

Baburao Bajirao Patil

Vs

State Of Maharashtra

Criminal Appeal No. 201 of 1966

(S. M. Sikri, I. D. Dua JJ)

28.09.1967

JUDGMENT

DUA, J. -

1. This appeal (Cr.A. No. 201 of 1966) alongwith three other appeals (including an appeal by the State against the acquittal of two accused persons) was disposed of by us on September 28, 1970. A review petition under Order XL of the Supreme Court Rules (Review Petition No. 46 of 1970) was later presented on behalf of the appellant Baburao Bajirao Patil (accused No. 7 in the Trial Court) for re-hearing this appeal so far as he is concerned on the ground that Mr. Frank Anthony, his learned counsel was under the impression at the time of hearing that he was not being called upon to reply to the arguments of the counsel for the State so far as accused No. 7 is concerned and that for this reason he did not address any arguments in reply. On January 11, 1971, after hearing both sides we considered it proper to permit Mr. Anthony to reply to the arguments of the State counsel. Mr. Anthony then addressed us on the arguments of appellant Baburao Bajirao Patil on January 29, 1971 and we are now concerned only with his case. It may at the outset be observed that the learned counsel in reply emphasised what he had said in his opening address and nothing new was brought to our notice.

2. The prosecution story is stated in our judgment, dated September 28, 1970, in which we have dealt with the case against the present appellant and all the other co-accused whose cases were before us. It is, therefore, not necessary to reproduce the prosecution story again. This case is one of conspiracy and it has to be born in mind that by virtue of Section 10 of the Indian Evidence Act where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong anything said, done or written by anyone of such persons in reference to their common intention after the time when such intention was entertained by anyone of them would be relevant as against each of the persons believed to be so conspiring, both of the purpose of proving the existence of the conspiracy and for the purpose of showing that any such person was a party to it.

3. The appellant was, according to the prosecution, the real brain behind the conspiracy. He had been approached by accused Nos. 1, 2 and 6 for help and he thought of helping them by winning over the investigating officers. There is undoubtedly no direct evidence as indeed it is seldom - if ever - that direct evidence of conspiracies can be forthcoming. Conspiracy of the present type from its very nature must be conceived and hatched in complete secrecy, for otherwise the whole purpose would fail. The High Court noticed that the Trial Court had catalogued a large number of circumstances against the appellant. In the opinion of the High Court the most important of them were, the appellant's movements on the morning of December 7, 1961, his acts in arranging for taxi

from Sholapur, the Telangwadi meeting, his subsequent conduct in going back in the taxi with P.S.I. Patil to that officer's house at Mohol and having a conference with him there. Evidence on these points had been discussed by the High Court earlier when dealing with the prosecution case generally. These circumstances, according to the High Court, could only be understood and explained on the basis of the conspiracy as alleged by the prosecution. The High Court observed :

"The conduct of Baburao, as stated above, couple with the movements of the taxi arranged by him during the night between the December 7 and 8, 1961 and the happenings of the two days, which we have already discussed provide, in our opinion, a substantially strong chain of circumstances which leaves no reasonable doubt (about?) the guilt of Baburao as a person who was a member of the conspiracy and had participated in the same."

Earlier the High Court had, while discussing the general case of conspiracy expressed its conclusions in these words :

"In our opinion, however, the circumstances we have so far discussed, which relate to the happenings on December 7 and 8, 1961, are sufficiently strong and of a conclusive nature to establish the prosecution case of the alleged conspiracy. Baburao's movements in going to Mohol and getting the taxi from Sholapur and proceeding in the said taxi to Telangwadi on the evening of the December 7, 1961 and waiting there for Rajabhau Nimbalkar to arrive from Modlimb; the arrival of Patil and Rajabhau at Telangwadi and their meeting with Baburao at that place and the subsequent travelling of Baburao and Patil in the taxi from Telangwadi to Mohol; the halt of the taxi at the place of P.S.I. Patil and the presence of Baburao at the place of Patil and the subsequent movements of the taxi during the night of December 7 and 8, 1961 leave no doubt, in our opinion, that Baburao had brought the taxi for no other purpose excepting that of the conspiracy and the meeting at Telangwadi and the movements of Baburao, P.S.I. Patil and Rajabhau Nimbalkar during the night of December 7 and 8, 1961, could only be explained on the basis of the alleged conspiracy. The presence of Rajabhau, P.S.I. Patil and the two accused at Modlimb during the night of the 7th; the meeting between P.S.I. Patil and Dy. S. P. Thorat at the dead of night at the Gram Panchayat Office; the subsequent arrival of the two accused alongwith Patil and Rajabhau in the taxi at the Mohol Sub-Jail early in the morning at 4 O'clock; the conduct of Patil in trying to make the accused comfortable; his conduct in making entries in the log books and weekly diary showing his visit to Ropale village on the morning of the 8th in connection with the Modlimb theft case to cover up his real movements; the telephonic call put in by Dy. S. P. Thorat to the D.S.P. Sahani and his telling Khalsode at the station to (sic) that he was contracting the D.S.P., because the theft was traced and the conduct of the accused Nos. 1 to 3 in yielding to the interrogation of the D.S.P. and producing the property form, in our opinion, a sufficiently strong chain of circumstances to establish that a criminal conspiracy of the alleged by the prosecution had come to be formed and sought to be executed and of the said conspiracy, apart from thieves themselves. P. S. I. Patil, Dy. S. P. Thorat, Baburao Patil and Rajabhau Nimbalkar were likely to be in the members. In our opinion, therefore, the prosecution has fairly established its case that a conspiracy of the nature as alleged by it existed."

4. We have not been persuaded to hold that on the evidence on the record it can be said that there

are no reasonable grounds for believing that the appellant had conspired with the other accused persons who were convicted of the offence of conspiracy and the conclusion of the High Court is in any way contrary of law or otherwise so infirm and insupportable on the material on the record as to require reversal by this Court under Article 136 of the Constitution.

5. Mr. Anthony, learned counsel for the appellant, concentrated his criticism of the judgment of the High Court by emphasising that the confessions of the co-accused persons could not be taken into account against the appellant and that the evidence led in the case was quite consistent with his client's innocence. It was also submitted that the evidence of the witnesses whose statements had been got recorded under Section 164, Cr.P.C., should be looked at with suspicion. According to the learned counsel the appellant was at Mohol at 9.30 a.m. on December 7, 1961 and he could not be at Angar as alleged by the prosecution. Reference was made to the decision in Hari Charan Kurmi and Jogia Hajam v. State of Bihar, ((1964) 6 SCR 623 : AIR 1964 SC 1184 : (1964) 2 SCJ 454 : 1964 SCD 956.) in support of the submission that a confession of a co-accused cannot be considered as evidence under Section 3 of the Indian Evidence Act and though under Section 30 of that Act it constitutes an element to be taken into consideration against the non-confessing accused the Court should not start with such a confession. The Court should begin with the other evidence and then turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind would feel inclined to reach on the other evidence. Reliance was also placed on Hanumant v. State of M.P., (1952 SCR 1091 : AIR 1952 SC 343 : 1952 SCJ 509 : SCA 623.) for the proposition that circumstantial evidence, in order to sustain a conviction, should be of conclusive nature and tendency and should exclude every hypothesis except that sought to be proved. The chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must be such as to show that within all human probability that act must have been done by the accused. Sailendranath v. State, (AIR 1954 Cal 373 : 55 Cr LJ 979.) was cited for the view that the object of the conspiracy must be proved as laid.

6. The principles laid down in these decisions are unexceptionable. The question is whether the judgment of the High Court has violated any of these principles. As already noticed, the High Court had, after narrating the circumstances, come to the conclusion that there was no reasonable doubt of the appellant's guilt as a person who was a member of the conspiracy and had participated in the same. The acquaintance of Kalyan with the appellant and the interest taken by the latter in the former and the appellant's contracts with the police officers and other government officials were undoubtedly not considered by themselves sufficiently strong incriminating circumstances but they were held to render the prosecution story plausible and probable against him. After expressing this opinion, the High Court observed that in addition to the circumstances which were of sufficient importance and of necessary incriminating nature and tendency there were other circumstances relied upon by the prosecution. Those circumstances were, however, considered by the Court not be indicative by themselves of anything more than that the appellant had contracts and association with P.S.I. Patil, Dy. S. P. Thorat and P.S.I. Shinde on certain occasions and they did not show that this association was linked with the conspiracy or its execution. The purchase by the appellant of gold worth Rs. 3,000/- sometime about December 27, 1961 and payment of Rs. 13,000/- to one Anna Gund, owner of a grocery shop on or about February 27, 1962, when the appellant was indebted to some other persons was also held not to be of much significance because the appellant was not considered to be a man of no substance. He had landed property and he also owned houses. He had further given monetary help to Viswasrao Phate in the elections in 1957. But in spite of these circumstances which were not considered to be conclusively connecting the appellant with the offence, as we have already observed, the High Court had come to the conclusion on the other evidence which does not suffer from any infirmity that there was no reasonable doubt about the

appellant's guilt. After having so held the confessional statements of the co-accused, in our opinion, could legitimately be taken into account by the Court to receive assurance to its conclusions. In regard to the appellant's presence at Angar on the morning of December 7, 1961 and in regard to the request by Rangya, Shankar and Kalyan to the appellant to help and protect them, the confessional statements of the co-accused could also be appropriately taken into consideration as provided by Section 30 of the Indian Evidence Act. In a case of conspiracy in which only circumstantial evidence is forthcoming, when the broad features are proved by trustworthy evidence connecting all the links of a complete chain, then on isolated events the confessional statements of the co-accused lending assurance to the conclusions of the Court can be considered as relevant material and the principle laid down in the Case of Hari Charan Kurmi (supra) would not vitiate the proceedings. The fact that some of the prosecution witnesses had been examined earlier under Section 164, Cr.P.C. is only a circumstance to be taken into account in appraising the value of their testimony and the Court has to scrutinise such evidence a little more closely and see if the other circumstances lend support to it. The decision of this Court in Rai Bahadur and Others v. The State of U.P., (Cr. A. No. 121 of 1967, decided on August 4, 1969.) does not seem to us to be of much help to the appellant. On a consideration of the arguments addressed at the Bar we do not think there is any ground for interference with the order of the High Court under Article 136 of the Constitution. The appeal thus fails and is dismissed. The appellant will surrender to his bail bond to serve out the remaining sentence.

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