MYSORE HIGH COURT

V. Govindrajalu

Vs

State of Mysore

Criminal Appeals Nos.393, 404, 410 of 1958 and 31 of 1959, Belgaum in Sessiones Case No.47 of 1958

(K.S. Hegde and Ahmed Ali Khan, JJ.)

23.03.1961

JUDGMENT

K.S. Hegde, J.

1. These appeals arise out of the decision of the learned Second Judge Belgaum, in Sessions CaseNo.47 of 1958 on his file. Cri. A.No.404/58 was filed by the first accused (Mithalal Tarachand Shah of Athani); Cr. A.No.393/58 was filed by A-2 (V. Govindrajulu Naidu of Pudukkupponi and A-3 (P.A. Shanmugha Sundaram Mudaliar of Madras); Cr. A.No.410/58 was filed by A-4 (V. Kalyankoti Ayengar of Madras); and Cr. A.No.31/59 was filed by the State against the acquittal of the accused under some of the charges. Pending hearing of these appeals A-3 (P.A. Shanmugha Sundaram Mudaliar of Madras) died. As the Court below had imposed a sentence of fine, as well, on A-3, his legal reprementative was brought on record but she is unrepresented. For the sake of convenience we shall refer to the parties as arrayed in the trial Court.

2. The appellants were convicted under various heads and sentence of imprisonment as well as of fine, the details of which are not necessary at this stage, were imposed on them.

3. The facts of the case have been elaborately set out in the judgment of the learned Sessions Judge. It is unnecessary to reiterate the same. We shall mention only such facts as are necessary for the determination of the points urged before us.

4. The basis for the prosecution case is the evidence of the approver P.W.15 (Vishvanath Dattatraya Kulkarni). His evidence is corroborated by other evidence, oral as well as documentary. The main question for our consideration is whether the evidence of P.W.15 is reliable and if reliable whether the same is corroborated in material respects by other independent evidence. It is now well settled that it is not necessary that the approver"s evidence should be corroborated in every respect and thus render his evidence superfluous. It is equally well settled that it should be corroborated in material respects. The corroborative evidence must be such as to lend assurance to the mind of the Court that the evidence of the approver could be safely relied

on. See : *Sarwan Singh Rattan Singh v. State of Punjab*[1], and *State of Bihar v. Basawan Singh*[2],

5. Briefly stated, the version given by P.W.15 is as follows : A-1 (Mithalal Tarachand Shah of Athani) was a merchant at Athani dealing in groceries and other articles. His shop is known as "Gadmal Motiji Shop"; he also had a shop at Bombay known as "Tarachand Mithalal and Sons" which was in charge of his son Lalchand. From about 1935 to 1940 P.W.15 was running a shop at Kanamadi, a village in Bijapur District; during that time, he had business connections with A-1; but in 1940 he (P.W.15) joined the Military Department as a Clerk and served in that capacity till his discharge in 1947. After discharge, he settled down at Madras and began to deal in military disposals. He happened to go down to Bijapur in 1950, where he met A-1. At that meeting A-1 discussed with him about business prospects at Madras. He (A-1) informed him that he would like to have his (P.W.15"s) assistance in carrying on some business at Madras. P.W.15 readily fell in with the idea. In October of that year A-1 purchased 11,000 second-hand military barrels and 2,000 jericans for a sum of ₹ 91,000/- in a public auction at Bombay; out of which he sent 6,000 barrels and 2,000 jericans to P.W.15 at Madras for sale. Simultaneously A-1 started a concern called "Tarachand Mithalal and Sons" at Madras. That concern was housed in the house of P.W.15, who was put in charge of the same. The business at Madras did not prosper. A-1 suffered loss in business at other places as well. Hence A-1 was anxious to get some profitable business. He asked P.W.15 to took out for manufacturers of counterfeit currency notes. A-4 (V. Kalyankoti Ayengar of Madras) had acted as a broker for A-1 for the sale of barrels and jericans and hence he was well acquainted with A-1 and P.W.15. His services were availed of for making contacts with the manufacturers of C.C. Notes. In the first instance P.W.25 (Ratnavelu), Tatacharya and Issace were contacted. They promised to do the needful. In February 1955, A-1, A-4, the approver (P.W.15), P.W.25, Tatacharya and Issac went to Trichy, Tanjore and other places to get into touch with the. manufacturers of C.C. Notes. Some C.C. Notes Were examined but they did not come upto A-1"s expectation Hence the party came back to Madras. Some days thereafter A-1 left for Athani leaving instructions with A-4 and P.W.15 to pursue their efforts to find out the manufacturers of C.C. Notes. Eight or ten days after A-1 left for Athani, A-4 gave two five rupee C.C. Notes to P.W.15 and asked him to send the same to A-1 for approval. They were sent to A-1 who approved the same. But the bargain fell through as the manufacturers insisted on advance payment which A-1 was not willing to make. He was insisting on delivery of C.C. Notes at Athani for cash payment. In about April or May of that year, A-1 was at Madras; at that time A-4 introduced A-2 and A-3 to him and P.W.15, as persons who could supply any number of C.C. Notes of the denomination of ₹ 100/- But A-1 insisted on seeing sample notes. Three sample notes were given to P.W.15 about a week later. But by that time A-1 had left for Athani. P.W.15 sent these notes to A-1. The samples were approved by A-1 and thereafter A-4 was informed through P.W.15 to bring the party to Athani as early as possible with the C.C. Notes. But A-4 informed P.W.15 that the notes were not ready and that he had to go to Bezwada to get them manufactured and that his expenses must be met. But A-1 did not send any

[1] AIR 1957 SC 637
[2] AIR 1958 SC 500

money, though repeatedly reminded about it by P.W.15 and therefore A-4 could not
be sent to Bezwada. A-1 went over to Madras in July 1955. There he met A-4 and at that time arrangements were made to send him to Bezwada. At that time P.W.23 (Sundaram Doraswami Mudaliyar) was introduced to A-1 as one of those who would be useful to them at Bezwada. A-1

left Madras for Athani sometime in July 1955. Thereafter P.W.15 went to Kalahasti and stayed there for 10 to 15 days in connection with some iron ore business. A-4 was keeping P.W.15 informed about the developments. He (A-4) was also paid some monies by P.W.15 now and then. Sometime later P.W.15 went to Bezwada from Kalahasti. There he met A-4 who took him (P.W.15) to the house of P.W.23 (Sundaram Mudaliyar). There they met one Shastri and one Venkateshwar Rao. Shastry was introduced to P.W.15 as the Agent of Nagabushan, the manufacturer of C.C. Notes. Some C.C. Notes of different denominations as well as their blocks were shown to P.W.15. A-4 informed him that special type of paper and dies were necessary for the manufacture of C.C. Notes. After returning to Madras P.W.15 wrote to A-1 about what he saw at Bezwada. But no further steps were taken till about September. In September P.W.15 visited Bijapur in connection with some work and at that time he discussed the matter with A-1. A-1 complained about his financial difficulties. In November of that year, A-4 again returned to Madras from Bezwada and showed P.W.15 two Hundred rupee C.C. Notes and told him that he would take them to Athani to show it to A-1 in order to convince him and bring him to Bezwada. Thereafter A-4 left for Bijapur taking with him a letter (Ex.26-S) from P.W.15. A-4 met A-1 at Athani and thereafter both of them proceeded to Bezwada. On receiving a telegram, P.W.15 also proceeded to Bezwada and joined them there. There A-1, A-4 and P.W.15 met P.W.23, Venkateshwar Rao and Shastri. From there they went by car to Chautapalli to the house of Nagabushan. Nagabhusan showed them C.C. Notes of various denominations. A-1 was satisfied with the samples and told Nagabhusan that he is prepared to purchase hundred rupee C.C. Notes of the face value of ₹ 50,000/- to ₹ 60,000/- Nagabhusan informed him that he was short of required type of papers, dies etc. for manufacturing C.C. Notes and that if a sum of ₹ 3,000/- was paid to him, he would order for the raw materials from Bombay. A-1 pleaded that he had not brought funds to the extent required by Nagabhusan but told him that he was prepared to purchase the necessary papers, dies etc., at Bombay through his son.

Thereafter Nagabhusan dictated to him (A-1) a list of materials required. While leaving Chautapalli, A-1 took with him 5 C.C. Notes of ₹ 5/-each, 10 of ₹ 10/- each and 2 of ₹ 100/- each. A-1 promised to send the required materials as early as possible. Meanwhile A-4 was asked to remain at Bezwada to expedite matters. Some time later P.W.15 was asked to proceed to Bombay in connection with some suit. Accordingly P.W.15 went there in December 1955. When he was in Bombay, he received a letter from A-1 asking him to purchase the required materials for manufacturing C.C. Notes. He was told that Lalchand, the son of A-1 would assist him in making the purchases and that he would also pay for the same. When Lalchand and P.W.15 went to the market to purchase those materials, it was found that those materials would cost about ₹ 600/-. Then Lalchand pleaded that he was not able to pay that much. Therefore the articles, in question were not purchased. P.W.15 wrote to A-1 about it as per his letter Ex.26-H dated 14-12-1955.

As desired by A-1, P.W.15 went to Bijapur on 20-12-1955, in connection with some litigation. At Bijapur, he learnt that A-1 was expecting the party from Bezwada with the C.C. Notes. On 4-1-1956, A-2 and A-3 came to Athani bringing with them C.C. Notes. On that night there was a midnight conference between A-1, A-2, A-3 and P.W.15 at A-1"s house. A-2 and A-3 showed A-1, the C.C. Notes brought by them. Out of those notes A-1 picked up 60 notes. A-1 was told that he has to pay ₹ 100/- for every three hundred rupee C.C. Notes. A-1 did not agree to it. Ultimately it was suggested that the question of price may be left to be settled at a later date.

Next day A-1 paid A-2 ₹ 500/- and promised to pay the balance later. A-2, A-3 and P.W. 15 stayed at Athani on the 5th and on the 6th they left Athani for Miraj. From there, they went to Madras via Guntakal. Subsequent events will be referred to at the appropriate stages.

6. The story given by P.W.15 appears to be prima facie credible. There is no denying of the fact that there was business connections between A-1 and P.W. ever since 1950. There is some controversy between the parties as to the exact business relationship that existed between P.W.15 and A-1. P.W.15 says that he was a salaried Manager, whereas according to A-1, P.W.15 was a partner. It is unnecessary to resolve this controversy for the purpose of this case. Suffice it to say that there was close and intimate relationship between the two. Though it is true that the concern "Tarachand Mithalal and Sons" at Madras had been closed in 1954, the connection between A-1 and P.W.15 admittedly continued even thereafter, as could be seen from the correspondence that passed between the two P.W.15 was also assisting A-1 in his litigation. Undoubtedly P.W.15 was a trusted friend of A-1.

7. It is clear that P.W.15 is a time server. Once A-1 was in trouble, he tried to save his own skin. He appears to have given evidence in this case with zeal. There is also no doubt that he had tried to minimise his own part. But that is the case with most approvers. There is also no gainsaying of the fact that the Investigating Officer was extremely soft to him. Right from the beginning he appears to have treated him with undue consideration. The Police arrested him without taking any arrest warrant. No sooner he was arrested, he was released on bail by the Police themselves. Obviously in order to facilitate his release on bail by the Police themselves, the offence committed by him was shown to be one under Section 489-C I.P.C. Even after filing the charge-sheet in this case which disclosed the commission of non-bailable offences, no steps were taken to get the approver re-arrested. His house was not searched. But he is said to have voluntarily picked up the relevant letters and produced them before the Police. Therefore one has to scrutinise the evidence of the approver with most care. But these small mercies shown by the Police or even the irregularities committed by them cannot invalidate the evidence given by P.W.15. His evidence will have to be judged on its own merit though in assessing its value, the Court will bear in mind the fact that the approver was hand in glove with the Police.

8. Prima facie the evidence of P.W.15 appears to be creditworthy. The version given by him seems to be natural and consistent. It is full of details. Some of the facts deposed by him are undisputed. In the very nature of things it would have been a stupendous task if not an impossible one, to concoct the version given by him. His version is substantially corroborated by the letters passed between the parties.

(After discussing evidence (Paras 9 to 31) the Judgment proceeded).

32. The facts established, in our opinion, fully justify the conclusion that A-1 to A-4 along with the approver entered into a conspiracy some time between the middle of 1955 and January 1956 to manufacture and to traffic in C.C. Notes. In a case of this nature it is not possible to locate with definiteness the place where the conspiracy was entered into. There is no doubt that the conspirators had met at Madras and again at Bezwada. It is equally doubtless that 4 out of the 5 conspirators had met at Athani on 4-1-1956. From the evidence it is seen that there was only preliminary discussion at Madras; some tentative conclusions were arrived at Bezwada but were

not adhered to; and the final agreement was reached at Athani on 4-1-1956. It is said that A-4 was not present at Athani on 4-1-56 and therefore he could not be a party to the conspiracy entered into on that date. This contention has no force. It is not the law that every conspirator must be present at every stage of the conspiracy. If the conspirator concerned had agreed to the common design and had not resiled from that agreement, it can be presumed that he continued to be a party to the conspiracy. See *Swamiratnam v. State of Madras*[3], The evidence as seen earlier, discloses that A-4 had played a leading role in bringing together A-1, A-2 and A-3. Hence the charge of conspiracy against all the accused is fully made out.

33. Similarly A-1 to A-3 were rightly convicted under Section 489-B read with Section 120-B I.P.C. which charge was unnecessarily split up into the several parts. There is little room to doubt that these accused, or for that matter all the conspirators, did traffic in C.C. Notes. The question of buying and selling or for that matter the possession of C.C. Notes were incidental matters; the crux of the matter being trafficking in C.C. Notes. The lower Court should have borne in mind the significance of the fact that trafficking in C.C. Notes was done in pursuance of the conspiracy. The fact that several conspirators played different roles is wholly irrelevant in considering that charge. Each one is responsible for the acts of the other conspirators as well. The Court below should not have separated the several incidents and considered them in isolation. But though the learned Sessions Judge acquitted A-4 under Section 489-B I.P.C. when dealing with the second part of the charge, he has convicted him for the same offence when he dealt with the third part of that charge. Hence, the resulting position is that A-4 is also convicted for an offence under Section 489-B I.P.C. The conviction of any of the appellants under Section 489-C, is redundant in view of the fact that they had been convicted under Section 489-B I.P.C.

34. But before concluding it is necessary to deal with some of the legal contentions urged on behalf of the appellants. It was urged that as regards the uttering of C.C. Notes in Bijapur in January 1956, there was a separate case against A-1; in that case he was discharged; therefore, this Court is precluded from going into the evidence bearing on that question over again as the order of discharge operates as res judicata. It appears to us that this contention is unsupported by facts and has no basis in law. We are informed that the order of discharge had been set aside and the case in

[3] AIR 1957 SC 340

question is pending trial. Hence, there can be no question of any res judicata.

35. Further the rule of res judicata so far as Criminal Cases are concerned springs from the provisions contained in S.403 Cr. P.C, which section is specially made inapplicable to cases of dismissal of complaints or the discharge of accused. It is now well settled that a case which has once ended in dismissal or discharge of the accused could be reagitated under certain circumstances. It is unnecessary to go into the niceties of this question for the simple reason that the order of discharge is no more in force. For the reasons mentioned above, we do not think that the ratio of the decision in *Pritam Singh v. State of Punjab*[4] has any application to the facts of the present case.

36. One other question debated before us is that the learned Sessions Judge at Belgaum had no jurisdiction to try this case as the offence of conspiracy is not proved to have taken place within his jurisdiction. This contention has to fail for more reasons than one. In the first place, as found by us earlier, the conspiracy, or at any rate a part of the conspiracy, took place at Athani within

the jurisdiction of the learned Sessions Judge, Belgaum. Under Section 182 Criminal Procedure Code when it is uncertain in which of the local areas an offence was committed or where an offence is committed partly in one local area and partly in another, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. At the worst the present case is one such.

37. In determining the question of jurisdiction, the essence of the matter is the accusation made and not the final determination of the facts alleged. In this case the charge as framed discloses that the conspiracy was entered into at Madras, Bezwada, Athani and other places. It is not the case of the defence that there was any attempt to clutch at jurisdiction.

38. This Court had held in *State v. Tavara Naika*[5], that the curative provisions of S.531 would extend also to a trial which has taken place in a wrong Sessions Division and therefore, in a case where the trial has proceeded to its conclusion and the Court is satisfied that no failure of justice has been occasioned by the trial having been taken place in a wrong Sessions Division, the error may amount merely to an irregularity curable under Section 531 Criminal Procedure Code No facts were brought to our notice to show that any prejudice has been caused to the accused by the case having been tried in Belgaum Sessions Division.

39. It is observed in Halsbury"s Laws of England (Third Edn. Vol 10 by Lord Simonds):

> "Conspiracy may be tried in the place where the conspirators agreed to do the wrongful act which is the object of the conspiracy, but as the place of agreement is often unknown, conspiracy is generally a matter of inference deduced from criminal acts of the accused persons which are done in pursuance of a common criminal purpose, and are often not confined to one place; a charge of conspiracy may consequently be held at common law in any

[4] AIR 1956 SC 415

[5] AIR 1959 Mys193

> county where one of these criminal acts is committed".

The law in this Country does not appear to us to be different.

40. The Judicial Committee held in *Babulal Chaukhani v. Emperor*[6], that :

> "if several conspirators commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators) these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it; the common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it".

(as summarized in the head note).

This view accords with the view taken by the Supreme Court in *Leo Roy Frey v. Supdt. District Jail, Amripal*[7], If a conspiracy and acts done in pursuance of that conspiracy constitute one

transaction, as held by the Judicial Committee, then it would come within the scope of S.182 Criminal Procedure Code, which lays down that where an offence is committed partly in one local area and partly in another, the same may be enquired into or tried by a Court having jurisdiction over any of such local areas.

41. The High Courts are not unanimous as to whether a conspiracy entered into in one Sessions Division and acts done in pursuance of that conspiracy in another Sessions Division can be tried together. But the controversy mainly centres round the scope of S.180 Criminal Procedure Code In order that an act may come within the scope of S.180 Criminal Procedure Code the act complained of must be an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence. In the case of conspiracies falling under Section 120-B I.P.C. and the acts done in pursuance of that conspiracy it cannot be said that conspiracy is an offence by reason of its relation to the acts done in pursuance of that conspiracy. That conspiracy is an offence by itself. This is made further clear by the illustrations provided under that Section. Illustration (a) refers to abetment and the offences committed in pursuance of the abtement. Except under Section 165-A I.P.C. (which was recently incorporated into the Penal Code) abetment is not an offence by itself. It becomes an offence only if the act abetted is committed. Illustration (b) refers to a charge of receiving or retaining stolen goods. Receiving or retaining goods as such is not an offence. What makes it an offence is the fact that they are stolen goods. In other words, receiving or retaining of the goods becomes an offence because of its relation to the theft. Similar is the position when you take into consideration Illustration(c). Concealment referred to in that Illustration is an offence because of the fact the person concealed had been kidnapped. On the plain meaning of S.180 Criminal Procedure Code it is difficult to subscribe to the view that conspiracies included in Section 120-B I.P.C. and acts done in pursuance of those conspiracies can be brought within the scope of S.180 Criminal Procedure Code We

[6] AIR 1938 PC 130
[7] AIR 1958 SC 119

think the more appropriate Section is 182 Criminal Procedure Code

42. Having examined the language of S.180 and 182 Criminal Procedure Code we may now proceed to consider the several decisions cited at the Bar. A single Judge of the Madras High Court in re; Dani, AIR 1936 Madras 317 held :

> "That as it was in B, where the accused resided, that they entered into the conspiracy, the charge should have been laid there and that the Court at P could not be clothed with jurisdiction to try the charge of conspiracy merely because the conspiracy and the different acts of cheating might form part of the same transaction, and that the charges in respect of them might be tried together. It could have jurisdiction only in respect of the acts of cheating alleged to have been committed within its jurisdiction".

The ratio of that decision is not available from the discussion found in the judgment. Hence, that decision is of no assistance to us.

43. Next we may take up the decision in *Emperor v. Pursumal Gerimal*[8], wherein the Judicial

Commissioners held that a charge of conspiracy has to be tried only in the place where the agreement had Been entered into and not in places where acts in pursuance of the conspiracy had been committed. In that case the learned Judges merely considered the scope of S.180 Criminal Procedure Code Evidently their attention was not invited to S.182. For the reasons already mentioned we are in agreement with the learned Judicial Commissioners that S.180 Criminal Procedure Code is inapplicable to such cases.

44. It is not necessary to consider the correctness of the decision in *Bisseswar v. Emperor*[9], as it relates to a converse case. In that case the accused were tried for acts committed in pursuance of the conspiracy at the place where the conspiracy had been entered into. But, as at present advised, we are not inclined to think that the decision in question lays down the law correctly for the reasons already mentioned.

45. In *Bachan Pande v. The State*[10], Asthana, J. opined that the conspiracy is an offence by reason of its relation to the other acts committed by the conspirators which are offences by themselves and therefore the case falls under Section 180 Criminal Procedure Code For the reasons mentioned earlier we are unable to subscribe to the correctness of that view.

46. In a recent decision of the Kerala High Court *Banwarilal Jhunjhunwalla v. Union of India*[11], Raman Nayar, J. considered this question exhaustively. He opined that to such cases both sections 180 and 182 Criminal Procedure Code apply With great respect to the learned Judge we are not able to agree with him that Section 180, Criminal Procedure Code can be applied to such cases. The fact that a conspiracy is also an abetment within the meaning of S.109 I.P.C. does not, in our view, make it any the less an offence by itself, if it comes within the scope of Section 120-B. But we are in respectful agreement with him as regards the

[8] AIR 1938 Sind 108 [10] AIR 1957 All 130
[9] AIR 1924 Cal 1034 [11] AIR 1959 Ker 311

applicability of S.182 Criminal Procedure Code

47. In AIR 1957 SC 340 the Supreme Court observed that where the charge, as framed in that case, disclosed one single conspiracy, although spread over several years, there is only one object of the conspiracy, and that is to cheat members of the public, the fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy does not change the conspiracy and does not split up a single conspiracy into several conspiracies. Their Lordships held that on the facts of that case the instances of cheating were in pursuance of one conspiracy and were parts of the same transaction. If we apply the ratio of that decision to the facts of the case before us then it follows that the several acts committed by individual conspiratiors are parts of the same transaction.

48. Even if we had come to the conclusion that the Sessions Judge, Belgaum had no jurisdiction to try the conspiracy charge, there would have been no difficulty in convicting such of the conspirators who were guilty of specific offences, for those offences and others for abetment.

49. In the result, Criminal Appeals Nos.393, 404, and 410 of 1958 are dismissed subject to the modifications suggested above. But it must be noted that the appeal filed by A-3 (P.A. Shanmugha Sundaram Mifdaliar) in so far as it relates to the substantive sentence imposed on him abated because of his death during the pendency of these appeals. His appeal only survives

as regards the sentence of fine. In view of the conclusions arrived at by us earlier, Criminal Appeal No.31 of 1959 filed by the State loses all significance. But to avoid any technical objection we allow that appeal in so far it relates to the acquittal of A-4 under Section 489-B read with section 120-B I.P.C. But in substance this order does not adversely affect A-4 as the lower Court had convicted him for that offence under the second part of the charge. The resulting position is that all the accused are convicted both under Section 120-B and under Section 489-B read with Section 120-B I.P.C. For the former offence each one of the accused was sentenced by the lower Court to suffer rigorous .imprisonment for five years and to pay a fine of ₹ 1,000/- (One thousand), in default to suffer further R.I. for one year. For the latter offence each one of them was sentenced by the Court to suffer rigorous imprisonment for nine years and to pay a fine of ₹ 1,000/- (One thousand), in default to suffer further R.I. for one year.

50. Taking into consideration the spate of C.C. Notes cases that have come to light recently, the sentence imposed cannot be said to be excessive. Therefore, the convictions and sentences above set out are confirmed. The appellants are acquitted of the other charges.
Order accordingly.