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Court : Chennai

Decided On : Nov-12-1958

Reported in : (1960)1MLJ334

Appellant : The Public Prosecutor

Respondent : S. Joseph

Judgement :

Ramaswami, J.

1. The accused S. Joseph was convicted under Section 471 read with Section 466, Indian Penal Code, by the learned Assistant Sessions Judge of Tiruchirapalli Division in Sessions Case Nos. 80 and 81 of 1957, and sentenced to R.I. for two years. On appeal the learned Sessions Judge of Tiruchirapalli in C.A. No. 177 of 1957 has acquitted the accused. Hence this appeal by the State.

2. The facts are : Sometime in June, 1956, the Government imposed control over the distribution of cement, obviously, as the production was insufficient to cope with the demand. The Cement Stockists could supply and sell without permit only 15 per cent, of the stock supplied to them by the manufacturers. They should supply or sell the remaining 85 per cent, of the stock only as against permits issued by the competent authority. The Government authorised the District Collector, and, or the Personal Assistant to issue permits for sale of cement between r to 5 tons and the Tahsildar of the Taluk concerned to issue permits for

sale up to one ton.

3. So far as Tiruchirapalli District Collector's Office is concerned, the procedure adopted in the issue of permits was as follows : The District Collector or his Personal Assistant had authority to issue permits for the supply of more than one ton. The Tahsildar of the Taluk concerned was authorised to issue permits for the supply of cement up to one ton. On the receipt of an application for issue of permit for supply of cement the same will be sent to the Huzur Head Clerk No. IV (H.H. C. IV) in the Tiruchirapalli Collector's Office, either by the District Collector or by his Personal Assistant. The said officer would hand it over to the clerk concerned who will put up a note thereon. The application with the office note will then be placed before the District Collector or his Personal Assistant. On their passing orders for supply of a particular quantity, the clerk concerned will prepare an office copy of the permit styling it as a proceeding of the District Collector. The office copy will be submitted to the District Collector or his Personal Assistant as the case may be through the Huzur Head Clerk. The officer concerned will approve of it and sign it. Then the Head Clerk will send it for being fair copied. This will be done with two carbon duplicates. The Head Clerk will sign all of them, send one to the Tahsildar of the Taluk concerned, another to the dealer or stockist, who is directed to supply, and the third to the applicant. The clerk concerned maintains a personal register wherein applications for grant of cement permit, the nature and date of disposal thereof, together with the reference current number and after disposal the L. Dis. number would all be entered. Generally, the received date seal or any other seal of the Collector's Office would not be affixed to the cement permit : vide the evidence of P.Ws. 1 to 3. The procedure is not challenged by the accused.

4. Accused is the proprietor of Fathima Electrical Company, Palakarai. He also carried on business as electrical contractor under Central Public Works Department in Tiruchirapalli Aerodrome and carried out some electrical works in the said Aerodrome : vide the evidence of P.W. 7, the Section Officer of Central P.W.D.

5. P.Ws. 8 and 9 testified that on 27th April, 1957, the accused produced Exhibit P-1 as the cement permit issued by the District Collector's Office authorising him

to purchase five tons of cement, that accused paid the price therefor, that Exhibit P-37, is the carbon copy of the cash bill prepared for the sale of the cement, that accused signed therein and that the accused took delivery of the five tons and also the original of Exhibit P-37. P.W. 10 testified that on 8th May, 1957, the accused presented Exhibit P-2 purporting to be a cement permit, signed the endorsement Exhibit P-2 a overleaf thereof in his presence, paid the price therefor and took delivery of five tons of cement and also received from P.W. 10 the original of Exhibit P-40, Exhibit P-40 being the carbon copy of the cash bill prepared for the sale of the cement.

6. The accused denied the above evidence of P.Ws. 8, 9 and 10. He denied also that he presented Exhibit P-1 to P.W. 8 and Exhibit P-2 to P.W. 10 or signed Exhibits P-37 and P-40 and took delivery of any cement. He examined D.W. 1 to show that the cement was sold by the stockists indiscriminately without knowing anything about the identity of the permit-holders.

7. The learned Assistant Sessions Judge relying on the evidence of P.Ws. 8 to 10 and also by comparing the admitted signatures of the accused with the disputed signatures in Exhibits P-1 and P-2, held that the accused was guilty of the offence for which he stood charged and convicted and sentenced him as mentioned above.

8. The law relating to appeals against acquittals has become well-settled. In an appeal against acquittal it has been laid down repeatedly by their Lordships of the Privy Council as Well as the Supreme Court that this Court will not lightly interfere with an acquittal. They will pay due regard to the fact that the respondent comes to this Court with the original presumption of innocence fortified by the acquittal by the lower Court. This Court will also bear in mind that the lower Court had the advantage of seeing the witnesses in the box and was able to come to its conclusion on imponderable factors like the 'feel' of the case, and which cannot all be translated into paper as well as on the records of evidence. In fact interference with an acquittal is an innovation in the Criminal Procedure Code and this Court will naturally exercise carefully that power to interfere with such acquittals and set it aside. This is sometimes expressed in another fashion, namely, that this Court

will interfere for substantial and compelling reasons. In other words, this Court will not interfere lightly and on unsubstantial grounds and what is more it will not interfere unless it is convinced that the interest of justice require that the acquittal must be set aside. These are the principles laid down by the Privy Council and the Supreme Court, whatever the phrases which might be used, and which are not terms of Article The sum and substance of all that has been laid down by both the Privy Council and the Supreme Court is that you must have good and sufficient and cogent grounds to interfere and you must interfere only when the interests of justice manifestly require it. Thus, in essence there is no distinction between an appeal against an acquittal and an appeal from a conviction on principle. But the difference is only on the accent.

9. That this is really the settled law will be evident from the following tabular statement of the judgments of the Supreme Court:

Sheoswarup v. King Emperor : High Court has full power to

review evidence. No limitation should

be placed upon the power unless it is

expressly stated in the Code. No

distinction between appeal against

acquittal and appeal from a conviction.

Noor Mahamed v. Emperor

Prandas v. State : AIR 1954 SC36 .. Six Judges. (Kania, C.J., Fazl Ali, Muk-

herjea, Patanjali, Mahajan, and S. R.

Das, JJ. Fazl Ali, J.,)

JUDGMENT

Sheo Swamp's case approved para. 6 jud-

gment.

Tulsiram Karu v. State (1953) S.C.J. 612 : Kania, Patanjali & Section R. Das, JJ.

: AIR 1954 SC1 . An experienced Judicial Officer (S.J.)

having had reasonable doubt the High

Court requires good and sufficiently

cogent reasons to overcome such reas-

onable doubt.

Walayat Khan v. State of U.P. I.L.R. (1953) Fazl Ali, Mahajan and Chandrasekhara

: AIR 1953 SC122 . Iyer, JJ. The power of the High Court

in appeal against acquittal are as

wide as in appeals from conviction.

But there are two points to be borne

in mind:

1. Presumption of innocence continues.

2. Slow to disturb the finding of the

Judge who saw and heard the witnesses.

Surajpal Singh v. State (1952) S.C.J. 32 : Fazl Ali and Bose, JJ.

: 1952 CriLJ331 : High Court has full power to review the

: 1952 CriLJ331 . evidence but it is equally well-settled

that the presumption of innocence is fur-

ther reinforced by the acquittal by the trial Court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

The High Court had not discussed the evidence of 4 witnesses. Had not met the objection pointed out by the Sessions Judge.

C.M.Narayanaw. State of Travancore A.I.R. Patanjali C.J., Mukerjee, S.R. Das, 1953 S.C. 478. Bose, Ghulam Hasan, JJ.

Follows Sheo Swamp's case.

Puran v. State of Punjab (1954) 2 Mahajan, S.R. Das, and Bhagavati, JJ.

: (1954) S.C.J. 573 Findings can be reversed only for sub

1953.R. 243 : : AIR 1953 SC459 . stantial and compelling reasons. Ref-

ers to Sheo Swarup's case, but finally

concludes by saying that they were not

able to see any compelling or substan-

tial reasons for reversing the order

of acquittal.

Zwinglee Ariel v. State of Madhya Pradesh Mahajan, S.R. Das and Bhagavati, JJ.

: AIR 1954 SC15 . Quotes Sheo Swarup's case with approval.

Ajmer Singh v. State of Punjab (1953) Mahajan, S.R. Das and Bhagavati, JJ.

: 1953 CriLJ521 Can only be reversed for substantial

: 1953 CriLJ521 . and compelling reasons.

Trimbak v. State of M.P. A.I.R. 1954 S.C. Mahajan and Bhagavati, JJ.

39. There is a heavy onus on the prosec-

ution to prove that the order is man-

ifestly erroneous. The High Court seems

to have approached the case as if it

was considering an appeal against con-

viction.

Rao Shiva Bahadur Singh v. State of Vindhya Bhagavati, Jagannadha Das,
Venkatarama

Pradesh, : 1954 CriLJ910 Ayyar, JJ.

: 1954 CriLJ910 . Follows C.M. Harayan v. State of Trav-

ancore : AIR 1953 SC478 which

follows Sheo Swamp's case.

Madan Mohan Singh v. State of U.P. A.I.R. Mukerji, Bose and Ghulam Husan, JJ.,

1954 S.C. 637. Follows Sheo Swarup's case & Harayan v.

State of Travancore.

Bansidhar Mohanty v. State of Orissa Mahajan, C.J., S.R. Das, Bhagwati and
A.I.R. 1955 S.C. 585. Venkatarama Ayyar, JJ.

Follows Sheo Swamp v. King Emperor

67 M.L.J. 664 : L.R. 61 I.A. 398 : I.L.R.

56 All. 645 : A.I.R. 1934 P.C. 227

(P.C.). Surajpal Singh v. State (1952)

1 M.L.J. 426 : (1952) S.C.J. 32 : 1952

S.C.R. 193 : A.I.R. 1952 S.C. 52(S.C).

Puran v. State (1954) 2 M.L.J. 124 :

(1954) S.C.J. 573 : (1955) 1 S.C.R.

243 : A.I.R. 1953 S.C 459(S.C).

Narayanv. State of Trav. A.I.R. 1953

S.C. 478.

Wording of Sheo Swarup reiterated.

High Court is not justified in an

appeal against acquittal in brushing

aside the view taken by the trial Court

which is by no means patently absurd or

unreasonable because as a result of labo-

rious process o reasoning, it is pos-

sible to take a different view on the evidence.

Atley v. State of U.P. A.I.R. 1955 S.C 807. Bose, Venktarama Ayyar and Sinha, JJ.

High Court can review the evidence.

Refers to Surajpal Singh v. State (1952)

S.C.J. 32 : (1952) S.C.R. 193 : A.I.R.

1952 S.C. 52, Wilagakhan v. State I.L.R.

(1953) 1 All. 189 : A.I.R. 1953 S.C.

122(S.C).

Surjanv. State of Rajasthan A.I.R. 1956 Bose and Jaganadha Das, JJ.

S.C. 425. High Court is free to appreciate the

evidence and will be slow to reverse an

acquittal except for strong and compe-

lling reasons.

Aher Raja Khina v. State of Sourashtra Bose, Venkatarama Ayyar and Chandras-

(1956) 1 M.L.J. (S.C.) 135: (1956) S.C.J. ekhara Iyer, JJ.

243 : (1955) 2 S.C.R. 1285 : A.I.R. 1956 Venkatarama Ayyar, J., dissenting. Per

S.C. 217 (S.C). Majority. - It is not enough for the

High Court to take a different view but

there must also be substantial and

compelling reasons. If the trial Court takes a reasonable view interference is not justifiable unless there are really strong reasons for reversing.

Ajmer Singh v. State of Punjab (1953)

1 M.L.J. 376 : (1953) S.C.J. 85 : (1953)

S.C.R. 418 : A.I.R. 1953 S.C. 76.,

Surajpal Singh v. State (1952) 1 M.L.J.

426 : (1952) S.C.J. 32 : 1952 S.C.R.

193 : A.I.R. 195a S.C. 52(S.C).

Balbir Singh v. State of Punjab A.I.R. Bhagawati, Imam, S.R. Das, Govinda

1957 S.C. 216. Menon, JJ. Refers to Prandas v. State

A.I.R. 1954 S.C. 36, Sheo Swarup v.

King Emperor 67 M.L.J. 664 : L.R. 61

I.A. 398 : I.L.R. 56 All. 645 (P.C) :

A.I.R. 1934 P.C. 227 (P.C.) Surajpal

v. State Ajmeer Singh v. State, Aher

Raja Khima v. State of Sourashtra.

There must be sufficient and compelling reasons.

Bhagwan Das v. State of Rajasthan (1957) Bhagawati and Kapur, JJ.

1 M.L.J. (Cr.) 478 : (1957) S.C.J. 515 : High Court should not set aside an

A.I.R. 1957 S.C. 589(S.C). order of acquittal unless there are

substantial and compelling reasons

for doing so.

Following Surajpal Singh's case.

Ramjanam Singh v. Bihar State A.I.R. 1956 Acquittal strengthens the hands of the

S.C. 643. accused. Strong presumption of evidence

is not displaced.

10. Bearing these principles in mind, let us examine the facts of this case. On a review of the entire circumstances, I have come to the conclusion that the learned Sessions Judge has given good, sufficient and cogent reasons for holding that the prosecution had not established the case beyond reasonable doubt against the accused. Here are my reasons.

11. The case for the accused that on account of certain disorderliness prevailing in the administration for issue of permits for distribution of cement, many people have taken advantage in collusion with the revenue staff of the District Collector to bring about forged permits and deliveries of the same to the stockists, stands fully made out. The evidence of P.Ws. 1 to 6 shows that sufficient precautions were not taken and sufficient check was not made either in the Collector's Office or in the Taluk Office to ensure prevention of use of forged permits for purchasing cement. P.W. 5, the Tahsildar testified that about the last week of April 1957, P.W. 4 the Revenue Divisional Officer orally told him that there were complaints to the effect that clerks and peons of the Taluk Office were issuing forged permits. P.W. 4 issued a printed order as per Exhibit P-34 dated 22nd May, 1957, to the village Headmen that they should recommend only persons who had real necessity for cement. Therefore, the version of the accused that taking advantage of this

disorderliness, the two forged permits forming the subject-matter of the prosecution, might have been secured and utilised by some persons taking also advantage of the fact that this accused was a contractor of the Aerodrome and that if permits were issued in his name, stockists would readily sell the cement on those permits is not unfounded.

12. Then, that the stockists were also either by design or by accident careless in issuing cement against forged permits is evident from the fact that notwithstanding the rules, no copy of the permit is said to have been issued to the accused was received by the stockists, they still issued cement and did not also ask or remind the Collector's Office for copies being sent to them even assuming that with a view to oblige contractors they supplied the cement before receiving the copies of permits.

13. It is difficult to believe the stockists P.Ws. 8 and 10 when they swore that either the accused and a Mohammadan known to them as the servant of the accused came and produced the permits and it was only when the accused signed the permits the cement was supplied. First of all, the signatures have not been brought home to the accused. The learned Assistant Sessions Judge who purported to have compared the disputed signature with certain admitted signatures of the accused, pronounced in favour of the genuineness. The learned Sessions Judge did the contrary. No handwriting Expert of the Government has been examined. In this very case the accused has examined a witness D.W. 1, the village Headman of Somarasampettai who testified about Exhibit D-5. P.W. 8 says that this Exhibit D-5 was a permit issued to one Sankaralingam whom he knew to be a resident of Somarasampettai and a real person. But the village Headman of Somarasampettai states that there is no such person at all in that village. The servant of the accused who is said to have brought one of the permits is said to be a Muslim by name Abdul Gaffoor or Ajiba. But neither of them has been traced. The accused denies that he had a Muslim servant whose name was Abdul Gaffoor or Ajiba. P.W. 11 the Investigating Officer could not get at Abdul Gaffoor or Ajiba. In fact the learned Sessions Judge has rightly characterised the story of the stockists that they knew the Muslim servants of the accused and that they spotted them when the transaction was effected, when there were a large number of transactions in the

shop and they could not reasonably be expected to remember the persons who came to the shop, as not acceptable.

14. Therefore, the learned Sessions Judge could not be said to have had no good or sufficient ground when he held that the presentation of permits and taking delivery of the cement by the accused or his servants has not been brought home to him. Then when 80 tons are said to have been issued to this accused in the course of one month, and in regard to which the charges relate only to ten tons, and when the accused's business place is situated opposite to the Palakarai Police Station and it is the common case that the accused was not executing any works during that period, these 1000 and odd bags could not have vanished into thin air. Still we have not a title of evidence in regard to the financing or the disposal of this large quantity of cement. When it is to the self-interest of the stockists to assert the same as otherwise if they are shown to have supplied cement to fictitious persons their licence would be cancelled, the learned Sessions Judge has rightly stated that under these circumstances in the absence of other corroborating materials enabling us to accept the testimony of P.Ws. 8 to 10, it is unsafe to rely on the testimony of P.Ws. 8 to 10 alone to hold that the accused personally appeared at the shops of P.Ws. 8 to 10 presented Exhibits P-1 and P-2, signed on them and purchased the cement.

15. Therefore, there are no grounds to interfere with the acquittal by the learned Sessions Judge. This appeal is dismissed.