

Mohd. Aslam

Vs

State of Madhya Pradesh

Criminal Appeal No. 121 of 1972

(Jaswant Singh, O Chinnappa Reddy JJ)

24.11.1978

JUDGMENT

Chinnappa Reddy, J. -

1. The sole appellant in this appeal by special leave was convicted by the learned Special Judge, Tikamgarh, Madhya Pradesh under Section 214 Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of one year. He was acquitted of a charge under Section 165-A Indian Penal Code. The conviction and sentence under Section 214 Indian Penal Code were confirmed by the High Court of Madhya Pradesh.

2. The brief facts of the prosecution case are as follows :

3. Dalip Yadav, PW 5, learnt that the accused who was an Overseer in charge of Feeder Channel of Extension and Improvement, Mohangarh Tank Project, was misappropriating Government money by preparing false muster rolls. The accused used to send instructions to the Mistry PW 7 regarding the manner in which the false muster rolls were to be prepared. Two such letters came into the hands of PW 5. PW 5 wanted that action should be taken against the accused. Therefore, he sent a petition, Exhibit 20 to the Collector. The accused, somehow, came to know about the petition sent by PW 5 to the Collector. He contacted PW 5 and wanted him to desist from taking further action in the matter. There were some preliminary negotiations and the matter was to be finally settled in the house of one Ram Kishan Misra, a Vakil of the place. A meeting was held on the morning of October 31, 1966. Thakurdas with whom PW 5 used to generally stay whenever he went to Mohangarh, was present. Sita Ram, PW 1, Brindavan, PW 4 and Ram Ratan, PW 6 were also present. It was settled that Dalip Yadav should be paid a sum of Rs. 500 by the accused and that Dalip Yadav should hand over the two letters and a written compromise to the accused. The accused left the place stating that he wanted to arrange for the money. Dalip Yadav who was not really interested in obtaining any money for himself, decided to report the matter to the Police. He got a petition Exhibit 16 prepared by PW 6 addressed to the Superintendent of Police. He also got prepared another application Exhibit P-2 addressed to the Collector. He first went to the Superintendent of Police and, on his instructions, went to PW 9, the Deputy Superintendent of Police. PW 9 prepared a Panchnama, Exhibit P-1 referring to Exhibit P-2 and then returned P-2 to PW 5 with instructions to go to Mishra's house a little ahead of him and to receive the money from the accused. PW 5 was instructed to give a signal on seeing which PW 9 would also enter the house of Ram Kishan Mishra. Accordingly, PW 5 went ahead followed by PW 9. When he entered the drawing room of Ram Kishan Mishra's house, he found the accused, Thakurdas, Ram Rattan PW 6, Sita Ram PW 1, and Brindavan PW 4 sitting there, waiting for him. The accused gave the money to PW 5 and asked for return of the letters and the application. PW 5 handed over Exhibit P-2 to the

accused. He also signed Exhibit P-4, a compromise letter. He told the accused that the two letters P-17 and P-18 were in his village and that he would give them to him afterwards. He gave a signal on seeing which PW 9 came to the room. PW 9 introduced himself as Deputy Superintendent of Police. He seized Exhibits P-2 and P-4 from the accused. He recovered Rs. 500 from PW 5. He then arrested the accused. On the next day, PW 5 produced Exhibits P-17 and P-18, before PW 9. After completing the investigation, PW 9 laid a charge-sheet against the accused for offences under Section 214 Indian Penal Code, Section 165 Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. He was tried by the learned Special Judge, Tikamgarh for offences under Section 165A Indian Penal Code and Section 214 Indian Penal Code. In regard to the offence under Section 214 Indian Penal Code with which alone we are concerned in view of the acquittal of the accused under Section 165A, the charge against the accused was that he gave gratification of Rs. 500 to Dalip Yadav in consideration of the said Dalip Yadav "screening him from legal punishment for the offence of criminal breach of trust and not proceeding against him for the purpose of bringing him to legal punishment".

4. In support of the prosecution case, the principal witness examined was PW 5. PWs 1, 4 and 6 were examined to prove the negotiations that took place in the house of Ram Krishan Mishra in the morning and the passing of the money later in the day. PW 7, was examined to prove Exhibits P-17 and P-18, the two letters said to have been written by the accused conveying his instructions to PW 7 regarding the manner in which the false muster rolls were to be prepared.

5. The defence of the accused was one of denial. He denied that Exhibits P-17 and P-18 were in his handwriting. He denied that he ever prepared false muster rolls or that he misappropriated Government money. He denied that he offered or paid a bribe to PW 5. He stated that he had made certain complaints against Dalip Yadav and Brindavan, and, therefore, the case was foisted against him at their instance.

6. As might be seen from the brief narration of the prosecution case, the essence of the case against the accused was that accused had misappropriated Government money by preparing false muster rolls, that PW 5 had come into possession of incriminating letters, Exhibits P-17 and P-18 written by the accused and had threatened to take further action against the accused and that with a view to prevent PW 5 from taking further action, the accused gave him bribe of Rs. 500. The preparation of false muster rolls and the writing of the two letters, Exhibits P-17 and P-18 were, therefore, two important circumstances which the prosecution was obliged to establish in order to bring home the guilt of the accused. In regard to the preparation of the false muster rolls, no evidence whatsoever has been offered by the prosecution. The alleged muster rolls have themselves not been produced nor has anyone been examined to say that his name was shown in the muster rolls as if he had been paid wages, though, in fact, he was not so paid. PW 5 stated that he was told by one Mauji Lal Lahaur that labourers who did not work, were shown as having received wages in the muster rolls. This Mauji Lal was not examined as a witness. Again PW 5 stated that a barber's wife, a tailor's wife and an Ahiran had come to him and told him that though they had worked for many days, they were paid wages only for a few days. None of them was examined as a witness. There is, therefore, no evidence to establish that the accused misappropriated any Government money or that he prepared false muster rolls. With regard to the letters Exhibits P-17 and P-18 stated to have been written by the accused to PW 7, the prosecution did not choose to send the documents to a handwriting expert for his opinion whether the documents were written by the accused or not. PW 7, was the only witness who was examined by the prosecution to establish that the two letters were written by the accused. In his examination-in chief, he stated that Exhibit P-17 and P-18 were signed by the accused and that the writing in P-17 and P-18 was that of the accused. He, however, stated that

Exhibits P-17 and P-18 were brought to him by a person who came along with PW 5. At that stage, he was treated as hostile by the Public Prosecutor and he was allowed to be cross-examined. In the cross-examination by the Public Prosecutor, he stated at one stage that a portion marked in Exhibit P-17 was written by the accused. He also stated that he was under the accused for a period of 25 days only. Later in the cross-examination by the accused, he admitted that the accused did not write anything in Hindi in his presence. He stated that he was saying that Exhibits P-17 and P-18 were in the hand of the accused by guessing only. He stated that he could not say definitely that P-17 and P-18 were in the handwriting of the accused. Despite the unconvincing evidence of PW 7 on the question of the authorship of Exhibits P-17 and P-18, the prosecution did not choose to examine either an expert or any one who was familiar with the handwriting of the accused to prove that P-17 and P-18 were in the handwriting of the accused. We may refer here to the evidence of PW 5 regarding P-17 and P-18. He stated that he showed the letters to the Collector and the Sub-Divisional Officer and that they also put their signatures in the documents. No signature of either the Collector or the Sub-Divisional Officer is to be found in P-17 and P-18. In fact P-17 and P-18 were produced before the Police not even on October 31, 1966 but only on the next day. PW 5 claimed to have sent a report P-20 to the Collector on October 26, 1966. In P-20 there is a reference to some instructions said to have been sent by the accused to his Mistry. It was presumably sought to be made out that the reference was to P-17 and P-18. Now, though PW 5 claimed to have sent P-20 to the Collector, there is no endorsement on P-20 to suggest that it was ever received in the office of the Collector. The Collector or anyone from the office of the Collector has not been examined to say that P-20 was received in the Collector's office from PW 5. It is a mystery how PW 5 came to file Ex. P-20 into Court. Thus not only is there no proof that P-17 and P-18 were written by the accused, their very appearance in the case appears to be suspicious. The result is that there is no evidence to prove that the accused prepared any false muster rolls or that the accused wrote Exhibits P-17 and P-18 instructing his Ministry regarding the manner in which the muster rolls were to be prepared. These are two wise gaps in the case of the prosecution which are by themselves sufficient to entitle the accused to an acquittal on the charge under Section 214.

7. PW 5 was, as already mentioned, the principal witness for the prosecution. We have perused his evidence carefully and we find it difficult to accept his evidence. He admitted in cross-examination that there was a quarrel between Habib and Brij Mohan (PW 7), that Aslam was siding Habib and that Brij Mohan and the witness suspected that Aslam might have gone to the Police Station to make a report. We have already referred to the circumstance that though PW 5 claimed that he had sent the report Ex. P-20 to the Collector earlier, there is nothing in the evidence to indicate that the alleged report was ever received in the office of the Collector. What is curious is that Exhibit P-2, the report which he claims to have got written on October 31, 1966 is a verbatim reproduction of Exhibit P-20. It is not explained how this could be so since PW 5 did not have P-2 with him on October 31, 1966. This is explainable only if both P-2 and P-20 were prepared at the same time, that is, on October 31, 1966. We have also referred to the circumstance that though PW 5 claimed that he had shown the letters, Exhibits P-17 and P-18 to the Collector and the Sub-Divisional Officer and that they had also put their signatures on the document, we do not find the signature of either the Collector or the Sub-Divisional Officer on P-17 and P-18. According to his evidence, the arrangement arrived at in the house of Ram Krishan Mishra was that the accused should pay him a sum of Rs. 500 and that he should hand over Exhibits P-17 and P-18 to the accused. He however, admitted in the evidence that he did not have Exhibits P-17 and P-18 with him that day. He claimed that after the money was received by him, he told the accused and the others that the letters would be given later as they were in his village. It is difficult to accept his evidence that if the arrangement was that he should part with the letters and that he should be paid a sum of Rs. 500, the accused

would have paid him the money without receiving the letters. According to the witness a deed of compromise was prepared and he signed the same. Exhibit P-14 is stated to be the deed of compromise. P-14 is as follows :

It is submitted that we people had made a complaint against Shri Aslam, Overseer, Irrigation Department, Mohangarh for preparing false muster rolls. In that four persons have satisfied us that in future he will not do so.

He has assured in this manner. Therefore, we people shall not take any further action in this connection.

It is a document which clearly incriminates rather than exonerates the accused. We do not think the accused would have accepted such a document from PW 5. PW 5 further that the accused gave him the money after counting the same. He stated that the money was not handed over to Thakurdas and thereafter to himself. There are any number of versions with regard to the manner in which the money passed into the hands of PW 5. PW 1 stated that the money was not paid in the presence by the accused to PW 5. According to him Thakurdas took out the amount from his pocket and gave it to PW 5. PW 4 stated that the accused took out the sum of Rs. 500 and handed over the same to Thakurdas. At that time PW 5 was not there. After PW 5 came there, Thakurdas took out the money and put it on the table. PW 5 took the money from the table. PW 6 stated that the accused himself paid the sum of Rs. 500 to PW 5. These are the several conflicting versions about how the money passed from the accused to PW 5. From the evidence of the various prosecution witnesses, it is clear that Thakurdas played a very prominent part in bringing about the alleged settlement and the payment. Thakurdas has not been examined as a witness by the prosecution and no explanation has been offered for the same. We also notice that Ram Krishan Mishra has also not been examined. We have already noticed that none of the labourers whose names were allegedly falsely entered in the muster rolls was examined. We have also noticed that the messenger who was supposed to have taken the letters, Exhibits P-17 and P-18 to PW 7 has also not been examined.

8. In view of these several grave infirmities we do not think that the lower courts were justified in convicting the accused. The conviction and sentence are, therefore, set aside and the bail bonds will be cancelled. The appeal is allowed.

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