

## SUPREME COURT OF INDIA

Om Prakash

Vs.

State of U.P.

Crl.A.No.24 of 1958

(A. K. Sarkar and M. Hidayatullah, JJ.)

15.09.1959

### JUDGEMENT

#### **HIDAYATULLAH, J.:**

1. The appellant, Om Prakash, was tried on two charges respectively under S. 165-A and S. 468/109 I. P. C., before the Special Judge, Bulandshahar empowered under S. 6 of the Prevention of Corruption Act, 1947. He was convicted under S. 165-A, I. P. C. and sentenced to rigorous imprisonment for 1 year. He was acquitted of the second charge. He appealed to the High Court of Allahabad against his sentence, and contended, inter alia, that his conviction under S. 165-A, I. P. C. was against the provisions of Art. 20 of the Constitution, because the offence was alleged to have been committed by him on December 4, 1948, whereas the said offence was first created on July 28, 1952, when S. 165-A was first enacted and introduced in the Indian Penal Code by S. 3 of the Criminal Law Amendment Act (No. 46 of 1952). This contention was accepted by the High Court, and the conviction was changed to one under S. 161 read with S. 109, I. P. C., but the sentence was maintained. The appellant applied for a certificate of fitness under Art. 134 (1) (c) of the Constitution, and the High Court having refused it, he was granted special leave by this Court.

2. The two charges on which he was tried, disclose the facts sufficiently for the purpose of this appeal, and may be quoted here :

"Firstly :-That you paid Rs. 300 on or about 4th December, 1948, to Roshan Lal Gupta, unit clerk in M. I.'s office Bulandshahar to issue to you fictitious permits for bricks and which were issued to you, to wit permits Nos. 19, 23, 24, 25 and 26 of Indent Book No. 59, which were later on detected and order was issued for not crediting them and they were cancelled and thereby committed an offence punishable under section 165-A of the I. P. C., and within my cognizance as Special Judge.

Secondly :- That you abetted the forging of permits Nos. 19, 23, 24, 25 and 26 of Indent Book No. 29 by Roshan Lal in fictitious names and you took them from Roshan Lal intending that these permits shall be used for cheating the department and the cultivators in general and thereby committed an offence punishable under section 468/109 of the Indian Penal Code and within my cognizance as a Special Judge, and I thereby direct you be tried by this Court on the said charges."

3. In this appeal, the appellant has urged only two points. The first is that the High Court acted without jurisdiction in altering the conviction to one under S. 161/109, I. P. C., or, at any rate, acted illegally in doing so; and the other is that the High Court was in error in relying upon Exs. P-3 and

P-4 (two statements made by him) as confessions of the offence with which he was charged, in the absence of any other or even corroborating evidence to bring home the accusation.

4. As regards the first contention, it is sufficient to say that the effect in law of S. 161/109, I. P. C., is precisely the same as that of S. 165-A, at least in so far as the abetment of an offence actually committed, is concerned. There were no further facts needed to be brought to the notice of the appellant by the amended charge, and the punishment both under S. 161/109 and S. 165-A is the same. In fact, if S. 165-A could be regarded as a freshly created offence, it did nothing more than provide expressly what was already provided by the Code by the two other sections. The change was in respect of abetment of offences not committed, that is to say, S. 161 read with S. 116. In view of the provisions of Ss. 225 and 537 of the Code of Criminal Procedure, this error in the charge cannot be taken note of, particularly as the appellant himself could have raised this objection at a much earlier stage during the trial, and also as no prejudice has been suggested nor could be found by us. This contention, therefore, is rejected.

5. The next contention needs a closer examination. The evidence in the case showed that Roshan Lal Gupta was Unit Clerk of the office of the Mechanical Inspector, Agricultural Department, Bulandshahar. Roshan Lal Gupta issued permits Nos. 19, 23, 24, 25 and 26 from Indent Book No. 59 purporting to be in the names of P. Ws. 5, 6 and 7. The original permits were not produced in the case, since they were not seized from the appellant. Only the counterfoils were produced, purporting to bear either the signatures or the thumb-marks of these several witnesses. The witnesses themselves were examined to show that they did not receive any such permits, nor did they apply for them and that the signatures or thumb-marks were not theirs. The prosecution case further shows that instructions were issued to the brick-makers not to honour these permits, and as a result, no bricks were delivered on the strength of these permits.

6. Enquiry into the matter appears to have been set on foot, as a result of a complaint made by the appellant to the Assistant Agricultural Engineer, Aligarh on January 17, 1949. That complaint is described as an application in the Paper Book, and is Ex. P-3. As a consequence of this complaint, the appellant was summoned before Sri Kant Sharma (P. W. 4), Assistant Agricultural Engineer, and there, the appellant gave a writing on May 7, 1949, amplifying his previous complaint and stating some further facts. That document is Ex. P-4.

7. The prosecution case is thus built up of the facts that certain indents were issued in the names of persons who had not applied for them and who did not need bricks, and further that the appellant made two statements in writing in Exs. P-3 and P-4, wherein he stated his own version of what had happened. According to the High Court, these two documents amounted to confessions and read with the other oral evidence, established a case of abetment of taking bribe, which offence was committed by Roshan Lal Gupta. The question in this appeal, therefore, is whether there is confession involved in these two documents read as a whole. There is no doubt whatever that if this be the position, then the conviction must be accepted as correct; but if the two documents do not amount to a confession, then the appeal must succeed.

8. What is a confession was laid down by their Lordships of the Privy Council in the oft-cited case of *Narayana Swami v. Emperor*, 66 Ind App 66 : (AIR 1939 PC 47), in these words :

".....a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, e.g., an admission that the accused is the owner of

and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of 'confession' in Art. 22 of Stephen's 'Digest of the Law of Evidence' which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding circumstances are examined it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872; and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime."

The same view was also expressed by this Court in *Palvinder Kaur v. State of Punjab*, 1953 SCR 94 at p. 104 : (AIR 1952 SC 354 at p. 357).

9. Bearing these tests in mind, we have to examine these two documents to see whether the requirements there described are satisfied. It may be remembered that there is no proof of the payment of money or why it was paid, aliunde in the case. The question that falls for consideration is whether the appellant admitted having paid the money as a bribe to Roshan Lal Gupta or whether his intention to do so can be gathered not as an inference but as a proved fact from these documents. Ex. P-3 is as follows :

"I beg to submit that I stood in need of some bricks for constructing a house. I came to know that bricks, cement etc., could be had from the office of the Mechanical Inspector of Bulandshahar. Babu Roshan Lal, Clerk had told me this thing. Thereupon I made a request to him that, if possible, he should get the permit for bricks issued to me from his office. Thereafter Babu Roshan Lal came to my house on 4th December, 1948. He took Rs. 300 from me and gave me four permits and idents Nos. 23, 24, 25 and 26, Book No. 59, dated 11th November, 1948, and permits of D. S. 6, Bulandshahar, serial Nos. 31, 32, 33 and 34, Book No. 4 dated 23rd November, 1948.

I could not get the bricks. I searched for Babu Roshan Lal. He met me on 30th December, 1948, and made pretensions. He assured me that those permits had been finished by his department, that he was on leave at that time, that his leave would come to an end on the 15th January, 1949, and that thereafter he would give me fresh permits. On 17th January, 1949, I again met him in his office. There I learnt that he had been suspended. When I made a demand, he behaved badly with me.

Therefore, I request that justice may be done to me and the bricks may be caused to be given to me or my money may be refunded. It shall be an act of great kindness."

10. Both parties interpret this document differently. According to the appellant, he was cheated of this money by Roshan Lal Gupta who, on his own, issued permits in the names of persons who had not applied for any permit, and gave them to him. Learned counsel for the appellant contends that unless the appellant was out of his mind, he would not have made a complaint, which would have involved him in a criminal prosecution. He says that the last sentence in the complaint shows that the appellant believed that the amount of Rs. 300 had to be paid towards the permits or the price of bricks, and that he acted bona fide, and was cheated by Roshan Lal Gupta. Counsel for the State, on the other hand, argues that the complaint shows that Roshan Lal Gupta brought the permits to the house of the appellant, and took the money there. There is nothing to show that the appellant had made any application for permit, and the fact that these permits were not in his name but in the

names of others should have at least put him on enquiry as to why they were so and for what purpose the claim for Rs. 300 was made. Even if the inference suggested by the learned counsel for the State was possible in this case, it would be impossible to say, in view of the dicta of the Privy Council and this Court, that the condition precedent to an admission being a confession had been fulfilled. The effect of the document may thus at most be described as suggesting the inference that he committed the crime, but it cannot be extended to show that the appellant admitted in terms the offence, or at any rate, substantially all the facts which constitute the offence of abetment.

11. We have now to go to the next document (Ex. P-4) to see whether it adds to the so-called confession in the first document, or whether the two documents read together make the admission a confession. That document is also a short one, and may be quoted here:

"As per enquiry made by you from me, I want to submit in addition to my previous application that, even before this, Roshan Lal Gupta had brought and given a permit for 5000 bricks to Lala Munshi Lalji in connection with the construction of his well and had promised that he would get the cement, which had moistened due to heavy rains, exchanged from his office. For this Rs. 150 were received (by him) in this period. He also said that a report for exchange of the cement was to be made to the Inspector, Mr. Bhatnagar, who must, therefore, also get a share. He took a sum of Rs. 150 also for getting the subsidy for engine granted saying that his (Munshi Lal's) work could not be done without giving this money inasmuch as the matter related to the refund of a huge amount and Mr. Bhatnagar had also to get a share in it. After this Mr. Bhatnagar also came for verification of this amount. When I did not get the goods, I demanded the money back from Roshan Lal. He told me that he would give me the money when he would have got back the same from Mr. Bhatnagar. Thereafter Mr. Bhatnagar also came to me. I made a demand for refunding the money. Mr. Bhatnagar promised to refund the money after returning to Bareilly I have not received that amount as yet. In this connection a talk had taken place between Mr. Bhatnagar and Roshan Lal that Mr. Bhatnagar had not received his share in the sum of Rs. 300 received on the basis of the four permits and that he had knowledge of these permits also."

It must be remembered that this document is after four months, and the question is whether the information admitted to be in the possession of the appellant can be said to have been in his possession when he gave the money. The second document discloses that on a previous occasion also Roshan Lal Gupta and/or Mr. Bhatnagar had taken Rs. 300 from one Lala Munshi Lalji in connection with a permit for 5000 bricks and the subsidy for an engine. Learned counsel for the appellant says that the appellant was only trying to show that his was not the solitary instance of money having been taken, and that there were others in the game, besides Roshan Lal Gupta. The words "even before this" refer not to the complaint filed on January 17, 1949, by the appellant but to his own affair. The appellant has stated in the document that previous to his own affair, some other incident had happened, but he is not stating that he made the payment because he was in possession of this information and knew that the payment of a bribe to Roshan Lal Gupta and/or Mr. Bhatnagar was required before such permits were granted. He is only speaking to what was within his knowledge on May 7, 1949, but there is nothing to show that the precise information was also in his possession on December 4, 1948, when he made the actual payment to Roshan Lal Gupta. The second part of the document refers to the incidents which took place after he had already paid the money, and it discloses that he came into possession of the information from Roshan Lal Gupta that the money had gone to Mr. Bhatnagar and would be returned to him after Mr. Bhatnagar's return to Bareilly. The two portions of Ex. P-4 cannot be said to contain a knowledge which the appellant possessed on December 4, 1948, when he paid the money, and if this information was a subsequent acquisition, then no inference of a criminal intention in paying the money to Roshan Lal on

December 4, 1948, can arise. The second document also is in the nature of amplification of his previous complaint of a deal, by which he lost money and did not get any bricks.

12. It may be that the two documents read as a whole, suggest an inference, but it is not what this Court and the Privy Council have laid down as the test for basing the conviction of an accused on his own admission. On the facts, a suspicion may arise that money was paid as a bribe, but we cannot successfully repel the suggestion that the appellant might have been cheated and had no intention of paying a bribe. Their Lordships of the Privy Council have laid down that unless there be a plenary admission of guilt, the facts must be interpreted reasonably and an admission of all the facts which constitute the offence should be present.

13. The prosecution case also suffers from the defect that the original permits which were with the appellant were not seized by the police, and an argument was thus allowed to be raised that the originals were in the name of the appellant, while the counterfoils were kept in the names of fictitious persons. We have no means of determining this issue, because the permits are not there. Considering the matter as a whole, we are of opinion that other evidence led in the case, apart from Exs. P-3 and P-4, merely established that in the record maintained some permits were shown to have been issued in the names of persons, who had not applied for them. The rest of the case has to be built up against the appellant from what he stated in Exs. P-3 and P-4. These documents reasonably considered, may suggest an inference that the offence was committed, but do not amount to confessions and cannot, therefore, be used to complete the ingredients of the offence, with which the appellant was charged.

14. We differ, therefore, from the appraisal of this evidence by the High Court, and we think that the documents were wrongly regarded by the High Court as confessions, pure and simple, and that it was in error in holding that the guilt of the appellant was brought home to him. No doubt, the sufficiency of evidence is a matter ordinarily for the High Court. Where, however, the High Court, as on the facts of this case, has construed the two documents as amounting to confessions of guilt, which they cannot reasonably be construed to be and there is no other evidence, this Court is entitled to interfere, even though this is an appeal from concurrent judgments of the two Courts below. We are, therefore, of opinion that the conviction in the present case on its facts, cannot be sustained.

15. We accordingly allow the appeal. The conviction and sentence of the appellant are set aside, and he is acquitted.

Appeal allowed.

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