

A

AMRITLAL RATILAL MEHTA & ANR.

v.

STATE OF GUJARAT

November 16, 1979

B

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Indian Penal Code 1860 (Act 45 of 1860) Ss 34, 420 and 477-A—Accused charged under section 420/34 & section 477-A/34—Acquittal on charge under section 477-A—In appeal confirmed—Acquittal on charge under section 480—Whether follows.

C

Criminal Trial—Finding of fact finally determined at an earlier stage of case—At later stages—Binding force and conclusive nature of such finding.

The prosecution alleged that the appellants (accused) who were employees of a private company, wilfully and with an intention to defraud the Central Excise Department, made false declaration in gate passes which were prepared by Appellant No. 1 and signed by Appellant No. 2, secured clearance of dutiable goods without payment of Central Excise Duty, and thereby caused wrongful loss to the Central Excise Department. They were therefore charged with having committed offences punishable under sections 420 read with section 34 I.P.C. and section 477-A read with section 34 I.P.C.

D

E

The Magistrate who tried the case found that neither of the accused intended to cheat and make wrongful gain but that they made a false entry in the gate passes with a view to help their employers, and acquitted both of them of the charge under section 420 read with section 34 I.P.C., but convicted them under section 477-A read with section 34 I.P.C. and sentenced them to pay fines.

F

In the appellants' appeal, the Sessions Judge found that the gate passes were prepared by the accused under a mistake, that the worst that could be said against them was that they acted inadvertently or negligently that the expression "intent to defraud" denoted some element of dishonesty and that the appellants having acted neither wilfully nor with intent to defraud the Government, acquitted them of the charge under section 477-A read with section 34.

G

The State filed two appeals in the High Court, one against the order of acquittal recorded by the Sessions Judge on the charge under section 477-A read with section 34 I.P.C., and the other, against the order of acquittal recorded by the Magistrate on the charge under section 420 read with section 34 I.P.C. The former appeal was dismissed summarily by a Division Bench, while the latter was allowed by a Single Judge who imposed a sentence of fine. The Judge was of the view that the acquittal of the charge under section 477-A was not a bar to a conviction under section 420 as the ingredients of the two offences were different, and that the gist of the offence under section 477-A was that the false entries must have been made wilfully and with intent to defraud whereas the essence of the offence under section 420 was that the accused should have acted dishonestly.

H

In the appeal, to this Court it was contended on behalf of the appellants that the findings of fact recorded by the Sessions Judge on the charge under section 477-A read with section 34 I.P.C. having become final as a result of the dismissal of the appeal by the Division Bench, the charge under section 420 read with section 34 I.P.C. would automatically fail. A

Allowing the appeal,

HELD : 1. The question about the binding force of a finding at an earlier stage would depend on the question as to what the allegations were and what were the facts required to be proved and what findings were arrived at. The question is not whether the ingredients of the two offences are the same but whether the facts alleged and required to be proved in the particular case to establish the offences are basically the same. [76 A-B] B

Bhagat Ram v. State of Rajasthan [1972] 2 S.C.C. 466; *State of Rajasthan v. Tarachand Jain* [1974] 3 S.C.C. 72 referred to. C

In the instant case the charges against the appellants showed that the essential allegation to be proved was whether the gate passes were made 'dishonestly' so far as section 420 was concerned and "with intent to defraud" so far as the charge under section 477-A was concerned. A finding that the gate passes were made inadvertently and negligently was destructive of both the charges. D
[76 C]

2. If for the purpose of the offence under section 477-A, the court found that the entries made by the accused in the gate passes were made inadvertently and negligently but not wilfully or with a view to defraud and that finding had become final, it would not be open to the court, later to find, on the charge under section 420, that the entry on the gate passes was made not inadvertently and negligently, but dishonestly. [76 D] E

3. The acquittal of the accused having become final, must operate for the benefit of the accused and lead to their acquittal on the charge under section 420 also. [76 E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 222 of 1973.

Appeal by Special Leave from the Judgment and Order dated 27/28-2-73 of the Gujarat High Court in Criminal Appeal No. 731/71. F

Frank Anthony and *K. L. Hathi* for the Appellant.

R. H. Dhebar, *Miss Pratiloha Pandit* and *M. N. Shroff* for the Respondent. G

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. To appreciate the question posed in the present appeal, it is necessary to set out in full the two charges framed against the two appellants. They were as follows :—

"I, Chandrakant T. Mashla, Judicial Magistrate 2nd Court, Baroda hereby charge you H

(1) Amritlal Ratilal Mehta

A (2) Gajanan Bhikhabhai Gandhi both of Baroda as follows :—

B That both of you Amritlal Ratilal Mehta and Gajanan Bhikhabhai Gandhi on or about 21-12-65, at Baroda cheated the Central Excise Department, Baroda in furtherance of common intention to cheat the Government of excise duty of Rs. 11450/- (Eleven thousand four hundred and fifty) by dishonestly making false declaration in gate passes numbers 105, 104, 103, all dated 21-12-65 which were prepared and written by accused No. 1 and signed by accused No. 2 stating therein :
C "Repaired Motor with our replacing stator or Rotor" and thereby dishonestly induced the Central Excise Inspector to allow the clearance of Electric Motor Nos. 614193, 614194, 614196 respectively without payment of Central Excise duty on the dutiable parts namely Rotors Numbers 41-40-42 which were manufactured by M/s. Joyto Ltd., Company Baroda and were replaced by the said company in the above Electric Motors and thereby got the clearance of the above Electric Motors without payment of Central Excise Duty, causing thereby wrongful loss of Rs. 11450/- to the Central Excise department and thereby
D both of you committed offence punishable u/s. 420 read with s. 34 of I.P.C. within cognizance of J.M.F.C., Baroda.

E And also that both of you at about the same time and place in furtherance of common intention in your capacity as employees of M/s. Joyto Ltd. Baroda wilfully and with an intention to defraud the Central Excise Department, Baroda made false entries in the gate passes as mentioned above belonging to your employer and thereby committed an offence punishable u/s 477-A, r/w. Section 34 I.P.C. and within cognizance J.M.F.C., Baroda. And thereby direct that you
F both be tried for the above offences by 2nd Court, J.M.F.C., Baroda."

G The learned Judicial First Class Magistrate, Baroda who tried the case acquitted both the accused of the charge under s. 420 read with s. 34 I.P.C. but convicted them under s. 477A read with s. 34 I.P.C. and sentenced them to pay fines of Rs. 100/- and Rs. 500/- respectively. The learned Magistrate was of the view that neither of the accused intended to cheat and make wrongful gain but that they made a false entry in the gate passes with a view to help their employer. The two accused preferred an appeal to the Extra Additional Sessions Judge, Baroda. The learned Sessions Judge acquitted them of the
H charges under s. 477-A read with s. 34 I.P.C. also. The learned Sessions Judge found that the gate passes were prepared by the accused under a mistake and that the worst that could be said against the two

accused was that they acted inadvertently or negligently. The learned Sessions Judge took the view that the expression "intend to defraud" denoted some element of dishonesty and that the appellants acted neither wilfully nor with the intent to defraud the Government. The State of Gujarat filed two appeals, the first against the order of acquittal recorded by the learned Judicial First Class Magistrate, Baroda on the charge under s. 420 read with s. 34 I.P.C., and the second against the order of acquittal recorded by the learned Extra Additional Sessions Judge, Baroda on the charge under s. 477-A read with s. 34 I.P.C. The appeal against the order of acquittal on the charge under s. 477-A read with s. 34 I.P.C. was dismissed summarily on 13-3-72 by J. M. Sheth and A. A. Dave, JJ. The appeal against the order of acquittal on the charge under s. 420 read with s. 34 I.P.C. was allowed on 27/28-2-73 by J. M. Sheth, J. and the two accused were sentenced to pay fines of Rs. 300/- and 500/- respectively. It is against this judgment of J. M. Sheth, J. that the present appeal has been preferred by special leave of this Court.

The principal submission of Shri Frank Anthony, learned counsel for the appellants was that in view of the findings of fact recorded by the Sessions Judge on the charge under s. 477-A read with s. 34, which had become final as a result of the dismissal of the appeal by Sheth and Dave, JJ., the charge under s. 420 read with s. 34 I.P.C. must automatically fail. The learned counsel submitted that the judgment of the High Court convicting the appellants under s. 420 read with s. 34 I.P.C. was patently wrong. We are inclined to agree with the submission of Shri Frank Anthony.

The learned Judge of the High Court was of the view that the acquittal on the charge under s. 477-A was not a bar to a conviction under s. 420 as the ingredients of the two offences were different. According to the learned Judge, the gist of the offence under s. 477-A was that the false entries must have been made wilfully and with intent to defraud whereas the essence of the offence under s. 420 was that the accused should have acted dishonestly. We are afraid that the learned Judge entirely misdirected himself. The question here is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one *autrefois acquit* or *autrefois convict*. The question is not even one of 'issue estoppel' properly so called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stages of a case, of a finding of fact finally determined at an earlier stage of the case. The question is not *res integra*. In *Bhagat Ram v. State of Rajasthan*(¹) and *State of Rajasthan v. Tarachand*

(1) [1972] 2 S.C.C. 466.

- A** *Jain*(¹) it has been held by this Court, an earlier finding which had obtained finality is binding in the subsequent proceedings in the case. The question about the binding force of a finding at an earlier stage would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at. The question thus is not whether the ingredients of the two offences are the same
- B** but whether the facts alleged and required to be proved in the particular case to establish the offences are basically the same. The charges set out by us at the outset show that the essential allegation which was required to be proved in respect of the two charges was whether the gate passes were made 'dishonestly' so far as the charge under s. 420 was concerned and 'with intent to defraud' so far as the charge under
- C** s. 477-A was concerned. A finding that the gate passes were made inadvertently and negligently was destructive of both the charges. If for the purpose of the offence under s. 477-A, the Court found that the entries made by the accused in the gate passes were made inadvertently and negligently but not wilfully or with a view to
- D** defraud and that finding became final, it would not be open to the Court, later to find, on the charge under s. 420, that the entries on the gate passes were made not inadvertently and negligently, but dishonestly. On the facts of the present case, we hold that the finding of fact to the effect that the gate passes were made inadvertently and negligently and not wilfully or with intent to defraud which led to the acquittal
- E** of the accused on the charge under s. 477-A must, that acquittal having become final, operate for the benefits of the accused and lead to their acquittal on the charge under s. 420 also. The finding that the gate passes were made inadvertently and negligently, as we said, was destructive of the charges under both s. 420 and s. 477-A. The appeal is therefore allowed. The appellants are acquitted. Their bail bonds
- F** will be cancelled. Fines if any will be refunded.

N.V.K.

Appeal allowed.

(1) [1974] 3 S.C.C. 72.