Bimbadhar Pradhan

Vs

The State of Orissa

Criminal Appeal No. 49 of 1954

(N. Chandrashekar Aiyar, B. P. Sinha, Syed Jafar Imam JJ)

13.03.1956

JUDGMENT

SINHA J. -

The main question canvassed in this appeal by special leave is whether the ruling of this Court in the case of Topan Das v. The State of Bombay [[1955] 2 S. C. R. 881.] governs this case also, in view of the fact that the appellant is the only person out of the accused persons placed on trial, who has been convicted for the offence of conspiracy under section 120-B, Indian Penal Code. The point arises in the following way :

> The appellant and four others were placed on their trial before the Assistant Sessions Judge of Sambalpur for offences under sections 120-B, 409, 477-A and 109, Indian Penal Code with having committed the offences of criminal conspiracy, criminal breach of trust in respect of Government property, and falsification of accounts with view to defraud the Government. The appellant was the District Food Production Officer in Sambalpur and the other four accused persons were agricultural sub-overseers in charge of their respective areas under the appellant. Another such agricultural sub-overseer was Pitabas Sahu at Bargarh centre. He was examined at the trial as P. W. 25 and shall hereinafter be referred to as the approver. The prosecution case is that in furtherance of the Grow More Food Scheme initiated by Government it was decided to subsidize the supply of oil cake to agriculturists with a view to augmenting the production of food crops. Cultivators were to be supplied this variety of manure at Rs. 4-4-0 per maund, though the Government had to spend Rs. 7-12-0 per maund. The appellant entered into a conspiracy with his subordinate staff including the agricultural sub-overseers aforesaid to misappropriate the funds thus placed at their disposal for the procurement and supply of oil cake to cultivators. To bolster up the quantity of oil cakes to be procured, they showed false transactions of purchase and distribution thereof and falsified accounts, vouchers, etc. Thus they were alleged to have misappropriated the sum of Rs. 4,943-4-0 of Government money.

A large volume of oral and documentary evidence was adduced on behalf of the prosecution. The three assessors who assisted at the trial were of the opinion that none of the accused was guilty. The learned Assistant Sessions Judge in agreement with the assessors acquitted the four agricultural sub-overseers aforesaid of all charges, giving them the benefit of the doubt. But in disagreement with

the assessors he convicted the appellant under all the charges and sentenced him to rigorous imprisonment for four and a half years and a fine of Rs. 2,000 under section 409, Indian Penal Code, and to rigorous imprisonment for two years each under sections 120-B and 477-A of the Code, the sentences of imprisonment to run concurrently. The learned trial Judge observed in the course of his judgment as follows :-

> "Hence on a consideration of all the evidence as discussed above, I find that the prosecution have fully proved their case that the accused Bimbadhar Pradhan, the D. F. P. O. has conspired to embezzle the Government money. They have also proved that he has got an active hand and in assistance of Pitabas Sahu has embezzled Government money amounting to Rs. 4,943-4-0 and in that act he has also actively helped Pitabas Sahu in falsifying the Government records by making false entries. Hence all these three charges have been conclusively proved against him. So far as regards the other accused persons, I have already stated that they are considerably inexperienced and the doubtful nature of evidence against these accused persons and considering the position between the first accused and the other accused persons, I give these four accused persons the benefit of doubt though I do not approve their conduct in this affair.
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> As per my findings given above, I may state here that this is a case in which we find a person incharge of the entire administration of agricultural and G. M. F. development of a district has not only soiled his own hands by embezzling Government money by corrupt means but has also introduced corruption into the entire administration of that department by spoiling the career of young men who are entrusted with this work and employed under him".

The appellant went up in appeal to the High Court of Orissa. A Division Bench of that Court allowed his appeal and set aside his convictions and sentences under sections 409 and 477-A, Indian Penal Code, but upheld his conviction and sentence in respect of the charge of conspiracy under section 120-B of the Code. We need not enter into the correctness of the findings of the trial court in respect of the acquittal of the other four accused, or of the High Court with regard to the acquittal of the appellant in respect of the charges under sections 409 and 477-A, Indian Penal Code. The High Court held that though the appellant had withdrawn the sum of Rs. 27,000 from the Government treasury with a view to subsidizing the procurement of oil cake, it had not been proved that there was an entrustment to the appellant. Hence the charge against him under section 409 failed. As regards the charge under section 477-A, the High Court acquitted him on the ground that the documents said to have been falsified, which were large in number, had not been mentioned in the charge and a vague statement that "accounts, cash books, stock books, petty cash sale register, cash memos, applications from cultivators, receipts, bills, vouchers, papers, documents, letters, correspondence, etc. had been falsified" was made.

As regards the charge of conspiracy under section 120-B, the High Court observed that the most important witness to prove the charge was the approver aforesaid (P. W. 25) who had given a full description of the conspiracy on the 23rd or 25th September 1947 between the appellant and other sub-overseers including himself for the purpose of showing bogus purchases and bogus distribution of large quantities of oil cake. It also observed that "Most of the witnesses examined by the prosecution to corroborate the evidence of Pitabas are themselves accomplices in the conspiracy". The High court found that in respect of that conspiracy the evidence given by the approver got adequate corroboration from other independent witnesses. After setting out the evidence the High

Court recorded the following finding :-

> "This would be strongest corroboration of the evidence of the approver about the appellant being the prime mover and the brain behind the entire fraud. It was he who wanted to misuse his official position and persuade his subordinates to join with him in showing false procurement and distribution figures of oilcakes".

And finally the High Court came to the following conclusion :-

> "I am therefore of the opinion that the approver's version about the leading part in the conspiracy played by the appellant in persuading all his subordinates to join with him for the purpose of committing criminal breach of trust of the sums withdrawn from the treasury by showing false procurement and distribution of oilcake is true. There is independent corroboration of his evidence which is inconsistent with the appellant being a mere negligent superior officer who was deceived and defrauded by his dishonest subordinates. It was then urged that in the charge under section 120-B of the Indian Penal Code, the date of the commission of the offence was stated to be the month of October 1947, whereas according to the evidence of P. W. 5, the conspiracy took place at Bargarh between the 23rd and 25th September 1947. This discrepancy in the date is immaterial and has not prejudiced the appellant in any way".

From the concurrent orders of conviction and sentence of the appellant under Section 120-B, Indian Penal code, he was granted special leave to appeal to this Court. The learned counsel for the appellant has raised the following points in support of the appeal :-

> 1. That all the persons charged with the offence of conspiracy except the appellant having been acquitted, his conviction and sentence in respect of that charge could not in law be maintained;
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> 2. That the appellant himself having been acquitted of the substantive charges under sections 409 and 477-A of the Code, he could not be convicted for conspiracy to commit those very offences;
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> 3. That the evidence of the prosecution witnesses having been disbelieved as against the other accused, the same evidence should not have been relied upon for convicting the appellant of the charge of conspiracy;
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> 4. That the provisions of section 342, Code of Criminal Procedure, had not been fully complied with in so far as important circumstances in the prosecution evidence had not been put to the appellant in his examination by the court under that section.

In our opinion, there is no substance in any one of these contentions and we proceed to give our reasons for our conclusions.

In support of the first contention raised on behalf of the appellant strong reliance was placed on the recent decision of this Court in Topan Das v. State of Bombay [[1955] 2 S. C. R. 881.] and the rulings relied upon in that case. The cases, The Queen v. Manning [[1883] 12 Q. B. D. 241.], The Queen v. Thompson [[1851] 16 Q. B. 832 : 117 E. R. 1100.] and the King v. Plummer [[1902] 2 K. B. 339.] were cited in support of the contention that where all the accused persons except one are acquitted on a charge of conspiracy, the conviction of one only on that charge cannot be sustained.

In this connection the recent decision of the Judicial Committee of the Privy Council in the case of Kannangara Aratchige Dharmasena v. The King [[1951] A. C. 1.] may also be referred to, though it was not cited at the Bar. In that case the Judicial Committee held that where only two persons are involved in a charge of conspiracy, if a new trial has to be directed in respect of one it should be ordered in respect of both, because the only possible conclusion in such a case was either that both were guilty or that neither was guilty of the offence. The recent decision of this Court so strongly relied upon by the appellant lays down a similar rule, but is clearly distinguishable from the case in hand inasmuch as in that case the only persons alleged to have been guilty of the offence of conspiracy were the persons placed on trial. There was no allegation nor any evidence forthcoming that any other persons were, though not placed on trial, concerned with the crime. In those circumstances this Court laid it down that it was essential to bring the charge of conspiracy home to the accused person or persons to prove that there was an agreement to commit an offence between two or more persons. On the findings in that case only one person, after the acquittal of the rest of the accused was concerned with the crime and stood convicted of the charge of conspiracy. As a person cannot be convicted of conspiring with himself to commit an offence, this Court gave effect to the contention that on the findings and on the evidence, as also on the charge in that case the conviction could not be sustained. But in the instant case, as already indicated, on the findings of the courts below, apart from the persons placed on trial, there was the approver who implicated himself equally with the other accused persons and a number of other prosecution witnesses as having been privy to the conspiracy. The evidence of the approver has been found by the courts below to have been materially corroborated both as to the unlawful agreement and as to the persons concerned with the conspiracy. In the first information report lodged on the 28th June 1948 the approver Pitabas Sahu, one of the agricultural sub-overseers, was named along with the other five accused as the persons concerned with the conspiracy. Subsequently Pitabas Sahu aforesaid was granted pardon on condition of his making a full and true statement of the facts of the case and was examined as an approver, on whose evidence mainly rested the case against the accused. His evidence, as indicated above, was supported by the dealers in oil-cake who supplied the commodity which was the subject matter of the conspiracy. It cannot therefore be said that this case is on all fours with the recent decision of this Court referred to above.

But it was argued on behalf of the appellant that he was charged only with a conspiracy with the other accused persons and not with any conspiracy with the approver along with those others. The charge under section 120-B is in these terms :

> "First, that you, on or about the month of October, 1947 in the district of Sambalpur agreed with Hemchandra Acharya and other accused persons to do or caused to be done an illegal act by illegal means and that you did some acts in pursuance of the said agreement to wit, the offence of criminal breach of trust under s. 409, I. P. C. and falsification of accounts under s. 477-A punishable with R. I. for more than two years and thereby committed an offence punishable under s. 120-B, I. P. C., and within the cognizance of court of Sessions".

It will thus appear from the words of the charge that the approver was not specifically named as having been one of the conspirators, unless he could be brought within the category of "other accused persons". Something will have to be said as to what those words denote, whether the approver was also included within that description. Counsel for the appellant contended that they did not. Counsel for the State Government contended to the contrary. In England an indictment consists of three parts : (1) the commencement, (2) the statement of the offence, and (3) the particulars of the offence. The English law of indictment from very early times has been based on

very technical rules. Those rules have now been codified by the Indictments Act, 1915 (5 & 6 George 5, Chapter 90). In Rule 2 (Schedule I) of the Act as amended by the Administration of Justice (Miscellaneous Provisions) Act of 1933, the form of "the commencement of the indictment" has been prescribed. The form of "Statement of the offence" has been prescribed by Rule 4 of the Act and below that has to follow "Particulars of offence" as required by Rule 5. Those rules more or less correspond to the rules laid down in Chapter XIX of the Code of Criminal Procedure. Section 221, Code of Criminal Procedure, requires that the charge shall state the offence with which the accused is charged, giving the specific name of the offence, if such a name has been given by the law which creates the offence, which in this case means the offence of criminal conspiracy, defined by section 120-A, Indian Penal Code. The naming of the section is, under sub-section (5) of section 221, Code of Criminal Procedure, equivalent to a statement that every legal condition required by law to constitute the offence of criminal conspiracy charged against the appellant was fulfilled. Section 222 of the Code requires that the particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, the offence was committed, shall be stated. It is noteworthy that that section which requires the particulars of the offence to be stated does not in terms further require that in an offence like conspiracy the names of the co-conspirators should also be mentioned. Hence in England it is enough if the indictment states that the accused along with other persons unknown had committed the offence of criminal conspiracy. Though the statute law in India does not make it obligatory that the persons concerned in the crime of criminal conspiracy should be specifically named along with the person or persons charged in a particular trial, it is always advisable to give those particulars also in order to give a reasonable notice to the accused that he has been charged with having conspired with so and so (persons named), as also persons unnamed, to commit a certain offence. In this case the charge against the five accused persons wish reference to section 20-B, Indian Penal Code, named only those five persons as the conspirators and omitted to name the approver also as having been privy to the conspiracy. This is clearly brought out with reference to the charge framed against the other four accused (who have been acquitted by the trial court as aforesaid). It states :-

> "That you, on or about the month of October 1947 in the district of Sambalpur, agreed with Bimbadhar Pradhan to do or caused to be done an illegal act by illegal means.........".

We find with reference to the records of the trial court that the trial has not been characterised by thoroughness or circumspection. The date of the offence as given in the charge is different from the date as disclosed in the evidence, as pointed out by the High Court, which found that that mistake had not caused any prejudice to the accused. Similarly, the charge under section 477-A had not, as held by the High Court, been framed with sufficient particularity as a result of which the appellant had to be acquitted of that charge on appeal. If the charge under section 120-B had added the words "and other persons, known or unknown", there would have been no ground for a grievance on the part of the appellant.

But even so, in our opinion, the provisions of section 225, Code of Criminal Procedure, are clearly applicable to the facts and circumstances of the present case. It has not been shown to us how the omission to mention the name of the approver in the charge under section 120-B, Indian Penal Code, has misled the appellant or has occasioned a failure of justice. The prosecution case throughout has been, as is clear with reference to the petition of complaint, that the appellant with his subordinates in the Food Department had conspired to misappropriate the funds allocated to the procurement of oil-cake with a view to helping agriculturists with manure to raise more food crops. The approver has been very much in the picture all the time and, as a matter of fact, as found by the

courts below, his evidence is the main plank in the prosecution case. Of course, there is the other corroborative evidence, as pointed out in the judgments of the courts below. The provisions of section 537 are equally attracted to this case. With reference to the provisions of that section it is pertinent to note that though the other accused had been acquitted by the trial court and though he was the only appellant in the High Court, he did not raise the points with reference to the alleged illegality or irregularity in the charge, before that court. Hence applying the Explanation to that section to this case, it cannot be urged that the omission in the charge has occasioned a failure of justice.

But the learned counsel for the appellant has invited our pointed attention to the observations of Mr. Justice Mathew at p. 243 of Queen v. Manning [[1883] 12 Q. B. D. 241.] that it is "an imperative rule of law" that "in a charge for conspiracy in a case like this where there are two defendants, the issue raised is whether or not both the men are guilty, and if the jury are not satisfied as to the guilt of either, then both must be acquitted". But Lord Coleridge, C. J., whose direction to the jury in that case was the subject matter of the judgment does not put it as high as Mr. Justice Mathew, but understood it "to be the established rule of practice".

Reliance was placed by the learned counsel for the appellant on the case of The King v. Plummer [[1902] 2 K. B. 339.], in which it has been observed that with the acquittal of the only alleged conspirators no verdict of guilty against the appellant could be passed because the verdict would be regarded as repugnant, in so far as it would amount to saying that there was a criminal agreement between the appellant and the others and none between them and him. Hence it was contended that in a situation such as the present case presents, the conviction of the appellant would amount to a similar repugnancy. This aspect of the matter has been well discussed in a judgment of the Calcutta High Court delivered by Mr. Justice Mukerji in the case of I. G. Singleton v. The King-Emperor [[1924] 29 C. W. N. 260.]. The learned Judge has there pointed out the difference between the position as it obtains in India and that in England. The rule of English law as to the acquittal of an alleged conspirator following from the acquittal of the other when the conspiracy was said to be only between the two and in a joint trial of both is based upon a rule of practice and procedure, namely, that repugnancy or contradiction on the face of the record is a ground for annulling a conviction. But such a repugnancy is not by itself a sufficient ground for quashing a conviction in India where the matterr is governed by statutory law both as to the offence and the procedure for bringing the offender to justice. In India there is no provision in the statutory law justifying an interference with a conviction on the ground of repugnancy in the record. That is not to say that the court is to shut its eyes to the inconsistency in convicting one person of the offence of conspiracy on the same evidence on which the other alleged conspirator had been acquitted. If the matter is as simple as that, ordinarily the courts will have no difficulty in setting aside the conviction, when there was absolutely nothing on the record to distinguish the case against the one from that against the other. Such was the case which was decided by this Court in Topan Das v. State of Bombay [[1955] 2 S. C. R. 881.].

Learned counsel for the appellant pressed upon us the consideration that notwithstanding the state of affairs as disclosed in the evidence, the appellant was entitled to an acquittal because in the charge as framed against him there was no reference to the approver. He contended that the rule upon which the accused was entitled to an acquittal was not a matter of practice but of principle. In the instant case we are not sure that the acquittal of the co-accused by the trial court was well founded in law or justified by the evidence in the case. The trial court has not disbelieved the evidence led on behalf of the prosecution. It has only given the benefit of the doubt to the accused whom it acquitted on grounds which may not bear scrutiny. But as the case against those acquitted persons is not

before us, we need not go any further into the matter.

It has further been contended by the learned counsel for the appellant that the High Court having acquitted him in respect of the two substantive charges of criminal breach of trust and of falsification of documents he should not have been convicted of the offence of criminal conspiracy because the conspiracy was alleged to have been for those very purposes. It is a sufficient answer to this contention to say that the offence of criminal conspiracy consists in the very agreement between two or more persons to commit a criminal offence irrespective of the further consideration whether or not those offences have actually been committed. The very fact of the conspiracy constitutes the offence and it is immaterial whether anything has been done in pursuance of the unlawful agreement. But in this case the finding is not that Government money had not been misappropriated or that the accounts had not been falsified. The charge under section 477-A relating to the falsification of the documents has failed because the High Court found that that particular charge was wanting in sufficient particulars, thus causing prejudice to the accused. The charge under section 409, Indian Penal Code, was set aside by the High Court on the ground that there was "practically no evidence of entrustment with the appellant of the price of 1500 maunds of oil-cakes, a substantial portion of which he was said to have misappropriated". How far this observation of the High Court is well founded in law with reference to the official position of the appellant who had the spending of the Government money in his hands is not a matter on which we need pronounce. It is enough to point out that it has not been found by the courts below that the object of the criminal conspiracy had not been achieved. On the other hand, there is enough indication in those judgments that the object of the conspiracy had been to a large extent fulfilled. Hence it must be held that there is no substance in this contention also.

Another contention raised on behalf of the appellant was that the other accused having been acquitted by the trial court, the appellant should not have been convicted because the evidence against all of them was the same. There would have been a great deal of force in this argument, not as a question of principle but as a matter of prudence if we were satisfied that the acquittal of the other four accused persons was entirely correct. In this connection the observations of this Court in the case of Dalip Singh v. State of Punjab [[1954] S. C. R. 145, 156.], and of the Federal Court in Kapildeo Singh v. The King [[1949-50] F. C. R. 834, 837, 838.] are relevant. It is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy. If the courts below had come to the distinct finding that the evidence led on behalf of the prosecution was unreliable, then certainly no conviction could have been based on such evidence and all the accused would have been equally entitled to acquittal. But that is not the position in this case as we read the judgments of the courts below.

Lastly, it was contended that the examination of the appellant by the learned trial Judge was not in full compliance with the requirements of section 342, Code of Criminal Procedure. Two points have been sought to be made in this connection. Firstly, it has been contended that though the other accused who have been acquitted by the trial court were questioned with reference to the conspiracy with the approver Pitabas Sahu, no such question was put to the appellant. It is true that the court questioned him about his "conspiracy with the other accused persons". Counsel for the parties before us did not agree as to the significance of the words "in conspiracy with the other accused persons". The contention on behalf of the appellant was that they referred only to the persons actually standing trial before the court, whereas counsel for the State contended that they had reference to all the accused persons named in the petition of complaint including the approver. A number of rulings of the different High Courts as to what is the position of an approver, whether he

continues to be an accused person even after the grant of pardon or whether he is only in the position of a witness on behalf of the prosecution, were cited before us. But we do not think it necessary in this case to pronounce upon that because we have, as already indicated, come to our conclusions on the assumption that there is an omission in the charge in so far as the approver has not been specifically named in the charge under section 120-B, Indian Penal Code. Secondly, it was contended that the evidence of P. W. 27 who had been chiefly relied upon in the courts below as corroborating the approver had not been specifically put to the appellant though the evidence of the approver Pitabas Sahu was pointedly put to him. In our opinion, it is not ordinarily necessary to put the evidence of each individual witness to the accused in his examination under section 342, Code of Criminal Procedure. The appellant was put the question "Have you got anything to say on the evidence of the witnesses ? " That, in our opinion, is sufficient in the circumstances of this case to show that the attention of the accused was called to the prosecution evidence. As to what is or is not a full compliance with the provisions of that section of the Code must depend upon the facts and circumstances of each case. In our opinion, it cannot be said that the accused has been in any way prejudiced by the way he has been questioned under that section.

As all the contentions raised on behalf of the appellant fail, the appeal must stand dismissed.

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