

Chandrakant Ganpat Sovitkar and Another

Vs

State of Maharashtra

Criminal Appeals Nos. 206, 207 and 214 of 1970

(P. Jagmohan Reddy, H. R. Khanna, Y. V. Chandrachud JJ)

03.05.1974

JUDGMENT

JAGANMOHAN REDDY, J. -

1. These appeals are by special leave against the judgment of the Bombay High Court confirming the conviction and sentence passed on Rajendraprasad Devidas Mishra A-1 and Raghunandan Trivedi A-2 under Section 161 read with Section 34 I.P.C. and section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. A-1 was also convicted under Section 212 I.P.C. The two accused, along with Chandrakant Ganpat Sovitkar A-3, were tried for offences under Sections 120-B, 161, 201, 212, 217, 218, I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, but A-3 was acquitted of all the charges and A-1 and A-2 were convicted and sentenced as aforesaid. A-1 was also convicted by the trial Court under Section 218 I.P.C., but his conviction and sentence under that section was set aside. The High Court in an appeal against acquittal of A-3, partly allowed the appeal and convicted him for offences under Section 161 read with Section 34 I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced him to suffer one year's rigorous imprisonment on that account. The State appeal against A-3 in regard to other offences was dismissed.

2. The prosecution case is that A-1 who was Inspector of Excise and A-2 who was Sub-Inspector of Excise were both posted at Indore. They received certain information that Truck No. M.P.E. 5948 was carrying opium from Upper India to Hyderabad. On receipt of his information the two accused left Indore on August 26, 1963 and reached Omerga via Hyderabad on September 3, 1963 with a view to intercept the said truck and seize the contraband. They took their residence in the Dak Bungalow at Omerga, wrote to the local police on the same day for giving them assistance. A-3 the local police Sub-Inspector posted one Head Constable and some constables for the said purpose and a barricade was erected on the road in front of the Dak-Bungalow. On September 5, 1963 at about 5 a.m. a Poona bound car which was driven by Chandrakant Lonkar P.W. 18 in which there were two males and 3 females was stopped as some of them appeared drunk and had blood stains on their clothes. Accused Nos. 1 and 2 came to the spot and checked the car. They sent for A-3 Sovitkar who arrived at about 5.30 a.m. in plain clothes and was engaged in making enquiries from the occupants of the said car. While he was so engaged, at about 6 or 6.30 a.m. a station wagon of blue colour bearing number plate M.S.W. 7159 and going towards Hyderabad was stopped. This vehicle was being driven by Sabir Sadik P.W. 17 and Abrar Ali Khan P.W. 16 was sitting by his side. A third person, one K. Amar Singh, the owner of the vehicle was sleeping in the rear of the vehicle. Sheikh Jamal Head Constable P.W. 2, who was on duty near the Dak-Bungalow, called out A-1 and A-2 who were in the Dak-Bungalow along with A-3. A-2 came out to make enquiries. He collected from P.W. 17 his licence, Ext. 37, the certificate of registration Ext. 38, certificate of insurance, Ext. 39,

tax token card, Ext. 40, and the keys of the vehicle. Thereafter A-2 gave the keys of the vehicle to P.W. 18 and asked him to take the station wagon to the compound of the Dak-Bungalow which he did. By this time A-1 had also come out and when he and A-2 were making enquiries and wanted to take a search, K. Amarsingh objected to it. In the meantime A-2 tried to open the inside roof of the vehicle with a screw driver and in that attempt succeeded in pushing the screw driver into the top. When he pulled it out, the screw driver smelt of opium. He showed it to A-1 who, it is alleged, on getting the smell of opium began to give fist blows to K. Amarsingh. A-1 ordered K. Amarsingh to take out the articles from the station wagon. When two trunks one suit case, one holdall and accessories of the vehicles were taken out and Amarsingh opened the trunk there was found in it a leather bag with zip arrangement. When that zip was opened, bundles of currency notes of Rs. 5, 10 and 100, in all of the value of Rs. 30,000 to 40,000 were disclosed. The trunk with the leather bag containing currency notes was ordered to be kept in the room of the dak-bungalow which was in the occupation of A-1 and A-2. The accused also led K. Amarsingh to the said room. Bahadur Khan P.W. 1 who was the Chowkidar of the Dak-Bungalow; Maruti Salunke P.W. 13 who was the peon of the Tahsildar residing in the adjoining bungalow; P.W. 18 driver of the Poona bound car; P.W. 17 who were the drivers of the same station wagon, saw the leather bag and heard and watched the talk between the accused and K. Amarsingh. A-1 and A-2 thereafter tried to open the top of the vehicle and asked P.W. 18 to cut it with chisel and hammer, but when this was about to be done, P.W. 17 on the instructions from K. Amarsingh, put a chain in the hook hanging from the cavity in the dashboard and pulled it from the shutter of the first chamber. On being so pulled, the shutter of the first chamber moved back and the iron-sheet tilted. One cake of opium fell down. In this way 4 chambers of that size were discovered and they could be pulled back from the cavity of the first chamber. When all the chambers were opened, in all 290 cakes of opium of the total weight of 271.300 kg. and valued at Rs. 2,15,000 were recovered. Detailed Panchnamas Exts. 32 and 33 were made from 10.30 a.m. to 6 p.m. The two drivers were searched in respect of whom Panchnamas are Exts. 34 and 35 and the articles found in the station wagon and the documents in respect of the station wagon are listed in Ext. 36. The Panchas who witnessed these Panchnamas are Manik Marut Patil, P.W. 8, Dadarao and Indrajit. Chandrasha Madule, P.W. 7 was called to act as Pancha but he was not called on to witness them though he says he sat there for a pretty long time and watched the activities of the accused officers. It is also said that while P.W. 16 and P.W. 17 were handcuffed, K. Amar Singh was sitting in the Central Hall of the Dak Bungalow. Sheikh Jamal, Head Constable, P.W. 2 had brought the handcuffs to the dak bungalow and according to him he put one set of handcuffs on the two drivers and while he was about to put the second set on K. Amar Singh, A-1 and A-2 stopped him from doing so and said he was not to be handcuffed.

3. Accused No. 3 who had earlier left with the occupants of the Poona car to the police station, returned to Dak Bungalow shortly after 10.30 a.m. He found A-1 and A-2 in their rooms in the Dak Bungalow. After him, K. Amar Singh was called in that room and was sent out after some time. It was then that all the three accused are said to have had a discussion which, according to the prosecution, amounted to a conspiracy under which they were to have let off K. Amar Singh on accepting the amount which was with him. All the three accused were charged with conspiracy to accept as illegal gratification a large sum of money to screen him from prosecution for the illegal possession and transport of opium under Section 65-A of the Bombay Prohibition Act, and for committing an offence punishable under Section 120B of Indian Penal Code. All the three accused were acquitted of this charge. They were also charged that they being public servants, accepted from the person found with the Motor Vehicle No. MSW 7159 and calling himself as K. Amar Singh a large sum of about Rs. 40,000 as gratification other than legal remuneration, as a motive or reward for forbearing to prosecute him for the offence of possessing and transporting opium and thereby

committed an offence punishable under Section 161 read with Section 34 of the Indian Penal Code. As already stated, A-3 was acquitted of this charge but A-1 and A-2 were convicted. The High Court, however, reversed the acquittal of A-3 and convicted him of this charge. Similarly, all the three accused were charged under Section 5(2) read with Section 5(1)(d) of the Prevention of corruption Act and Section 34 of the I.P.C. for abusing their position as public servants and for obtaining from the occupant of the motor vehicle K. Amar Singh a sum of Rs. 40,000. Of this charge also A-3 was acquitted and A-1 and A-2 were convicted. The High Court reversed the acquittal and convicted A-3 also of this offence. Again, all the three accused were charged for giving false information about the occupant of the motor vehicle calling himself to be K. Amar Singh as an informant and the opium contained therein and hereby committed an offence punishable under Section 201 read with Section 34 of the Indian Penal Code. They were also charged for offences under Section 212, 217, 218 each one read with Section 34 I.P.C. Of these charges, accused No. 1 was alone convicted under Sections 212 and 218 and was sentenced to suffer 9 months' rigorous imprisonment. A-2 and A-3 were acquitted of all these offences.

4. We will first take up the appeal against A-3 as his being a case of conviction by the High Court by setting aside his acquittal, a different approach would be required for considering whether his acquittal has been validly set aside. The main charge against the accused is that they accepted from K. Amar Singh large sum of money as illegal gratification to screen him from legal punishment for the offence of illegally possessing and transporting opium. The receipt of money by the accused is, therefore, the main fact to be proved, of which it was admitted there is no direct evidence, either of the giver or of the accused being in possession of the money given as bribe. The question is whether from proved and credible evidence an inference can be drawn that the accused can with reasonable certainty be said to have taken bribe. The special Judge quite rightly posed the following two as the important circumstances : (1) whether there was a third person calling himself as K. Amar Singh in the station wagon MSW 7159 besides the drivers Sabir and Abrar responsible for the illegal possession and transport of the opium seized from the vehicle on September 5, 1963 at Omerga, and it so - (ii) which of the accused 1 to 3 knowingly and intentionally omitted to prosecute him ? The case of the prosecution was that A-1 had stated that K. Amar Singh was an informant and on that pretext his name was not deliberately shown nor was any mention made of the money. On the other hand, the case of A-1 and A-2 is that there was no such person as K. Amar Singh and consequently there was no money as alleged by the prosecution. The case of A-3 was that he was busy with his other car and did not in fact know anything about the money and believed A-1 wherein he was told that K. Amar Singh was an informant.

5. The complaint given by A-1 was not written by A-3 but by A-1, but after A-1 and A-2 along with K. Amar Singh suddenly left on the morning of 6th, A-3 pursued the investigation vigorously and took several steps to apprehend the culprits. In fact, it is claimed that as a result of his efforts, K. Amar Singh was caught and he was prosecuted and was convicted. P.W. 16 P.W. 17 were also prosecuted and though convicted by the trial Court, were acquitted in appeal, by the Additional Sessions Judge, Osmanabad.

6. The prosecution had led the evidence of 16 witnesses who claimed to have seen K. Amar Singh as the third occupant of the station wagon MSW 7159. Some of them claimed to have seen him from the time the station wagon arrived while others say they saw him sitting in the Dak Bungalow discussing with the accused officers. By way of corroboration, the prosecution has also adduced evidence to show that K. Amar Singh was ultimately arrested in Rampur and a prosecution was launched against him for illegal possession and transport of opium and has produced certified copies of the charge-sheet, Ext. 84 judgment of the Judicial Magistrate, First Class, Ext. 85 by which he

was convicted, judgment of the appellant court, Ex. 86 and of the High Court in the revision petition filed by him, Ext. 87. The evidence of the 16 persons was summarised by the trial Court in para 86 of its judgment. This evidence is of Bahadur Khan, Chowkidar P.W. 1, Sheikh Jamal, H.C. P.W. 2, Abdul Gani, H.C. P.W. 3 armed H.C. No. 115 who relieved Sheikh Jamal at 11 a.m. and took in his custody the two drivers, the said K. Amar Singh, the station wagon and the opium; Police Constable Ram Govind Dande P.W. 5 who was in the armed party of Sheikh Jamal and who was present at the check post at the time the station wagon arrived and thereafter till they were relieved by the party of P.W. 3; Shamsingh Thakur P.W. 6, H.C. who was Police Station Officer, Omerga till he was relieved by the P.S.I. Sovitkar (A-3) at 9.30 a.m. He also claims to have gone to the Dak Bungalow to assist the officers; Chandrasha Madole, P.W. 7, Manik Maruti Patil, P.W. 8, Kishan Datta Patil, P.W. 9, photographer of Merga who was admittedly called to take photos of the accused and officers and took snaps from two of which he made the photo prints Exts. 16 and 17; Panchappa Madale, P.W. 10, newspaper agent of Omerga; Shantram Joshi, P.W. 11 sales representative of the Indian Express group of papers who claims to have been halting that day at the Dak Bungalow, Omerga and to have seen the station wagon and K. Amar Singh and to have made inquiries and sent news to the papers; H.C. Daji Mane, P.W. 12 who claims to have gone to the Dak Bungalow on learning of seizure on a big quantity of opium, Maruti Salunke, P.W. 13, Peon of the Tahsildar who had to attend to the Tahsildar in the adjoining bungalow and claims to have passed the dak-Bungalow in the morning and evening of September 5, 1963 and also next morning; P.W. 16, P.W. 17 and P.W. 18. After reviewing the evidence, the trial Court summarised the net result of the testimony of Bahadur Khan as follows : (1) The station wagon arrived at 6 to 7 a.m. Accused-3 was either busy in checking the Poona car or had left with it to Police Station and thereafter he arrived at 10.30 a.m. (2) K. Amar Singh was in the station wagon when it arrived and he had objected to the checking of the vehicle and his kit. (3) After accused 2 Trivedi succeeded in piercing the screw driver which was smelling of opium - the opium was discovered from the secret compartments; (4) Thereafter from the kit of K. Amar Singh were discovered large sums of currency notes and the kit was removed and kept in suit No. 2 at which A-1 and A-2 were staying; (5) A-1, 2 and K. Amar Singh took meals together on a table; (6) K. Amar Singh had in between a talk with the accused and was seated throughout in the dining hall; (7) The work of investigation went on till late at night; (8) A car came from Hyderabad, inmate of that car stayed in the same suit, had meals - and A-1, A-2 and K. Amar Singh left in the morning by this car.

7. The Special Judge was of the view and in our view rightly so that the case of A-3 was different from A-1 and A-2 and accordingly the evidence must be separately assessed. After examining the gist of evidence of each of the 16 witnesses, the Special Judge came to the conclusion that on the arrival of the station wagon the third occupant who was in the beginning calling himself to be 'K. Amar Singh' or who was referred to by the witnesses as 'K. Amar Singh' but subsequently gave his name as 'Masud Raheman' had objected to the drivers Sabir and Abrar handing over the keys and papers of the station wagon. He spoke with A-2 in English and asked the purpose of checking and probably tried to assure him that there was nothing wrong. In spite of it, A-2 tactfully took out the keys from the switch board and obtained the documents Exts. 37, 38, 39 and 40. By this time A-1 also arrived, Till this time, the said person was in the station wagon. Thereafter the keys were given to Chandrakant Lonkar driver of the Poona car and he was asked to take the station wagon into the compound of Dak-Bungalow. The version of A-1 that he was then in the bath-room was not believed but the evidence of Bahadurkhan, Sheikh Jamal, Ram Dande and Chandrakant Lonkar shows that both A-1 and A-2 went near the station wagon and there was talk and discussion between the third occupant and these officers in English firstly on the road and again after the station wagon was taken into the compound in the Dak Bungalow. It was also found that A-2 searched every part

of the vehicle and when he tried to tear the rexin of the cushions, the said person objected seriously. There was a sort of altercation between them. A-1 held him and scolded him. Then the kit was taken out and searched. The leather bag containing money was also noticed by those who were present. Yet the kit remained near the station wagon. The accused officers A-1 and A-2 were trying and after some time A-2 succeeded in piercing the screw-driver into the top and declared that it smelt of opium. A-1 after smelling it got angry with that man and scolded him for his defiant attitude although he had concealed a large quantity of opium in the top of the vehicle and so ingeniously. The Special Judge said that the conduct of that man, deposed to by the witnesses Bahadurkhan, Sheikh Jamal, Ram Dande, Abrar and Sabir and even by the witnesses who came there subsequently - Chandrasha Madole, Manik Maruti - definitely indicated that even to the knowledge of the officers he was the person interested in the vehicle and the opium hidden therein. His kit was removed to the suite in the occupation of A-1 and A-2. At that time it may have been considered as a precautionary measure that he may not run away. But the witnesses could see the change in the attitude of the officers somewhat softening towards that man. It was also stated by a number of witnesses that officers brought chisel and hammer and called Chandrakant Lonkar to cut open the top of the station wagon. The third person again objected to it. A-2 asked Sabir to open the top, but Sabir pleaded ignorance and consulted the said man who it is said took out from his bag one chain, handed it to Sabir and himself went out and pointed out to Sabir the lever or the hook hanging on the left side by the dash-board. The chain was put through the hole from the engine side into that hook and it was pulled from the outside. The iron-sheet covering the first chamber moved aside. Again there was an iron-sheet with 14 screws. It was taken out. It is quite obvious from this conclusion that the third person had more than a passenger's interest in the station wagon as he knew every nook and corner of it which only an owner could have known. In spite of the fact that this third person was in the knowledge of the opium hidden in the secret chambers of the roof with hidden gadgets to open it and notwithstanding that a large sum of money was discovered hidden in his leather bag, A-1 and A-2 did not arrest him, nor did A-1 mention his name in the complaint given to the police station or in the panchanamas that were made of the recovery of the opium and the contents of the station wagon etc.

8. We will deal with the evidence relating to the money later when discussing further the evidence against A-1 and A-2. But for the present, suffice it to say that throughout all this there is no mention of A-3 being directly involved in the search or in his having seen large sums of money in the leather bag. There is some discrepancy in the evidence as to whether A-3 was at all present there when the car carrying the opium arrived. It is in evidence that A-3 arrived in plain clothes at the Dak-Bungalow after the Poona bound car had arrived. According to some it was 5.30 a.m. and according to others it was 6.00 a.m. A-3 himself says that within half an hour he left. The car carrying the opium is said to have come there at 6.30 a.m. or 7.00 a.m., so that the case of A-3 is that he was not present there when the car arrived and he returned to the Dak Bungalow only at 10.30 a.m. in his uniform. The Special Judge did not believe the evidence of Ram Dande that A-3 Sovitkar was at the Dak Bungalow from morning till 10 a.m. because he had a grievance against A-3 who had admittedly been punished for his misconduct on the report of A-3. The Special Judge accepted the evidence of Sheikh Jamal that A-3 had left with the Poona car within half an hour and that he returned to the Dak Bungalow at 10.30 a.m. Bahadurkhan's evidence was said to be not clear, but even he admitted that A-3 had left with the Poona car within half an hour and again came 2/3 hours thereafter i.e. at 10.30 a.m. The evidence of Abrar and Sabir was that A-3 was present at the Dak Bungalow till the station wagon was taken into the compound, the kit was taken out, and A-2 succeeded in piercing the screw driver and smelling of opium. The Special Judge pointed out that these two witnesses, Abrar and Sabir, had a strong grievance against A-3 because he had persistently

questioned them and tortured them to disclose the identity and whereabouts of K. Amar Singh, or the third person alleged to have boarded the station wagon from Sholapur and who had left with the officers A-1 and A-2. Apart from this, witnesses Abrar and Sabir were notorious smugglers and their testimony cannot be believed without independent corroboration nor did they have any reason to mark and remember the presence of A-3 who was in plain clothes and unknown to them. The witnesses also did not say that A-3 took an active part in questioning them or in checking their vehicle.

9. The evidence of Chandrakant Lonkar that A-3 was at the Dak Bungalow at the time of the arrival of the Station wagon and also that he was asked by A-2 to drive the station wagon into the compound of the Dak Bungalow seems to have been accepted. The entry in the Station diary that A-3 was actually in charge of the police station from 9.30 to 10.30 a.m. seems to belie the version of some of the witnesses that A-3 was there at the Dak Bungalow from the time when the station wagon containing the opium had arrived till 10.30 a.m. The Special Judge summed up the statements of the witnesses thus :

Thus the net result of the entire evidence appears that P.S.I. Sovitkar may be at the dak-bungalow for sometime between 6 to 7 and even if he were present at the dak-bungalow, he was busy in making inquiries with the inmates of the Poona car and within few minutes he took away those persons to the Police Station. Even though, it is a fact that Chandrakant Lonkar was available to drive the said station wagon into the compound, the accused No. 3 Sovitkar would not go near the station wagon. He was busy with the inmates of the Poona car and although station wagon was detained, the Narcotics Officers - accused 1 and 2 at whose instance the check post was put up, were actually present and had been attending to the station wagon. Sovitkar was then in plain dress. Accused Nos. 1 and 2 were in uniform. It is quite natural that he did not go towards the station wagon and after it was taken inside, he left with Chandrakant Lonkar and other inmates of the Poona car to the Police Station. Till then, there was nothing suspicious and important for him to attend to the station wagon. Accused 1 and 2 were sufficiently capable and were actually dealing with it. He was available if and when required.

10. The next phase of the evidence relates to what happened after 10.30 a.m. All the preliminaries of checking the vehicle, the objection by 'K. Amar Singh', the altercation with him, attempt to tear the rexin and the checking of his kit, calling Chandrakant Lonkar to open the roof with chisel and hammer and ultimately Sabir's opening it under the directions of 'K. Amar Singh' were all completed even before A-3 returned to Dak Bungalow at 10.30 a.m. It was also held that A-3 had no knowledge and no body claims to have told him that day that the said man had a large amount in his bag or that there was anything suspicious. Evidence of Panchappa Madole and Shantaram Joshi in this regard was disbelieved as it was improbable and conflicting.

11. No doubt the panchanamas etc. were made between 10.30 a.m. to 6 p.m. and A-3 was admittedly at the dak-bungalow though in between he had gone back to the police station to release inmates of the Poona car on getting clearance certificate from the Medical Officer. Statement of Abdul Gani who was on duty from 11 a.m. that all of them, namely, A-1, A-2 and A-3 and others took meals together on the table at night was not accepted as it was not corroborated by other witnesses because Bahadurkhan Chowkidar plainly admitted that he did not serve food at night but his servant Barkya might have done so. The said Barkya was not examined and Bahadur Khan did not receive money for it. In the circumstances, the Special Judge held that there was no truth in the allegation that A-3 had dined at night with A-1, A-2 and K. Amar Singh at the Dak Bungalow. Apart from this, Abdul Gani's evidence was not relied upon as he had a grievance against A-3.

12. The evidence of Vithal Suryawanshi P.W. 4 was also disbelieved because he went to the extent of saying that he heard a conversation between A-1 and A-3 near the station wagon where they were seated for Panchnama as to whether the staff was mischievous. On this enquiry A-3 is said to have assured him that it was good enough. It was also stated that A-1 and A-3 had also a meeting in the room with 'K. Amar Singh'. This witness further added that he peeped through the door and actually saw the handling of currency notes. His evidence was disbelieved because he was put under suspension for 50 days while under A-3 and on enquiry his increment was stopped for one year. The witness bears enmity and bitterness against A-3 and is inclined to speak against him. The Panchas Manik Maruti and Chandrakant who were present did not speak against A-3. On the other hand they said that A-3 asked A-1 and A-2 about the third person seated in the dining hall and how only two were mentioned in the Panchnama. To this A-1 replied that he was their informant. This evidence seems to have been accepted, because the Special Judge says that it definitely indicates A-3's bona fides and negatives the evidence of Vithal Suryawanshi.

13. The Special Judge, as a result of the discussion, disbelieved the story that currency notes were kept openly on the table or the stool or in an open bag, according to some in the verandah, according to others on the table or a stool in the room, as if for an exhibition. Similarly the evidence of the witnesses that A-1 had at some stage told them that there was money and the third man was the owner was also held to be not at all probable. The Special Judge, while accepting the broad facts of there being a third person of the name of 'K. Amarsingh' or that Chandrakant Lonkar drove the station-wagon into the compound or that an attempt was made to open the top by chisel and hammer and ultimately Sabir opened it - did not rely upon all other details which could be supplied by imagination. He further observed that many of them were found to be unnatural and improbable and some inconsistent with the evidence of the other witnesses and, therefore, except for the fact that the third person calling himself 'K. Amarsingh' or 'Masud Rehman' was there in the Dak Bungalow, it may not be safe to believe the evidence that all the three accused and K. Amarsingh had a closed meeting in the room for some time.

14. A-3's statement that he was told by the officers of the Narcotics Department that the third person was their informant was accepted by the Special Judge, because there was no reason for him to dispute or challenge their representation and to find fault with them. There was also no evidence that Sheikh Jamal or Ram Dande or Abdul Gani had told A-3 that day specifically that the said man was the owner of the vehicle and the opium. Daji Mane, however, said in his evidence that he had apprised A-3 of the mischief of the officers after A-3 had returned to the Police Station. But this was not accepted, because the Special Judge thought till the evening nobody suspected that there was anything wrong, and it was only in the evening or on the next day, when they learnt that the complaint was only against two drivers and the third one had left with the officers that they realised of the mischief by the officers of the Narcotics Department.

15. The evidence of Panchappa Madole and Shantaram Joshi that they saw A-3 at 4.30 p.m. at his house and asked him about the third man and the amount of money was disbelieved for the simple reason that A-3 was at the Dak Bungalow busy in drawing up the Panchnama and other documents which went on up to 6 p.m. The Special Judge believed the evidence of Sheikh Jamal, Vithal Suryawanshi, Shamsingh, Panch Manik Patil, Photographer Kishan Patil, Panchappa Madole, Shantaram Joshi, Daji Mane and Maruti Salunke that A-1 had made representation to A-3 that the third person was an informant and if this representation had been believed by A-3 on that day there was nothing improbable. A-3 began to pursue the matter only after he found that A-1 and A-2 had left with the third person, and he came to know about the money the next day when he did pursue the matter further. As pointed out by the Special Judge there is abundant evidence in this case to

show that A-3 pursued the investigation vigorously. Our own perusal of the evidence shows that A-3 tried to trace the whereabouts of K. Amarsingh. When he found that he had inadvertently given a wrong number of the station wagon in the wireless message he went to Madras. Thereafter he found the address given in the Car Registration Office and went to that address but found that it was a fictitious address. He sent a wireless message asking A-1 to produce K. Amarsingh and the Narcotics Department said that they were giving instructions to A-1 to do so. He also sent a wireless message to Madras to find out if the vehicle belonged to K. Amarsingh as shown in the Registration Certificate. In these circumstances, the Special Judge found that the charge against A-3 that he directly accepted a large sum of about Rs. 40,000 as illegal gratification from the person found with the motor vehicle No. MSW 7159 and calling himself as K. Amarsingh was not proved. In our view there seems to be no evidence actually to connect A-3 with the knowledge that money was discovered, nor is there any evidence from which an inference could be drawn that K. Amarsingh had given any money as illegal gratification to A-3. In our view, the High Court has not kept in view the approach which an appellate Court should have in an appeal against acquittal before it can reverse the judgment and convict the accused. This Court has consistently laid down that in appeals against acquittal, while the Appellate Court has certainly the right to review the entire evidence and come to its conclusion, in exercising this power it will consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal. It must also express its reasons in its judgment which led it to hold that the acquittal was not justified. It must also bear in mind that where two reasonable conclusions can be reached on the basis of evidence on record the Appellate Court should not disturb the finding of the Trial Court. (See *Bhim Singh v. State of Maharashtra* ((1974) 3 SCC 762 : 1974 SCC (Cri) 238), per Chandrachud, J.).

16. It may be mentioned that the High Court accepted the appreciation of the Trial Judge that -

.... not only the evidence of Vithal Suryawanshi (P.W. 4), Panchappa Madole (P.W. 10), Daji Mane (P.W. 12) and Maruti Salunke (P.W. 13) should not be relied, but the evidence of Abdul Gani (P.W. 3) and Shamsingh (P.W. 6) also should not be relied on against accused No. 3. It appears from the answers elicited in the cross-examination of Abdul Gani that he had falsely stated that accused No. 3 wanted to implicate only one person out of four detected on September 3, 1963, though in fact accused No. 3 is proved to have hauled up four persons who were found in the truck, which was carrying liquor bottles. In fact, there seems to be some substance in the suggestion that he was responsible for implicating only two out of the four persons who were actually caught red-handed. As far as Shamsingh (P.W. 6) is concerned, several circumstances have been brought on the record, which show his possible animus against accused No. 3.

We may also point out that the High Court, after giving its anxious consideration to the submissions of the learned Advocates, agreed that the prosecution evidence is apparently discrepant on several points. It said :

There is also no doubt that the probative value of the draft of the news item (Exhibit 5) prepared by P.W. 10 Panchappa Madole, the writings in the patrol book (Exhibit 27) by Shamsingh and the diary claimed to have been maintained by Daji Mane (Exhibit 61) is not free from suspicion. Similarly, the latter part of the entry claimed to have been made by P.W. 11, Shantaram Joshi, in his diary, the extract of which is at Exhibit 57 also fails to inspire any confidence. It is also true that evidence of the witnesses Police Constable Vithal (P.W. 4), Head Constable Daji Mane (P.W. 12), Tahsildar's Peon Maruti Salunke P.W. 13, bristles with several embellishments and artificialities to which

reference in detail will be shortly made. It is also true that part of the evidence of Panchappa Madole (P.W. 10), Shantaram Joshi (P.W. 11) and Head Constable Shamsingh (P.W. 5) or Head Constable Abdul Gani (P.W. 3) is incapable of carrying conviction.

Again, after examining the evidence of Abrar, P.W. 16, the High Court observed that "In view of the fact that the witness was prosecuted at the instance of the three accused, the grievance of the three accused that the witness had strong motive to implicate them falsely cannot be said to be empty". These passages would show that the High Court could not but admit that there were vital infirmities in the prosecution evidence. It, however, seems to accept the evidence of Bahadur Khan (P.W. 1) Chowkidar of the Dak Bungalow who it says does not appear to have any animus against A-3, but does not say why the reasoning given by the Special Judge for discrediting his evidence cannot be accepted. As we have seen earlier, the Special Judge said that Bahadur Khan admitted that he did not even serve the food in the night, nor did he receive any money for it. While characterising his evidence as not clear, he accepted only the statement that A-3 had left with the Poona bound car within half an hour and again came 2/3 hours thereafter i.e. at 10.30 a.m. At one stage this witness tried to say that A-3 took part in checking the station wagon carrying the opium along with A-1, but does not say he was present throughout. When A-1 and A-2 were trying to open the top of the vehicle he says he went home. If so, he could not have spoken about A-3 being present when large sums of currency notes were discovered in K. Amarsingh's bag. The evidence of the Tahsildar's peon Salunke P.W. 13 was also held to be irreconcilable. Agreeing with the Trial Court the High Court did not accept his testimony. It also did not feel it safe to rely on Madole P.W. 10 the newspaper vendor, and the evidence of Manik Patil Panch and the Panchanama Ext. 33 was stated by the High Court to suffer from several infirmities. In spite of rejecting a large number of witnesses, the High Court merely accepted the evidence of some of the prosecution witnesses on the ground that the Trial Judge had condemned the evidence wholesale without reference to any of their testimony, secondly that he relied on the very evidence he rejected for convicting A-3 to convict A-1 and A-2. The learned Judges of the High Court summed up their conclusions thus :

To our mind, this wholesale, out-right, and indiscriminate condemnation of all witnesses without reference to any particular portion of the evidence of such witnesses, is not justified by the facts and circumstances of this case, though we have ourselves noted that some of the witnesses like Vithal Suryawanshi (P.W. 4), Daji Mane (P.W. 12) and Maruti Salunke (P.W. 13) are wholly unreliable and the evidence of witnesses like Abdul Gani (P.W. 3), Ram Dande (P.W. 5), Shamsingh (P.W. 6) Panchappa Madole (P.W. 10), and Shantaram Joshi (P.W. 11) requires to be approached with caution. That the above observation does not represent his true appraisal of the evidence of the witnesses is displayed by the fact that he himself has relied on their evidence to record the conviction against accused Nos. 1 and 2.

It appears to us that the High Court itself, as seen earlier, agreeing with the trial Court, rejected eight out of the sixteen prosecution witnesses, and in cases where the High Court accepted the evidence it did not take into consideration the reasons given by the trial Judge for discarding that evidence. This is sufficient for us to reject the conclusions arrived at by the High Court in so far as A-3 is concerned. It is no doubt true that what transpired on September 5, 1963, creates a suspicion about the complicity of A-3, but his conduct from morning of September 6, after A-1 and A-2 had left with K. Amarsingh is wholly inconsistent with his having accepted or taken bribe. It is well settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety. His case, and the case of A-1 and A-2, is not the same. It may be that he was tempted on September 5, 1963, regarding which there is no cogent and reliable evidence, but

whatever it may be once A-1 and A-2 went away with the third person, A-3 began to pursue the investigation with vigour and efficiency. There is also no evidence of his having received any money, a charge on which he was convicted. On this conclusion it is not necessary to go into the question of the legality of the sanction. In the circumstances we allow the appeal, reverse the judgment of the High Court, set aside his conviction and the sentence passed on him. His bail bond will be cancelled.

17. In so far as A-1 and A-2 are concerned, the evidence against them is common. A great deal of argument was addressed before us to distinguish the case of A-2 from A-1, but we find that there is no such distinction. Both A-1 and A-2 deny that there was any person like K. Amarsingh or that he was carrying any money with him. Even if A-2 did not know what A-1 wrote in the complaint, he was an attesting witness to all the Panchnamas in which only P.W. 16 and P.W. 17 were shown as accused, while K. Amarsingh also should have been added. There is ample credible evidence to establish that K. Amarsingh was in the station wagon when it was stopped. When the opium was discovered by A-2, A-1 was incensed by the fact that K. Amarsingh had not only been pretending innocence but was obstreperous and so he gave him first blows. Then something which none of them expected happened. When K. Amarsingh's Bags were searched, there were found large sums of cash. From that moment things took a different turn. A-1 became soft, gave him a chair, kept the money bag in the room where he and A-2 were staying, represented to A-3 who came back after all this had happened at 10.30 a.m. that K. Amarsingh was an informant so much so that A-3 could no longer question him for omitting his name from the complaint. There is also evidence that at first A-3 wanted to have Amar Singh's photo taken but later countermanded it. The next day A-1, A-2 and K. Amarsingh with the bag of money all disappeared from the scene without informing A-3. These facts coupled with the denial by A-1 and A-2 of the incriminating circumstances that any such person as K. Amarsingh or any third person was present or that he had with him a bag of large sums of money make the case of both the accused alike. If A-2's case was that K. Amarsingh or a third person was present and that A-1 had told him that he was an informant and that the money recovered was not taken by him but by A-1, his plea to have his case considered separately would have been valid. Perhaps if A-2 had admitted the presence of K. Amarsingh he would have then to say what happened to the money with K. Amarsingh, which of the three took it, or whether it was taken by A-1 and A-2 or what amount of it was paid to them or whether the whole of it was taken away by K. Amarsingh, if so why was he allowed to take it away. All these questions would be inconvenient for A-2 to answer unless if he was innocent he had decided to make a clean breast of it which would mean implicating A-1 and exculpating himself. The fact that he did not do so would show that he and A-1 are in the same boat and would be deemed to have taken a part or a whole of the money from K. Amarsingh who has been allowed to get away. In these circumstances the facts proved give rise to the only conclusion that A-1 and A-2 had taken a bribe and did not disclose the name of K. Amarsingh in any of the documents and later let him get away. In the circumstances the conviction of both the accused cannot be disturbed. In so far as the sentence is concerned, the part of A-2 is not such as would not justify a mitigation of sentence. He was a subordinate of A-1 who was the dominant person and an experienced officer. It was A-1 who wrote out the complaint, dictated the Panchnamas and who held out K. Amarsingh as an informant, and being a superior officer must have given orders to leave next morning. Though he denied all these facts, which by themselves are incriminating circumstances, we think some of the aspects pointed out by us justify interference with the sentence awarded to him. We understand that he has served a part of the sentence, which, in our view, would be sufficient punishment. The sentence of trial and the sentence in default of payment of fine is maintained. Accordingly we substitute the sentence already undergone and the sentence of trial for the sentence of one year which will be the sentence in this

case. The appeal of A-2 is to this extent allowed and dismissed in all other respects. His bail bond will be discharged. There are in our view, no mitigating circumstances to interfere with the sentence on A-1. His appeal is accordingly dismissed, and he will surrender to serve out his sentence.

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