M.G. Agarwal Vs The State of Maharashtra

Court: Bombay High Court

Date of Decision: April 24, 1962

Acts Referred: Penal Code, 1860 (IPC) â€" Section 120B, 34, 467, 471

Citation: (1962) 64 BOMLR 773

Hon'ble Judges: B.P. Sinha, C.J; T.L. Venkatarama Aiyar, J; P.B. Gajendragadkar, J; N. Rajagopala Ayyangar, J; K.N. Wanchoo, J

Bench: Full Bench

Judgement

P.B. Gajendragadkar, J.
A criminal conspiracy to which, according to the prosecution, M, G. Agarwal, M.K. Kulkarni and N.

Laxminarayan, hereafter called accused Nos. 1, 2 and 3 respectively, were parties between December, 1954 and June, .1955 at Bombay, has

given rise to the criminal proceedings from which the two present appeals arise. At the relevant time, the three accused persons were attached to

the office of the Income Tax Officer, Ward No. A-III in Greater Bombay. Accused No. 1 was designated as the First Income Tax Officer, and

accused Nos. 2 and 3 worked under him as second and third Assessment Clerks respectively. The main charge against these persons was that

during the relevant period, they had entered into a criminal conspiracy by agreeing to do or cause to be done illegal acts by corrupt and illegal

means and by abusing their position as public servants to obtain for themselves pecuniary advantage in the form of Income Tax refund orders and

this criminal object was achieved by issuing the said refund orders in the names of persons who either did not exist or were not assessees entitled

to such refunds. The prosecution case was that after the said refund orders were thus fraudulently issued, they were fraudulently cashed and

illegally misappropriated. The ten persons in whose names these refund orders were fraudulently issued were G.M. Thomas, P.N. Swamy, K.S.

Patel, S.R. Bhandarkar, S.P. Jani, D.M. Joshi, C.B. Kharkar, Eamnath Gupta, V.M. Desai and K.V. Rao. It appeal"s that twenty-five bogus

vouchers were issued in respect of these ten fictitious cases; eleven accounts were fraudulently opened in different banks in Bombay and

misappropriation to the extent of Rs. 54,000 has thereby been committed. That, in substance, is the main charge which was levelled against the

three accused persons.

2. Nine other subsidiary charges were also framed against them. Charges 2, 3 and 4 were in respect of the Income Tax refund order issued on

January 7, 1955, in favour of Mr. G.M. Thomas. The prosecution alleged that by their several acts in respect of the issuance of this refund order,

the three accused persons had committed offences under Sections 467 and 471 read with Section 34, Indian Penal Code, as well as Section 5(2)

of the Prevention of Corruption Act read with Section 5(1)(d) of the said Act and Section 34 of the Indian Penal Code. Similarly, charges 5, 6 and

7 were; framed under the same sections respectively in regard to the Income Tax refund order issued in favour of Mr. G.M. Thomas on April. 2,

1955. In regard to the Income Tax refund order issued in favour of Mr. S. R. Bhandarkar on April 2, 1955, charges 8, 9 and 10 were framed

under the said respective sections. That is how the case against the three accused persons under ten charges was tried by the Special Judge,

Greater Bombay.

3. It would thus be seen that, in substance, the prosecution case is that in order to carry out the criminal object of the conspiracy, the three accused

persons adopted a very clever and ingenious modus operandi in defrauding the public treasury. They decided to take adequate steps to issue

Income Tax refund orders in the names of non-existing persons and to misappropriate the amounts by encashing the. said refund certificates issued

in pursuance of the said refund orders. In furtherance of the conspiracy and in furtherance of the common intention of all the conspirators, steps

were taken to forge the signatures of the said fictitious persons as claimants wherever necessary, to prepare some of the supporting documents and

to deal with the cases as though they were cases of genuine assessees submitting a return and making a claim for refund. It is by adopting this

clever device that all the accused persons have succeeded in misappropriating such a large amount as Rs. 54,000.

4. It appears that when a return or refund application is received in the Income Tax Office, it first goes to the assessment refund clerk, who, in due

course, puts it up for orders before the Income Tax Officer. In ordinary course, the Income Tax Officer sends a notice to the assessee, examines

him and the accounts produced by him to see if the return is correct, That done, an assessment order is passed by the Income Tax Officer.

Thereafter, .a form known as I.T. 30 form is prepared. This form contains several columns which, when filled in, give details about the Income Tax

payable by the assessee, the tax paid by him, the refund ordered by the Income Tax Officer or the collection demanded by him. After this form is

duly filled, it is sent to another clerk for preparing the refund order. At that stage, the refund order is prepared and the said order together with the

demand and collection register and I.T. form 30 are sent back to the Income Tax Officer who examines the record and signs the refund order and

the I.T. form 30 and himself makes or causes to be made an entry in the demand and collection register. At this time, he also cancels the refund,

certificates, such as dividend warrants. The Income Tax Officer also receives the advice memo prepared by the refund clerk and signs it. The said

memo is sent to the Reserve Bank and the refund order is sent to the assessee. After the refund voucher is cashed by the .Reserve Bank, the

advice memo, is received back in the Income Tax Office. It is thereafter that an entry is made in the Daily Refund Register. The prosecution case is

that the conspirators purported to adopt all steps which they deemed necessary to carry out their criminal object in order formally to comply with

the procedure prescribed by the department in making refund orders.

5. At this stage, it is relevant to state briefly how, according to the prosecution, the fraud of the conspirators was discovered. In April, 1955, Mr.

Sundarajan who was then, the Commissioner of Income Tax, Bombay City, received a report that many irregularities were being committed in

respect of refund orders issued by A-III Ward. On receiving this report, he told Mr. Gharpure, who was the Inspecting-Assistant Commissioner

of Income Tax, A-Range, to carry or it an inspection of the work of accused No. 1. He, however, cautioned Mr. Gharpure to carry out his

assignment as if he was making an inspection in the normal course in order that no suspicion should arise in the mind of accused No.]. Mr.

Gharpure accordingly made inspection and submitted his report on June K, .1955. It is common ground that Mr. Gharpure was not able to

discover any fraud.

6. On June 10, 1955, Mr. Sundararajan asked Mr. Gharpure to produce before him all the refund books kept in A-III Ward. They were

accordingly produced before him. On examining these books, Mr. Sundararajan found certain suspicious features He came across one counter-foil

of the refund order in the name of G.M. Thomas and he noticed that the relevant postal acknowledgment did not bear any postal stamp and

presented a clean and fresh appearance. That appeared to Mr. Sundararajan to be suspicious. He also found that a number of refunds were made

in round figures which was very unusual. The files showed that on the back of the counter-foils the postal acknowledgments were not stuck up nor

were advice notes stuck up. His suspicions having been raised by these unusual features of the files, Mr. Sundararajan conducted a further scrutiny

of the six counter-foil books particularly to find out whether the refund orders were in respect of round figures and he found that such refund

orders had been passed in the names of Messrs, G.M. Thomas, K. S. Patel, P. N. Swamy, D. N. Joshi and S. R. Bhandarkar. After the refund

orders were encashed, they were sent to the Accountant-General''s Office by the Reserve Bank and so, Mr. Sundararajan thought that he could

get them from the said office. All this happened in the evening of June 10, 1955.

7. On June 11, 1955, which was a Saturday, Mr. Sundararajan called for the Income Tax files of some of the persons named above including G.

M, Thomas and K. S. Patel along with the files of twenty other regular assessees. The files of the twenty regular assessees were submitted to him

but not of the ten fictitious persons. On enquiry, he was told that those files were not available. The non-production of the said files confirmed his

suspicion that something irregular must have happened in respect of them. That is why he sent for accused No. 1 at 2 p.m. but he was not in his

office. He came at 3 p.m. Mr. Sundararajan showed him the relevant counter-foils and examined him. The statement made by accused No. 1 was

duly recorded by Mr. Sundararajan. As a result of the enquiry made by him, Mr. Sundararajan was satisfied that the three accused persons had

fraudulently brought into existence several documents as a result of which a large amount had been misappropriated, and so, he requested the

Central Board of Revenue to suspend accused No. 1.

8. At that stage, Mr. Sundararajan naturally wanted to search the office of A-III Ward, but he could not carry out the search since he was told that

the key of the A-III ward Office had been taken away by accused No. 3. He then left instructions with the police guard of his office that nobody

should be allowed to enter the room of A-III Ward without his permission. Next day, he attended his office but he found that no person in A-III

Ward had gone to work. Before he left the office, he got the office of A-III Ward sealed and left word with the Inspector on duty that if any

person came to work in that office thereafter, it should be reported to him. After Mr. Sundararajan reached home, he received a telephone

message that accused No. 3 had come to A-III Ward Office with the keys. Mr. Sundararajan directed the Inspector to take charge of the keys

from accused No. 3 and ask him to attend office the next day.

9. Next day was a Monday (June 13, 1955). On that day, Mr. Sundararajan accompanied by certain other officers went to the office of A-III

Ward, opened the seal and the lock and after going inside, attached six registers. He also made a search for the assessment records of the ten

persons in question but he did not find them. He then transferred accused No. 1 to an unimportant charge and instructed the Banks that no

withdrawals should be allowed from any of the eleven accounts, since the said accounts appeared to him to be suspicious. He then sent for

accused No. 3 and examined him. He also sent for accused No. 2 but he was not available since he had gone on leave. He directed one of his

inspectors to enquire whether the said ten persons were real persons or were merely fictitious names. All this happened on June 13, 1955.

10. On June 14, 1955, Mr. Sundararajan went to A-III Ward Office along with accused No. 3. He wanted to search for the missing papers, viz.,

the assessment record of the ten persons in question. Accused No. 3 waited for some time and then opened accused No. 2 "s table and took out

some papers. A list of these papers was made and they were taken in charge. This list has been signed by Mr. Sundararajan and the officers who

accompanied him as well as by accused No. 3. Thereafter, accused Nos. 2 and 3 were suspended and as a result of the investigation which

followed, all the three accused persons were put up for their trial before the learned, Special Judge for Greater Bombay on the charges already

indicated.

11. Before the learned trial Judge, accused No. 3 pleaded guilty to all the charges framed against him, whereas accused Nos. 1 and 2 denied that

they had anything to do with the alleged commission of the offences charged.

12. The prosecution sought to prove its case against all the three persons by producing before the learned trial Judge the relevant documents

including the files kept in A-III Ward office, and it examined four witnesses from the department for the purpose of showing the procedure that is

followed in passing assessment orders and granting refunds and with the object of showing that the conspiracy could not have succeeded without

the active assistance and cooperation of accused No. 1. These witnesses are Sundararajan, P.W. 1, Nag-wekar, P.W. 2, Subramaniam, P.W. 5

and Downak, P.W. 21. It also examined Das Gupta, P.W. 26, to prove the handwriting of the accused persons. Eleven other witnesses were

examined to prove the identity of accused Nos. 2 and 3 in respect of the steps taken by them to open accounts in different banks in order to

encash the refund vouchers issued in pursuance of the refund orders passed by accused No. 1.

13. The learned trial Judge held that the evidence adduced by the prosecution did not establish beyond a reasonable doubt the existence of the

criminal conspiracy between the three accused. He was not inclined to hold that the ten alleged persons were non-existent. Even so, he proceeded

to deal with the case on the basis that the ten persons were non-assesses and yet the refund orders had been passed in their favour. According to

the learned trial Judge, accused No. I may have innocently signed the relevant documents without looking to them in a hurry to dispose of cases,

placing confidence in his staff, and so, it would be difficult to hold that he was a member of the conspiracy. The utmost, said the learned Judge, that

can be argued against him is that he was negligent. That is how he acquitted accused No. 1 of the principal charge of conspiracy u/s 120-B and as

a result, the other charges as well. In regard to accused No. 2, the learned .Judge was likewise not satisfied that the evidence adduced by the

prosecution to prove his signatures on the relevant documents established the fact that he had signed those documents and he was not impressed

by the other evidence led before him to show that he assisted accused No. 3 in the matter of encashing the refund vouchers. On these findings,

accused No. 2 was acquitted of all the charges framed against him. Since accused No. 3 had pleaded guilty to the charges, the learned Judge

convicted him under Sections 467, 471 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act and sentenced him to

different terms of imprisonment which were ordered to run concurrently. He, however, acquitted accused No. 3 so far as the charge of conspiracy

was concerned and he acquitted accused Nos. 1 and 2 of all the offences.

14. Against the order of acquittal passed by the learned Judge in favour of accused Nos. 1 and 2, the State of Maharashtra preferred an appeal in

the Bombay High Court and this appeal succeeded. The High Court has found that the learned trial Judge misdirected himself by assuming that

accused No. 1 had pleaded that he had negligently signed the relevant documents and passed the relevant orders in a hurry, placing confidence in

his staff. The High Court has pointed out that far from pleading negligence, accused No. 1 had definitely stated in his written statement filed in the

trial Court that before he directed the issue of refund in the ten cases, he had examined the files containing the supporting documents and had

satisfied himself that it was proper to allow the refund in each one of those cases. This position was conceded by the learned advocate who

appeared for accused No. 1 in the High Court. The High Court then examined the question as to whether the ten assessees were existing persons

or were fictitious names and it came to the conclusion that the ten names given for the eleven accounts in which refund orders were passed were

fictitious names. The High Court then examined the circumstantial evidence on which the prosecution relied in support and proof of its main charge

of conspiracy between the three accused persons and it came to the conclusion that the said charge had been proved against all the three accused

persons beyond a reasonable doubt. That is how the High Court partially allowed the appeal preferred by the State and convicted all the three

accused persons u/s 120-B of the Indian Penal Code. It also convicted accused No. 2 of the offences under Sections 467,. 471, Indian Penal

Code, and Section 5(2) of the Prevention of Corruption Act. In regard to the other offences charged, the order of acquittal was confirmed. Having

convicted accused Nos. 1 and 2 u/s 120-B, the High Court has sentenced each one of them to suffer rigorous imprisonment for 18 months for the

said offence. Accused No. 2 has also been directed to suffer rigorous imprisonment for 18 months in respect of each of the offences under

Sections 467, 471, Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act. These sentences are ordered to run concurrently

with the sentence ordered u/s 120-B. It is against this order of, conviction and sentence passed by the High Court in appeal that accused Nos. 1

and 2 have come to this Court by special leave by their appeals Nos. 176 of 1959 and 40 of 1960.

15. Since the impugned order of conviction and sentence was passed against the appellants by the High Court in exercise of its powers u/s 423 of

the Criminal Procedure Code while hearing an appeal against their acquittal, the first question which calls for our decision relates to the extent of

the High Court''s powers in interfering with orders of acquittal in appeal. This question has been discussed and considered in several judicial

decisions both by the Privy Council and this Court. In dealing with the different aspects of the problem raised by the construction of Section 423,

emphasis has sometimes shifted from one aspect to the other and that is likely to create a doubt about the true scope and effect of the relevant

provisions contained in Section 423. Therefore, we propose to deal with that point and state the position very briefly.

16. Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and Clauses (a) and (ft) deal with

appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by Clause (a) which, deals with

an appeal against an order of acquittal is as wide as the power conferred by Clause (6) which deals with, an appeal against an order of conviction,

and so, it is obvious that the High Court''s powers in dealing with criminal appeals are equally wide whether the appeal in question is one against

acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High

Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind, the

presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of

acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always

be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in

disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the

trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in

dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal, against conviction, in dealing with the former

class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the

power is emphasized, while on other occasions, the necessity to adopt, a cautious approach in dealing with appeals against acquittals is

emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however

circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its

own conclusions upon the evidence adduced by the prosecution in, respect of the guilt or innocence of the accused. This position has been clarified

by the Privy Council in Sheo Swarup v. The King-Emperor (1934) L.R. 61 : 1185 36 Bom. L.R. and AIR 1945 151 (Privy Council) .

17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautions approach in dealing with appeals

against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, ""the findings of the trial Court

which had the advantage of seeing the witnesses and hearing- their evidence can be reversed only for very substantial and compelling reasons"":

vide Surajpal Singh and Others Vs. The State, . Similarly in Ajmer Singh v. The State of Punjab [1958] S.C.R. 448, it was observed that the

interference of the High Court in an appeal against the order of acquittal would be justified only if there are ""very substantial and compelling

reasons to do so."" In some other decisions, it has been stated that an order of acquittal can, be reversed only for ""good and sufficiently cogent

reasons"" or for ""strong reasons"". In appreciating the effect of these observations, it must be remembered that these observations were not intended

to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and

should not be read to have intended, to introduce an additional condition in Clause (a) of Section 423(1) of the Code. All that the said

observations are .intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious

because as Lord Russell observed in the case of Shea swarup, the presumption of innocence in favour of the accused ""is not certainly weakened

by the fact that he has been acquitted at his trial."" Therefore, the test suggested by the expression ""substantial and compelling reasons"" should not

be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in

Sanwat Singh v. State of Rajasthan [1901] AIR S.C. 715 and Harbans Singh and Another Vs. State of Punjab, and so, it is not necessary that

before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the

question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was

justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the

contrary view taken by the trial Court was erroneous. In answering this question, we would, no doubt, consider the salient and. broad features of

the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 336 we

would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on

appreciation of oral evidence.

18. There is another point of law which must be considered before dealing with the evidence in this case. The prosecution case against accused

No. 1 rests on circumstantial evidence. The main charge of conspiracy u/s 120-B is sought to be established by the alleged conduct of the

conspirators and so far as accused No. 1 is concerned, that rests on circumstantial evidence alone. It is a well-established rule in criminal

jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person''s conviction if it is of such a character that it is

wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent

either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this

position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and

inference of facts to be drawn from them on the other. In regard to the proof of basic for primary facts, the Court has to judge the evidence in the

ordinary way, and ''in the appreciation, of evidence in respect of the proof of these basic or primary facts there is no scope for the application of

the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is

held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing

with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly

inconsistent with the innocence of the accused and is consistent only with his guilt. It is in the light of this legal position that the evidence in the

present case has to be appreciated.

19. [The rest of the judgment which deals with the evidence in the case is not material to this report.]