

MOHANDAS LALWANI

v.

THE STATE OF MADHYA PRADESH

September 11, 1973

[H. R. KHANNA AND A. ALAGIRISWAMI, JJ.]

Indian Penal Code, s. 165—Appellant attempted to bribe the Chief Engineer to secure a contract—Trial Court acquitted but High Court convicted and sentenced the appellant—Whether High Court has power of review the entire evidence under s. 417, Cr. P.C.

The accused-appellant was acquitted by the Special Judge, Bhopal, but convicted by the High Court under s. 165-A I.P.C., and sentenced to one year's rigorous imprisonment. The prosecution case is that on April 9, 1966, the Chief Engineer (Construction) of Heavy Electricals Ltd. was present in his office. The appellant-accused went there for an interview with two others. It is alleged that the accused-appellant offered a bribe of Rs. 3 000/- to the Chief Engineer and requested him to give the contract for which tenders were submitted earlier by 4 contractors. On being refused, the appellant put back the currency notes in his pocket. P.W. 5, the Personal Assistant of the Chief Engineer, is alleged to have taken out the envelope containing the currency notes from the trouser-pocket of the accused and thereafter, the Chief Engineer made a report to the Police and the accused and the report were sent to the Police Station. The First Information Report was prepared in the Police Station on the basis of the report (P-1) and a case was registered against the accused.

A complaint about the occurrence was thereafter filed in the Court of the Special Judge, Bhopal, by the Police. At the trial, the Chief Engineer, (P.W. 1) gave evidence in support of the prosecution and witnesses were examined by both sides. The trial Court did not believe wholly the prosecution case and gave the accused the benefit of doubt.

On appeal, the High Court considered the evidence on record, and convicted the accused.

In appeal before this Court, the appellant had assailed the judgment of the High Court and had contended that there was no sufficient ground for the High Court to reverse the judgment of acquittal of the Trial Court. If two views, according to the counsel were possible in the matter, the view which was favourable to the accused, as had been taken by the Trial Court, should be adopted.

Dismissing the appeal,

HELD : (i) There is no cogent ground as to why the evidence of P.W. 1 should not be accepted. The witness had no animus against the accused. The witness even did not know the accused till the day of occurrence. There is no particular reason as to why P.W. 1 should falsely involve the accused in this case.

(ii) The view taken by the Trial Court in rejecting the evidence of P.W. 1 was clearly unreasonable and the High Court had the cogent grounds to interfere with the judgment of acquittal passed by the Trial Court. Further, the High Court in reversing the order of acquittal considered the matters on record, including the reasons given by the Trial Court, as well as those aspects which could possibly be claimed by the accused to be favourable to him. [643B]

Kanu Ambu Vish v. State of Maharashtra, A.I.R. 1971 S.C. 2256, referred to and distinguished.

(iii) It is well settled that the High Court in appeal, under s. 417 of Cr. P.C., has full power to review at large the evidence on which the order of acquittal was founded and reach the conclusion that upon the evidence the

A order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code, and before reaching its conclusion upon fact, the High Court should give proper weight and considerations to the following matters :—(i) the views of the Trial Judge as to the credibility of the witnesses (ii) the presumption of innocence in favour of the accused (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. Therefore, from the matters on record and after considering the judgment of the trial court and the High Court, we are firmly of the opinion that the trial is not vitiated by any such infirmity as may call for interference by this Court. [643E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 45 of 1970.

C Appeal by special leave from the judgment and Order dated February 4, 1970 of the High Court of Madhya Pradesh (Jabalpur Bench) in Criminal Appeal No. 24 of 1967.

Hardayal Hardy, M. S. N. Nambudri and B. R. G K. Achar, for the appellant.

Ram Panjwani and H. S. Parihar, for the respondent.

D The Judgment of the Court was delivered by

HE KHANNA, J. This is an appeal by special leave by Mohandas Lalwani against the judgment of Madhya Pradesh High Court whereby the High Court reversed the judgment of acquittal of the Special Judge Bhopal and convicted the accused appellant under section 165A Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of one year.

F The Executive Engineer, Heavy Electricals Ltd. (hereinafter referred to as HEL), Bhopal invited tenders for construction of four BCC overhead tanks, each of one lakh gallons capacity, by a tender notice published on December 23, 1965. Four contractors, including the accused appellant, submitted their tenders. Those tenders were opened on February 1, 1966. It was found that the tender of the appellant, who had stipulated that he would use 18 tons of steel, was of the lowest amount. The other three contractors had stipulated that they would use 24 tons of steel.

G The case of the prosecution is that on April 9, 1966 PW 1 Shivarain Wadhwa, Chief Engineer Construction of HEL was present in his office. PW 5 Niranjanlal Shrivastava, Personal Assistant to the Chief Engineer, was also present there. A partition divides the office of the Chief Engineer from the place where Shrivastava used to sit. At about 11.45 a.m. on that day, the appellant accompanied by two others, came to PW Shrivastava. The appellant gave visiting card P4 to Shrivastava and said that he wanted to see the Chief Engineer. Shrivastava sent that card through a peon to Chief Engineer Wadhwa. A short time thereafter on being called by H Wadhwa, the accused appellant accompanied by his two companions went inside the office of Wadhwa. On arrival there, the accused talked about his tender and stated that as his tender was the lowest,

the same should be accepted. The accused also handed over copy P3 of letter dated April 8, 1966 which had been addressed by him to the Executive Engineer in connection with the above tender. Wadhwa then told the accused that according to the information received by him, the accused had stipulated the use of only 18 tons of steel as against 24 tons stipulated by others. The accused, however, persisted in saying that his tender was the lowest. Wadhwa then told the accused that whatever he had to say in the matter, he should tell the Executive Engineer and that he might also hand over a copy of his letter to the Assistant Chief Engineer. The two companions of the accused then left the office of Wadhwa, while the accused remained sitting there. Wadhwa then told the accused also to go, but the accused instead of going took out from the left pocket of his trousers an envelope and presented it to Wadhwa. Wadhwa could see that the envelope contained 100-rupee currency notes. Wadhwa reprimanded the accused for doing something wrong and at the same time he (Wadhwa) pressed the buzzer for his Personal Assistant. Shrivastava PW then came inside the office of Wadhwa. In the meantime, the accused had put back the envelope containing currency notes in the pocket of his trousers. On the arrival of Shrivastava, Wadhwa told him that the accused had given him bribe. Wadhwa also asked Shrivastava to take out the envelope from the pocket of the trousers of the accused. Shrivastava then took out the envelope containing currency notes from the trousers pocket of the accused. There were thirty 100-rupee currency notes in that envelope. Wadhwa then rung up R.C. Gupta (PW 3) who is the Secretary and Vigilance Officer of HEL as well as Chandra Shekhar Tiwari (PW 4), who is the Chief Security Officer of HEL. The offices of Gupta and Tiwari are also in the Administrative Building of HEL, in which building is situated the office of Wadhwa PW.

The case of the prosecution further is that on the arrival of Gupta and Tiwari PWs, Wadhwa narrated the facts about the offer of Rs. 3,000 by the accused to him as mentioned above. The accused then expressed his apologies and stated that he was sorry and ashamed for what he had done. The accused also requested that he might be forgiven and that otherwise he would lose his career as a contractor. When the accused offered his apologies, Wadhwa remarked that if the accused gave anything in writing, he would consider the matter. The accused thereupon wrote something on a piece of paper. As the writing was not found to be satisfactory, the same was not accepted by Wadhwa and the paper remained with the accused. Wadhwa then asked Shrivastava to take Lalwani to his room. Wadhwa thereafter asked for the advice of Gupta and Tiwari. It was then decided that the matter should be reported to the police. Wadhwa thereupon called Shrivastava and dictated to him report P1. In the report the number of currency notes were also noted by Shrivastava. The report was then signed by Wadhwa. The accused and the report were thereafter sent to police station Govindpura. Formal first information report P8 was prepared at the police station on the basis of report P1 and a case was registered against the accused at

A 2.15 p.m. Complaint about the occurrence was thereafter filed in the court of the Special Judge Bhopal by Town Inspector Gurbir Singh on May 20, 1966.

B At the trial, Wadhwa (PW 1) gave evidence in support of the prosecution case as given above. Gupta (PW 3) and Tiwari (PW 4) deposed about the extra judicial confession of the accused in the office of Wadhwa PW when they were called there by Wadhwa PW on telephone. The prosecution further examined Shrivastava (PW 5), according to whom, he was called by Wadhwa and was told that the accused had offered him bribe. The witness took out an envelope containing currency notes of the value of Rs. 3,000 from the pocket of the accused under the directions of Wadhwa. The witness further deposed regarding the extra judicial confession made by the accused after the arrival of Gupta and Tiwari PWs.

C The accused, in his statement under section 342 of the Code of Criminal Procedure, admitted having met Wadhwa PW in his office on April 9, 1966 and about his having handed over to Wadhwa copy of letter P3. The accused also admitted that the Personal Assistant of Wadhwa had taken out 30 currency notes of Rs. 100 each. from his pocket under the directions of Wadhwa. The fact that Gupta and Tiwari were called on telephone by Wadhwa was further admitted by D the accused. The other prosecution allegations were denied by the accused. He denied having offered any amount to Wadhwa or about his having made any confession after the arrival of Gupta and Tiwari PWs. The accused further gave the following version of the occurrence :

E "On 7-4-66 I had gone to the office of the Executive Engineer Shri Karajgi. He was not there. I learnt from the office that my tender and the tenders of two or three persons more sent to the Assistant Chief Engineer, and there was remark on my tender that the testimonials were not attached whereas I had sent the same on the 21st. Therefore, I went to the Chief Engineer on the same day and F told him that my tender was the lowest and they say, that the testimonials have not been sent. On being asked by him I replied, 'can bring the testimonials'. Then I went to Delhi and on 9-4-66 I came with the testimonials and the consultant Engineer and I had brought the amount of security also. Then I went to the office of the Chief Engineer on the 9th and talked to him and showed my testimonials and handed over the letter Exhibit P.3. For taking G out the papers I was required to take out money also and after keeping money in my pocket I showed the papers to him. I said 'I have brought the testimonials also. I have brought the Engineer also.' You discuss with him and give final reply. 'He replied', Do not talk to me. Speak to the Executive Engineer. 'I said', There is corruption. Otherwise H why my certificates have been removed from my tender? 'Thereupon he began to say, 'I am not prepared to hear this much.' Whereupon I replied, 'You are Head of the Depart-

ment. If you do not hear who will hear? Thereupon he replied, 'Do not talk anything more with me?' Whereupon I said, 'Are you also included in that corruption?' Thereupon, he pressed the buzzer. I had a hot talk with him. My Engineer also told him. Thereupon he replied, 'I am not prepared to hear anything.' Then my Engineer spoke in Sindhi language, 'He is not hearing I go downstairs and I send any other person.' At the same time Wadhwa Sahab threw away the testimonials and said, 'Where those persons have gone?' Whereupon I replied, 'They have gone downstairs'. He questioned, 'What did they say?' I replied, 'They have not said anything.' 'Then I put the testimonials in my pocket and he pressed the buzzer.'

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In defence, the accused examined one witness V. S. Asnani, Consulting Engineer. According to this witness, he went with the accused on the day of occurrence to Wadhwa PW. The witness supported the version of the occurrence as given in the statement of the accused under section 342 of the Code of Criminal Procedure.

The trial court was of the view that Wadhwa PW was not wholly reliable witness. As regards Gupta and Tiwari, it was observed that they were interested witnesses. Reference was also made to some discrepancies in the prosecution evidence as well as to the fact that there was no mention in the first information report of the extra judicial confession of the accused. The version given by the accused, in the opinion of the trial court, could not be said to be unreasonable. In the result the trial court gave the benefit of doubt to the accused and acquitted him.

On appeal the High Court considered the evidence adduced in the case by the prosecution and found the same to be reliable. The High Court disagreed with the trial court that the prosecution evidence suffered from infirmities. The defence version was rejected by the High Court as unworthy of evidence. In the result the appeal was accepted and the accused was convicted and sentenced as above.

In appeal before us Mr. Hardy on behalf of the appellant has assailed the judgment of the High Court and has contended that there was no sufficient ground for the High Court to reverse the judgment of acquittal of the trial court. If two views, according to the learned counsel, were possible in the matter, the view which was favourable to the accused and had been taken by the trial court should be adopted. As against that, Mr. Ram Panjwani on behalf of the State submits that the view taken by the trial court was clearly unreasonable and there were good and valid grounds for the High Court to interfere with the judgment of the trial court. We find force in the submission of Mr. Ram Panjwani.

The prosecution in order to bring the charge home to the accused has examined Wadhwa (PW 1). The witness gave evidence in support of the prosecution case as reproduced above and deposed about the offer of the envelope containing currency notes by the accused to him. We have been taken through the evidence of the witness and

A find no cogent ground as to why his evidence should not be accepted. The witness had no animus against the accused. The witness even did not know the accused earlier and had met him only once before on April 7, 1966 when the accused had seen him in his office and had made some representation regarding his tender. In the circumstances, we can discover no particular reason as to why Wadhwa should falsely involve the accused in this case.

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The trial court did not place much reliance upon the testimony of Wadhwa because the witness admitted that complaints had been made against him for showing favouritism as well as for corruption and high-handedness. On some occasions the witness also had to give explanation to clarify some particular action. The accused also placed on record letters and articles published in a local paper, copies of which

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are D2, D3, D4 and D5. In this respect we find that documents D2 to D5 contained general allegations of irregularities in HEL. There were no allegations in those writings against Wadhwa by name or by designation. As regards the complaints made against Wadhwa, there is nothing to show that the authorities concerned found substance in any of those complaints. As things are, such complaints are even made against senior officers who are very honest. In the absence of

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material to show that substance was found in any of the complaints made against Wadhwa, it would, in our opinion, be not proper to infer that Wadhwa is a person of doubtful integrity from the mere fact that sometimes complaints were received against him. Another reason which weighed with the trial court in not placing much reliance upon the testimony of Wadhwa was the fact that in answer to a question relating to the details of the design of the tanks in question, the witness replied that it was his prerogative as Chief Engineer in charge of

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construction to decide as to what he should do. The above answer would show that the witness used inappropriate language in describing his powers and functions. The answer might also reveal that the witness had exaggerated notion of the authority vested in him, but these facts would hardly warrant an inference that Wadhwa PW is not a very truthful witness and the court cannot place much reliance upon his testimony.

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The conduct of Wadhwa immediately after the offer to him of the envelope containing currency notes by the accused lends considerable support to his testimony. Wadhwa immediately pressed the buzzer and called his Personal Assistant Shrivastava PW. Shrivastava PW was then told by Wadhwa that the accused had offered him bribe.

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Wadhwa also told Shrivastava to take out the envelope containing currency notes from the trousers' pocket of the accused. Shrivastava then took out the envelope containing currency notes from the trousers' pocket of the accused. The envelope was then found to contain 30 currency notes of Rs. 100 each. The evidence of Wadhwa in this respect is corroborated by that of Shrivastava, PW. Shrivastava too had no animus against the accused and it is not explained as to

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why Shrivastava should falsely depose against the accused in this case.

It has been pointed out by Mr. Hardy that Wadhwa did not mention in report P1 dictated by him that he had told Shrivastava about the offer of bribe by the accused to him. This omission appears to

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have been due to the fact that Wadhwa did not give complete details in the report dictated by him. As mentioned earlier, there is nothing to show as to why Shrivastava should falsely depose against the accused. The fact that Shrivastava was a Personal Assistant of Wadhwa would hardly justify rejection of his testimony, especially when Wadhwa himself had no animus against the accused. In any case, it is mentioned in report P1 and is also admitted by the accused in his statement under section 342 of the Code of Criminal Procedure that Shrivastava took out Rs. 3,000 from the trousers' pocket of the accused under the directions of Wadhwa. There is nothing to show that the accused protested against the taking out of the currency notes from his pocket by Shrivastava under the directions of Wadhwa. If the accused was an innocent person and had no guilty conscience, he would in the normal course have flared up and not meekly submitted to the recovery of currency notes from his pocket by Shrivastava under the directions of Wadhwa. The conduct of Wadhwa in directing Shrivastava to take out the envelope containing currency notes from the pocket of the accused is in consonance with the prosecution case and belies the defence version.

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The evidence of Gupta and Tiwari PWs regarding the extra judicial confession made by the accused after the arrival of these witnesses lends further corroboration to the evidence of Wadhwa. These two witness, who were senior officers of HEL, had no enmity with the accused and nothing has been brought out as to why they should make false statements against the accused. It is true that Wadhwa made no mention of the extra judicial confession of the accused in the report sent by him to the police. This omission might also have been due to the fact that Wadhwa did not give full details in the report dictated by him. Be that as it may, even if the evidence regarding the extra judicial confession of the accused were excluded from consideration, the other material on record, particularly the testimony and conduct of Wadhwa as well as the evidence of Shrivastava, furnishes ample ground for basing the conviction of the accused.

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We are not impressed by the plea taken on behalf of the accused that Rs. 3,000, which were recovered from his pocket, had been brought by him for the purpose of depositing security. The question of the depositing of the security would have arisen only if and when the tender would have been accepted. The amount of security in that event would have to be deposited within 15 days of the date directing the contractor to do so.

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Argument has also been advanced on behalf of the accused appellant that it was not a condition of the tender that the contractor would use 24 tons of steel in the making of the tanks in question. This may be so, but it would not make any material difference so far as the present case is concerned. The evidence of Wadhwa PW shows that he had learnt from the Assistant Chief Engineer that as against the accused who had stipulated to use 18 tons of steel, the other contractors had stipulated to use 24 tons of steel. The accused, in the circumstances, might have become apprehensive that his tender in spite of

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A his lowest quotation might not be accepted. Necessity might consequently have been felt by the accused to offer illegal gratification with a view to secure a favourable decision in the matter of the acceptance of the tender.

B The view taken by the trial court in rejecting the evidence of Wadhwa, in our opinion, was clearly unreasonable and the High Court, in our opinion, had cogent grounds to interfere with the judgment of acquittal of the trial court. We are unable to find any infirmity in the appraisal of the evidence by the High Court as may induce us to take a different view.

C Reference on behalf of the appellant has been made to the decision of this Court in the case of *Kanu Ambu Vish v. State of Maharashtra*⁽¹⁾ wherein it was observed that the High Court in reversing a judgment of acquittal should not only consider all matters on record, including the reasons given by the trial court in respect of the order of acquittal, but should particularly consider those aspects which are in favour of the accused, and ought not also act on conjectures or surmises. The above dictum, in our opinion, cannot be of much avail to the appellant because we find that the High Court in reversing the order of acquittal considered the matters on record, including the reasons given by the trial court, as well as those aspects which could possibly be claimed by the accused to be favourable to him.

E It is well settled that the High Court in appeal under section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived by a judge who had the advantage of seeing the witnesses. We have been taken through the judgments of the trial court and the High Court and we find that the judgment of the High Court is not vitiated by any such infirmity as may call for interference by this Court.

H Before we part with this case, we would like to observe that as long as an impression exists that corruption is prevalent and that unless one pays to somebody things are not done, there would be always persons who would feel the urge to offer bribe. Bribe would be offered not only to get an undue favour but also to avoid unnecessary harassment and to see that no obstruction or delay is caused in getting the most legitimate work done. To prevent the repetition of crimes like

(1) A. I. R. 1971 S. C. 2256.

the one of which the appellant has been found guilty, it is necessary to inculcate a general feeling that things are done in due course uninfluenced by extraneous considerations. It would be unfortunate that, rightly or wrongly, an impression were to exist that without payment of illegal gratification, things would not be done. At the same time, the position in law is that if one makes an offer of bribe to a public servant, he would be guilty of the offence under section 165A Indian Penal Code. The courts are concerned only with the fact whether the person arraigned as an accused before them is guilty of the offence with which he is charged. The finding regarding the guilt of the accused cannot be affected by any consideration of the social and administrative milieu in which the offence is committed. Once the guilt is proved, as it has been in the case of the appellant, the law must take its course.

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The appeal fails and is dismissed.

S.C.

Appeal dismissed.