

Krishna Govind Patil

Vs

The State of Maharashtra

Criminal Appeal No. 184 of 1969

(J. M. Shelat, H. R. Khanna JJ )

18.07.1972

JUDGMENT

SHELAT, J. -

1. In special case No. 5 of 1966, four persons (referred to hereinafter as A-1 to A-4) stood their trial before the Special Judge, Kolhapur on charges under Sections 120-B, 166, 167, 218, 447, 427 and 109 of the Penal Code and under Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act.

2. The Special Judge found that the prosecution had failed to establish conspiracy and therefore acquitted all the four accused of the charge under Section 120-B, Penal Code. But he convicted the accused on other charges, the particulars of which may for brevity's sake be stated as follows -

(A-1) convicted under Sections 166, 167 and 218 and sentenced to three years rigorous imprisonment on each of the charges; also under Section 5(2), read with Section 5(1)(d), Prevention of Corruption Act, 1947 and sentenced to three years rigorous imprisonment, and under Section 447 and 427/109, Penal Code and sentenced to two years and three months respectively;

(A-2) convicted under Sections 166, 167 and 218, Penal Code and sentenced to three years rigorous imprisonment on each of the three counts, under Section 5(2), read with Section 5(1), Prevention of Corruption Act, 1947 and sentenced to three years rigorous imprisonment, and under Sections 427 and 447/109, Penal Code and sentenced to two years and three months rigorous imprisonment respectively;

(A-3) convicted under Sections 166, 167 and 218, Penal Code, and sentenced to three years on each count, under Section 5(2), read with Section 5(1)(d), Prevention of Corruption Act, 1947 and sentenced to three years rigorous imprisonment, under Sections 427 and 447/109, Penal Code, and sentenced to two years and three months respectively; and

(A-4) convicted under Sections 166, 167 and 218 all read with Section 109, Penal Code, and sentenced to three years rigorous imprisonment on each count, also under Sections 447 and 427, Penal Code and sentenced to two years and three months respectively.

All the substantive sentences against each of the accused were ordered to run concurrently.

3. The four accused appealed in the High Court against the orders of conviction and sentences passed against them. A-1 died pending the appeal, and therefore, the appeal filed by him abated. As regards the appeals of the rest of the accused, the High Court substantially agreed with the findings of fact given by the Special Judge, but modified to a certain extent the orders of conviction passed by him and also reduced the sentences awarded to them partly on the ground that considerable time has elapsed since the offences were said to have been committed and partly owing to the loss attempted to have been caused to Government being of a comparatively small amount. The result of the appeals of A-2 may be seen from the following -

(A-2) convicted under Section 166, Penal Code, in respect of the reports made by him in regard to the trees to be permitted to be cut and their valuation,

under Section 167/109, Penal Code, for abetting A-1 in the making of the earlier panchnamas in respect of the trees standing in the fields in question and on the basis of which the said trees were ultimately transferred to the allottees,

also under Section 5(2), read with Section 5(1), Prevention of Corruption Act and under Section 427/109, Penal Code.

The rest of the convictions passed against him were set aside. Sentences also were reduced to six months each under Sections 167 and 167/109 and to one year under Section 5(2), read with Section 5(1)(d), Prevention of Corruption Act, and also under Section 427/109, Penal Code, all of them being directed to run concurrently. It is not necessary to set out here the modifications made in the order of convictions and sentences passed against A-3 and A-4 as we have before us only the appeal by A-2 against the order of conviction and sentence passed against him.

4. The facts relevant for appreciating the arguments advanced in support and against the appellant's said conviction and sentence need first be set out.

5. At the material time A-1 was the Circle Officer in Radhanagari Taluka in Kolhapur District. A-2 (the appellant) was the assistant Gram Sevak and A-3 was the Range Forest Officer for Radhanagari.

6. In or about 1960, the Government of Maharashtra had decided to allot certain Government waste lands to landless persons and had for that purpose fixed the target date, viz., March 31, 1962. The Government, however, desired to expedite such allotments and issued for that purpose the resolution, dated January 4, 1961. In consequence of that resolution, applications of four persons (with whom only we are concerned in this appeal) Ganu Nhavi, Bala Shiva, Shiva Ghume and Reghu Gavada, for allotment were taken up for disposal. These applications were in respect of survey Nos. 62/2, 58/1, 12/1 and 111. On August 7, 1963, the said four persons were made to execute the requisite Kabulayats under the Land Revenue Code Rules, 1921. One of the conditions in these Kabulayats was that the allottee had to agree to pay the price of the land as also of the trees standing thereon as may be determined by the relevant authority. On the said allottees paying the price of the said four survey Numbers, the Mamlatdar by his orders, dated August 14, 1963, directed the village officer to deliver possession, to make the necessary entries in favour of the allottees and credit the said amounts in their names. In pursuance of these orders and on the allottees paying the price possession was delivered to them on September 4, 1963.

7. Thereafter, the said allottees applied to the Mamlatdar that the trees standing in the said lands

should be valued and ownership thereof also should be transferred to them on their paying the value so determined. On September 9, 1963, the Mamlatdar forwarded these applications to A-1 as the Circle Officer for necessary action. On September 18 and 19, 1963, A-1 recorded the statements, Exs. 91, 97, 83 and 51 of the four allottees. These statements were countersigned by A-1 and the thumb-impressions of the allottees thereon were attested by A-2 (the appellant). These statements mentioned that there were diverse kinds of trees standing in the said lands including Hirda, Ain, Kinjal, etc. that panchnamas in respect of these trees were prepared by A-2 in their presence and in the presence of Panchas and that the same had been read out to them, and finally, that their value had been determined according to the market rates and the allottees had agreed to pay the price so fixed. These panchnamas Exs. 35, 33, 37 and 31 were countersigned by A-1 and A-2 and the Panchas, one of whom was Ganpat Vithu Patil (P.W. 5). Besides these panchnamas, detailed statements of the trees and the values were prepared which were signed by the said Panchas and countersigned by A-1 and A-2.

8. According to these statements, there were 103 trees in survey No. 111, valued at Rs. 84, 186 trees in Survey No. 62/1, valued at Rs. 53.5, 188 trees in Survey No. 12/1, valued at Rs. 64.55 and 133 trees in Survey No. 58/1 valued at Rs. 63.5. In all, there were, according to these statements, 700 trees of which the total value determined was Rs. 284.75. A-1 thereafter sent his report to the Mamlatdar in respect of the trees in each of the said four survey numbers transmitting along with them the said panchnamas and the statements prepared by A-2 and affirming that their values were determined according to the prevailing market rates. He, however, suggested that the value of the trees may also be ascertained by the Forest Department. Accordingly, the Mamlatdar caused A-1's report and the said statements prepared by A-2 to be sent to A-3, who was the Forest Range Officer of Radhanagari range. It was alleged that A-3 without himself verifying the number the trees or their value endorsed on the said reports of A-1 that the number and value of trees stated in these reports were correct. Relying on the endorsement of A-3, the Mamlatdar and thereafter the Prant Officer sanctioned the transfer of the said trees to the said allottees on payment by them of the prices fixed by A-1, A-2 and A-3. The amounts fixed in the said reports were actually paid by A-4, a forest contractor, in the treasury in the names of the said allottees.

9. The ownership in the said trees having thus been transferred, the allottees applied to the Mamlatdar on October 17, 1964, for permission to cut the said trees stating that it was necessary to do so for better cultivation and improvement of the said lands. These applications were in the handwriting of A-2, though they bore the allottees' thumb-impressions. Those thumb-impressions were attested by A-4. These applications had to be made as under the Maharashtra Felling of Trees (Regulation) Act, 1964 the said trees could not be felled except with the permission in writing of the revenue authority named in the Act. The applications were forwarded by the Mamlatdar to A-2 for his report as to how many trees were fit to be cut. A-2 accordingly reported on October 20, 1964, that he had inspected the trees and that 140 trees in survey No. 12/1, 122 trees in survey No. 62/1, 83 trees in survey No. 58/1 and 124 trees in survey No. 11, in all 469 trees could be allowed to be felled. On these reports reaching the Mamlatdar, that officer relying on the statements of A-2 therein permission by his orders, dated November 13, 1964. These orders, before they were passed on to A-2, were endorsed by A-1. The evidence was that even before these orders were passed by the Mamlatdar and their contents communicated to the allottees, A-4 and his servants had cut a large number of trees not only in the said allotted lands but also in the adjoining Government lands.

10. These facts came to light when the Sub-Divisional Officer, Kolhapur received an anonymous letter, dated October 14, 1964. The Sub-Divisional Officer forwarded this letter to S. K. Dalvi (P.W. 2) who was then the Sub-Divisional Forest Officer. Dalvi went to Manbet and instituted an inquiry.

In the course of his inquiry, he contacted A-4, who informed him about the said orders passed by the Mamlatdar permitting the cutting of the trees in the said allotted lands and of the allottees having in their turn granted him permission to cut the trees standing therein. Dalvi, however, found that apart from cutting the trees in the said allotted lands A-4 and his servants had also illegally encroached in survey Nos. 11, 12/2, 122, 60 and 62/2 belonging to the Government and cut trees standing in those lands. Dalvi, thereupon, prepared panchnamas and detailed statements of the trees cut and also of trees still standing in the said lands in the presence of Panchas. These statements and panchnamas showed that A-1, A-2 and A-3 had in their previous panchnamas grossly under-estimated the number of trees standing in the allotted lands and equally grossly undervalued them inasmuch as, according to Dalvi's calculations, there were in all 1,485 trees, both cut and still standing as against 700 only as shown by A-1, A-2 and A-3 and their value on the spot, according to Dalvi, came to Rs. 1,529 as against the figure of Rs. 284.75 given to the Mamlatdar by A-1, A-2 and A-3 in their respective panchnamas, statements and reports. Needless to say, A-4, according to Dalvi, had cut 490 trees from the Government lands over and above those cut by him from the said four survey numbers allotted to the four allottees. The statements prepared by Dalvi showed that the trees cut from the said survey numbers were 710 (i.e. 350 Hirda and 360 other trees) and the rest i.e., 775 trees were standing therein, in thus totalling 1,485 trees.

11. It may be mentioned that S.I.K.G. Patil (P.W. 19) also had visited the lands in question and counted trees therein in the presence of Panchas. According to the panchnamas prepared by him, the total number of trees in the four allotted survey numbers both cut and uncut came to 1,383 trees and not 1,485 mentioned by Dalvi. This difference, as explained by him in his evidence, was due to the fact that while calculating the trees, he took a single trunk as a unit and not every branch above the height of 4 1/2 ft., from the ground as was done by Dalvi. This, however, does not make much difference as Accused 1 to 3, had they counted the trees honestly, could not have in any case come to the figure of only 700 and valued them at Rs. 284.75 only.

12. On these facts, the Divisional Forest Officer referred the matter to the Anti-Corruption Department and thereupon Dalvi lodged a complaint alleging conspiracy between the four accused to cheat the Government and to cause wrongful gain to A-4 by making the said panchnamas and reports and aiding and abetting A-4 to cut trees not only in the said allotted lands but also from the adjoining Government lands. The loss said to have been caused to Government, according to Dalvi's report, was of Rs. 1,832.50. In due course, the Collector, Kolhapur sanctioned the prosecution of A-1 and A-2 for offences under Sections 120-B and 167 of the Penal Code and Section 5(1)(b), read with Section 5(2) of the Prevention of Corruption Act. Similar sanction was obtained from the Conservator of Forest in regard to A-3. These were the facts and circumstances on which the four accused were prosecuted on the charges referred to earlier.

13. As stated before, the Special Judge held the charge of conspiracy under Section 120-B not to have been established. That being so, the accused persons could only be convicted in respect of other charges and only on the basis of acts established against each of them separately. Consequently, the principal questions, so far as A-2 (the present appellant) was concerned were :

(1) Whether he was, in his capacity as a public servant, charged with preparation of any document and being so charged did frame such a document or documents in a manner which he knew or believed to be incorrect with the intention thereby to cause wrongful loss to the Government or wrongful gain to any other person, in this case A-4 ?

(2) Whether A-1, in his capacity as a public servant, charged with preparation of document or documents, framed false documents, viz., panchnamas, knowing and believing them to be false with the intention aforesaid, and if so, whether A-2 (the present appellant) aided and abetted him in so doing ?

(3) Whether in respect of the said acts A-2 could be held to be guilty of misconduct and envisaged by Section 5(1), read with Section 5(2) of the Prevention of Corruption Act ? and

(4) Whether the acts alleged against accused A-4 fell within Section 427, Penal Code, and if so, whether A-2 (the appellant) can be said to have aided and abetted him in the said acts ?

Although considerable evidence, both oral and documentary, was led in the trial court, the questions arising in the trial fell within a limited compass. The crucial questions were, firstly, whether the panchnamas prepared by A-1 and A-2 and the statements and reports with regard to the trees standing in the said lands and fit to be cut prepared by A-2, as compared with the statements and panchnamas prepared by Dalvi and S. I. Patil, were incorrectly made and the price of the trees therein set out was undervalued with the intention of causing loss to the Government and a corresponding wrongful gain to A-4, and secondly, if the acts of Accused 4 in encroaching into Government lands and illegally cutting down trees therefrom amounted to mischief, whether A-2 had aided and abetted him in so doing.

14. As against the number of trees mentioned by A-1 in the panchnamas made by him viz., 700 of the estimated value of Rs. 284, the number mentioned by Dalvi in his panchnamas and detailed statements came to a little more than double, whose value at the spot and not at the market at Kolhapur he estimated at about Rs. 1,500 and odd. If Dalvi's evidence and his calculations both as to the number of trees and their value were to be held proved, it would clearly mean the number of trees shown in the panchnamas prepared by A-1 and their value as shown by him were grossly incorrect, and under-estimated. It is true that when S. I. Patil subsequently counted the trees, both cut and standing, he found them to be 100 less than Dalvi's figure. The difference, as earlier stated, was due to a slightly different mode of counting. In any event, the difference between Dalvi's figure and that given by Patil was so small that it would hardly make any difference. It is impossible to think that if A-1 and A-2 had counted the trees properly, there could conceivably be such a difference between their figures and those given by Dalvi and Patil. As a matter of fact, Dalvi's detailed statements showed that the trees cut by A-4 and his men alone came to 710 in number. There were besides 775 standing trees. If the number of trees cut by A-4 alone came to 710, it is obvious that the number 700, of all trees in the lands in question given by A-1, could not possibly have been correctly calculated or counted.

15. The endeavour of Mr. V. S. Desai was, however, to show us that the mere difference in the numbers of trees given by A-1 and A-2 on the one hand and those given by Dalvi and Patil on the other did not mean that A-1 and A-2 had purposely given false numbers so as to give an undervalue of the trees with intent to cause wrongful loss to Government. For that purpose he took us to the evidence of the main witnesses in the case as also the panchnamas and statements made by Dalvi and Patil on the one hand and by A-1 and A-2 on the other. The argument was that the difference in numbers did not matter at all since Dalvi had included in his statement even dried, useless and small saplings in order to inflate the number as also the value of the trees. It is no doubt true that Dalvi had counted as separate trees branches over 4 1/2 ft. in height. But that does not advance Mr. Desai's

argument for the reason that S. I. Patil had treated each tree as a unit and yet, according to his calculations the trees numbered 1,300 and odd, almost double than the number given by A-1. If Patil's calculations were to be accepted as true, there is no alternative consideration left except that A-1 and A-2 had given the figure of 700 incorrectly and it must follow that their valuation also was incorrect. From that circumstance alone the inference must follow that they knew that by giving such low number of trees and low valuation, the Government would wrongfully suffer a loss, since both of them knew that the ownership in those trees was to be transferred to the allottees on their paying the value thereof determined by the Mamlatdar, who would rely on the panchnamas and statements prepared by A-1 and A-2.

16. Both the Special Judge and the High Court considered this aspect of the case fairly elaborately and both of them on assessment of the evidence believed Dalvi's evidence and the panchnamas P.W. 3 and P.W. 4 in their cross-examination that he had taken into account dried and non-valuable trees while ascertaining the number of trees. Having been taken through this part of the evidence by Mr. Desai, we find no substantial reason to take a view different from that taken by the Special Judge and the High Court. It must, therefore, follow that while making the panchnamas A-1 and A-2 had given incorrect number of trees in the allotted lands, viz., 700 and the value estimated by them on the basis that there were only 700 trees was obviously low and incorrect. As aforesaid, the difference between the figures given in the panchnamas prepared by A-1 and A-2 and those given by Dalvi and Patil being so considerable, it cannot be attributed to mere mistake or neglect. It must consequently be held that such low figures and low values were purposefully given in those panchnamas with the knowledge that wrongful loss would as a result thereof be caused to the Government.

17. The panchnamas were, however, made by A-1 in his capacity as the Circle Officer. It was he also to whom the Mamlatdar had instructed to make them after ascertaining the number of standing trees and their value. Obviously, therefore, in respect of those panchnamas A-1 only could be convicted of the substantive offence under Section 167, and not A-2. A-2, however, as an assistant Gram Sevak, was bound to assist the Circle Officer if called upon to do so, in making the said panchnamas. As the panchnamas show, A-2 had attested the thumb-impressions of the allottees on those panchnamas. The evidence also shows that apart from his attesting the thumb-impressions, A-2 had assisted A-1 in preparing those panchnamas. The High Court, therefore, was right in modifying the order of conviction passed by the Special Judge and converting that order from Section 167 to Section 167, read with Section 109 of the Penal Code so far as those panchnamas were concerned.

18. The next question is whether A-2 could have been convicted of the substantive offence under Section 167 in respect of the endorsements made by him underneath the allottees applications for permission to cut the trees. Those are Exs. 67, 70, 72 and 50. These endorsements were made by A-2 in pursuance of A-1 having inquired from him whether there were trees in the said allotted lands fit for being cut and if so how many. In pursuance of that query, A-2 made the aforesaid endorsement to the effect that there were in all 493 out of 700 trees in those lands which were fit for felling. A-2 must have known that the Mamlatdar would rely on the figures given by him before he issued the permission. The evidence shows that pursuant to the permission granted by the Mamlatdar, A-4 cut down 710 trees in all from those lands alone. Dalvi's statements show that even though 700 and more trees were cut, there were, besides them, 775 trees still standing when he inspected those lands. Both the figures of 700 and 469 were clearly therefore wrongfully given. There is nothing to show that in spite of the fact that A-4 felled 700 and odd trees, although the permission to cut was for 469 trees only, A-2 ever protested or made a complaint regarding the

excessive cutting. Obviously, he hoodwinked the illegal action of A-4 knowing full well that A-4 would thereby make a wrongful gain. This inference as to his knowledge is strengthened by two circumstances : (1) that the applications of the allottees for cutting the trees were written out by A-2, and (2) the price of the trees payable by the allottees before these trees could be transferred to them was paid by A-4 directly in the treasury. The cumulative effect of all these circumstances is that A-2 must have known that it was A-4 who was interested in the trees and that it was he who was to benefit as a result of the transfer of those trees and their cutting. From these two things it must follow that A-2 gave low figures of trees and their values and also gave the figures 469 trees out of the total number of 700 wrongly. He must have known that once the permission to cut the trees was given, no one would then trouble to find out whether A-4 restricted his activities to 469 trees only. He could not have anticipated that some one would make an anonymous complaint or that such a complaint would be acted upon by the Sub-Divisional Officer.

19. The argument of Mr. Desai, however, was that the High Court was not justified in convicting A-2 under Section 167 in respect of the said endorsements by him since Dalvi in his complaint had confined himself to the panchnamas, dated September 18 and 19, 1963 made by A-1 and had not there stated that these endorsements were falsely made. In other words, the conspiracy there alleged by Dalvi pertained to the wrongful making of those panchnamas. Hence the High Court could not go beyond the scope of that complaint and convict A-2 of the offence under Section 167 in respect of the said endorsements.

20. We do not think there is force in this argument. Dalvi's complaint was filed before the Investigating Officer. That complaint, no doubt, focused the point as to the panchnamas made by A-1 with the assistance of A-2. But then that could not circumscribe the scope of the trial. For ascertaining the true scope of the trial, we have to turn to the charges framed by the Special Judge. Those charges in express terms mentioned not only panchnamas but also other "false documents" which on the facts averred by the prosecution must necessarily include the endorsements made by A-2 while mentioning the number of trees fit to be cut out of the 700 trees mentioned in the panchnamas. A-2, therefore, had from the very outset clear notice that he was being tried also in respect of these endorsements which in point of fact ultimately misled the Prant Officer giving the permission to cut the trees. Besides as the High Court has remarked A-2 was from the very start concerned with the allottees agreeing to A-4 cutting the tree. He had not only prepared their applications for permission to cut the trees but had induced them to agree to A-4 cutting the trees. The question is why was A-2 taking so much interest in the allottees agreeing to A-4 cutting the trees, unless he and A-4 were in league with each other and he wanted A-4 to make wrongful gain out of these transactions. It is also impossible to think that A-2 would not know the fact of A-4 having cut 710 trees from these lands although he (A-2) had recommended only 469 trees for which only the permission was to his knowledge issued. His silence, which amounted to acquiescence in this regard shows that he was althroughout privy to the illegal cutting of the excess trees. In our view, he was rightly convicted by the High Court under Section 167 in respect of the false endorsements made by him which misled the Prant Officer to issue the permission to cut the said trees. These very acts on the part of A-2 would a fortiori constitute misconduct within the meaning of Section 5(1)(d).

21. That being the conclusion, the question whether he was rightly convicted under Section 427/109 becomes academic in view of the order of the High Court directing the substances sentences to run concurrently. However, considering all the circumstances of the case and the role played by A-2 from the very outset when he helped A-1 to prepare the incorrect panchnamas up to the time when he prepared the applications by the allottees for permission to cut the trees and induced them to A-4

cutting the trees clearly shows that he must have A-4's encroachments in the adjoining Government lands and his illegal cutting of the trees standing therein. As Dalvi's panchnamas and statements show, the cutting was not confined to a tree here and a tree there, but speared in considerable areas and was systematic. It is impossible to think that A-2 was totally unaware of this cutting and yet he closed his eyes to it. These facts must lead to the conclusion that he did aid and abet A-4 in committing the said mischief which obviously caused loss to Government.

22. On these facts and circumstances there is scarcely any reason for our interfering with High Court's conclusions. The appeal fails and is consequently dismissed.

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