal Code. The 10 accused included Ayub

and the five appellants. Amir Uddin was shown as absconder. Ayub Ali later on was given conditional pardon and was examined as a witness.

The case was committed to the Court of Session and in the order of commitment by some clerical mistake Ayub's name was mentioned as one of

the accused who were committed to the Court of Session. At the trial he was examined as the principal witness on behalf of the prosecution. No

objection has been taken to the validity of the trial on the ground of the slip noticed above.

11. At the trial Ayub made a very long and detailed statement. It is not necessary to reproduce it with all the wealth of its details. He adhered to his

confessional statement in regard to the important parts of his version of the case. According to his statement in Court he met Magar, Mia Hussain

and Asar in the court compound on 25th January. From there he was taken to the bus stand by them, where he met Afiluddin. Five of them got

into the bus. They reached Doboka at about sunset. When getting down from the bus he noticed that the five other accused and a man from

Doboka (who could not be sent up for trial) - all came out of the bus with them. They had their tea in batches and enjoyed music for a couple of

hours. Mia Hussain, Jubed and the man from Doboka left the place and came after some time. Eleven of them including Ayub proceeded from

Doboka Bazar towards the scene of occurrence. Asar, Magar and Mia Hussain produced some weapons from a bridge which was on their way.

He was then told that they were going to commit a dacoity and on his protests he was also told that he would be killed if he made any fuss. He

agreed to go with them out of fear for life. He then gave details of the weapons which each accused carried and what happened inside the house.

He said that he was inside the house when the deceased was injured and his box was opened and property and currency notes, ornaments and

other things were removed from the box. He also disclosed when coming back from the house how the stolen property was divided on the way.

He was given Rs. 200/- in two hundred rupee notes. The cash stolen came to about Rs. 2,200/-. That was divided into 11 shares. He said that the

other culprits divided the stolen property among themselves. It was here that Magar, Mia Hussain, Jubed and Ahmed separated and went to

Chaparmukh. The other 7 including Ayub Ali went to Charali. On the way the accused Hatem and the man from Doboka went to purchase Chira

and Muri from a shop on the road-side. The other 5 got into the bus and were taken to the police station. On suspicion they were searched and

then apprehended.

12. At the parade held on 24-2-1950, Kala Mia, P. W. 16, identified Afiluddin, Magar, Mia Hussain and Ali Hussain. Ramjan, P. W. identified

Mia Hussain, Jubed, Asar, Ayub, Aftiuddin and 2 outsiders. Mt. Jarina, P. W., identified Afiluddin, Magar, Mia Hussain, Asar, Abdul Latif and an

outsider. Badiuzzamal, P. W., identified Mia Hussain, Magar, Jubed and Ayub.

13. That the house of the deceased was the scene of a daring dacoity on the night of the 25th is both undoubted and undisputed. The report of the

occurrence was made at the Jamunarnukh police station. The police at Nowgong who apprehended Ayub, his companions and 4 others at his

instance were unaware of the report made in the Jamunamukh police station. Whatever information they got was received from Ayub. The officer

in charge of Jamunarnukh station arrived at the scene of occurrence before the officer in charge of Nowgong police station. The officer in charge of

jamunamukh police Station registered a case u/s 396, Penal Code, on the report he received and proceeded to the scene of occurrence. He found

Mushraf Hazi lying dead inside his house. He also found injuries on the person of Mushraf's wife and also on Ramjan and Badiuzzarnan, witnesses

who were guarding paddy belonging to the deceased which was lying close to the house of the deceased. He got a list of the articles stolen from

the house of the deceased. He also found marks of violence on the door. The bracket for holding the cross bar of the door was found broken.

Inside a big wooden box was found wide open. Some suit cases were also found to have been broken. A long bamboo with a pointed end, a

country made unburnt mashal having smell of kerosene and a cane stick were also handed over to him.

Medical evidence shows that the deceased died of shor-k and haemorrhage caused by injury No. (1) which was a sharp clean cut resulting in an

uninverted punctured wound just below the middle part of the left costal margin. This injury caused the rupture of the spleen also. This

circumstantial evidence is supported by the direct testimony of Mt. Jarina, P. W. 13. She deposed that 6 or 7 culprits entered the house. One of

them had a spear and another a pointed bamboo, the third one a lathi and the, 4th culprit was holding a burning chungabati. The man with the

Spear and the man with the pointed bamboo both caused them injuries with their respective weapons. One of them gave her husband a lathi blow.

He fell down. One of the culprits then sat on his chest, another was pressing his head and still another his waist. They demanded the keys. He and

she both informed them about the keys. The keys were cut from the waist of her husband. Ramjan and Badiuzzaman were according to her

guarding the paddy on the bari. She saw the dacoits opening the box and breaking open suit cases. She also gave a detailed description of the

property removed from the box that was broken open.

Kala Mia, P. W. 16 deposed that he had seen 10 to 12 persons leaving the house of the deceased on the night of the occurrence. One of them

was carrying a burning bamboo "mashal". Ramjan, P. W. 17 was roused from his sleep at mid-night. He heard some noise coming from the house

of the deceased, took up a pointed bamboo stick and went towards the house. He saw Six persons standing outside the house. The door of the

house was wide open. There were 5 or 6 dacoits inside. He saw the persons inside assaulting the deceased with lathis and a spear. He was also

assaulted inside the house. P. W. ,18 also saw some persons inside the house. They were armed. He was beaten outside the house. Direct

prosecution evidence apart from the statement of the approver establishes that more than 5 persons were concerned in the occurrence. They

committed theft of the property and while committing theft they caused the death of Moshraf Haji whose house was broken open. They were all

acting conjointly. The direct testimony has abundant circumstantial support. It is thus clear that there was a case of dacoity and during its

commission murder of an inmate of the house was committed by one of the offenders. The difficult question in the case was whether the accused

who had been sent up for trial participated in the dacoity. From the accused only Hatem has been given the benefit of doubt presumably because

the approver's statement against him lacked independent corroboration.

14. Mr. Sen, the learned Counsel for the appellants has assailed the conviction of the five appellants on the ground that there were misdirections in

the charge and these misdirections have led to an erroneous verdict against the appellants. The learned Counsel has first contended relying on -

Sheo Barhi and Another Vs. Emperor, that if the evidence of an approver is discarded, it must be discarded as a whole. It cannot be relied on in

part. He urges that the approver contradicted his first statement made to the police on several important points in the prosecution version. On those

points the statement is evidently unreliable. He urges that in these circumstances the whole of statement must necessarily be discarded.

I am not quite sure if - Sheo Barhi and Another Vs. Emperor, supports this contention. The learned judge Adamij J. observed in the course of his

judgment that 2 learned judges who had differed in regard to convictions of the 2 appellants on the charges of murder and abetment had agreed in

discarding the approver's evidence. He proceeded to consider whether after discarding that evidence there was sufficient evidence on the record

to satisfy the Court that the appellants brought about the death of Harsulal deceased in that case. The defence sought to rely on certain portions of

the approver's statement which had been discarded. He observed that if the evidence is discarded this must be discarded as a whole and the

defence cannot base arguments on it any more than the prosecution. The point was that if circumstances were such that the prosecution could not

take advantage of it, the defence could not be permitted to pick out such portions of the statement for use as evidence as were favourable to them.

This is very different from stating that where the statement of an approver cannot be relied on in regard to certain matters, the whole of it must

necessarily be discarded. The learned Judge really was not considering any such question but if the language used by him can by some stretch of

imagination be taken as supporting the contention raised before us, I would find it difficult to subscribe to it.

I would prefer to follow the rule laid down in - Bhola Nath and Others Vs. Emperor, In this case it was held that

the question whether the approver is or is not a reliable man and whether his statement should be taken into consideration or should be rejected

depends on the circumstances of each case. Where the approver makes positively false statements in respect of a particular point and yet the

evidence produced in the case goes to prove beyond any doubt that in other respects his evidence is trustworthy and is fully corroborated by very

best evidence produced, it would be wrong in that case to suggest that because the approver has made a wrong statement on a particular point his

whole evidence should be rejected.

In - "Bachinta v. Emperor" AIR 1916 Lah 380 , a Division Bench of the Punjab Chief Court also expressed the same view. They held that the

question of the value to be attached to the statement of the approver must be decided in every case on the particular and peculiar circumstances of

that case. The contention that the whole of the statement of the approver must be discarded if some parts of it have been found to be unreliable

therefore must be repelled. The failure of the Judge to direct the jury to discard the statement wholly if they could not rely on any particular part of

it, does not therefore amount to a misdirection.

15. The second contention raised by the learned Counsel for the appellants was based on - Fazlur Rahman Vs. Emperor, He pointed out that the

approver's statement undoubtedly conflicted with his previous statement to the police on several points. These contradictions were brought out in

the charge. They were placed before the jury. His objection to this part of the charge, however, is that the direction to the jury should have been as

was indicated in Fazlur Rahman Vs. Emperor, In this case the learned Judges held that the proper direction to the jury where the evidence of a

witness in court is in conflict with his previous statement is that he is unreliable and his testimony worthless and that their verdict should be founded

on the rest of the evidence. This really is another argument in support of the first contention that by reason of the fact that the approver

contradicted his previous statement on certain points, his testimony should be found to be worthless.

One distinguishing feature of the case relied on is that the learned Judges in this case were not considering what value was to be attached to the

statement of the approver. They were dealing with the evidence of identification given by certain witnesses. In the first information report it was

stated in that case that the complainants could not recognize anyone from amongst the dacoits. At the trial evidence of identification was given and

some of the witnesses deposed to having identified 3 out of the accused as persons who had been known to them. The observations made by the

learned Judges have to be interpreted in the light of these facts. The observations on which the learned Counsel relies referred to the evidence of

identification on which there was conflict between testimony given in Court and the statements of witnesses recorded by the police. Where such is

the case it would be correct to direct the jury that the statement of the witness is unreliable. The testimony of a witness who contradicts his

previous statement on a matter like identification would be unreliable on that point. In that case the direction given was that where the statement to

the police is inconsistent with the statement given in Court, the jury is to see if the witness is made unreliable thereby. This evidently was not a

correct direction and therefore it was ruled with some emphasis that in the case of such an inconsistency the directions should be that the witness is

unreliable. But even this case is no authority for the proposition that the entire statement of a witness must be discarded if he contradicts his

statement to the police on a point or on some points.

16. The learned Judge in the case before us has not given any direction about the approver's statement even on points on which his testimony

conflicts with his previous statement in terms approved in the Calcutta case. He embarked on a very critical examination of the statement of the

approver and brought out almost all discrepancies between the testimony given in Court and the statement made to the police. His direction to the

jury about the statement was that Ayub Ali had accepted the pardon and he was treated as a witness. A conviction on the uncorroborated

testimony of an approver was not illegal but it was a universal practice not to convict an accused on the testimony of an accomplice unless it was

corroborated in material particulars. He also pointed out the evidence of an approver is "ab initio" open to grave suspicion and if that suspicion is

not removed, the evidence should not be acted upon unless corroborated in material particulars. In regard to corroboration he was careful to point

out that it should be on material particular's in respect of the circumstances of the crime and also in the matter of the complicity of each accused in

the offence. After bringing out all discrepancies that could have any bearing on the credibility of the statement of the approver, he told the jury that

they are to scrutinise the evidence of the witnesses and also to see whether the evidence of the approver Ayub Ali has been corroborated in

material particulars by the evidence of the witnesses Mt. Jarina, Rarnjan, Kala Mia, Haji Golam Robbani and Badiuzzaman as well as by the other

circumstances of the case and then they are to see whether any of the accused were concerned in the occurrence. The charge has to be read as a

whole and when so read it leaves the impression that the Judge spared no effort to indicate to the jury on what points his statement may not be

relied on. It is in substantial accord with the recognised rule relating to the appreciation of an approver's testimony followed in the Allahabad case

(B) referred to above.

17. The third contention raised was that the case of each accused should have been placed before the jury separately. In support of this contention

reliance has been placed on - "Lokhono Sahu v. Emperor" AIR 1943 Pat 163 and also on - "Otto George Greller v. the King" AIR 1943 PC 211

. In the former case it was laid down by Manohar Lall J. that it was necessary when concluding the charge that

the Judge should briefly summarise the evidence against each of the accused so that it would assist the jury in giving their verdict and not confuse

them with the charge which is unnecessarily lengthy.

In the latter case their Lordships of the Privy Council held that the case of one accused required separate consideration and if it could be shown

that it was not laid before the jury as a case separate from that of two others, he would have a serious ground of complaint. On facts their

Lordships held that the Judge had summarised the evidence of the principal witnesses and it was not a probable suggestion that the jury men could

have supposed after listening to the evidence that the appellant was shown to have been with any of the thieves or that guilty knowledge had been

imputed to him on that basis.

18. Where there are several accused and particularly in cases where evidence is voluminous, it would be necessary for the Judge to give a

summary of the evidence against each of the accused. But we are not satisfied in this case that there has been any violation of this rule by the

learned Sessions Judge. The approver's statement was that all the accused persons went by the same bus. All the accused went to the house of

Mushraf Hazi on the night of occurrence for committing a dacoity. Some entered inside and some remained outside the house when the dacoity

was in progress. The part assigned by him to each was clearly stated. There was evidence of identification of the accused. Two identification

parades were held and at these parades prosecution witnesses identified different accused. Apart from the statement of the approver the evidence

that bears on the complicity of the appellants consisted of the search at which currency notes and other articles were recovered from the different

accused and of the identification of the accused by the prosecution witnesses. What was recovered from each accused was very distinctly and

separately stated. There were only two prosecution witnesses who identified some of the ornament's and certain other articles. The charge brings

out separately against each accused the articles recovered from each and their identification mainly by Mt. Jarina the widow of Mushraf Hazi.

Prosecution witnesses also identified different accused at the identification parades. The evidence of identification against each accused also has

been summarised. This evidence has not been separately summed up at the close of the charge. But the learned Judge dealt with evidence about

identification at great length, after cautioning the jury that in the case of dacoity which had taken place at night and under circumstances disclosed in

the case, the evidence about identification of the culprits should not be accepted readily and it should be looked at and scrutinized with great

caution. He also dealt with the means of identification available and its difficulties. He then dealt with the statement of witnesses who identified

different accused. In conclusion he told the jurors that it was for them to consider whether the witnesses of identification could recognize any of the

culprits and whether they actually recognized the accused they identified at the parade. The learned Judge is very dear in his summing up on this

point and I do not think there was any danger Of confusion.

The learned Counsel has relied on the two authorities referred to above which state the general rule. But he has not made any serious effort to

show that there was substantial non-compliance with the rule or that the non-compliance has resulted in any failure of justice. I do not think there

has been any misdirection in this respect, nor do I find that any case has been made out for a finding that there has been any failure of justice due to

any misdirection. Even if it is assumed for purposes of argument that the charge has not been adequate in any particular point, it appears to me that

the approver"s statement so far as participation of the appellants is concerned is fully supported by independent testimony both direct and

circumstantial.

19-21. (His Lordship reviewed the evidence and the identification of the articles recovered and proceeded :) The recoveries of these articles

connect all the appellants except Ahmed with the crime. Ahmed Ali had confessed. His confession was recorded on 28th January. This confession

was retracted. The learned Judge did not tell the jury that a retracted confession should not form the basis of conviction without corroboration. So

far as Ahmed is concerned, there is the approver"s statement. This requires independent corroboration. His own confession having been retracted,

also requires corroboration. But that corroboration is supplied by circumstantial evidence. Ahmed was apprehended in consequence of information

given by Ayub. If he was not with Ayub during the night Ayub could not give that information. Money also was recovered from him. Both the

confession and the approver"s statement thus are corroborated.

22. The evidence of identification in this case is no doubt very weak. The identification parade was held on 24th February, about a month after the

occurrence. The defects in the evidence were all brought into clear relief and it is difficult to say that there has been a misdirection even so far as

the appreciation of this evidence is concerned. Assuming that the direction was not adequate and assuming further that this evidence has to a

certain extent influenced the verdict, there still would be no good reason for interfering with the convictions. For even if the evidence of

identification by prosecution witnesses is left wholly out of account, the statement of the approver in regard to the participation of the appellants in

the dacoity is amply corroborated by both direct and circumstantial evidence. No case at all has been made out for quashing the convictions which

must be upheld,

23. The learned Counsel has also argued that the sentence is unduly severe. It is a case of a dacoity carefully planned and committed ruthlessly. It

is attended with murder. No case for indulgence is made out and even the sentence should stand.

24. For reasons given above the appeal is dismissed.

Sarjoo Prosad, C.J.

25. I agree.