

CRIMINAL APPEAL
Present: The Hon'ble Justice S.P. Talukdar
Judgment on: 18.05.2010
C.R.A.No. 370 of 1988

Tarit Baran Chaudhury
Vs.
The State of West Bengal

Point:

CONSPIRACY, PROOF: If there is no direct evidence of an agreement to conspire whether a conspiracy can be inferred from circumstances- Agreement whether be proved by necessary implication- Credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny- Minor inconsistencies and marginal mistakes do not necessarily demolish the prosecution case- Proof beyond reasonable doubt is the guideline and not a fetish- Indian Penal Code, 1860 S 465- Code of Criminal Procedure, 1973, S 313

Facts:

The appellant/convict, Tarit Baran Chaudhury, was an employee of Dharamtolla Street Branch of the United Bank of India. While working as a clerk he entered into a criminal conspiracy with another person namely, Sisir Das and got an account opened in the Bank, in the name of Rabin Mallick for cheating the bank. He obtained an introduction from one D.N. Chowdhury, a constituent of Gangulybagan Branch of the said bank through the Branch Manager, Subodh Kr. Shom. The accused persons managed to get a sum of Rs. 53,894.50/- with four 'pay-in-slips' credited to the account of the said Rabin Mallick. Such complaint was lodged. After completion of investigation, the investigating authority submitted charge sheet. Sanction for prosecution was duly obtained.

Learned Court framed charge under Section 120B of Indian Penal Code read with Section 420 of I.P.C., under Section 465 of I.P.C. and under Section 5(1) (d) read with Section 5 (2) of the Prevention of Corruption Act on 31st July, 1985. The accused/appellant pleaded not guilty to the said charges and claimed to be tried.. The accused person during his examination under Section 313 of Cr.P.C. pleaded innocence. Defence side did not adduce any evidence. Learned Trial Court after taking into consideration the evidence on record and other relevant facts and materials convicted the accused/appellant and imposed sentences as referred to earlier. The appellant preferred this appeal being aggrieved by the said judgment and order of conviction and sentence.

Held:

Learned Trial Court seems to be perfectly justified in observing that it is difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. An agreement may also be proved by necessary implication. **Para-16**

The role of the present appellant in the matter of incorporating the words 'Park St.' in the 'pay-in-slips' cannot just be lost sight of. This coupled with other evidence on record convincingly established the charge under Section 465 of the I.P.C. against him. **Para-20**

It may be pointed out that credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Minor inconsistencies and marginal mistakes do not necessarily demolish the prosecution case. It cannot also be disputed that truth sometimes suffers from infirmity when

projected through human process. Proof beyond reasonable doubt is the guideline and not a fetish.

Para-24

Cases referred:

J Th Zwart & Ors. vs. Indrani Mukherjee reported in 1990 C Cr LR (Cal)

**For the Appellant: Mr. Joymalya Bagchi
Mr. Deep Chaim Kabir.**

For the State: Mr. Ranjit Kumar Ghosal.

The Court:

1. This appeal is directed against the judgment and order dated 17th March, 1988 passed by the learned Judge, Second Special Court, Calcutta in Special Case No.1 of 1977. The learned Court convicted the present appellant under Section 120B/420/465 of the Indian Penal Code, 1860 as well as under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act. The Appellant was sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.50,000/- in default, to suffer rigorous imprisonment for a further period of one year for the offence under Section 120B/420 of Indian Penal Code and sentenced to suffer rigorous imprisonment for two years for the offence under Section 465 of I.P.C. He was further sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.50,000/- in default, to suffer imprisonment for one year for his conviction under Section 5 (1) (d) read with Section 5 (2) of Prevention of Corruption Act II of 1947. Learned Court directed that all the sentences would run concurrently.

2. The prosecution case in brief is: -

The appellant/convict, Tarit Baran Chaudhury, was an employee of Dharamtolla Street Branch of the United Bank of India. While working as a clerk between 13th March, 1976 and 24th March, 1976, he entered into a criminal conspiracy with another person namely, Sisir Das and got an account opened in the Bank, in the name of Rabin Mallick for cheating the bank. He obtained an introduction from one D.N. Chowdhury, a constituent of Gangulybagan Branch of the said bank through the Branch Manager, Subodh Kr. Shom. The accused persons managed to get a sum of Rs.53, 894.50/- with four 'pay-in-slips' credited to the account of the said Rabin Mallick.

3. Such complaint was lodged on 27th March, 1976. After completion of investigation, the investigating authority submitted charge sheet on 21st January, 1977. Sanction for prosecution was duly obtained. Learned Court framed charge under Section 120B of Indian Penal Code read with Section 420 of I.P.C., under Section 465 of I.P.C. and under Section 5(1) (d) read with Section 5 (2) of the Prevention of Corruption Act on 31st July, 1985. The accused/appellant pleaded not guilty to the said charges and claimed to be tried.

4. Prosecution in order to establish the guilt of the accused person examined as many as 27 witnesses. The accused person during his examination under Section 313 of Cr.P.C. pleaded innocence. Defence side did not adduce any evidence. Learned Trial Court after taking into consideration the evidence on record and other relevant facts and materials convicted the accused/appellant and imposed sentences as referred to earlier.

5. The appellant preferred this appeal being aggrieved by the said judgment and order of conviction and sentence. Mr. Bagchi appearing with Mr. Kabir as learned Counsel for the appellant/accused submitted that the impugned judgment and order of conviction and sentence suffers from

misappreciation of evidence on record. It was also submitted that there had been failure on the part of learned Trial Court to appreciate the relevant legal provisions as well.

6. It appears from the evidence of P.W.1, P.W.2, P.W.8, P.W.14 and P.W.18 that on 13th March, 1976 the appellant went to the chamber of P.W.1, Subodh Kr. Shom, who was the Branch Manager of Gangulibagan Branch of the United Bank of India. He was accompanied by the accused Sisir Das, since deceased. The present appellant introduced him to P.W.1 as Rabin Mallick. The appellant obtained introduction of the said Sisir Das in the application form (Ext.1) in the fictitious name of Rabin Mallick from P.W.2 D. N. Chowdhury, a constituent of the Gangulibagan Branch of the United Bank of India for opening current account in Dharmatalla Street Branch of the said bank. There is further evidence on record showing that the appellant being accompanied by Sisir Das, since deceased, went to P.W.1 to find out why the application had not been forwarded. On instructions of P.W.1, a forwarding letter was prepared and all documents were then sent to U.B.I., Dharmatalla Branch through Sisir Das, since deceased, who signed the registers as a token of receipts of the documents. Thus, a current account, being No.13253/76, was opened and Rs.500/- was deposited. Sisir Das, since deceased, obtained a cheque book from the bank and signed in the name of Rabin Mallick. It was issued by one Jawarharlal Sengupta. Both the accused persons prepared four cheque deposit slips dated 20th March, 1976 of Rs.17, 521/-, Rs.21, 000/-, Rs.3, 411/- and Rs.11, 952.50/- and they procured a forged seal and then put stamp on them. Sisir Das @ Rabin Mallick, since deceased, as account holder deposited the pay in slips and got them encashed. The appellant surreptitiously introduced the false pay in slips with other genuine ones. Debabrata Roy Chowdhury being P.W.14 credited the account with the money. Sisir Das, thereafter, withdrew Rs.32, 095/- from the said account.

7. Mr. Joymalya Bagchi, appearing as learned Counsel for the appellant, first submitted that it is not for the defence to clarify the implication of the alleged writing 'Park St.'. This was in response to the prosecution allegation that the hand writing expert opined that the said writing, 'Park St.' was introduced subsequently. He then submitted that it was no part of the job of the appellant to introduce customers. Thus, it could not be in discharge of any official function or duty. He then pointed out that at best the appellant requested another public servant to introduce. He wondered as to how such an act of introduction could be an offence since introducer had not been made an accused.

8. Mr. Bagchi further submitted that there could be no evidence showing that the present appellant could derive any 'pecuniary advantage'. It was his further submission that P.W.1 and P.W.5 i.e., the person who introduced and the person who made entries in the relevant ledger are not accused persons and then, how could there be a charge under Section 5(1) (d) of the Prevention of Corruption Act against the present appellant. He referred to the evidence of P.W.8 who deposed that the official account was in ledger No.5. According to P.W.8, appellant was in charge of the relevant ledger but he stated that the concerned ledger No.5 dealt with surnames starting with the letter I, J and F. It transpires from his evidence that the appellant was on leave at the relevant time and P.W.14 was in charge of the ledger in his absence. P.W.8 further deposed that the appellant visited the bank on 23rd March, 1976 and 24th March, 1976 and met him. He, however, did not state that the appellant dealt with any paper work or the ledger, which P.W.14 was dealing. Referring to the evidence of P.W.9, it was submitted that the said witness could not identify the person who had withdrawn the amount. Reference was made to the evidence of P.W.15 who

deposed that the entire complaint was on the basis of information he received from one Sibarama Bhar who was not examined. According to P.W.15, there was nothing against the appellant apart from the fact that he came to the office during his leave and handled the ledgers. Mr. Bagchi also submitted that the present appellant could not have had any role to play in the commission of the offences as alleged. Since he was an active member of the U.B.I. Employees Union, he was targeted by the management. Mr. Bagchi further submitted that the entire prosecution case is essentially directed against Sisir Das @ Rabin Mallick and the said accused having expired during the trial of the case, there was hardly anything left so as to justify convicting the present appellant.

9. It was contended that since the ledger under reference did not include the concerned account, as following alphabetical order another ledger ought to have been used and since the appellant was on leave at the relevant time and the ledger was being maintained by P.W.14, there could not be any remote involvement of the present appellant. Significantly enough, P.W.8 in his cross examination deposed that the words 'Park St' are not in the hand writing of the appellant. On behalf of the appellant, Mr. Bagchi further submitted that the significance or implication of the said words 'Park St.' could not be properly established by the prosecution.

10. Attention of the court was invited to the evidence of P.W.21 while submitting that the said writing, 'Park St' was written subsequently. Mr. Bagchi referred to the inconsistency in the evidence of P.W.8 and P.W.21 in this regard.

11. According to him, there could be no such material so as to establish the ingredients of the offence punishable under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act against the appellant. Expressing surprise, Mr. Bagchi submitted that the bank official

responsible for opening the account in the name of Rabin Mallick had been made a witness whereas the present appellant, for reasons not far to seek, was made an accused.

12. He further added that in absence of any material showing any misrepresentation on the part of the appellant to the bank, there could be no justification for holding the appellant guilty for the offence under Section 420 either.

13. Similarly, Mr. Bagchi sought to assail the charge under Section 465 of I.P.C while submitting that mere writing of the words 'Park St' in the 'pay-in-slips' does not constitute an offence of making a false document in law. He sought to derive support from the Division Bench decision of this court in this regard in the case between J Th Zwart & Ors. vs. Indrani Mukherjee reported in 1990 C Cr LR (Cal), 1. Their Lordships in the said case held: -

“Incorporation or inclusion of a false statement in a document would not *ipso facto* make the document false, for a document to be false it has to tell a lie about itself”.

14. Reference was further made to the decision of the Apex Court in the case between Md. Ibrahim & Ors. vs. State of Bihar & Anr., reported in 2009 (6) Supreme 470 while submitting that to fall under the category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

15. On the other hand, Mr. Ghosal, learned Counsel for the State, sought to defend the impugned judgment and order while submitting that the same does not call for any interference by this court.

16. Learned Trial Court seems to be perfectly justified in observing that it is difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. An agreement may also be proved by necessary implication.

17. It is difficult to brush aside the evidence on record indicating active involvement of the appellant in introducing Sisir Das, since deceased, to the relevant branch of the United Bank of India. The very fact that he was introduced in the name of Rabin Mallick speaks volume against the present appellant. It transpires that in the account opening form (Ext.1), a fictitious address was given and that was 151/1A, Dharmatalla Street, Calcutta-13.

18. P.W.25 in his evidence clearly indicated that there was no premises with the said number. The manner in which the controversial 'pay-in-slips' were handled and the entries were made in the relevant ledger register leave little untold. The anxiety of the appellant was further reflected in his visiting the concerned bank and getting engaged in casual talk with P.W.14 on 23rd March, 1976 and 24th March, 1976. The prosecution evidence on record derived effective support and strength from the documentary exhibits and the learned Trial Court appears to have dealt with the same in their proper perspective.

19. Having regard to the well-corroborated oral evidence on record, which had been effectively substantiated by various documentary exhibits, I find it difficult to accept the contention as made

on behalf of the appellant. Learned Trial Court after analysing the evidence on record and taking into consideration other relevant materials, held that the present appellant entered into a criminal conspiracy with another accused Sisir Das @ Rabin Mallick, since deceased, and this was with the object of cheating the United Bank of India, Dharmatalla Branch, and as result, the said bank was cheated to the extent of Rs.32, 095/- covering the amounts of five cheques being Exts. 7/1 to 7/5.

20. As already discussed, the role of the present appellant in the matter of incorporating the words 'Park St.' in the 'pay-in-slips' cannot just be lost sight of. This coupled with other evidence on record convincingly established the charge under Section 465 of the I.P.C. against him.

21. It cannot be disputed that the present appellant was an employee of the concerned bank. He was, thus, a public servant at the relevant time. In order to prosecute him, there was need for sanction. P.W.5, who is the authority to accord sanction, in compliance with the requirement of Section 6 of the Prevention of Corruption Act, issued such sanction order, marked Ext.3.

22. Mr. Bagchi, of course, submitted that as an employee of the bank, it was no part of his duty to introduce customers. As such, it could not also be in course of discharge of his official duty. He further submitted that at best, he requested another public servant to introduce Sisir Das. He then expressed wonder while submitting that if act of introduction is not an offence since the employee who introduced Sisir Das had not been made an accused, how could the appellant be implicated. He further submitted that the evidence on record could not have established that the present appellant derived any pecuniary advantage.

23. Having regard to the evidence on record, particularly of P.W.5 and considering other facts and materials including Ext.3, this court finds it difficult to accept the contention as made on behalf of the appellant regarding his conviction for the offences under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act.

24. It may be pointed out that credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Minor inconsistencies and marginal mistakes do not necessarily demolish the prosecution case. It cannot also be disputed that truth sometimes suffers from infirmity when projected through human process. Proof beyond reasonable doubt is the guideline and not a fetish. Considering the evidence on record, both oral and documentary, I think that learned Trial Court was perfectly justified in convicting the accused persons for the offences as referred to earlier. Thus, I do not find much merit in the grievance ventilated on behalf of the appellant.

25. It is however, submitted that the present appellant/convict is now an aged and ailing person. He was convicted by the learned Trial Court as far back as in 1988. Long 22 years have passed. Mr. Bagchi submitted that if such a person is now sent back to suffer detention, it will invite painful embarrassment for the institution. It may also be mentioned that gone are the days of “a tooth for a tooth and an eye for an eye”. Modern penology lays more emphasis on correctional measures. It is said that ‘if every saint has a past, every sinner has a future’. The present appellant must have spent last couple of decades in anxiety and humiliation. These factors now need to be taken into consideration. In course of submission, it was contended that the appellant/convict at various stages was in detention for more than a year in connection with the present case. In that event, I do not

find any rational justification for sending him back to any correctional home after all this protracted period.

26. Mr. Bagchi appearing as learned Counsel for the appellant further submitted that compelling the appellant/petitioner to be back in custody will certainly be not in the best interest of justice. He, further, referred to the principles of punishment while submitting that the present appellant who admittedly has no criminal antecedent and who is an old ailing person certainly does not deserve to be sent back to custody and that too, more than two decades after his conviction by the learned trial court.

27. Mr. Ghosal, appearing as learned Counsel for the State, quite rightly appreciates the same.

28. Considering all these aspects the sentence inflicted upon the appellant/convict be modified to the extent as indicated hereunder: -

The appellant/convict has to suffer imprisonment for a period of ten days only and to pay fine of Rs.5, 000/- (Rupees five thousand) only in default, to suffer imprisonment for a period of one month for the offences under Sections 120B/420 of the Indian Penal Code. No separate sentence is passed for either the offence under Section 465 of the Indian Penal Code or under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act. In the event, the appellant/convict has already been in detention for ten days, he must immediately be set free upon his surrender before the learned Trial Court as per section 428 of Cr.P.C and of course, subject to payment of fine.

Send a copy of this judgment along with the lower court record back to the learned Trial Court immediately for information and necessary action.

The appellant is directed to surrender before the learned Trial Court within a period of six weeks from this date.

Criminal Section is directed to supply the photocopy of the judgment on priority basis.

(S.P.Talukdar, J.)