P L D 1987 Lahore 136
Before Rustam S. Sidhwa and Riaz Ahmad, JJ

1NAYAT-Appellant

versus

THE STATE-Respondent

Criminal Appeal No. 148 and Murder Reference No. 76 of 1983, heard on 13th December, 1986.

(a) Penal Code (XLV of 1860)-

-- S. 307-Appreciation of evidence-Related witness-Interested witness-Difference-Testimony-Value - Corroboration-Nature Mere relationship is no ground to reject testimony of an eye-witness, if his testimony inspires confidence.-[Witness].

Mere relationship is no ground to reject the testimony of an eyewitness, if his testimony inspires confidence. There is difference between a related witness and an interested witness, because the latter has motive to implicate falsely. However, a witness can both be related as well as be interested. It will depend upon the facts and circumstance of each case, and that is why a rule of caution has been propounded by the Courts to seek corroboration. This rule has now become a rule of law. It is further pertinent to mention that corroboration need not consist of spoken words, it may consist of any circumstance which would tend to connect the accused with the commission of the crime.
In certain cases the Court in practice does not, act upon evidence Whip]; is not supported or confirmed in some material respect by other independent evidence, direct or circumstantial but not itself requiring corroboration. There are cases where evidence is of little weight unless it is corroborated, but at the same time when corroboration is required as a matter of practice the greatest caution must be exercised incoming to a conclusion. Corroboration must proceed from a source independent of and extraneous to the person whose evidence is to be corroborated. It may consist of direct or circumstantial evidence and it need not amount to confirmation of the whole of the story of the witness to be corroborated, so long as it corroborates such evidence in some respects material to the issue or the charge under consideration. Corroborative or corroborating evidence is additional evidence of a different character to the same point; evidence which would tend to establish the disputed facts by other circumstances. It is evidence of such type which would tend to confirm and strengthen or to show the truth or probability of truth of the testimony of a witness sought to be corroborated. The extent and degree of corroboration rests in the judicial discretion of the Court and necessarily varies with the facts and circumstance of each case. But the general rule is that facts proved must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

Whenever interested persons claiming to be eye-witnesses of an occurrence charge person against whom they have some motive for falsely implicating them with the commission of offence, the first question to be considered is whether in fact they saw the occurrence, and were in a position to identify the culprits. If there be no reason to doubt that they in fact witnessed the occurrence and were in a position to identify the offenders, the further question arises as to whether they can be relied upon for convicting the accused without corroboration. In cases where such interested witnesses charge one person only with the commission of the offence, or where the number of persons whom they name does not exceed that which appears from independent evidence or from circumstances not open to doubt to be the true number of culprits, their evidence may, in the absence of anything making it unsafe to do so, be accepted without corroboration, for, substitution is a thing of rare occurrence and cannot be assumed and he who sets up the plea of substitution has to lay the foundation for it. But if the Court finds that the number mentioned by interested persons may have been exaggerated, their word cannot be made the basis of conviction and the Court will have to look for some additional circumstance which corroborates their testimony. This circumstance need not be such that it can of its own probative force bring home the charge to the accused. It should, however, be a circumstance which points to the inference that the particular accused whose case is being considered did participate in the commission of the offence. The force that such circumstance should possess in order that it may be sufficient as corroboration must depend on the particular circumstances of each case. However, the circumstance itself must be proved beyond all reasonable doubt. Strictly speaking this is a rule of prudence though not of law, for safe dispensation of criminal justice in such cases.

Nazir v. State P L D 1962 S C 269 ; Halsbury's Laws of England, Third Edn., Vol. 15 ; Corpus Juris Secundum, Vol. 32, S. 106 ; Niaz v. .State P L D 1960 S C 389 and Sardar Ali v. State P L D 1967 S C 217 ref.

(b) Penal Code (XLV of 1860)-

-- S. 302-Accused surrendering himself before Investigating Officer soon after occurrence--Presumption. Persons accused of serious offences have had themselves presented before the Police in the course of the investigation by a respectable of the village, they usually do so in order to avoid the rigors of an investigation and must be prepared to satisfy the Investigating Officer that they are indeed the persons for whom the Police had been searching, so that the investigation need not be continued further. It is not unnatural that such persons should make over incriminating evidence, so that further pressure upon them or their relations should cease. No responsible Police Officer would discontinue his investigation merely because persons had presented themselves before him and either admitted their involvement or for the reason that they had been named in the initial report. He would need to satisfy himself that he had enough evidence to make out a complete case.
Nawab and 3 others v. The State P L D 1965 S C 522 ref.

(c) Penal Code (XLV of 1860)-

-- S. 302-Eye-witnesses admittedly close relations of deceased and also related inter se-Circumstances showing that eye-witnesses were present at place of occurrence and had seen incident-Corroborative evidence also amply proved participation of accused in crime--Conviction maintained.
Malik Muhammad Qasim for Appellant.

Ch. Abdul Azia for the State.

Hassan Ahmed Qamer for the Complainant.

Dates of hearing : 8th and 13th December, 1986.

JUDGMENT

RIAZ AHMAD, J.--The appellant Inayat alongwith eight others, namely, Umra, Pana, Malka, Nasra, Mushtaq, Mansha, Sultan and Ahmed was tried by the Additional Sessions Judge, Gujranwala for having caused triple murder of Aziz Ahmed, Akram and Sher Muhammad. The learned Additional Sessions Judge, vide his judgment dated 24-1-1983 found only Inayat, appellant guilty on all the three counts and accordingly, the appellant Inayat was sentenced to death on each of the three counts. The appellant was also sentenced to pay of fine of Rs. 15,000 on each count or in default of the payment of the fine, to suffer three years' rigorous imprisonment on each count. It was further ordered that the fine of Rs. 45,000 if recovered, shall be paid to the heirs of the deceased as compensation under section 544-A, Cr. P. C.

2. Aggrieved by his conviction, the appellant Inayat has preferred this appeal and the case has also been referred to us under section 374, Cr. P. C. This judgment shall dispose of both the appeal as well as the reference.

3. The unfortunate occurrence resulting into three deaths took place on 8th May, 1980 at 5-00 a. m., in the area of village Trigra situated at the distance of nine miles from the Police Station Wanike Tarrar.

4. The F. I. R. in this case is based upon the statement Exh. P. C., made by Muhammad Iqbal P. W. 2 and recorded by Sarfraz, Sub-Inspector in village Gujrake on the same day at 7-30 a. m. The Sub-Inspector who had met Muhammad Iqbal complainant P. W. 2 on his way to the Police Station, sent the statement Exh. P. C., to the Police Station where the formal F. I. R. Exh. P. C. I was drawn by Muhammad Rafique, Head Constable.

5. The prosecution as unfolded in the F. I. R. is that Aziz Ahmed, deceased was Lamberdar and had a dispute over a land with Umra, acquitted-co-accused and the appellant Inayat.

The dispute was sub judice in the Court of Additional Deputy Commissioner (General), Gujranwala. Besides this dispute, the appellant and Umra had also a dispute over a house with Sher Muhammad, deceased and a case about this dispute was

pending in the Court of a Civil Judge at Hafizabad. The said suit was decided in. favour of the deceased Sher Muhammad on 5th May, 1980.

6. At night on 8th May, 1980, Muhammad Akram, deceased and Aziz Ahmed deceased and Muhammad Baksh, Fazal Elahi P.W. 3 and Muhammad Iqbal P. W. 2 were sleeping at the Dera of Aziz Ahmed, deceased. At 5-00 a. m., the appellant and the eight acquitted co-accused came to the said Dera, Nasra acquitted co-accused held the deceased Aziz Ahmed from his head while Malka acquitted co-accused held the deceased from his feet and allegedly the appellant inflicted 3/4 hatchet blows, on the neck and right hand of Aziz Ahmed deceased. It was further alleged that likewise, Sultan and Umra, acquitted -co-accused bad held Akram deceased, while Mushtaq acquitted. co-accused inflicted 3/4 hatchet blows on the neck of Muhammad Akram, deceased. Complainant Muhammad Iqbal P. W. 2 and Fazal Elahi, eye-witness P. W. 3 saw the occurrence and had got up at the fateful moment. The appellant and his acquitted associates fled from the scene, while the complainant P. W. 2 and Fazal Elahi P. W. 3 and Muhammad Bakhsh followed them. It was further alleged that the appellant and the acquitted co-accused then attacked the third victim Sher Muhammad, deceased who was sleeping on the northern end of the village. Mansha and Ahmed acquitted co-accused held Sher Muhammad, deceased while Pana another acquitted co-accused inflicted 3/4 hatchet blows to him. On the alarm raised, the appellants and his associates escaped from the scene. One Nawaz who was sleeping with Sher Muhammad, deceased had also got up and seen the occurrence.

7. The Investigating Officer, Sarfraz Khan, Sub-Inspector P. W. 9 after despatching the statement Exh. P. C., made by Muhammad Iqbal P. W. 2 to the Police Station reached the scene of occurrence. During the investigation at the spot at about 10-00 a. m., the appellant carrying the blood-stained hatchet appeared before the Sub-Inspector. The clothes of? the appellant a Tehband P/2 and Kurta P/3 were also blood-stained. The Investigating Officer took the blood-stained hatchet produced by the appellant into possession vide Memo. Exh. P. G., which was attested by Nasar Ullah Khan P. W. 4 and Zuifiqar Ali (not produced besides the Investigating Officer). Similarly, the blood-stained clothes worn by the appellant at the time of surrendering before the Sub-Inspector were also taken into possession vide Memo. Exh. P. H. attested by Nasar Ullah P. W. 4 and Zulfiqar (not produced besides Investigating Officer).

8. Dr. Muhammad Akram P. W. 5 conducted the post-mortem examination on the dead bodies. The following injuries were noticed on the dead body of Aziz Ahmed, deceased :

(1) Transverse incised wound 10 ?? c.m. x 2 ?? c.m. x bone deep on left side neck. 2- ? c.m. below the left ear.
(2) A transverse incised wound 8 c.m. x 2 c.m. x bone cutting on left side neck. 1 ??? c.m. below injury No. 1.

(3) Transverse incised wound 6 c.m. x I c.m. x bone deep on left side of neck. I c.m. from the injury No. 2.

(4) Transverse incised wound 6 ?? c.m. x 3 c.m. x parietal bone cutting of the right hand index middle and ring finger close to matetracel joints.

In the opinion of the doctor the death occurred due to the neckinjury, and particularly injury No. 1 on the left side of the neck causing haemorrhage and shock. All the injuries were sufficient to cause death in the ordinary course of nature and had been caused with sharp-edged weapon. Injury No. 4 was grievous.

9. On the dead body of Muhammad Akram, the following three injuries were noticed :

(1) Transverse incised wound 10 c.m. x 2 ?? c.m. bone cutting through mandible at its angle on the left side of neck. Its antredge was 2 ?? c.m. from left ear and posteriorly reaching near midline.

(2) An oblique incised wound 11 ?? c.m. x bone cutting through and through at body of mandible left side of the neck. Its interior edge was 2 ?? c.m. from left side of angle of the mouth. This injury was I c.m. below interior edge of injury No. 1.

(3) Transverse incised wound 6 c.m. x 2 ?? c.m. x partial cut in cervical vertebra on left side of the neck. This injury was 1 c.m. below the preceding injury No. 2 and going posteriourly. There was also a cut on collar of Kurta on the left side. I found under desection injuries Nos. 1 and 2.

In the opinion of the doctor death occurred due to injury on the neck cutting big-vessels of the left side and also injuries to vertebra. The injuries had caused haemorrhage and shock and were sufficient to cause death in the ordinary course of nature collectively as well as individually.

On the same day the same doctor noticed the following injuries on the dead body of Sher Muhammad deceased :

(1) Transverse incised wound 7 c.m. x 3 c.m. x bone deep cutting through at angle of the medible bone on the right side of the neck 2 c.m. from the right ear. Its interior end is 3 ?? c.m. from right side of the angle of mouth.

(2) Transverse incised wound 7 c.m. x 2 c.m. x cutting soft tissue and reaching the bone. It was 12 c.m. below injury No. 1.

(3) Transverse incised wound 8 c. m. x I c.m. x bone deep.

(4) Transverse incised wound 6 c.m. x 1 c.m. x muscle deep just above right collar band.

In the opinion of the doctor the death had taken place due to the injuries can the right side of the neck which had cut big vessels and muscles of the neck through and through. The injuries collectively and individually were sufficient to cause death in the ordinary course of nature. The injuries had been caused with sharp-edged weapon and were dangerous to life.

11. At the trial, the prosecution placed reliance upon the ocular testimony in the form of the testimony of P. W. 2 Muhammad Iqbal, complainant and Fazal Elahi P. W. 3. Reliance was also placed upon the evidence as to the recovery of blood-stained clothes worn by appellant and the blood-stained hatchet.

When examined under section 342, Cr. P. C., the appellant denied the charge and stated that he had been involved falsely on account of enmity.

With the assistance of the learned counsel, we have carefully examined the record of the case, and have also heard the counsel for the appellant, the State, as well as the complainant who has also preferred the ravision petition against the acquittal of all the eight co-accused.

12. The learned counsel for the appellants attacked the ocular testimony by stating that both the eye-witnesses P. W. 2 Muhammad Iqbal and P. W. 3 Fazal Elahi were chance witnesses and had no occasion to be present at the Dera of Aziz Ahmed, deceased and, therefore, could not have seen the occurrence. According to the learned counsel this was an unwitnessed crime and because of the enmity the complainant side thought it fit to involve the appellant and eight others by throwing a widenet. It was further argued that P. W. 3 Fazal Elahi did not own land in the village where the occurrence took place, but belonged to another village. Not being the land-owner in the village his stay in the night at the Dera of Aziz Ahmed, 'deceased was improbable. It was further argued that Fazal Elahi P. W. 3 was resident of village Balakay which was situated at the distance of 15 miles from the scene of occurrence. This suggestion in cross-examination about the distance was denied by the witness and he stated that his village was only one mile away from the scene of occurrence. About- his presence at the scene of occurrence Fazal Elahi P.W. 3 stated that he had some dispute over water with one Muhammad Bakhsh, and we had appointed Aziz Ahmed, deceased as "Arbitrator", but the decision could not be arrived at on account of the absence of Muhammad Bakhsh, and therefore, the witness had slept on the Dera of Abdul Aziz, deceased. Furthermore, we have noticed that it was not odd or unnatural for the witness Fazal Elahi to sleep at the Dera of Abdul Aziz, deceased. The witness is related to the deceased Akram who was the brother of the wife of the son of Fazal Elahi (P. W. 3). Zubeda widow of Akram, deceased is also the daughter of the sister of the complainant. It was also admitted by the witness that Munawar Bibi (sister of Aziz Ahmed deceased) was married to Riaz P. W. who is son of the sister of Fazal Elahi (P. W. 3). Similarly, the relationship of P. W. 2 Muhammad Iqbal was also highlighted in cross-examination, and our attention was drawn to the same. Muhammad Iqbal, P. W. 2 is the husband of Sardaran sister of Aziz Ahmed, deceased. Besides this relationship both the eye-witnesses are] admittedly close relations of the deceased, and also related inter se. On account of close relationship, learned counsel for the appellant contended that such testimony should be rejected.

12-A. After careful consideration of the contentions of the learned counsel, we reject the same because it is now well settled that mere relationship is no ground to reject the testimony of an eye-witness, if his testimony inspires confidence. There is difference between a related witness and an interested witness, because the latter has motive to

implicate falsely. However, a witness can both be related as well as be interested. It will . depend upon the facts and circumstances of each case, and that is why a rule of caution has been propounded by the Courts to seek corroboration. This rule has now become a rule of law. It is further pertinent to mention that co-oboration need not consist of spoken words, it may consist of any circumstance which would tend to connect the accused with the commission of the crime. We are fortified in this view by a Judgment of the Supreme Court of Pakistan reported as Nazir v. State (1). On the question of corroboration and its nature, we would refer to paragraphs 811 anal 813 in the Halsbury's Laws of England (Third Edition), Volume 15. According to the learned author, "in certain cases the Court in practice does not, act upon evidence which is not supported or confirmed in some material respect by other independent evidence, direct or circumstantial but not itself requiring corroboration." The author further states that there are cases where evidence is of little weight unless it is corroborated, but at the same time when corroboration is required as a matter of practice the greatest caution must be exercised in coming to a conclusion. Corroboration must proceed from a source independent of and extraneous to the person whose evidence is to be corroborated. It may consist of direct or circumstantial evidence and it need not amount to confirmation of then whole of the story of the witness to be corroborated, so long as it corroborates such evidence in some respects . material to the issue or the charge under consideration. Similarly, according to the Corpus Juris Secundum (Volume 32), section 106, corroborative or corroborating evidence is additional evidence of a different character to the same point, evidence which would tend to establish the disputed facts by other circumstances. It is evidence of such type which would tend to confirm and strengthen .or to show the truth or probability of truth of the testimony of a witness sought to be corroborated. The extent and degree of corroboration rests in the judicial discretion of the Court and necessarily varies with the facts and circumstances of each case. But the general rule is that facts proved must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

In the famous case reported as Niaz v. .State (2), the Supreme Court observed that whenever interested persons claiming to be eye-witnesses of an occurrence charge person against whom they have some motive for falsely implicating them with the commission of offence the first question to be considered, is whether in fact they saw the occurrence and were in a position to identify the culprits. If there be no reason to doubt that they in fact witnessed the occurrence and were in a position to identify the offenders, the further question arises as to whether they can be relied upon for convicting the accused without corroboration. In cases where such interested witnesses charge one person only with the commission of the offence, or where the number of persons whom they name does not exceed that which appears from independent evidence or from circumstances not) open to doubt to be the true number of culprits, their evidence may in the absence of anything making it unsafe to do so, be accepted without corroboration for, substitution is a thing of rare occurrence and cannot be assumed and he who sets up the plea of substitution has to lay the foundation for it. But if the Court finds that the number mentioned by interested persons, may have been exaggerated, their word cannot be made the basis of! conviction and the Court will have to look for some additional circumstance which corroborates their testimony. This circumstance need not be such that it can of its own probative force bring home the

charge to the accused. It should, however, be a circumstance which points to the inference that the particular accused whose case is being considered did participate in the commission of the offence. The force that such circumstance should possess in order that it may be sufficient as corroboration must depend. v.. Luc particular circumstances or eacn case. However, the circumstance itself must be proved beyond all reasonable doubt. Strictly speaking this is a rule of prudence though -not of law, for safe dispensation of criminal justice in such cases".

(1) P L D 1962 S C 269????????? (2) P L D 1960 S C 389

13. In the light of the criteria laid down by the Supreme Court of Pakistan and the celebrated authors, referred to above, we are of the view that in the circumstances of this case both the eye-witnesses were present and had seen the occurrence. We have no reasons to depart from the' appreciation of the evidence of these e)e-witnesses, qua the appellant, by the Trial Court, inasmuch as it had the advantage of recording and noting the demeanour of these witnesses. No doubt they have exaggerated the number of the accused, and therefore, the Trial Court rightly sought corroboration. Of course, it is such a case in which the application of the; rule of prudence for seeking the corroboration, is essential. In our vie, ample corroboration exists on the record in the form of the recovery of, blood-stained hatchet and the blood-stained clothes worn by the appellant.'

The said corroborative evidence was supported by Nasar Ullah P. W. 4 and Sarfraz Khan, Investigating Officer. We have perused the testimony) and there is no reason to disbelieve these recoveries.

14. There is nothing odd in the behaviour of the appellant to have appeared before the Investigating Officer with the blood-stained hatchet and blood-stained clothes worn by him.

In two similar cases reported as Sardar Ali v. State (1) and Nawab and 3 others v. The State (2) The accused had surrendered himself before the investigating Officer soon after the occurrence and the Supreme Court of Pakistan had made the following observations -.

"Persons accused of serious offences have had themselves presented before the police in the course of the investigation by a respectable of the village, they usually do so in order to avoid the rigors of an investigation and must be prepared to satisfy the Investigating Officer that they are indeed the persons for whom the police had been searching, so that the investigation need not be continued further. It is not unnatural that such persons should) make over incriminating evidence, so that further pressure upon them or their relations should cease. No responsible Police Officer would discontinue his investigation merely because persons had presented themselves before him and either admitted their involvement or for the reason that they had been named in the initial report. He would need to satisfy himself that he had enough evidence to make out a complete case."

15. For the foregoing reasons, we hold that the prosecution has proved its case beyond any shadow of doubt against the appellant. The corroborative evidence amply proves his participation in the crime, there -L fore, in our view he was rightly convicted on all the three counts for having caused triple murder. In this view of the matter we confirm the death sentence awarded to the appellant. The sentence of fine is also maintained.

M. B. A./I-1/L ??????????? Sentence confirmed.
(1) P L D 1967 S.C 217????????? (2) P L D 1965 S C 522

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