

SUPREME COURT OF INDIA

Madan Mohan Singh

Vs.

State of U.P.

Crl.A.No.102 of 1952

(B. K. Mukherjea, Vivian Bose and Ghulam Hasan, JJ.)

07.05.1954

JUDGEMENT

B. K. MUKHERJEA J. :

1. This appeal, which has come before us on special leave, is directed against a judgment of a Division Bench of the Allahabad High Court dated the 27th November 1951 by which the learned Judges reversed, on appeal, an order of acquittal made in favour of the appellant by Mr. Srivastava, Magistrate, First Class, Meerut and converting it into one of conviction under section 161 of the Indian Penal Code, sentenced him to rigorous imprisonment for a term of 18 months.

2. The appellant is an Excise Inspector under the U. P. Government and was posted at Baghatpat Circle of Meerut at the relevant time. The complainant Ghammanlal is a licensed vendor of liquor and drugs in the same area and at the material time he and his brothers had licences for ten shops, seven for the sale of liquor and three for the sale of drugs.

The prosecution story is, that on the 22nd March 1948 Ghammanlal approached the appellant with an application, praying, that the latter might recommend him to draw 50 gallons of liquor and 2 seers of Ganja from the bonded warehouse and godown, in view of the Holi festival that was approaching. The accused, it is said, recommended only 8 gallons of liquor and 4 chhataks of Ganja and while making the recommendation he asked Ghammanlal to pay the bribe which he had already promised to pay, at the rate of 5 per cent upon the total amount of contract for the shops.

It may be stated here that the excise shops had been put up to auction about a fortnight before, on the 8th of March 1948 and though Ghammanlal had offered higher bids for some of these shops, his bids were not accepted on the complaint of the accused, that he was a habitual defaulter in the matter of payments, and a big shop for which he had offered bid to the extent of Rs. 32,000/- was knocked down to another person at a much lower price.

On the 23rd March 1948 Ghammanlal went to Meerut to draw liquor from the warehouse. Here he met his friend one Balwant Singh who, being acquainted with the appellant's demand for bribe from Ghammanlal, advised him to contact the Anti-Corruption Department and make a complaint to them against the accused. Accordingly they both went to the Anti-Corruption Department at about 11 A.M. and met the Under Officer one Arshad Ali, who asked them to come later, as the Deputy Superintendent of Police had not arrived then.

Both of them went to the Collectorate and there met the accused. Ghammanlal entreated the accused to recommend him a larger quantity of liquor. The appellant replied that he would recommend more if he was paid the bribe. Ghammanlal promised to pay him money after taking liquor from the godown. Upon this the application, upon which 8 gallons of liquor were sanctioned already, was torn off and a fresh application was made and this time the accused recommended 24 gallons of liquor and demanded bribe at the rate of Rs. 1 per gallon. The complainant and Balwant Singh left the place promising to pay the money within three hours.

They went to the Anti-Corruption Department and met the Under Officer as well as the Deputy Superintendent of Police and told them all about the talk they had with the appellant. Ghammanlal said that he would be paying Rs. 50/- as bribe and gave that amount in currency notes to Arshad Ali. Ghammanlal's statement was recorded by the Deputy Superintendent of Police and they planned a trap to catch the appellant. The District Magistrate was approached and he gave a slip to one Mr. Burnye, a First Class Magistrate, to get the notes signed by the Additional District Magistrate and arrest the accused while accepting the bribe. As the Additional District Magistrate was not available, the notes were signed by the District Magistrate himself. Agreeably to these instructions Mr. Burney came to the Anti-Corruption Department and prepared a list, noting down the numbers of the currency notes.

A party was formed consisting of Burney, Ghammanlal, his friend Balwant, Arshad Ali Inspector Raghbir Dayal and other members of the staff. On reaching the house of the appellant Ghammanlal and Mr. Burney went inside the house while others remained outside, concealing their presence. Mr. Burney was in changed dress and Ghammanlal introduced him to the accused as his brother or cousin and asked the accused to enter his name in the Binauli shop.

The prosecution story is that Ghammanlal then asked the appellant to settle his accounts. The accused looked into the register of Ghammanlal and, asked him to pay Rs. 48/8 on different counts. Ghammanlal paid Rs. 48/- to the accused which the latter accepted and kept the notes on the window-sill. Ghammanlal then went outside and gave a signal to those who were waiting there and the whole party came immediately rushing into the room. Mr. Burney after disclosing his identity picked up the currency notes from the window-sill and noted down the statements of Ghammanlal as well as of the accused. The house of the appellant was searched but nothing incriminating was found. On the same day Burney submitted a report about the trap to the District Magistrate.

3. After the police investigation was complete, the accused was sent up for trial under section 161 of the Indian Penal Code and the case was tried by Mr. Srivastava a First Class Magistrate of Meerut.

The accused pleaded not guilty to the charge and denied having ever demanded or accepted any bribe. His defence in substance was, that Ghammanlal was on inimical terms with him. Because of the complaint which the accused had made against him to the Excise Officer and Assistant Excise Commissioner he was not allowed to offer bids for the big shops at the auction sale which took place on the 8th March 1948. As a matter of fact even the higher bid of Ghammanlal was not accepted and the shop for which he made the bid was knocked down to another person at a much lower price. Naturally Ghammanlal harboured a bitter resentment against the accused whom he considered to be responsible for the loss of his business and it was to satisfy his grudge and get him implicated in this bribery case that the complainant in conjunction with Balwant Singh, who was an ex-convict and a close friend of his, lodged a false complaint with the Anti-Corruption Department and persuaded the latter to believe that the accused had really demanded bribes from him.

The accused said that he knew Mr. Burney, who was Magistrate in charge of the Nazarat and the Arms Act Department, perfectly well and could not possibly mistake him for a brother or cousin of Ghammanlal.

On the 23rd March Ghammanlal did come to his house along with Mr. Burney. The accused saluted Mr. Burney and requested him to take tea and other things. After some time Ghammanlal took out some money from his pocket and placed it on the window-sill. Immediately afterwards he ran out coughing and some people of the anti-Corruption Department, who were waiting outside, rushed into the room. Mr. Burney prepared a list and compelled the accused to sign it. In his statement the accused plainly stated that Ghammanlal took out money from his pocket and kept it in the window-sill and he did not know how much money it was.

The defence case further was that as a matter of fact under a circular issued by the Excise Department the accused was collecting subscriptions, from all licensed liquor shops within his jurisdiction as contributions towards the refugee fund. The subscription were fixed at Rs. 10/- per shop and Ghammanlal, having been in possession of seven shops, his subscription was fixed at Rs. 70. He had paid Rs. 22 already on the 3rd of February 1948 and Rs. 48 was still due to him. As the sum of Rs. 48 was still owing by Ghammanlal, he placed only that amount of money before the accused thinking that the accused would accept the same, taking it to be payment of the balance of the subscription that was still due by the complainant.

4. Six witnesses were examined on behalf of the prosecution and eleven on the side of the accused. The trial magistrate, on a consideration of the entire evidence, came to the conclusion that the prosecution failed to prove the guilt of the accused and on this finding acquitted him.

Against this order of acquittal, the State of U. P. preferred an appeal to the High Court under section 417 of the Criminal Procedure Code. The appeal was heard by a Bench consisting of Shankar Saran and Desai, JJ. The learned Judges allowed the appeal. The order of acquittal was set aside and the accused was convicted under section 161 of the Indian Penal Code and sentence him to undergo, rigorous imprisonment for 18 months. The High Court refused to give a certificate to the accused under Article 134(c) of the Constitution, but this court granted him special leave and that is how the matter has come before us.

5. Two points have been taken before us by Mr. Gopal Singh who appeared in support of the appeal. The first contention is, that there was no proper or valid sanction obtained for prosecution of the accused in the present case, as is required under section 6 of the Prevention of Corruption Act and consequently the initiation of the proceeding was illegal and without jurisdiction.

The other contention raised is, that the High Court's approach to the case has not been proper. It is said, that the learned judges ignored altogether the principles which ought to guide the appellate court in setting aside an order of acquittal in a criminal case and that their conclusions are based upon a misreading of the evidence and a failure to consider the material facts upon which the trial court based its decision.

6. As regards the first ground it is not disputed on behalf of the State, that sanction was necessary for starting the prosecution against the appellant, and other section 6(1)(c) of the Prevention of Corruption Act the sanction had to be of the authority that was competent to remove the accused from his office. The authority in the present case was the Excise Commissioner and the prosecution relied upon the copy of a letter (Ex. P. 10) which conveyed to the Collector of Meerut the sanction

of the Excise Commissioner U.P. to prosecute the accused. The letter runs as follows :

"EXHIBIT P-10.

From

The Excise Commissioner, U. P.

To,

The Collector, Meerut.

No./IV-302, D/- Allahabad, Nov. 1948

Sir,

With reference to your wireless message dated 4th September, 1948, relating to prosecution of Sardar Mohan Singh Ahluwalia, Excise Inspector, Circle V. Baghpat, District Meerut on the alleged charge of accepting illegal gratification. I have the honour to sanction the prosecution of the above Excise Inspector as requested. He is being placed under suspension pending his prosecution vide this office letter No. 14312-17/IV-302, dated 25th November 1948.

Yours faithfully,

(Sd.) R. D. Dikshit,

Personal Assistant,

For Excise Commissioner, U. P."

7. It is contended by the learned counsel for the appellant that the sanction is not a valid or sufficient sanction in law, firstly because it is not signed by the Excise Commissioner but purports to have been signed by his Personal Assistant.

The other point taken is, that not only there is nothing in the letter, which purports to be a reply to a wireless message received from the Collector of Meerut, to show that the sanction was given in respect of the facts consisting the offence, but the prosecution did not prove, by any extraneous evidence, that the material facts were placed before the sanctioning authority.

The first ground does not impress us much. Mr. R. Dikshit, the Personal Assistant to the Excise Commissioner, has been examined as a witness for the prosecution and he proves another document 'to wit' Ex. P. 11 which purports to be draft of the letter of which Ex. P-10 is a copy. This draft, according to the witness, constitutes the original order of Excise Commissioner and contains his signature. The witness says : "On the paper marked Ex. P-11 there is the signature of the Excise Commissioner below the word 'approved'. We are not sure that, this is quite the proper way of according sanction; for the 'approval' might be merely of the correctness of the draft. But at the same time we do not want to be too technical and we would hold therefore that the sanction was in fact given by the Excise Commissioner.

8. The other point raised by the learned counsel for the appellant seems to us however to be of

considerable substance. As the Privy Council pointed out in the case of - 'Gokul Chand Dwarkadas v. The King', AIR 1948 PC 82 at p. 84 (A), the burden of proving that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts might appear on the face of the sanction or might be proved by extraneous evidence. In the present case the facts constituting the offence do not appear on the face of the letter Ex. P. 10. It was consequently incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. This they did not attempt to do.

A question was put to Mr. Dikshit (P. W. 6) who gave evidence on this point as to whether the material facts were brought to the notice of the Excise Commissioner. The reply given by the witness is as follows :

"A detail of this case has been sent to the Excise Commissioner. The said details are in the confidential file at my place. I do not want to show these details."

We think that the appellant is right in his contention that the prosecution instead of proving what facts were placed before the Commissioner deliberately withheld them from the Court. The sanction must therefore be held to be defective and an invalid sanction could not confer jurisdiction upon the court to try the case. The appeal is entitled to succeed on this point alone; but we consider it proper to record our decision on the second point also as in our opinion the view taken by the High Court, on the merits of the case, appears to be plainly unsupportable.

9. It cannot be disputed that the High Court in hearing an appeal against an order of acquittal has full powers to review and reassess the evidence on the record and reach its own conclusions upon its estimate of the evidence. But, as was laid down by the Privy Council in - 'Sheo Swarup v. Emperor', AIR 1934 PC 227 (2) (B) and reiterated by this court in a recent pronouncement (Vide - 'Narayan Ittiravi v. State of Trav. - Co.', AIR 1953 SC 478 (C)), in exercising these powers the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial court as to the credibility of witnesses', (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of the appellate court in disturbing the finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

On hearing the learned counsel on both sides and on a careful perusal of the records we are constrained to hold that the learned Judges of the High Court did not keep these rules and principles of administration of criminal justice clearly before them and that their judgment is vitiated by non-advertence to an misappreciation of various material facts transpiring in evidence and the consequent failure to give due weight and consideration to the findings upon which the trial court based its decision.

10. The essence of an offence under section 161 of the Indian Penal Code is the obtaining or acceptance, by a public servant, of a gratification other than legal remuneration, as a motive or reward for doing or forbearing to do an official act or for showing or forbearing to show any favour or disfavour to any person or for rendering any service or disservice to him. The first question that requires consideration is, with what motive or as reward for what act, was the sum of Rs. 48/- paid as illegal gratification by the complainant and accepted by the accused.

The complainant's story, as told before the Magistrate, is that the accused demanded from him, as bribe, 5 per cent, of the amount for which he got contracts relating to the Excise shops and that he did promise to pay this amount. In his examination-in-chief he stated that the accused made demands of this money from time to time and he was constrained to give a promise that he would pay it after the Holi festival.

As he been said already, according to the prosecution, Ghammanlal made an application to the accused for 50 gallons of liquor and 2 seers of Ganja on the 22nd of March 1948 in view of the approaching Holi festival, but the accused sanctioned only 8 gallons of liquor and 4 chhataks of Ganja. No bribe was demanded according to the complainant by the accused when he made this recommendation. It transpires in evidence that on the very next day, that is to say, on the 23rd of March 1948 Ghammanlal accompanied by his friend Balwant Singh went to the Anti-Corruption Department to lodge a complaint against the accused. This was about 11 a.m. in the morning and one Arshad Ali, an employee of the Department, told him to come later as the Deputy Superintendent of Police had not then arrived. They then went to the Collectorate where they met the accused. The complainant entreated the accused to recommend a larger quantity of liquor. To this the accused agreed and on a fresh petition being made by Ghammanlal, the accused increased the supply of liquor from 8 gallons to 24 gallons.

According to the complainant, the accused demanded bribes from him for the recommendation that he was making the amount of bribe being calculated at a certain rate for each gallon of liquor. The earlier petition, upon which 8 gallons were sanctioned, is said to have been torn off and the accused kept the torn pieces in his pocket. On that very day in the afternoon the complainant and Balwant came again to the Anti-Corruption Department and the plan was there settled to lay a trap to catch the accused. Thus, according to the prosecution, the accused demanded bribes from the complainant first for doing service to him in the matter of securing licences for his shops and secondly for the favour he showed to him by recommending supplies of liquor and other drugs from the warehouse.

11. The trial Magistrate held - and it seems to us on perfectly goods grounds - that on none of these two points the complainant's story can be accepted as true. According to the Magistrate, having regard to the actual facts of this case, there could be no occasion at all either for demand of bribes by the accused or for promise payment of the same by the complainant.

12. As regards payment of 5 per cent of the contract money by the complainant, we think that the point was not pressed by the complainant with any amount of seriousness. It is to be noted that the bribe which, according to the prosecution, the complainant actually paid to the accused was not on account of the licences at all. The trial court held definitely that the accused could not possibly have demanded a bribe for anything done by him in regard to the Excise licences; because far from rendering any service to the complainant in this connection he did positive disservice to him.

Mr. Saksena, the Assistant Commissioner of Excise, who was examined as a defence witness, stated in his deposition that he was present at Meerut when the auction of the Excise shops took place. The accused complained to him against four Thikadars including the complainant and his brothers, saying that they were, habitual defaulters and undersirable persons. The witnesses got this fact verified by the Naib Tahsildar and in spite of Ghammanlal's objections, he was not allowed to bid for any big shop. In view of this fact it is quite inconceivable that the accused could demand bribes from Ghammanlal or that the latter could promise him any amount for doing any benefit to him in respect to these contracts.

13. As regards demand of illegal gratification as a reward for recommending supplies of liquor and other drugs from the warehouse, the Magistrate point out that according to a Government circular (Ex. D-17) which is proved by Abdul Jabbar (D. W. 4) restrictions were imposed on the issue of excisable articles for the month of March 1948, by fixing a quota in accordance with the average monthly consumption for the last eleven months.

Consequently Ghammanlal was free to draw liquor up to that quota and it required no recommendation from the accused. This is why the trial Magistrate said that there appears to be no necessity for the offering of any bribe by the complainant.

The High Court brushes aside these discussions and findings of the trial Magistrate in a summary manner. The High Court says :

"The learned Magistrate has again gone wrong in holding that there was no occasion for Ghammanlal's paying a bribe to the respondent. He relied upon the circular letter fixing quota for each licence. Whether Ghammanlal could draw from the Warehouse liquor within the quotas without any recommendation from the respondent or not, the fact remains that the recommendation was made by the respondent."

Again as regards payment of 5 per cent of the contract money, the High Court observes :

"We do not see any substance in another argument of the learned Magistrate that the respondent could not demand any bribe from Ghammanlal whom he had wronged a fortnight previously by getting his bids for larger shops rejected When the respondent had no right to demand any bribe, there did not arise any question of his having wronged Ghammanlal previously."

It is difficult to appreciate the logic behind these observations of the learned Judges. No doubt a public officer has no right to demand any bribe; but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and a material fact for consideration.

14. Assuming however that there is nothing 'per se' improbable in the appellants' demanding bribes from Ghammanlal for the recommendations he made regarding the supply of liquor, whether the story which the complainant told in this respect is true or false can be determined only on a proper examination of the evidence, that the prosecution has adduced on the point.

The trying Magistrate pointed out in his judgment that in the first statement (Ex. P-3) made by Ghammanlal to Mr. Burney just after the accused was arrested, he stated that the accused demanded from him 8 annas per gallon of liquor recommended on the 23rd of March 1948. There was Rs. 24 owing to the accused on account of 48 gallons of liquor previously recommended and Rs. 7/8 for 12 chhataks of Ganja. These would make a total of Rs. 47/8. Nothing was said about any payment being demanded or promised on account of excise licences.

In this statement made on the 13th April 1948 before the police under Section 162. Cr. P. C. (Exs. D-5 and D-6) Ghammanlal stated as follows :

"The Excise Inspector prohibited him from bidding for the liquor shop at Baraut. Although bid for the same was offered up to Rs. 32,000 he caused the auction of the shop to be concluded for Rs. 26,500 in the name of another person. For this reason the Inspector was displeased with me and he was not recommending me liquor. In place of '-/8/- annas' he recommended 24 gallons at the rate of

Rs. 2 per gallon as bribe."

In his deposition before the trying Magistrate he said that the bribe was demanded at Rs. 1 per gallon or in other words the demand was for Rs. 24 for 24 gallons of liquor.

In addition to these, it is said, that Rs. 10 was demanded for opium, Rs. 7/8 on account of Ganja and another Rs. 7 on account of previous dues. Apart from the fact that the item of Rs. 10 for opium and that of Rs. 7 for previous dues were not mentioned before, the three statements made by the complainant on three occasions are in flat contradiction to each other. The High Court makes a sweeping remark on this point by saying that whatever discrepancies there might be in this respect, they have no bearing on the question in issue.

This, we desire to point out, is an entirely wrong approach. These are certainly material and relevant facts for the purpose of arriving at a conclusion as to whether the complainant was at all a truthful man and reliance could and placed upon his evidence.

The Magistrate, who had the complainant before him, came to the definite conclusion that he was speaking untruth from the beginning to end and from the materials on the record we are unable to say that this estimate of the trial court was in any way improper.

15. The next material thing for consideration is whether the accused knew Mr. Burney from before and knew him well and if so whether it is all probable that he would accept any bribe in his presence.

On this point the trying Magistrate recorded his finding as follows :

"The accused has proved it beyond doubt that he knew Shri Burney full well much before the occurrence and there was no reason for him to have mistook Shri Burney as Ghammanlal's cousin or nephew so long as Shri Burney had not changed his face. I need not go into the details. Shri Burney has himself admitted that he was in charge of Nazarat and the money of the Nazarat used to be disbursed in his presence and on his signature and when he was shown the Nazarat Registers for the year 1947-48 he found entries Ex. D-3 and Ex. D-4 on which many of the vouchers contained the signatures of the accused, the money being given to him as Excise rewards. The accused received money on so many occasions in the presence of Shri Burney and must have been recognising him well. Shri Burney was also Arms Officer and used to endorse licences for guns and pistols after seeing the arms and comparing the numbers and the accused must have appeared before him to take the licence of his pistol and his father's gun which are Exs. D-1 and D-2 and bear signatures of Shri Burney. Lastly the court room of Shri Burney was also very near to that of the Excise Magistrate and the accused had often been attending that court in his Excise cases and thus had occasions to see Shri Burney; also Shri Burney has stated that he had only changed his clothes and his face was not at all changed."

It is somewhat astonishing that the High Court did feel surprised at this finding which the Magistrate, arrived at, on a careful consideration of the evidence adduced before him.

This is what the learned Judges of the High Court say :

"There is no substance in the defence of the respondent that he knew Shri Burney well and we are surprised that the learned Magistrate thought that this was proved beyond doubt. Shri Burney might have signed the respondent's arm license and might have been present when the respondent was

given excise rewards. His court room might be separated from the court room of the Excise Magistrate by one court room. Still it does not follow necessarily that the respondent not only knew Shri Burney but knew him so well that he could recognise him even if he was disguised. He had changed his clothes and when Ghammanlal introduced him as his cousin, even though his face might have appeared to the respondent to be similar to that of Shri Burney, he might not have suspected that he was really Shri Burney in that guise."

Comment upon these observations seems to us to be useless.

In our opinion the finding of the Magistrate was quite reasonable and was supported by facts about which there was little no dispute. There was no justification for the High Court's interfering with this finding of fact arrived at by the trying Magistrate on such reasons as are set out above. Once it is established that Shri Burney was known to the accused from before, there can be no doubt that it would strike at the very foundation of the prosecution case.

16. The only other material point we need discuss is that which arises on the evidence adduced by the accused that a sum of Rs. 48 was actually owing to the accused by the complainant as the balance of his subscription to the refugee fund which the accused was collecting under instructions from the head of his department.

We may point out here that it was not the defence case that the accused knew that the sum of Rs. 48 which the complainant took out from his pocket and placed before him was being paid as the balance of the subscription alleged to be due by the complainant or that the accused accepted the money as such. The suggestion of the defence was - and this suggestion was accepted by the Magistrate - that Ghammanlal did promise to pay Rs. 70 in respect to the seven licensed shops held by him and his brothers, as his contribution to the refugee fund. He had paid Rs. 22 already on the third of February 1948 and Rs. 48 was still due by him. The reason why he took out Rs. 48 from his pocket when he met the accused in his place on 23rd March 1948 and not Rs. 50 although currency notes of the value of Rs. 50 had in fact been marked for payment by the District Magistrate, was that if Rs. 48 was paid to the accused the latter would accept the money under the impression that it was only the balance of the subscription that Ghammanlal was paying and consequently would not excite his suspicion at all.

The High Court seems to think that the entire plea of the accused was that he received the money as the balance of the subscription owing to him by the complainant. The learned judges disbelieved the story of the accused that Ghammanlal at all promised to pay Rs. 70 or had actually paid Rs. 22 out of the same on the 3rd February 1948. In arriving at this finding the High Court, in our opinion, had not adverted to or considered the material facts upon which the trying Magistrate based his conclusion. They even overlooked the admissions which the prosecution made during the hearing of the case. The High Court says that the accused might be collecting subscriptions but from that it does not follow that Ghammanlal agreed to pay Rs. 70/-.

It may be pointed out that the accused got three receipt books, namely, D-37, D-38 and D-39 from the Excise office and the payment of Rs. 22 by Ghammanlal was evidenced by five counterfoil receipts, four for Rs. 5 each, bearing numbers 4501-4504 of Ex. D-38 and one for Rs. 2 which was numbered 575 of Ex. D-39. Ghammanlal admitted that he paid Rs. 20 and not Rs. 22 and that the payment was made at Lohara Sarai. Ghammanlal did not produce the four receipts which he admitted were given to him. The Magistrate states in his judgment that the genuineness of the receipts was not at all challenged by the prosecution, but still the High Court says that the receipt for

Rs. 2 was a forged one and even though Ghammanlal might have made a false statement in saying that he paid the money at Lohara Sarai, the defence story could not be accepted as correct.

In our opinion the High Court's approach to the case has been wrong from the start. It did not apply the principles stated above which it was incumbent upon it to keep in mind when dealing with a judgment of acquittal. The reasons given by it to overrule the estimate of evidence made by the trial court which heard and recorded it are in our opinion altogether inadequate and flimsy. The result is that in our opinion this appeal should succeed. The judgment of the High Court is set aside and that of the trying Magistrate restored. We direct that the accused be acquitted.

Appeal allowed.

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