Bakhshish Singh Dhaliwal

Vs

The State of Punjab

Criminal Appeal Nos. 150 and 151, 196 to 199 of 1962

(Raghuvar Dayal, V. Ramaswaami – I, V. Bhargava JJ)

31.08.1966

JUDGMENT

BHARGAVA, J.

These six appeals, filed on the basis of certificates granted by the High Court of Punjab, arise out of a single judgment of that Court, and consequently, they have been heard together. Two of the appeals Nos. 150 & 151 of 1962 have been brought up by Bakhshish Singh Dhaliwal (hereinafter referred to as "the appellant") against his convictions on three different charges of cheating under s. 420 of the Indian Penal Code which were upheld by the High Court. The remaining four appeals Nos. 196-199 of 1962 have been filed by the State of Punjab against the acquittal of the appellant in respect of offences of cheating on some other counts recorded by the High Court.

There were all together four trials before a Special Tribunal originally constituted under Ordinance 29 of 1943. In these four trials, the appellant was charged for having committed ten different offences of cheating by making representations to the Government of Burma and obtaining payments of money to the extent of over Rs. 6 lakhs which included payments in respect of works which had not been carried out by him as a contractor, though he claimed that the work had been done and he was entitled to payment in respect of those works.

The facts which are relevant for the decision of these appeals fall under a very short compass. In the year 1942, the Government of Burma and the Allied Forces operating there were compelled to leave Burma as a result of the Japanese invasion. For purposes of evacuation from Burma and the defence of that country, the Government of Burma and the army had to execute certain works of the nature of construction of roads, repairs and construction of bridges, strengthening and repairing of old tracks and converting railway lines into motor roads. Some of these works were executed by the army itself, while others were entrusted to contractors.

After the evacuation, the Government of Burma was located at Simla. Due to the disturbed conditions, no exact records were available of the works done by the various contractors and consequently, in August 1942, the Government of Burma issued an advertisement inviting claims from contractors who had executed works or had supplied materials in Burma during this period and had not yet been paid.

The appellant submitted a number of claims in respect of various works which he claimed had been executed by him as well as for supply of materials. These claims were in the form of bills and were in respect of works which he claimed had been carried out under the instructions of various units of the army. These bills were sent for verification to three different Officers, Henderson, Nasse and

Karam Singh; and after their verification, payments were made to the appellant in respect of those bills. In one or two cases, the payments were only partial; while in other cases the entire claims as recommended by those officers were paid off.

In the case of the appellant, it was found that he had put in 20 claims for various works alleged to have been done or materials supplied. Sixteen of these claims aggregated to an amount of Rs. 16,31,808/ out of which a sum of Rs. 6,87,173/ was paid by means of cheques issued by the office of the Controller of Military Accounts working with the Burma Government situated at Kolhapore.

Subsequently, suspicions of the Government of Burma were aroused concerning many of the claims made by various contractors including the claims made by the appellant, and it was discovered that some of the claims were false and bogus. Consequently, further investigations were made and thereafter the appellant was prosecuted in respect of ten different charges. Since there were a number of such cases to be tried, Special Tribunals were constituted by issuing Ordinance No. 29 of 1943; and two of these Tribunals were located at Lahore. The cases against the appellant were entrusted to one of these Tribunals.

Before the Tribunal, the ten charges against the appellant were given Cases Nos. 21 to 26 and 31 to 34. Some of these cases were, however, tried together with the result that ultimately, there were four trials in which the appellant was tried in respect of these ten charges. The Special Tribunal convicted the appellant in respect of all the charges; but on appeal, the High Court upheld the conviction in respect of three charges only. These charges were part of charge No. 21, charge No. 22 and charge No. 26. In respect of the other charges, the High Court recorded a finding that the prosecution had failed to prove beyond all reasonable doubt that the claims put forward by the appellant were bogus and in respect of works not done by him or materials not supplied by him, so that the appellant was given the benefit of doubt and acquitted.

The appellant was tried for charges Nos. 21, 22 and 23 in the one single trial by the Special Tribunal, while charge No. 26 was the subject-matter of a different trial. His conviction in respect of part of charge No. 21, charge No. 22 and charge No. 26 having been upheld by the High Court, the appellant has thus filed two appeals Nos. 150 & 151/1962 in this Court. He was acquitted of part of charge No. 21 and charge No. 23 which were tried together with charge No. 22 in one trial; and similarly, he has been acquitted of other charges also in the other three trials. The four State appeals before us are against these orders of acquittal recorded by the High Court in respect of the charges which were the subject-matter of four different trials.

A number of points of law have been argued before us on behalf of the appellant in the two appeals filed by him. The first point which was very strenuously pressed was that the appellant had been very seriously prejudiced by having been tried in four different cases in respect of ten different charges when, in fact, all that he did was to submit a set of bills together and had not made any ten different false representations which might have induced the Burma Government to made payments to him. Our attention was invited to letter Ext. DR dated 3rd November, 1942, to support the contention that all the claims put forward by the appellant were submitted with this letter together and consequently, should be held to form one single representation.

On behalf of the State, our attention was, however, drawn to the fact that this letter was found to contain obliteration of the figure 2 before the word "claims", so that this letter really referred to only 2 out of the 20 claims submitted by the appellant; and this submission is further supported by a reference to letter Ext. DS in which the Government acknowledged receipt of only 2 claims when

referring to letter Ext. DR sent by the appellant. The case of the State was that the various bills containing the 20 claims put forward by the appellant could not be treated as one single representation.

It appears to us that even if it had been a fact that all these claims were submitted by the appellant with only one single covering letter, it could not be held that they amounted to one single false representation. The claims related to a number of works or supplies of materials which the appellant claimed he had carried out. A representation in respect of each different work or each different supply of materials would be a separate and distinct representation from the one relating to another work carried out or supply made. Thus, in one trial which covered charges 21, 22 and 23, three different charges were framed by the Tribunal. The first charge related to conversion of railway track between Taungdwingyi and Kyaukpadaung as well as supply of materials at those places. The second charge which related to charge No. 22 was in respect of work claimed to have been done in connection with the improvement of a country track from Myothit northwards to its junction with the main trunk road between Kyaukapadaung and Meiktila, while the third charge relating to charge No. 23 was in respect of materials claimed to have been supplied at Allanmyo. The three charges thus framed related to works or supplies at three different places and were in respect of three claims each of which was totally independent of the other. In respect of each of these charges, claims had been submitted by the appellant and those claims amounted to representations made by him that he had carried out those works or had made those supplies. There was consequently no error at all in holding that in this trial the appellant was being tried for three different offences of the same kind, so that the splitting of the cases into ten different charges was fully justified.

Mr. R.L. Anand on behalf of the appellant, in these circumstances, challenged before us the validity of the case in which the appellant was tried for charges 21, 22 and 23, on a different ground which had not been put forward before the High Court. He urged that an examination of the claim put forward by the appellant on the basis of which charges 21 and 23 were taken up, would show that there were in fact three different claims by the appellant; and since these were tried together with charge No. 22 which had a separate claim, the trial was vitiated as being in respect of four charges of the same kind which is not permissible in law. The submission fails, because it is clear from the claim itself that charge No. 21 was really one single charge and not two charges. It was based on a claim made by the appellant for work done and materials supplied at the same places, viz., Taungdwingyi and Kyaukpadaung. The courts below in holding that the representation made by the appellant in his claim in respect of work done and materials supplied at the same places amounted to one single representation, were quite correct, so that, in fact, in this trial the appellant was tried in respect of only three charges on the basis of three false representations relating to three items of bogus works or supplies. None of the trials against the appellant was, therefore, vitiated by any error relating to misjoinder of charges or splitting up of charges.

The next question of law raised was that even on the facts found by the High Court, the appellant was wrongly convicted as no offence of cheating had been made out against him. This submission was based on the circumstance that after the claims, which had been found bogus, were put forward by the appellant, they were sent for verification to various officers and payments were sanctioned and made to the appellant on the basis of the reports which were submitted by those officers verifying the claims of the appellant. The submission was that the payments were the result not of any representations made by the appellant, but of the wrong representations contained in the reports of those officers, so that if any offence of cheating at all was committed, it was by those officers and not by the appellant.

The fallacy in this argument is quite clear. It is correct that payments were sanctioned by the Burma Government and were made only after reports had been obtained from their own officers on the claims which had been put forward by the appellant; but the payments were after all made only because the appellant had submitted those claims in the first instance. The representations made by the appellant in the written claims contained in the bills were the basis of all subsequent proceedings which resulted in payments being made to him. These representations contained bogus claims and orders for payment were based on those very claims. The officers who verified the claims wrongly could certainly be held guilty of abetting the appellant by supporting his false representations. It cannot be said that the payments that were made to the appellant were not connected with or induced by the representations made by the appellant himself in his bills. In fact, primarily, it were those representations by the appellant which ultimately culminated in the Government of Burma parting with the money to satisfy those claims put forward by the appellant. The correctness of the decision in Mata Prasad v. Emperor ((1920) 18 A.L.J. 371.) relied upon by learned counsel for the appellant need not detain us, because the facts in that case were different and Mata Prasad was found not guilty because he himself had made no representation at all which induced the payment of money by the complainant, and the finding was that the advance of money was induced entirely by the representation made by Hira Lal. The finding that the appellant was guilty of cheating in these circumstances was fully justified.

In this connection, another point put forward was that the appellant should have been convicted for the offence under s. 417, Indian Penal Code, instead of s. 420, I.P.C., because, as soon as written orders were made sanctioning payments in respect of the bogus claims, offences under s. 417 were complete, and the subsequent payments made should not have been taken into account. The submission has to be rejected, because the subsequent payments-after the orders sanctioning the bills, were a part of the same transaction which started with the false representations being made by the appellant in putting forward bogus claims and which transaction only concluded after the payments were made and did not come to an end merely on orders of sanction being passed in those proceedings. In fact, in every case where property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representations made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under section 417, I.P.C., and cannot be tried under s. 420 because the person cheated parts with his property subsequent to making up his mind to do so. The conviction of the appellant for the offence under s. 420, I.P.C., in these circumstances is in no way vitiated.

The liability of the appellant for conviction for the offence of cheating was challenged on one other ground. It was urged that the appellant left Burma on 15th April, 1942, while the claims which had been found to be bogus related, at least to a considerable extent, to works alleged to have been done or materials alleged to have been supplied after that date, so that the appellant could have no personal knowledge that the claims put forward by him were bogus. The finding of fact recorded by the High Court in respect of the charges for which the appellant has been convicted is that the works to which the claims related were not carried out at all, or that the supplies concerned were never made. Once the finding is categorically recorded in this manner, we do not think there was any burden placed on the prosecution to establish that the appellant had personal knowledge of the bogus nature of his claims. Knowledge involves the state of mind of the appellant and no direct evidence of that knowledge could possibly be given by the prosecution. The very fact that the claims were bogus and did not accord with the true facts, leads to the inference that the appellant knew that the representations which he was making in these claims were false. It is significant that the appellant has not come forward with any explanation that he made these claims on the basis of

information given to him by any particular person whose word he had no reason to doubt. In fact, the claims purported to be based on the facts that the appellant knew that he was entitled to the amounts included in the claims because he had carried out the works or had supplied the materials relating to the claims.

The next point urged was that in this case the trial of the appellant was vitiated, because up to a certain stage he was tried together with Henderson who was charged with the offence of abetment of cheating under s. 420 read with s. 109, Indian Penal Code, and Henderson was put to trial without any sanction of the Central Government under s. 197 of the Code of Criminal Procedure.

There are two reasons why this ground has no force. First it has already been held by this Court in a very similar case of K. Satwant Singh v. The State of Punjab ([1960] 2 S.C.R. 89.) that sanction under s. 197 of the Code of Criminal Procedure was not required for a valid trial of Henderson for the offence of abetment of cheating, because it cannot be held that a public servant committing such an offence is acting in the discharge of his duties as such. If this connection, learned counsel referred us to a subsequent decision of this Court in Sunil Kumar Paul v. The State of West Bengal (A.I.R. 1965 S.C. 706.) where this Court held, in the case of a government servant who had submitted a false bill, that the act of false representation which resulted in the offence of cheating being completed, was done in the course of his official duties by that government servant. The facts of that case, however, were different, because in that case it was held that the submission of the bill by the government servant was itself the act for which he was to be prosecuted, and that act was held to have been done by him in the discharge of his dutiee. In the case before us, as well as in the earlier case of Satwant Singh ([1960] 2 S.C.R. 89.), Henderson was not being prosecuted for the act of certification of the correctness of the bills which were sent to him for verification, but was to be prosecuted for abetment of the offence of cheating committed by those persons who had submitted the bills by falsely certifying the correctness of those bills. The act of thus abetting the principal offenders could not possibly be held to have been done in the discharge of official duties as a public servant.

The second reason is that after the trials against the appellant had proceeded to some extent, the case against Henderson was separated and the appellant was tried alone in all the four cases. The appellant was not a government servant, but only an independent contractor, and in his case, therefore, there was no question of any sanction of the Central Government being obtained under s. 197 of the Code of Criminal Procedure. His trials would, therefore be unaffected by the want of sanction of the Central Government for the prosecution of Henderson.

In this connection, it was also urged that after Henderson's case was separated from that of the appellant, there should have been a de novo trial. No reasons could, however, be advanced by the learned counsel in support of this proposition. So far as the appellant is concerned, the entire trial took place while he was present and the case against him remained unaffected by the fact that during part of the trial, Henderson was also being tried with him for abetting the offence alleged to have been committed by him, whereas during the remaining part of the trial, he was being tried alone for the offence with which he was charged. There is further the circumstances that no request was made for a de novo trial at any stage by the appellant, and even in the appeals before the High Court, no grievance was put forward in this behalf.

The validity of the trials was also challenged before us on the ground that the Special Tribunal which recorded the convictions of the appellant was not constituted in accordance with law and was incompetent to hold the trials. The main submission before us, which was different from the aspect

in which it was argued before the High Court, was based on the fact that the Special Tribunal was constituted under Ordinance No. 29 of 1943 which was issued not under s. 102 of the Government of India, Act, 1935, but under s. 72 of the Ninth Schedule of that Act. It was urged that s. 72 of the Government of India Act itself laid down that an Ordinance issued under that provision was to remain in force for the space of not more than six months from its promulgation. Learned counsel on this basis urged that the subsequent Ordinances issued in 1944 and 1945 amending this Ordinance as well as the Punjab Ordinance III of 1946 which continued the life of the Special Tribunal were all ineffective, because they purported to continue the existence of a Tribunal which had already become defunct on the expiry of six months from 9th September, 1943, the date on which Ordinance No. 29/1943 was promulgated. The submission was obviously made under a misapprehension ignoring the effect of s. 1(3) of the India and Burma (Emergency Provisions) Act, 1940 (3 & 4 Geo. 6, ch. 33) which suspended the operation of the clause in s. 72 of the Ninth Schedule of the Government of India Act, 1935 under which the life of the Ordinance was limited to six months from its promulgation. In fact, this point came up before the Federal Court in J.K. Gas Plant Manufacturing Co. (Rampur) Ltd. & Ors. v. The king Emperor ([1947] F.C.R. 141.) where the Federal Court held that this very Ordinance 29/1943 expired on 30th September, 1946 in view of the provisions of s. 1(3) of the India & Burma (Emergency Provisions) Act, 1940. Until 30-9-1946, therefore, the Tribunal constituted by the Central Government under that Ordinance was functioning competently.

The Punjab Ordinance III of 1946 continuing the powers of that Tribunal for the purpose of trying the cases pending before it, came into force on the 1st October, 1946, so that there was no interval and the Tribunal already functioning under the earlier Ordinance 29 of 1943 continued to function validly in accordance with the provisions of the Punjab Ordinance III of 1946. This Ordinance was subsequently replaced by Punjab Act X of 1950, whereby the life of the Tribunal and its powers were continued, though the membership of the Tribunal was reduced from three to one. The Special Tribunal which tried the cases against the appellant, therefore, functioned throughout in accordance with the various Ordinances and the Punjab Act without any interruption.

In the alternative, the constitution of the Tribunal which recorded the convictions of the appellant was challenged on one other ground, viz., that at one stage, the membership of the Tribunal, which under the law was required to consist of three members, was reduced to only one member and the subsequent appointment of the other two members was made by the Punjab Government which had no authority or power vested in it to make such appointment. Under Ordinance No. 29 of 1943, the power of constituting the Special Tribunal was vested in the Central Government, and the Central Government actually appointed a Tribunal consisting of three members. That Tribunal continued until 30th September 1946 and thereafter, it functioned by virtue of the provisions of Punjab Ordinance III of 1946. It appears that subsequently some time in the year 1947, one of the members died and the President of the Tribunal ceased to function on his departure from India. Thereafter, two fresh members were appointed by the Punjab Government to the Tribunal and one of them was appointed to function as the President of the Tribunal. The point urged on behalf of the appellant was that under Punjab Ordinance III of 1946, the Government of Punjab did acquire the power of appointing the President, but that Ordinance did not confer on the Punjab Government the power to reconstitute the Tribunal or to appoint members of the Tribunal. This submission was based on the provisions of s. 3(2) of the Punjab Ordinance which laid down that the provisions of the Ordinance of 1943 were to continue in force and to apply in relation to the Tribunals, except sub s. (2) of section 1 and sub-s. (1) of section 5, subject to the modification that the powers of the Central Government under clause (b) of section 3, sub-s. (3) of section 4 and section 11 were, as from the commencement of the Punjab Ordinance, to be powers of the Provincial Government. The power of

constituting the Tribunal was contained in the principal clause of s. 3 of the Ordinance of 1943, and there was no mention of this principle clause where, by modification, the powers of the Central Government were to be exercised by the Punjab Government under s. 3(2) of the Punjab Ordinance.

This submission, however, ignores the effect of sub-s. (3) of s. 3 of the Punjab Ordinance, under which all notifications issued, and all rules made, by the Central Government under s. 3, sub-s. (3) of s. 4 and s. 11 of the Ordinance of 1943, so far as they applied to the Tribunals, were to continue in force until superseded or modified by the Punjab Government under the Punjab Ordinance. This provision, thus, clearly laid down that the Punjab Government had the power to supersede or modify notifications issued and rules made by the Central Government under s. 3, sub-s. (3) of s. 4 and s. 11. Consequently, notifications issued by the Central Government under s. 3 of the Ordinance of 1943 constituting the Special Tribunal could be superseded or modified by the Punjab Government. When the Punjab Government appointed two members in place of the two original members appointed by the Central Government, the former only exercised the powers of modifying the notification issued by the Central Government as the order of appointment amounted to reconstitution of the Tribunal already constituted by the Central Government. The order of the Punjab Government was, therefore, passed within the scope of the powers conferred on it by sub-s. (3) of s. 3 of the Punjab Ordinance. During the period when there was only one member and the requirement under the law was that the Tribunal should consist of three members, no proceedings were taken by the Tribunal for continuing the trial of the appellant. It was only after the appointment of two other members, including the President that the Tribunal took up the trial. Further when the Tribunal later on functioned with only one single member, the law had already been altered by Punjab Act X of 1950 which provided for change of composition of the Special Tribunal and laid down that instead of three members, the Tribunal was to be composed of one member only. The tribunal, thus, at each stage, was properly constituted and functioned competently.

The next point urged on behalf of the appellant was that in these trials, the appellant was not given an adequate opportunity to produce his defence evidence, and this happened for no fault of the appellant. Reference in this connection was made to witnesses who were in three different countries. Some witnesses were in Pakistan, some in England, and some in Burma. So far as witnesses in Pakistan are concerned, the Tribunal recorded an order on 6th April 1949, refusing to examine those witnesses, because the Pakistan Government was not prepared to even effect service of summons on persons residing there when the summons were issued by courts in India. It is significant that subsequent to this order by the Tribunal, the case came before a Bench of the Punjab High Court and at that stage no grievance was made about non-examination of these witnesses from Pakistan, even though a grievance was put forward in respect of witnesses in England and in Burma. The Bench dealt with the case on 25th September, 1951 and granted the prayer of the appellant for examination of witnesses in England and Burma. It is now too late for the appellant to make a fresh grievance in this Court that the witnesses in Pakistan were not examined.

With regard to witnesses in England and Burma, an order was actually made by the Bench of the High Court directing the Tribunal to take steps for their examination. Steps were taken and three witnesses in England were examined on commission at the instance of the appellant. The others were given up as they were not available. There has, therefore, been no failure to examine witnesses in England.

Learned counsel for the appellant strenuously pressed before us that the real prejudice to the appellant took place because of want of examination of the witnesses who were in Burma. Their

examination was refused by the Tribunal at one stage and against that refusal, the appellant moved the High Court. As we have said earlier, a Bench of the High Court on the 25th September, 1951, directed steps to be taken by the Tribunal for their examination. Subsequently, difficulties arose and from time to time the appellant approached the High Court and various orders were made up to the year 1954. In the year 1954, commissions were actually issued for examination of witnesses in Burma to District Magistrates of two places who were, by common consent of parties, chosen as the persons before whom those witnesses could be conveniently examined. The appellant was given a sum of Rs. 3,000/- in order to proceed to Burma and have the commissions executed in his own presence. The grievance is that this sum was never actually paid and further that in any case, adequate funds were not provided for the appellant to enable him to proceed to Burma in time by air and be present on the dates fixed for execution of the commissions.

This point came up for a scrutiny before the High Court and a Bench of the High Court on 23rd August, 1954, held that a sum of Rs. 3,000/- had already been paid to the appellant for this purpose, and that there were no further funds available from which additional payments could be made to the appellant as desired by him. Certain properties and funds belonging to the appellant were attached under Ordinance 38 of 1944 which laid down in s. 9 that the District Judge was to provide, from the attached property in which the applicant claimed an interest, such sums as may be reasonably necessary for the maintenance of the applicant and his family, and for expenses connected with the defence of the applicant where criminal proceedings may have been instituted against him in any Court for a scheduled offence. Our attention has been drawn to the order of the District Judge by which he directed payment of Rs. 3,000/- for expenses in connection with the examination of witnesses in Burma and by which he further directed payments in respect of maintenance, etc. the result of which was that all the funds attached under Ordinance 38/1944 were completely exhausted. The High Court also in its order dated 23rd August, 1954, found that the funds had already been exhausted and no further money was available to be paid to the appellant as desired by him. It cannot, therefore, be held that there was any refusal on the part of the authorities to provide funds to which the appellant was entitled. In any case, it appears to us that all this grievance about non-provision of funds is immaterial in view of the fact that the appellant himself ultimately withdrew his request for the examination of those witnesses in Burma. It appears that in order to enable the appellant to go to Burma, a passport was obtained for him; but the validity of the passport expired some time before the date for execution of the commission was fixed. Consequently, the passport was sent to the appropriate authorities for further extending its validity. The High Court has specifically mentioned in its judgment under appeal that, before this passport could be renewed, the appellant withdrew his request to the High Court to have the Burma witnesses examined on commission. It will thus appear that all necessary steps for examination of the Burma witnesses were being taken when the appellant of his own accord withdrew his request for their examination, so that there has been no denial of the right of the accused to produce the defence which he desired.

The Judgment of the High Court upholding the conviction of the appellant was also challenged on the ground that that Court based its findings on certain War Diaries which were inadmissible in evidence. The War Diaries which have been referred to in connection with the charges for which the appellant has been convicted are those of 6, Bombay Pioneers and Chief Engineer, Burcorps, the latter having been referred to as C.E.s. diaries and with these diaries, it appears, were incorporated the C.R.E. War Diaries of Burcorps also. The submission before us was that all the ingredients necessary for showing that these War Diaries were admissible in evidence under s. 35 of the Indian Evidence Act were not established by the prosecution.

The first aspect put forward was that these War Diaries were not public documents; they were

confidential and were not open to public; and in this connection, reliance was placed on some remarks of the House of Lords in Maria Mangini Sturla and Others V. Filippo Tomasso Matta Freccia, Augustus Keppel Stavenson & Others ((1879-80) 5 I.A. 623.). It appears to us that for the interpretation of s. 35 of the Evidence Act, this decision on common law in England cannot be of much help, because under s. 35 of the said Act, the documents admissible are not only public documents, but also record of official acts. There can be no doubt that these War Diaries, which have been used as evidence were records of official acts and in fact there is specific evidence of witnesses that these were required to be maintained under the rules applicable to the units of the army which maintained these diaries.

It was also urged that the prosecution had not given specific evidence to show that the persons who were maintaining these diaries were public servants. This objection, sought to be raised for the first time before us, involves a mixed question of fact and law. The diaries were maintained by officers of the army and at no earlier stage was any objection put forward that they were not servants of the Indian Government as they belonged to units which were not parts of the Indian Army. The case proceeded in the lower courts on the basis that these units in which these diaries were maintained were parts of the Indian Army and in fact, it was on this very basis that an earlier objection dealt with by us was raised on behalf of the appellant that sanction of the Central Government was required for the prosecution of Henderson. We cannot, therefore, at this stage go into the question of fact whether the prosecution led evidence to show that the officers maintaining these diaries were in service of the Government of India. The diaries were further proved by the evidence of the persons who wrote them and of the persons who dictated the entries recorded in them. There was, therefore, no error in admitting these diaries in evidence.

It was also submitted that these War Diaries were not put to the accused when he was examined under s. 342 of the Code of Criminal Procedure and consequently, their use to the prejudice of the appellant to record findings against him was not justified. This submission is clearly based on a misapprehension of the scope of s. 342, Cr. P.C. under that provisions, question are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the witnesses for the prosecution have been examined and before he is called on for his defence. These War Diaries were not circumstances appearing in evidence against the appellant. They were, in fact, evidence of circumstances which were put to the accused when he was examined under s. 342, Cr. P.C. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section; and consequently, the High Court committed no irregularity at all in treating these War Diaries as part of the evidence against the appellant.

The last point urged by the learned counsel before us related to the question of sentence. The sentence of substantive imprisonment awarded by the Tribunal has already been very substantially reduced by the High Court and we are unable to find any justification for interference with it. However, our attention was drawn to the fact that the High Court, while fixing the amount of compulsory fine in respect of charge No. 21, committed an obvious error. The finding recorded by the High Court was that under this charge, the claim was bogus in respect of four amounts, viz., Rs. 38,000/-, Rs. 44,000/-, Rs. 8,800/- and Rs. 17,600/- relating to four different items in respect of this work. The fictitious claims thus totalled Rs. 1,08,400/-. The High Court proceeded on the basis that this was the amount paid to the appellant in respect of this bogus claim and overlooked the fact that in respect of the claim which was the subject-matter of charge No. 21, payment had actually been made only to the extent of 50 per cent of the claim verified. Thus, in respect of this work which was

found to be bogus, the payment was to the extent of Rs. 54,200/- only and not to the extent of Rs. 1,08,400/-. The compulsory fine imposed in respect of this charge must, therefore, be reduced from Rs. 1,08,400/- to Rs. 54,200/-.

So far as the four State appeals are concerned, learned counsel appearing on behalf of the State of Punjab has not been able to show to us that any error of law has been committed by the High Court when recording findings of fact holding that the prosecution had failed to prove beyond all reasonable doubt that the claims paid to the appellant were bogus. The findings of fact recorded by the High Court do not, therefore, call for any interference by this Court.

In the result, all the appeals are dismissed, subject to the modification that the compulsory fine imposed on the appellant in respect of charge No. 21 which was the subject-matter of Criminal Appeal No. 478 of 1949 in the High Court is reduced from Rs. 1,08,400/- to Rs. 54,200/-.

G.C.

Appeals dismissed.

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