

Krishnalal Naskar and Others Vs The State

Court: Calcutta High Court

Date of Decision: July 6, 1981

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 337
Penal Code, 1860 (IPC) â€” Section 109, 120B, 409, 491

Citation: (1982) CriLJ 1305

Hon'ble Judges: N.G. Chaudhuri, J; N.C. Mukherji, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

N.C. Mukherji, J.

These appeals have been filed against an order of conviction dated 31-7-70 passed by Shri S. C, Majumdar, Judge

Calcutta Third Additional Special Court, Calcutta.

2. Criminal Appeal No. 335 of 1970 has been filed by Krishnalal Naskar, Banobir Burman, Mata Prosad Ghose and Brahmananda Sarkar. They

were convicted u/s 409/109 IPC and sentenced to Rule I. for one year. Criminal Appeal No, 336 of 1970 has been filed by Suresh Ch. Saha who

has been found guilty u/s 409 and 409/120B IPC and sentenced to R. I. for one year under each count. It was ordered that the sentences would

run concurrently Cr. Appeal No. 337 of 1970 has been filed by Alik Narayan Jha alias Alik Narayan Ojha against an order of conviction u/s

409/120B and sentenced to R. I. for one year. The other accused persons, namely, Bma Devi, Lalmohon Pal Aurobinda Mukherji, Manotosh

Mitra. Oremlal Parasar, Sumanbhai Patel and Reba Chakraborty were found not guilty u/s 409/120B IPC and were acquitted. These three

appeals were taken up together. All the accused persons were charged u/s 409/120B IPC for entering into a conspiracy in respect of criminal

breach of trust of consignment of petrol. Accused Suresh Saha was further charged under S 409 IPC in respect of criminal breach of trust of

consignment of petrol dated 20-7-62, 26-7-62, 31-7-62, 2-R-62 and 21-8-62.

3. The facts of the case may briefly be stated as follows:

After the partition of Bengal in 1947 there was a vast influx of refugees and a Special Department was opened which was named Refugee Relief

and Rehabilitation Department, The Calcutta Office of this branch was established at 10A, Auckland Road, though the directorate was situated at

Writers' Buildings. The main function of this Department was to ameliorate the condition of the refugees and make provision for their rehabilitation

within and outside the State. For the purpose of transport facilities a fleet of trucks and other vehicles was necessary and for that purpose the

department owned a fleet of 54 vehicles with drivers and cleaners, of which 46 were in running condition during the relevant period. At the

outset, for the consumption of petrol coupons were issued to other petrol pumps from which the drivers of the trucks and vehicles used to lift

the petrol. But that was soon found to be uneconomic and it was decided to instal a petrol pump within the compound of the building situated at

10A, Auckland Road in pursuance of a contract entered into by the department with Standard Vacuum Oil Company, popularly known as Esso

Company. Petrol was indented from the Esso Company and deposited in the underground tank of the department wherefrom it was issued to

different trucks and vehicles. The receiving section indented and received petrol into the tank and issuing section as per slips issued petrol to

different vehicles and trucks and maintained an account of the same. The receiving section was originally operated by Shri Surendramohon

Sengupta, the store keeper who received petrol till 1961. After Shri Sengupta ceased to do that work P.W. 12 - Debabrata Ghosh (the accused

who subsequently turned approver) did all the works of the store keeper with the permission of Major Brahma. Debabrata Ghosh was the petrol

clerk and he joined the department on 10/II April, 1957. His works were to indent petrol and mobile oil. to receive the same, to maintain the stock

book and to get them signed by Major Brahma on receipt of petrol. Confirmation slips were issued sometime after the confirmation of the receipt

of petrol upon which bills were sent by ESSO Company with the attached confirmation slip. The underground tank had a capacity of 2000 gallons

or 9,100 liters of petrol. There were two pipes to the underground tank. One was called the dip pipe and the other the fill up pipe. Through the dip

pipe measurement was taken by a measuring rod and the quantity of petrol was calculated with the help of a calibration chart and that was done

before unloading the contents of the tanker vehicle into the underground tank. The drivers of the ESSO Company used to come with challans in

triplicate and after verification of the underground tank and the seal thereof, climbed the tanker and measured the contents with the help of a

measuring rod. The petrol clerk also used to verify the seal of the chamber of the petrol tanker before the seal was broken under the direction of

the petrol clerk. Then the petrol clerk took measurement of the contents of the petrol tanker with the measurement rod. Thereafter the helper of the

vehicle with the aid of the driver poured petrol into the underground tank and after delivery the petrol clerk climbed up the tanker to see whether

any petrol was left inside. Then again the measurement of petrol in the underground tank was taken. After being satisfied that the entire quantity of

petrol was delivered the petrol clerk used to sign challan and after delivery the driver used to seal Up the fill pipe and the dip pipe after replacing

the caps on them. The two signed challans used to be made over to the drivers and one Was regained by the petrol clerk for retaining in the record

of the R. R. department. Measurement taken with the measuring rod were noted in the back of the challans and also in the stock book. Stock

book was maintained by the petrol clerk. Thereafter, confirmatory order was sued in duplicate or triplicate to be attached to the bills sent by the

ESSO Company, After submission of the bills, the transport section gave necessary certificate about the entries in the bill and made entries in the

bill register and stock book The AROT used to sign the bill after necessary verification and then after the signature of DCDT the bills were used to

be sent to the A/cs, department. The department possessed 15 vehicles with 50 drivers and helpers. Each vehicle had a log book. When a driver

required petrol for a journey he came to the AROT with a log book and the AROT used to verify the log book and send the driver to the petrol

clerk or the pump attendant who verified the log book to ascertain the quantity of petrol required for the journey. Entries were made in the log

book by the driver or by the petrol clerk or by the pump attendant who issued petrol slips and the driver or the store clerk or the pump attendant

made note in the log book about the issue of petrol slips and the quantity of petrol. All the petrol slips were serially numbered and after writing of

the petrol slips which used to be done ordinarily by accused Arabinda in duplicate by carbon process, those were sent to the AROT for his

signature. After his signature the petrol issue slips used to come back to the clerk who prepared it and then two original slips were made over the

pump attendant for delivery of petrol to the driver of the vehicle. After delivery of petrol the pump attendant noted the meter reading behind the

petrol slip. Pump attendant used to make over all the slips to the petrol clerk thereafter and the petrol clerk then used to post all the slips in the

petrol slip posting book which was maintained by him. The note was made in the stock book and balance was struck after noting the quantity of

petrol. Major Brahma from time to time used to verify the noting by putting his signature therein. In August or September, 1961 accused Suresh

Saha Was placed in-charge of receipt of petrol and the petrol clerk P.W. 2 - Debu Ghosh was to do all the works under his supervision. Under

that arrangement Suresh used to remain present when petrol was to be delivered and it was he who ordered pouring petrol into the underground

tank after being satisfied as to the measurement. Suresh used to sign the challans thereafter and Debu used to sign the challans after Suresh signed

the same, in December, 1961 Suresh asked P W. 2 Debu as to whether he was in the habit of drinking and after getting the reply that Debu drank

once or twice, he indulged in some amorous talks with P. W, 2 and asked from to remain at home between 730 and 8 p. m, Suresh came to

Debu's house at the appointed time and took; him to a taxi to a place near B. K. Pal Avenue where they made merry making with a girl. The same

thing was repeated on the following day In the 4 place Suresh told Debu that some extra money was required for such environment and that

provision for the same could be made by selling some petro1 outside. To this proposal Debu but at first was unwilling to agree. but afterwards

agreed on the assurance held by Suresh. Suresh told Debu that hey would have talks with the driver of the ESSO Company for this purpose. P.W.

2 after talking to the driver informed Suresh that it was possible to sell petrol at the rate of Re. 1/- per gallon through the help of the drivers. The

first sale of petrol look place on 6-1-1962 when a little portion of petrol was poured into the underground tank and the rest was left in the tank for

sale outside and the challans were duly signed by both Suresh and Debu in token of full delivery. Payment of Rs. 500/- was made to Debu near

moniment and the amount was divided between Suresh and Debu who spent the amount at the brothel. Debu was assured of having a young girl

for his enjoyment. Accused Lal-mohon and accused Arbinda came to know about the conspiracy and as such they were also taken into

confidence. Lalmohon took upon lvmself the responsibility of finding a girl for Debu and accordingly Debu was taken to 12, Abinash Kabiraj

Street where Debu was acquainted to accused Alik Narayan Ojha who was the daroan of that brothel. The brothel was popularly known as

Nandarani"s flat. Thus, matters went on merrily and the accused Bina was engaged for P. W, 2 Debu. Bina implored Debu to save her from the

life of shame and asked him to remove her from the brothel. Suresh approved of the idea. Accused Gobinda came to know about this affair and as

such Aliknarayan and Gobinda were also taken info confidence. It was, proposed that consignment should be sold in full. But in order to ensure

sale of full consignments strict precaution was necessary and for that purpose accused Banabir, a driver of the ESSO Co. and accused Brahma-

aanda a clerk of the Chjttarganj Terminal, Budge Budge were taken into confidence that petrol would be sent from Chittarganj Terminal through

the driver Banabir and for his efforts Brah-mananda would lake Rs. 30/- from the side of I he driver and Rs. 30/- from the side of the R. R

Department. Thus, the orbit of the conspiracy was enlarged by the involvement by accused Nos. 9 and 17. The first sale of the entire consignment

took place on 15-2-1962 and delivery was given not at Auckland House but accused Banabir waited near Outramghat where the challans were

signed in token of receipt of the full consignment in the tank of the R. R. Department. It was arranged that money for the illegal sale of petrol was

to be got from the house of Banabir at Gariahat and money was actually taken from Banabir's house and money was distributed at Nandarani's

flat amongst the accused Nos. 1, 2, 3, 4, 5, 6 and 7. In this way the trend of events followed and on 16-2-1962 a part of the consignment was

sold, On that day a part of the consignment was delivered and the remaining was left for sale and Suresh demanded money from Banabir. Banabir

proposed that the petrol might be sold to accused Manotosh and for that purpose, he took P.W. 2 to Manotosh Mitra's petrol pump. At that time,

Manotosh Mitra paid Rs. 100/- to Debu and assured him that he would be their regular customer and for that purpose requisite arrangements were

made. Conspiracy to sell petrol in this way continued. The next delivery for illicit sale took place on 27-2-1962 when the petrol was delivered at

Outramghat and the entire consignment was fixed up for illicit, sale and the challan was signed by accused Suresh and Debu in token of delivery. In

th's way part of consignment was sold on 3-3-1962 and the entire consignment was sold on 9-3-1962. On 16-3-1962 the entire consignment

was sold. Similar thing happened on 27-3-1962. On 29-3-1962 accused Banabir paid Rs. 300/- to accused Saha. On all these dates of illicit sales

money was distributed at Nandarani's flat. Again illicit sale took place on 30-1-1962. 5-4-62, 10-4-62, 26-4-62, 3-5-62 and 9-5-1962. On 14-

5-1962 Gobordhone and Bina came to the office of the R. R. Department and Saha asked Debu to keep watch over them. The challans dated

14-5-1962 were signed by Saha and on that night sale proceeds were distributed at Nandarani's flat. The next sale took place on 16-5-1962.

Signing of challans and selling of petrol also took place on some other dates. Debu was on leave and he told everybody in the office according to

the instructions of Saha that he had kept petrol stock book in the al-mirah before going on leave. P.W. 30 Sarat Bose contacted Captain Palit, D.

O. D. T. and also Deputy R. R. O. and orders were passed by them to prepare petrol stock book afresh and entered all the invoices in the said

book. New stock books were prepared and Deputy R. R. O. for additional precaution directed that in addition to Debu and Saha the challans for

the delivery of petrol would be signed by P.W. 15 Amar Mullick. The new arrangement for receiving petrol was followed on 6-6-1962, 11-6-1962

and 13-6-1962 and all these dates Amar Mullick signed the challans. On 12-6-1962 Debu prepared twenty six confirmation orders and got them

signed by Major Brahma. The next illicit sale of petrol took place on 15-6-1962. Such things continued on several other dates. Meanwhile, a

departmental enquiry was started and Suresh told Debu that he had already denied his signature. Debu denied his signature as advised by Saha.

There was a scare in the department for non-receipt of petrol dated 21-8-62 which according to the telephonic information given from Budge

Budge to the department had already been delivered to the department. Meanwhile Debu made a statement about the illicit sale of petrol to A. R.

O. T. Shri Sarkar who took him to the Deputy R. R. O. Shri A. Chatterjee who again took him to R. R. O. at Writers' Buildings and the matter

was handed over to the police. The investigation was taken up and the file along with papers of the departmental enquiry conducted by Shri Moitra

were made over to D. C. (E. B., Calcutta) police who handed over the file to Shri P. Chatterjee, the I. O. of this case. The I. O. took notice of the

two petitions of complaint filed by Shri A. Chatterjee dated 10-9-1962 on the basis of which. F. I. R. was drawn up. Another F. I. R. was drawn

upon 12-2-1963. The I. O. submitted report. Thereafter, three different cases were started on the basis of three F. I. R. After the completion of

investigation, papers were submitted by the I. O. to the relevant department and thereafter the petition of complaint was filed in Court on 21-9-

1965. The case was allotted to the Special Court by Government. Notification on dated 17-6-1965. Charges were framed against all the accused

excepting Kalyan Kr. Bose and Kunjabehari Patra who were discharged. All the accused persons were charged u/s 120B read with Section 491

I.P.C. Besides accused Saha was specifically charged u/s 409 IPC in respect of criminal breach of trust of consignment of petrol on 26-7-1962,

30-7-1962, 2-8-1962 and 21-8-1962. Accused No. 2 Debu was granted pardon u/s 337 of the Code and he deposed as an approver in support

of the prosecution case. All the accused persons pleaded not guilty to the charges and claimed to be pardoned. All the accused persons denied

that they had any connection with the sale of illicit petrol. It is their case that they are quite innocent and have been falsely implicated. The learned

Judge, on a consideration of the entire evidence on record acquitted some of the accused persons, but convicted all the appellants u/s 120B read

with Section 409 IPC and appellant Saha u/s 409 IPC in respect of Criminal breach of trust on five occasions. Being aggrieved by the aforesaid

order of conviction and sentence the appellants have come up to this Court.

4. Mr. Dutta, learned Advocate, appearing on behalf of the appellant in Criminal Appeal No. 336 of 1970 points out several infirmities in the

prosecution case. In the first place, Mr. Dutta submits that the charge Under Sections 120B/ 409 of the Indian Penal Code is not maintainable as

the charge indicates rolled up conspiracy. It has been mentioned that the persons entered into a conspiracy at Calcutta and other places. 17

accused persons have been named in the charge and it has been stated that the accused persons, along with other unknown, between December,

1961 and August, 1962 at Calcutta and other places agreed to do or caused to be done an illegal act ... Mr. Dutta submits that what are the other

places have not been mentioned and that being so, the charge suffers from vagueness and such a charge has caused a great prejudice to the

accused persons. Again, though it has been said that the accused persons along with others, entered into conspiracy the name of P.W. 2

Debabrata Ghosh who turned approver and who sought to divulge the story of conspiracy in Court was not mentioned in the charge as a person

who also entered into the conspiracy. In this connection, it is further submitted by Mr. Dutta that against 7 persons there were allegations of overt

act in pursuance of the conspiracy said to have been entered into by the accused persons. But those 7 persons have been acquitted and that being

so, it must be said that the prosecution has not succeeded in proving the charge of conspiracy as against Suresh Ch. Saha and other appellants.

We find much substance in the argument advanced by Mr. Dutta with regard to the defect in charge and are of opinion that such a charge has

caused great prejudice to the appellants.

5. In the next place, Mr. Dutta contends that Suresh Ch. Saha is admittedly a public servant. He was entrusted, according to the prosecution, as a

public servant. In such circumstances, in the absence of sanction Suresh Ch. Saha could not have been prosecuted. Mr. Dutta refers to paragraph

7 of the petition of complaint wherein it has been stated that the accused No. 1 Suresh Ch. Saha being given charge of the petrol and being

entrusted with such patrol indented and Received by. him as public servant in such specified manner and all the accused persons at different time"s

and at various Stages entered into A criminal conspiracy to commit criminal breach of trust in respect of various quantities of Government petrol by

dishonestly disposing of the said petrol to several petrol pump owners and thus on various dates requisitioned approximately one lac liters of petrol

received by and entrusted to accused No. 1 - Suresh Ch. Saha in his capacity as public servant. These being the allegations, it has been contended

by Mr. Dutta that it is the prosecution case that Suresh Ch. Saha was A public servant and was entrusted as such public servant In such

circumstances, Mt. Dutta submits that obtaining of sanction was a condition precedent before prosecuting him. In this case, however it is the

prosecution case. Mr. Dutta submits that Shri Saha disposed of petrol illegally in the discharge of his duty as a public servant. Mr. Roy

Chowdhury, learned Advocate, appearing on behalf of the" State, however, submits that the illegal act, alleged to have been committed by Shri

Saha, cannot be said to have been done in the discharge of his official duty and that being so, no sanction is necessary. Mr. Dutta to several

decisions in support in his contention. He first refers to a decision reported in Shreekantiah Ramayya Munipalli Vs. The State of Bombay, . It has

been held in this case that if an alleged act is said to have been done and a public servant in the discharge of official duty sanction is necessary. The

same view has been taken in Amrik Singh Vs. The State of Pepsu, . the next case, relied on by Mr. Dutta has been reported in Matajog Dobey

Vs. H.C. Bhari, . In this case, the view taken in Shreekantiah Ramayya Munipalli Vs. The State of Bombay, and Amrik Singh Vs. The State of

Pepsu, was reaffirmed. The last case relied on by Mr. Dutta is reported in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, . It has

been held by majority decision that ""where the act complained of is directly concerned with his official duties, so that, if questioned it could be

claimed to have been done by virtue of the office, then sanction would be necessary"". In the present case considering the facts and circumstances

and the allegations, we have to doubt that the acts alleged were done by Shri Saha by virtue of the office. This being the position, we accept the

contention of Mr. Dutta and hold that in order to prosecute Shri Saha it was absolutely necessary to obtain sanction and that being so, the trial has

been vitiated.

6. Now, with regard to the merits of the case, Mr. Bijoy Bhose, Mr. Dilip Kr. Dutta and Mr. S. G. Poddar, learned. Advocates appearing on

behalf of the appellants in three different Criminal Appeals, submit that in this case the prosecution mainly relies on the evidence of P.W. 2 -

Debabrata Ghosh who, according to the prosecution, was one of the main persons who at first entered into a conspiracy with Shri Suresh Ch.

Saha and then other persons were taken in confidence and they also entered into conspiracy. Debabrata Ghosh was turned an approver and was

examined as prosecution witness No. 2. It is submitted by the learned Advocates that evidence of an approver should be considered with great

caution. At first it will have to be seen whether the witness is a reliable one. If the witness passes the test, then it is required to be seen if the

evidence adduced by the approver gets corroborated by other reliable and independent evidence at least material particulars. But, if it found that

the approver cannot be declared as a reliable witness, then the question of seeking corroboration of his evidence does not arise. The learned

Advocates for the appellants in one voice state that from the nature of evidence adduced by P. W 2 the Court will have no hesitation to hold that

he is an unreliable Witness and that being so, in this case it is not necessary to seek for corroboration. In this case, however, it is submitted that

there is no corroboration of the evidence adduced by P.W. 2 on material particulars, either oral or documentary. It is also submitted that most of

the persons who, according to P.W. 2, entered into a conspiracy have been found not guilty and acquitted. That the men of two petrol pump

dealers have been acquitted. It may be remembered that it is the prosecution case that small quantity of petrol was used to be filled in the

underground tank of the department and the huge amount of petrol was to be sold to the two petrol dealers. The petrol dealers and their men have

all been acquitted. That being so, it must be held that the clandestine sale of petrol to the petrol dealers has not been believed by the learned Judge.

The story of conspiracy as narrated by P. W 2 is to the effect that several persons entered into a conspiracy, namely, that the major portion of

indented petrol would not be filled in the under-ground tank of the department, but would be sold outside. If the later part of the story of the said

conspiracy could not be proved by the prosecution, then we fail to understand how the conspiracy has been proved at all. The entire evidence of

P.W. 2 was placed before us. We have scrutinised the evidence carefully and on going through the evidence we find that P.W. 2 cannot be relied

on when he gives out the story of conspiracy. We find that his statements with regard to the facts are such which are very difficult to believe. The

hatching and development of conspiracy at Nandarani's flat not at all convincing. It may be mentioned that prostitutes of Nandarani's flat who were

accused in his case have all been acquitted, it is also worth mentioning that it is P.W. 2's evidence that rubber stamps etc., were used to be kept at

Nandarani's flat and these were used. But nothing has been found from Nandarani's flat. We agree with the learned Advocates that P.W. 2

cannot be considered as a reliable witness and that being so, we put no reliance on his evidence regarding the story of conspiracy entered into by

the appellants and others. The being the 1st position, we need not seek for further corroboration from other witnesses and from documents regarding

the story Of conspiracy. If the charge Of conspiracy fails, then all the appellants must be found not guilty Under Sections 409/120B of the Penal

Code.

7. Now, we are left with the charge u/s 409 of the Penal Code against appellant Suresh Ch. Saha. He has been charged on 5 counts. With regard

to this charge our conclusion is the same, namely that the prosecution has failed to substantiate the charge against accused Suresh Saha u/s 409 of

the Penal Code. We come to this conclusion because, besides the evidence of P.W. 2, there is no other evidence worth the name from which it

can be said that the Prosecution has been able to prove the charge against accused Suresh Saha u/s 409 of the Penal Code. This charge also,

therefore fails.

8. In the result, all the appeals are allowed. The order of conviction and sentence passed against the appellants is set aside. They are found not

guilty and are acquitted. Let them be discharged from their bail-bonds.

N.G. Chaudhuri, J.

9. I agree.