

the other account. The correctness of this decision has been doubted in Paget's Law of Banking where the learned author observes at page 380 that the words of Swift, J., must be read as part of a judgment in a case in which the proceeds of certain bills were alleged to have been wrongfully appropriated by the bank. Swift, J., found that although there had been an intention to appropriate them, this did not take place, but as the bank knew of the intention to appropriate to a particular account they could not take advantage of the failure actually to do so. The very nature of the case renders it practically useless as a guide to the general question of the right of a banker to set off one account against another. I entertain no doubt in my mind that it was open to the Bank in the present case to combine the two accounts and in exercise of the banker's lien to appropriate the deposits in one account to the payment of the debt due to the Bank in the other account [*Radha Raman Chowdhary and another v. Chota Nagpur Banking Association, Ltd., and others* (1)].

Firm Jaikishen
Dass-Jinda Ram
v.
The Central
Bank of India,
Ltd., Bombay
Bhandari, C. J.

For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal. There will be no order as to costs.

GOSAIN, J.—I agree.
B.R.T.

Gosain, J.

APPELLATE CRIMINAL

Before Mehar Singh and Dua, JJ.

AUTAR SINGH AND ANOTHER,—*Convicts-appellants.*

versus

THE STATE,—*Respondent*

Criminal Appeal No. 169 of 1959.

*Evidence Act (I of 1872)—Section 133—Accomplice—
Whether a competent witness against an accused person—
corroboration of the testimony of the accomplice—Whether*

1959

Sep. 3rd

(1) A.I.R. 1944 Pat. 368

necessary—Nature and extent of such corroboration—Material particulars—meaning of—Section 8—Accused absconding—How far relevant.

Held, that an accomplice, as laid down in Section 133, Indian Evidence Act. is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice. Uncorroborated evidence of an accomplice is thus admissible in law but it has long been a rule of practice, which is now virtually equivalent to a rule of law, that it is dangerous and unsafe to base a conviction on the uncorroborated testimony of an accomplice. Indeed, if a Judge chooses to act upon uncorroborated evidence of an accomplice he must give some indication that he is conscious of this rule of caution which is really dictated by experience, and he must give reasons as to why in that particular case he considers it safe to convict in the absence of corroborative evidence and in disregard of the above rule of caution. The nature and the extent of corroboration, however, must necessarily depend on the facts and circumstances of each case, including the nature of the offence involved, as it is well-nigh impossible if not also dangerous, to lay down or formulate with precision as to what kind of evidence should or would be considered as corroboration. Independent corroborative evidence need not come up to the standard of being sufficient by itself to sustain conviction. What is needed is the existence of some additional evidence showing that the version given by the accomplice is probably true and that it is reasonably safe to base a conviction thereon. Such independent evidence must not merely render the story to be probable and believable with respect to the commission of the offence but it must in some reasonable way either connect or tend to connect the accused with the commission of the offence; in other words such additional evidence, whether direct or circumstantial, must come from an independent source and must confirm in material particulars the version given by the accomplice that the accused committed the crime. The word 'material' must mean material for the purpose of connecting or tending to connect the accused with the crime. The degree of suspicion attaching to the evidence of an accomplice would also vary according to the extent and nature of his own complicity.

Held, that absconding is undoubtedly relevant for showing the conduct of the accused after the offence and

may legitimately be taken into consideration as provided by section 8, Indian Evidence Act, but such conduct is generally considered to be a very small item in the evidence on which a conviction can be based. Absconding may be equally consistent with innocence and guilt, depending as it does, on various factors and it can only be properly considered alongwith the other facts of the case. On the circumstances and facts of the instant case, where several offences were the subject-matter of trial and where for some of the offences charged the accused have not been convicted, absconding by itself is hardly of much real value in determining the guilt of the accused in the offence of murder.

Appeal from the order of Shri Rameshwar Dayal, Additional Sessions Judge, Karnal, dated the 24th February, 1959, convicting the appellants.

Y. P. GANDHI and V. P. GANDHI, for Appellants.

K. L. JAGGA, for Respondent.

JUDGMENT

DUA, J.—Autar Singh, Dalip Singh, Jaimal Singh, Harnam Singh, Inder Singh and Hazara Singh were tried by the Additional Sessions Judge, Karnal, for the murder of Puran Singh and the charges framed related to offences under sections 120-B, 302/34 and 201, Indian Penal Code. Dalip Singh who belongs to village Ullana, about 5 kos from Ladana Chaku where all the other accused own land and reside, was, however, not charged with the offence under section 201, Indian Penal Code. Autar Singh, it may be mentioned, is the son of Jaimal Singh, accused. Puran Singh, deceased was also a resident of Ladana Chaku. The learned Additional Sessions Judge, has, in a very lengthy judgment, convicted Autar Singh and Dalip Singh under section 302, Indian Penal Code, and sentenced them to imprisonment for life ; they have also been convicted under section 364, Indian

Dua, J.

Autar Singh and
another
v.
The State

Dua, J.

Penal Code, and sentenced to 8 years' rigorous imprisonment each, the sentences to run concurrently. Jaimal Singh, Harnam Singh, Inder Singh and Hazara Singh were acquitted of the charge brought against them. The whole prosecution case really depends on the question whether or not the evidence given by Jagir Singh approver, P.W. 2 is trustworthy enough to sustain the conviction.

The first information report lodged on 24th of August, 1958, at 2.30 p.m. by Smt. Swaran Kaur, widow of Puran Singh, deceased at Police Station, Guhla, District Karnal, gives the earliest version of the prosecution story. She reported that on the preceding afternoon her husband Puran Singh and Suchet Singh, her brother, were taking their meals when Autar Singh, son of Jaimal Singh, Jaimal Singh, son of Kharak Singh, Jagir Singh *siri* of Jaimal Singh and Dalip Singh, son of Boota Singh came to their house and said that a Panchayat was to be held at Megha Majra in connection with the buffalo of Harnam Singh, jat, which had been stolen, and asked Puran Singh to accompany them. Thereafter all the four visitors talked to Puran Singh, aside and the deceased went away with them telling his wife that he would return at night time. Smt. Swaran Kaur then stated that she had in vain waited for her husband for the whole night but he did not return. In the morning, however, she went to the houses of Autar Singh and Jaimal Singh in order to enquire about her husband's whereabouts but Autar Singh, Jaimal Singh and Jagir Singh were not to be found. Bhagat Singh, the sister's husband of Puran Singh, who had come to see Puran Singh the preceding day, informed her that Puran Singh had met him near the well of Jaimal Singh going towards Megha Majra along with Autar Singh, Jaimal Singh, Jagir Singh, Inder Singh, Hazara Singh and Harnam Singh, residents of Ladana Chaku and Dalip

Singh resident of Ullana. She then proceeded to Megha Majra in search of her husband and there she came to know from Sahib Singh and Sardara Singh, sons of Phula Singh, *Jat*, residents of Megha Majra, that Puran Singh alongwith Harnam Singh, Hazara Singh, Jagir Singh, Autar Singh, Jaimal Singh, Dalip Singh and Inder Singh had come to Megha Majra the previous evening, but all of them had later gone back. In this report Smt. Swaran Kaur expressed suspicion that Autar Singh and others had murdered Puran Singh, the cause of enmity according to her, being that Dalip Singh suspected Puran Singh to have illicit connection with his, i.e. Dalip Singh's sister and Autar Singh suspected the deceased to have illicit connection with his, i.e. Autar Singh's wife. There is no direct evidence connecting the accused with the murder. The learned trial Judge has based the conviction on the testimony of Jagir Singh P.W. 2 who has turned approver because, according to the trial Court, he has been fully corroborated in material particulars. The story as given by the approver, Jagir Singh, is that he joined as *siri* of Autar Singh, accused about 6 or 7 months before the alleged occurrence. All the accused had friendly relations and were on intimate terms with Puran Singh, deceased and they used to visit each other's place. Puran Singh had illicit connection with Jit Kaur sister of Dalip Singh, accused and also with Harbans Kaur, wife of Autar Singh, accused, and these facts were known to all the accused but they used to keep quiet being afraid of the deceased, who was a *badmash*. About 25 days before the alleged occurrence Autar Singh had told Jagir Singh that he had seen an unknown Brahmin driving two buffaloes and a bullock in the jungle, but the bullock got frightened and ran away. The Brahmin ran after the bullock leaving behind the two buffaloes. Autar Singh tied

Autar Singh and
another
v.
The State

Dua, J.

Autar Singh and
another
v.
The State
Dua, J.

the buffaloes in a thick part of the forest and returned to the village. When he went back he found the buffaloes missing which, according to him, had been removed by Puran Singh. Autar Singh also informed Jagir Singh that Puran Singh had denied that he had taken away the buffaloes and thus refused to return them. One day after the above talk all the six accused gathered together in the house of Autar Singh where the approver was also present. They deliberated and discussed the question of Puran Singh's visit to their houses and his illicit intimacy with their womenfolk as also the matter of taking away the buffaloes. It was then resolved that Puran Singh should be killed and somehow got rid of. While these consultations were going on, one Midha *badmash* of village Sultanian who had friendly relations with Autar Singh and Harnam Singh also arrived there. These two persons disclosed to Midha their grievances against Puran Singh and offered him a sum of Rs. 1,000 as a reward for killing Puran Singh either himself or through someone else. Midha refused the offer and went away. After Midha's departure it was planned that Puran Singh should be taken to village Megha Majra on the pretext of inviting him to join a Panchayat for the purpose of recovering Harnam Singh's buffalo but in reality with the object of finding an opportunity to kill him. It was stated that Harnam Singh's buffalo was with Sahib Singh and Sardara Singh, sons of Phula Singh at Megha Majra and that the Panchayat was to prevail upon them to return the buffalo. On the day following Autar Singh, Dalip Singh, Jaimal Singh and Jagir Singh approver went to the house of Puran Singh at about noon time when they found Puran Singh and Suchet Singh *amli*, his wife's brother, taking their food which was being served by Puran Singh's wife. Autar Singh requested the deceased to

accompany them as a member of the Panchayat to Megha Majra ; Puran Singh, after finishing his meals, came out of the house where it was also suggested to him that after finishing the Panchayat business they would enjoy drinks. This witness also states that before leaving Autar Singh's house Harnam Singh, Inder Singh and Hazara Singh accused had been instructed to wait outside the village. So when Autar Singh and others, along with Puran Singh started on their errand, the aforesaid three accused also met them outside the village. From there they proceeded to village Megha Majra. Near Jaimal Singh's well they met Bhagat Singh who is Puran Singh's sister's husband and who was going to Puran Singh's village to see him. Puran Singh told Bhagat Singh that he would return in the evening and that the latter should go to his house, take his food and wait for him. As desired Bhagat Singh continued his journey towards Puran Singh's village. Megha Majra is about a mile and a half from village Ladana Chaku. At Megha Majra Sahib Singh and Sardara Singh offered to their visitors some refreshments but regarding the buffalo they said that since their father had gone to Karnal, they could not settle this matter in his absence. The party after waiting till half an hour before sunset, left Megha Majra because till then Phula Singh father of Sahib Singh and Sardara Singh had not returned from Karnal. Reaching near the well of Jaimal Singh on their way back accused Autar Singh suggested that they should all sit down and enjoy drinks. Jaimal Singh, Harnam Singh, Inder Singh and Hazara Singh accused continued their journey to the village whereas Autar Singh, Dalip Singh, Puran Singh and Jagir Singh approver proceeded towards the well of Jaimal Singh. At that well Autar Singh went towards a thorny fence and brought a bottle of liquor with a cup (*piali*). The

Autar Singh and
another
v.
The State

Dua, J.

Autar Singh and
another
v.
The State
Dua, J.

party then moved about a furlong away from the well, sat down and began to enjoy drinks. This spot is said to be located in a jungle to the south of the well. Autar Singh poured the liquor and offered it to others. The approver states that though it was dark at that time, he, however, saw a Sikh gentleman passing by them, whom he had never seen before, but whom he would be able to recognize by face. Autar Singh offered to Puran Singh much larger quantity of liquor than others and after finishing the first bottle Autar Singh again went to the thorny fence where he threw away the empty bottle and picked up and brought another one. When that too was consumed and Puran Singh became drunk, Autar Singh suggested that it was time to leave for the village. Saying so, he went again to the thorny fence and brought two *gandas* which had been placed there in pursuance of a previous plan. The second bottle and the *piali* were thrown in a bush and all the persons rose to proceed towards the village. They had hardly walked for 10 or 12 paces when Puran Singh began to stagger ; at that time Autar Singh gave one of the *gandas* to Jagir Singh, keeping the other with him. Moving a few steps further the approver saw Autar Singh striking Puran Singh with the *gandasi*. Puran Singh tried to run away but Autar Singh dropping the *gandasi*, ran after Puran Singh, caught him by the waist and felled him on the ground. In the meantime Dalip Singh picked up the *gandasi* which had been dropped by Autar Singh and started giving *gandasi* blows to Puran Singh. Autar Singh then took the *gandasi*, which had earlier been handed over to Jagir Singh, and separated Puran Singh's head from his trunk. Autar Singh and Dalip Singh asked Jagir Singh to stay as they were feeling somewhat typsy and were thus unable to carry the body of Puran Singh. The approver stayed on and

Autar Singh and Dalip Singh went to the village ; but Autar Singh alone returned from the village with Jaimal Singh, Harnam Singh, Inder Singh and Hazara Singh. Autar Singh and Jaimal Singh accused then scraped the bloodstained earth and threw it in Jaimal Singh's well. The approver was asked to carry Puran Singh's head which he did. The headless body was then tied into the *chaddar* of the deceased and made into a kind of sling. The body tied in the *chaddar* was thus carried on the shoulders of Autar Singh and Harnam Singh with the help of a *danda* ; the approver and the other persons walking with them alongside. When they reached the jungle a thorn pricked one of Jagir Singh's feet whereupon he put the head of the deceased on the ground and started extracting the thorn. In the meantime the others proceeded ahead though the approver called them in a low tone ; there was, however, no response from them. The approver thereupon took the head of the deceased to a flowing *nala* nearby (popularly known as Para) and threw the head in it ; thereafter he returned to the well of Jaimal Singh. Two hours later Autar Singh returned to the approver and on enquiry he was informed that the head had been thrown in the *nala*. Autar Singh then also informed the approver that they had cut the body into pieces and then thrown it in the *nala*. Autar Singh and the approver slept at the well for that night and in the morning when they rose they learnt that their other companions had run away. These two persons also went to the jungle to hide themselves where they stayed for that day and the night following. The approver carried with him a *gandasi*, which Autar Singh took away saying that he was going to his father-in-law's village Polar to ascertain the whereabouts of their other companions. The approver stayed in the jungle for that

Autar Singh and
another
v.
The State
Dua, J.

Autar Singh and
another
v.
The State

Dua, J.

day and for the following night and was arrested on the day which followed. This in substance is the evidence of the approver and excepting his testimony there is no other direct evidence of the offence. The question to be determined is as to whether or not this approver's testimony has been corroborated in material particulars so as to justify or to provide a safe basis for the conviction of the accused-appellants. The Court below has, broadly speaking, been influenced by the following considerations in convicting the accused. It has observed that the approver has no grudge against the accused nor has he any interest in Puran Singh deceased; and his name having been mentioned in the first information report as one of the persons who visited Puran Singh's house on 23rd of August, 1958, it must be believed that he was in fact a *siri* of Autar Singh accused although there is no evidence to corroborate this assertion. The motive so far as the story of Harnam Singh's buffalo is concerned, has been discarded by the learned Additional Sessions Judge but the existence of illicit relations with the two ladies mentioned above has been believed by the Court since corroboration was considered to be forthcoming from the statement of Smt. Swaran Kaur P.W. 4, widow of the deceased. In so far as the assembly of the accused and Jagir Singh on 23rd of August, 1958 is concerned, the trial Court has expressly held it to be unsafe to rely on this version of the conspiracy. The departure of Puran Singh along with Autar Singh and others for Megha Majra and their visit to Sahib Singh as a Panchayat has been held by the Court below to be highly probable; it has also been believed that these persons left Sahib Singh's place about half an hour before sunset. The Court has observed that it was common ground that Harnam Singh had lost his buffalo about a year earlier and that Sahib Singh and Sardara Singh had been challaned

and acquitted in this connection. The Court, however, felt that in spite of the delay Harnam Singh must have been anxious to get his buffalo restored to him and therefore it is very likely that Puran Singh, who was very well-known to Sahib Singh, might well have been persuaded to intervene. The approver's statement with respect to a Sikh gentleman passing by them has been discarded by the Court as doubtful, in spite of Sohan Singh, P.W. 10 having been examined to corroborate the approver's statement; indeed the learned Judge has described Sohan Singh's testimony to be a cock and bull story. The skull and hair which had been recovered are admittedly wholly unidentifiable; the doctor was not even able to say whether the injuries on the bones were ante-mortem; the skull was broken and the brain and the fleshy portions had disappeared; the teeth in sockets were not present. This skull was sent for expert examination to the Medical College at Amritsar and according to the expert it could not even be said whether the skull belonged to a male. The skull is said to have been recovered from a flowing *nala* in which water is said to be at least man high. The Court below has itself remarked that it is not possible to say that the skull belonged to Puran Singh and that it had very little evidentiary value. The learned Additional Sessions Judge appears to have been influenced by the existence of bloodstained earth which was found to be scraped in a part of the jungle which place is said to be near the well of Jaimal Singh. The recovery of the *piali* and the bottle has been considered by itself not to be very important but because the discovery was made on 27th of August, 1959, after the arrest of the approver, from a place near the well of Jaimal Singh, the Court thought that it assumed considerable significance. According to the trial Judge these recoveries showed that something unusual had

Aufar Singh and
another
v.
The State
Dua, J.

Autar Singh and
another
v.
The State

Dua, J.

happened near the well of Jaimal Singh between the 23rd and the 26th of August, 1958 though even, according to him, it was difficult to attach much value to them. The Court has then drawn an inference against the accused because they were not found in their houses and had absconded. It has based its conclusion, on proof of motive for the crime by Autar Singh and Dalip Singh ; on the deceased having been seen in the company of the accused till half an hour before sunset on 23rd of August, 1958; and on the Panchayat, of which the deceased, the approver and the accused were members, having gone from Ladna Chaku to Megha Majra and having returned from there. Principally influenced by these considerations the Court has convicted the appellants under section 302, Indian Penal Code. The Court has also held against corroborative evidence of the approver's statement being available with respect to the assemblage of the accused on 23rd of August, 1958, the actual Commission of the murder, scraping of the earth and throwing it in the well, and removal of the head and the body from the place of murder to other places. Similarly corroborative evidence of the conspiracy has also been disbelieved, with the result that charges of conspiracy and of disappearance of the body after the crime have been negatived and the accused have been acquitted of the charges under sections 201 and 120-B, Indian Penal Code.

On appeal, Mr. Gandhi has very forcibly contended that Jagir Singh is to all intents and purposes not an approver. He does not tarnish himself with the same brush as he has done the other accused and he has scrupulously avoided implicating himself in the offence of actual murder. The charge under section 201, Indian Penal Code, having been negatived by the trial Court and there

being no appeal by the State, obviously so far as causing the evidence of the offence to disappear is concerned for the purpose of the present appeal, Jagir Singh's testimony would not be of much avail. The counsel contends that it is open to this Court to consider this circumstance at least for the purposes of determining whether he could be a competent witness with respect to the offence of murder and also to what value should be attached to his testimony; merely because he has been tendered a pardon by the executive authorities would not be conclusive of the question that he is an accomplice in the offence of murder. He has next contended that there is no corroboration of Jagir Singh's testimony in material particulars. In reply the learned counsel for the State has submitted that the approver had no motive to falsely implicate the accused and the story given by him is probable and consistent with the normal course of human conduct. He has also submitted that the approver's testimony has been corroborated in material particulars.

I do not agree with Mr. Gandhi in his contention that Jagir Singh should not be considered to be an approver in the real sense of the word. According to section 337, Code of Criminal Procedure, any person supposed to have directly or indirectly been concerned in or privy to the offence mentioned in the said section, can be granted a pardon on the condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence. It is difficult to see how Jagir Singh can be considered not to fall within the terms and language of this section. But with respect to the value to be attached to his testimony and whether his evidence has been corroborated in material particulars, I am inclined to uphold the appellants' contention. It cannot be

Autar Singh and
another
v.
The State
Dua, J.

Autar Singh and
another
v.
The State

Dua, J.

disputed that an accomplice as laid down in section 133, Indian Evidence Act, is a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice. Uncorroborated evidence of an accomplice is thus admissible in law but it has long been a rule of practice, which is now virtually equivalent to a rule of law, that it is dangerous and unsafe to base a conviction on the uncorroborated testimony of an accomplice. Indeed, if a Judge chooses to act upon uncorroborated evidence of an accomplice he must give some indication that he is conscious of this rule of caution which is really dictated by experience, and he must give reasons as to why in that particular case he considers it safe to convict in the absence of corroborative evidence and in disregard of the above rule of caution. The nature and the extent of corroboration, however, must necessarily depend on the facts and circumstances of each case, including the nature of the offence involved, as it is well-nigh impossible, if not also dangerous, to lay down or formulate with precision as to what kind of evidence should or would be considered as corroboration. Certain rules are, however, clearly discernible from the decided cases. As early as 1931 in a case reported as *Dalip Singh Parja Singh v. Emperor* (1), a Division Bench relying on *R. v. Baskerville* (2), observed that the corroborative evidence given by an accomplice must be such as implicates the accused, that is which confirms in some material particulars not only the evidence that the crime has been committed but also that the accused committed it, though the nature of corroboration must necessarily vary according to the particular circumstances of the offence in question; such corroboration may not be by direct evidence but may be

(1) A.I.R. 1933 Lah. 294

(2) (1916) 2 K.B. 658

by circumstantial evidence. It is also by now very well settled that independent corroborative evidence need not come up to the standard of being sufficient by itself to sustain conviction. What is needed is the existence of some additional evidence showing that the version given by the accomplice is probably true and that it is reasonably safe to base a conviction thereon. Such independent evidence must not merely render the story to be probable and believable with respect to the commission of the offence but it must in some reasonable way either connect or tend to connect the accused with the commission of the offence ; in other words such additional evidence, whether direct or circumstantial, must come from an independent source and must confirm in material particulars the version given by the accomplice that the accused committed the crime. This rule which has since received the approval of the Supreme Court is based on experience and is in no small degree due to the tendency peculiarly prevalent in our country to include the innocent with the guilty; it has been felt not to be easy for the Courts to guard against this danger. As observed by Bose J., in *Kashmira Singh v. The State of Madhya Pradesh* (1), the only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused. Indeed the Supreme Court in *Rameshwar v. The State of Rajasthan* (2), laid down that the rules of practice were clear at least to the following extent:—

Autar Singh and
another
v.
The State
Dua, J.

- (a) It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case,

(1) A.I.R. 1952 S.C. 159

(2) A.I.R. 1952 S.C. 54

Autar Singh and
another
v.
The State

Dua, J.

apart from the testimony of the accomplice, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

- (b) The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particulars the testimony of the accomplice that the accused committed the crime.
- (c) The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another, and
- (d) 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.

The degree of suspicion attaching to the evidence of an accomplice would also, in my opinion, vary according to the extent and nature of his own complicity. This being the correct position in law we have to determine as to how far the approver's statement in the present case satisfies these criteria. As noted above he had been very cautious and careful in keeping himself almost uninvolved in the actual murder. At worst, his evidence implicates him as a passive accomplice and a person

who actively helped only in concealing the evidence of the offence of murder. It may be remembered that the trial Court has expressly held that the charge under section 201, Indian Penal Code, has not been satisfactorily proved. If that is so, then the part of the story imputed to the approver, so far as carrying and doing away with skull is concerned, has not even been believed by the Court below and nothing has been said by the counsel for the State against this finding; and once we eliminate this part of the version then the approver's testimony is only confined to the story of conspiracy; of course, as I have stated earlier, being present at the time of the offence may implicate him only as a passive accomplice. The Court below has also chosen not to convict the accused for conspiracy of which charge they must be deemed to have been acquitted. In this view of the matter it is difficult for me to see how it is possible to hold that the approver's testimony has been corroborated in material particulars. The particulars on which corroboration has been held proved even by the trial Court, can by no stretch be called material. In the light of the above discussion the word 'material' must mean material for the purpose of connecting or tending to connect the accused with the crime, and this, in my opinion, the prosecution has completely failed to establish.

The alleged motive, the visit of the Panchayat to Megha Majra and their departure for the return journey half an hour before sunset, the recoveries of the empty bottle and the cup (*piali*) do not satisfy the required test of corroboration. Absconding is undoubtedly relevant for showing the conduct of the accused after the offence and may legitimately be taken into consideration as provided by section 8, Indian Evidence Act, but, in my

Autar Singh and
another
v.
The State

Dua, J.

Autar Singh and
another
v.
The State

Dua, J.

opinion, such conduct is generally considered to be a very small item in the evidence on which a conviction can be based. Absconding may be equally consistent with innocence and guilt, depending as it does, on various factors and it can only be properly considered along with the other facts of the case. On the circumstances and the facts of the instant case, where several offences were the subject-matter of trial and where for some of the offences charged the accused have not been convicted, absconding by itself is hardly of much real value in determining the guilt of the accused in the offence of murder.

For the reasons given above, this appeal is allowed and the accused are acquitted.

Mehar Singh, J. MEHAR SINGH, J.—I agree.

B.R.T.

CIVIL WRIT

Before Bhandari, C.J. and Falshaw, J.

THE PUBLIC FOUNDRY & WORKSHOP PRIVATE
LIMITED, PHILLAUR,—*Petitioners.*

versus

THE DEPUTY COMMISSIONER, JULLUNDUR AND
ANOTHER,—*Respondents.*

Civil Writ No. 114 of 1959.

1959

Sept. 4th

Punjab Professions, Trades, Callings and Employments Taxation Act (VII of 1956)—Sections 2 and 5—"Total gross income"—Meaning of.

Held, that the expression "total gross income" as defined in Section 2 of the Punjab Professions, Trades, Callings and Employment Taxation Act, 1956 means the aggregate income derived from various professions, trades, callings